

August 31, 2021

*Sent via email*

Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768

**RE: LDF Opposition to Senate Bill 1 Conference Committee Report**

Dear Speaker Phelan, Speaker Pro Tempore Moody, Republican Caucus Chair Klick, Democratic Caucus Chair Turner, and Members of the Texas House of Representatives:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to express our strong opposition to the Conference Committee Report on Texas Senate Bill 1 (“S.B. 1”).<sup>1</sup> This Conference Committee Report should be voted down in its entirety for the reasons described herein, as well as the reasons set forth in LDF’s testimony against S.B. 1, submitted on August 10, 2021 to the Senate State Affairs Committee,<sup>2</sup> and many of the reasons set forth in LDF’s testimony against the bill’s previous incarnations during this year’s Regular Session and First Special Session.<sup>3</sup>

In our democracy, it is imperative that all voters, particularly Black voters and other voters of color, have full, meaningful, and unburdened access to the one fundamental right that is preservative of all other rights: the right to vote.<sup>4</sup> Yet S.B. 1 proposes to undermine that right for Texas citizens. The bill would impose severe, needless, and discriminatory restrictions on voting by mail and the receipt and provision of voting assistance. It would target for elimination the common-sense methods of voting, such as “drive-thru” voting and 24-hour early voting, that proved invaluable for Black and Latino voters in Texas’s largest cities in 2020. And it would

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<sup>1</sup> S.B. 1, 87th Leg., 2nd Spec. Sess. (Tex. 2021).

<sup>2</sup> NAACP LDF, *LDF Opposition to Senate Bill 1* (Aug. 9, 2021) (on file with authors and submitted by email to the Senate State Affairs Committee).

<sup>3</sup> See NAACP LDF, *LDF Opposition to Senate Bill 1* (July 10, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-Opposition-S.B.-1.pdf>; NAACP LDF, *LDF Opposition to House Bill 3* (July 10, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-Opposition-H.B.-3.pdf>; NAACP LDF, *LDF Opposition to House Bill 6* (Mar. 25, 2021), [https://www.naacpldf.org/wp-content/uploads/20210324\\_LDF-Opposition-TX-H.B.-6-v02.pdf](https://www.naacpldf.org/wp-content/uploads/20210324_LDF-Opposition-TX-H.B.-6-v02.pdf); NAACP LDF, *LDF Opposition to Senate Bill 7* (Mar. 22, 2021), <https://www.naacpldf.org/news/ldf-submits-testimony-opposing-texas-senate-bill-7/>.

<sup>4</sup> See *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (describing the right to vote as “a fundamental political right, because preservative of all rights”).



empower partisan poll watchers to play an outsized role in election administration—while criminalizing other election officials for simply doing their jobs by encouraging and facilitating access to the franchise for eligible, registered Texans.

We write to highlight a sampling of the bill’s most concerning provisions, but we oppose this harmful and unnecessary legislation in its entirety. For the reasons set forth herein and others, we are deeply concerned that the enactment of S.B. 1 will erect discriminatory barriers and burdens to political participation and encumber the fundamental right to vote for Black, brown, disabled, elderly, and low-income voters. Cumulatively and individually, these restrictions may also violate federal law, including the First, Fourteenth and Fifteenth Amendments to the U.S. Constitution, the Voting Rights Act of 1965, the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. We urge you to vote down the Conference Committee Report on S.B. 1 in its entirety.

#### **A. S.B. 1 Bans Drive-Thru Voting, Tightens the Prohibition on Straight Ticket Voting and Eliminates 24-Hour Voting.**

S.B. 1 would eliminate 24-hour early voting,<sup>5</sup> prohibit drive-thru voting,<sup>6</sup> and ban any ballot design or system of voting that incorporates the time-saving features of “straight-ticket” voting.<sup>7</sup> These provisions of S.B. 1 target methods and means of voting used disproportionately by Black and brown voters, particularly in the 2020 election in which these voters participated in record numbers.<sup>8</sup>

S.B. 1 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 outside or in any “movable structure” and by barring voters from “cast[ing] a vote from inside a motor vehicle” unless they are eligible to vote curbside.<sup>9</sup> Drive-thru voting was used in urban centers in Texas, which are disproportionately home to Black and Latino Texans, and provided critical voting access to elderly voters and voters with disabilities.

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.<sup>10</sup> These provisions of Texas law allowed Harris County to develop a

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<sup>5</sup> S.B. 1, §§ 3.09-3.10.

<sup>6</sup> *Id.* §§ 3.04, 3.12-3.13.

<sup>7</sup> *See id.* § 3.15.

<sup>8</sup> *See, e.g.,* Matt Goodman, *Election Day Arrives on the Heels of Historic Early Voting Turnout in North Texas*, D Magazine (Nov. 2, 2020, 11:22 AM), <https://www.dmagazine.com/frontburner/2020/11/election-day-2020-dallas-county-north-texas/>; Taylor Pettaway, *Experts say more Blacks and Latinos are voting in Texas this year. Here is what is motivating them.*, MySanAntonio.com (Nov. 3, 2020), <https://www.mysanantonio.com/news/local/article/Black-and-brown-voters-could-change-Texas-15694876.php>.

<sup>9</sup> S.B. 1, §§ 3.04, 3.12-3.13.

<sup>10</sup> Tex. Election Code § 85.062.

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.<sup>11</sup>

Methods such as drive-thru voting that make voting by personal appearance easier, safer, and more accessible are critical for elderly and disabled voters, who are less able to wait in long lines to vote, as well as Black and Latino voters, who disproportionately face longer wait-times to cast their ballots and may simultaneously face greater challenges in leaving family obligations, obtaining time off from work, or securing transportation to vote.<sup>12</sup> S.B. 1's total elimination of this method of voting will disproportionately harm the state's Black and Latino voters, and, given that the disparate impact appears to be widely recognized, may indicate a discriminatory purpose in violation of the U.S. Constitution.

S.B. 1 also tightens Texas' recent ban on straight-ticket voting, eliminates 24-hour voting and requires early voting to occur during peak hours. Taken together, these measures will operate to increase the time Texas voters must wait to cast a ballot, disproportionately harming elderly, disabled, Black and brown voters.

S.B. 1 eliminates straight-ticket voting by providing that “[v]oting system ballots may not be arranged in a manner that allows a political party’s candidates to be selected in one motion or gesture.”<sup>13</sup> Straight ticket voting can be a critical tool for voters across Texas to effectively engage in the political process. A century-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.<sup>14</sup> Straight-ticket voting has been such a critical tool that, in the 2018 general election, some two-thirds of Texas voters—*over 5.6 million Texans*—used straight-ticket voting when casting their ballots.<sup>15</sup> S.B. 1's elimination of straight-ticket voting as an option will lead to longer lines at the polls in future elections, making it more difficult for Black and brown voters to cast a ballot in person.<sup>16</sup>

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<sup>11</sup> See *Hotze v. Hollins*, No. 4:20-cv-03709, 2020 WL 6437668 (S.D. Tex. Nov. 2, 2020).

<sup>12</sup> *Texas Alliance for Retired Ams. v. Hughs*, No. 5:20-CV-128, 2020 WL 5747088 (S.D. Tex. Sept. 25, 2020).

<sup>13</sup> S.B. 1, § 3.15 (amending Tex. Election Code § 124.002).

<sup>14</sup> *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”).

<sup>15</sup> 2020 WL 6601593 at \*10.

<sup>16</sup> 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).

The Conference Committee Report on S.B. 1 eliminates 24-hour voting by generally preventing voting from occurring “earlier than 6 a.m. or later than 10 p.m.”<sup>17</sup> This will limit early voting hours that were most accessible and convenient for individuals who work non-traditional work hours, and who are disproportionately people of color. In the 2020 general election, Harris County, one of the largest and fastest growing jurisdictions in the United States, offered six 24-hour polling locations, which were highly popular and disproportionately used in a county where the majority of residents are people of color.<sup>18</sup> This provision of S.B. 1 appears to be a targeted and direct response to measures used by the Clerk of Harris County to enfranchise Black and Latino voters in the 2020 general election.

Together, S.B. 1’s rollbacks to the hours of early voting, including its elimination of 24-hour voting, ban on straight-ticket voting and elimination of drive-thru voting, will likely cause voting to take significantly more time and be less open to Black and Latino voters. Such an increase in the wait-times at the polls will have a foreseeable discriminatory effect on Black and Latino voters.<sup>19</sup>

### **B. S.B. 1 Imposes Severe Burdens on the Already Limited Vote By Mail Process in Texas, Adding Burdensome ID Requirements and Matching Provisions as well as Eliminating Mail Ballot Drop Boxes.**

S.B. 1 imposes a myriad of new restrictions that will make it more difficult for voters to cast vote-by-mail (VBM) ballots at every stage in the process, and will likely disproportionately affect Black voters, Latino voters, and other voters of color; elderly voters; and voters with disabilities. Each of these provisions threatens to erode access to voting opportunities. Their likely combined effects raise still greater concerns. By imposing further restrictions on Texas’s already limited VBM process, S.B. 1 will increase barriers for eligible voters to vote by mail. These restrictions will likely force more Texans who qualify to vote by mail to attempt to vote in person, leading to longer wait times for all voters—and outright disenfranchisement for some.

*First*, S.B. 1 will impose new restrictions on how eligible voters may receive VBM ballot applications by prohibiting election officials from “distribut[ing] an application to vote by mail to a person who did not request an application”—even if the voter is duly registered and eligible to vote by mail.<sup>20</sup> Further, S.B. 1 bans local election officials from encouraging participation in the electoral process by “solicit[ing] the submission of an application to vote by mail” from eligible registered voters.<sup>21</sup> These restrictions on how an eligible Texas voter may receive a VBM

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<sup>17</sup> S.B. 1, §§ 3.09-3.10 (amending Tex. Election Code § 85.005 and Tex. Election Code 85.006).

<sup>18</sup> U.S. Census Bureau, *QuickFacts: Harris County, TX*, <https://www.census.gov/quickfacts/harriscountytexas> (reporting that, as of the 2019 American Community Survey, only 28.7% of Harris County’s population consisted of non-Hispanic white people).

<sup>19</sup> *Texas Alliance for Retired Ams. v. Hughs*, 489 F. Supp. 3d 667, 686–691 (S.D. Tex. 2020).

<sup>20</sup> S.B. 1, § 7.04.

<sup>21</sup> *Id.*

application serve no legitimate purpose and interpose obstacles between eligible voters and a VBM application or ballot

*Second*, S.B. 1 will make it more difficult for voters to return their VBM ballots in person by banning the use of unstaffed, secure drop boxes. S.B. 1 would require any “in-person delivery of a marked ballot” to be “received by an election official at the time of delivery.”<sup>22</sup> This would make it impossible for counties to respond to voter needs by providing unstaffed secure drop boxes and will likely prevent counties from providing in-person ballot-return options after business hours. Restricting access to this vital option serves no purpose. Secure drop boxes have become a frequently-used best practice nationwide—the Department of Homeland Security 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>23</sup> Drop boxes are especially important for voters seeking to return their VBM ballots in the final days before an election, including after a clerk’s office closes for the evening, as some voters do not receive their ballots until the final days before the election and may not have time to return them by mail.<sup>24</sup> For voters with personal or professional commitments that limit their availability during workhours, elderly voters, and voters with disabilities or other medical conditions, returning an early voting ballot in-person at a clerk’s office during business hours, or voting in person during early voting or on Election Day, may not be feasible. In addition, based on service issues with the United States Postal Service, which will likely persist,<sup>25</sup> some voters are not confident about returning absent voter ballots by mail.

*Third*, S.B. 1 will make it more difficult for voters to apply for VBM ballots by imposing an unnecessary identification requirement. When applying for a VBM ballot, under S.B. 1, a voter would be required to provide the number of their Texas driver’s license or personal identification card, the last four digits of their Social Security number, or a statement attesting that they have not been issued any of these forms of identification.<sup>26</sup> If there is an error or discrepancy among the numbers provided such that “the information provided . . . does not identify the same voter identified on the applicant’s application for voter registration,” the voter’s VBM application must be rejected.<sup>27</sup> The additional hurdle this provision of S.B. 1 imposes will increase the opportunity for ballot-rejection due to minor errors, create needless

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<sup>22</sup> See S.B. 1, § 4.12.

<sup>23</sup> See U.S. Dep’t of Homeland Security, Cybersecurity and Infrastructure Security Agency, *Ballot Drop Box* 1 (2020), [https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot\\_Drop\\_Box.pdf](https://www.eac.gov/sites/default/files/electionofficials/vbm/Ballot_Drop_Box.pdf).

<sup>24</sup> See, e.g., Karen Brooks Harper, *Worried your mail-in ballot still hasn't arrived? Here's how to be sure your vote counts*, Tex. Tribune (Oct. 29, 2020), <https://www.texastribune.org/2020/10/29/texas-mail-in-ballot-absentee/>.

<sup>25</sup> Quinn Klinefelter, *There’s No End in Sight: Mail Delivery Delays Continue Across the Country*, NPR (Jan. 22, 2021), <https://www.npr.org/2021/01/22/959273022/theres-no-end-in-sight-maildelivery-delays-continue-across-the-country>.

<sup>26</sup> S.B. 1, §§ 5.02, 5.07, 5.08.

<sup>27</sup> *Id.* § 5.07.

burdens for all absentee voters, and likely require some voters to take additional steps to correct rejected ballots—and potentially resulting in disenfranchisement for those who are unable to do so as a result of unclear instructions, confusion as to the ballot-cure process, or unavoidable work or other obligations.

The bill’s restrictions on VBM access are likely to disproportionately burden historically marginalized groups. For example, Black and Latino voters are less likely to be able to take time off work<sup>28</sup> and are therefore more likely to return their VBM ballot to a drop box outside of business hours. By requiring all such ballots to be returned in-person to an election official,<sup>29</sup> S.B. 1’s restrictions impose significant burdens on these voters. The bill’s provisions will likely also harm older voters and voters with disabilities, who may face greater challenges in traveling, during business hours, to physically drop off their ballots to an election official. Curtailing in-person ballot return options for voters of color, older voters, and voters with disabilities—and subjecting these voters and others to an inappropriately onerous identification requirement—serves no legitimate purpose but will impose a severe burden on the right to vote.

S.B. 1’s assault on early voting in person and by mail is especially concerning because it comes immediately after an election in which voters of color used early voting, voting by mail, and other methods of voting, other than voting in person Election Day, at unprecedented levels.<sup>30</sup> And despite the global pandemic and barriers associated with it, Texas’s voter turnout for the 2020 general election broke records as the highest in almost thirty years, up 6.6 percentage points from voter turnout from the last general election in 2016.<sup>31</sup> Voters of color specifically accounted for 40% of the total votes cast in Texas in the 2020 general election.<sup>32</sup> Importantly,

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<sup>28</sup> Black Texans have a median household income of \$47,428 and Latino Texans have a median household income of \$52,010—far less than that of non-Hispanic white Texans (\$78,905), making it more difficult for Black and Latino voters to take time off work to vote. *See S1903, Median Income in the Past 12 Months (In 2019 Inflation-Adjusted Dollars)*, 2019 American Community Survey 1-Year Estimates, United States Census Bureau; *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 minority workers “are likely to be working for an hourly wage and are less likely to be able to take off from work” to vote during business hours than workers in higher-paying, salaried jobs).

<sup>29</sup> S.B. 1, § 4.12.

<sup>30</sup> Zachary Sherer, *What Methods Did People Use to Vote in the 2020 Election?*, U.S. Census Bureau (Apr. 29, 2021), <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>.

<sup>31</sup> Shannon Najmabadi & Mandi Cai, *Democrats hoped high turnout would usher in a blue wave across Texas. It didn’t.*, Texas Tribune (Nov. 4, 2020), <https://www.texastribune.org/2020/11/04/texas-voter-turnout-democrats/>.

<sup>32</sup> Texas Presidential Election Results 2020, NBC News, <https://www.nbcnews.com/politics/2020-elections/texas-president-results> (last updated Mar. 31, 2021).

early voting, both in person and through the mail, was a key factor in this increase in turnout, accounting for over 9.7 million of the 11.3 million votes cast (over 85%).<sup>33</sup>

### **C. S.B. 1 Severely Burdens Disabled Voters’ and Other Voters’ Ability to Receive Assistance to Vote.**

S.B. 1 also appears to limit who is eligible to receive voting assistance, narrow the scope of the assistance available to Texas voters, and erect general burdens for all voters seeking assistance.

S.B. 1’s text may inappropriately narrow the scope the availability of assistance for some voters with disabilities, because it appears to restrict eligibility for “assistance in marking or reading the ballot” to only those voters who have “a physical disability that renders the voter unable to write or see; or . . . an inability to read the language in which the ballot is written.”<sup>34</sup> But other qualified voters with disabilities, even if they are physically able to enter a polling place or are able to read the ballot language, may also need assistance.<sup>35</sup>

In addition, S.B. 1 appears to further narrow the forms of assistance available to any voter under the Election Code by striking the common-sense provision of current law that allows individuals assisting voters to “answer[] the voter’s questions.”<sup>36</sup>

S.B. 1 also erects general barriers to any voter entitled to receive assistance under Section 208 of the Voting Rights Act, Title II of the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. S.B. 1 proposes to require an individual who provides assistance to fill out a form, under penalty of perjury, swearing or affirming that he or she is helping the voter because the voter “represented to me that they are eligible to receive assistance,” and that the person providing assistance “will confine my assistance to reading the ballot to the voter, directing the voter to read the ballot, marking the voter’s ballot, or directing the voter to mark the ballot.”<sup>37</sup> This requires that an assistor fill out a new form for each voter

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<sup>33</sup> See Jeremy Schwartz & Mandi Cai, *Texas is on track for record turnout in this election after breaking early voting records*, (Oct. 31, 2020), <https://www.ksat.com/news/texas/2020/10/31/texas-is-on-track-for-record-turnout-in-this-election-after-breaking-early-voting-records/>, and Texas Presidential Election Results 2020, NBC News, <https://www.nbcnews.com/politics/2020-elections/texas-president-results> (last updated Mar. 31, 2021).

<sup>34</sup> S.B. 1, § 6.02 (amending Tex. Election Code § 64.031).

<sup>35</sup> See, e.g., Danielle Root & Mia Ives-Rublee, *Enhancing Accessibility in U.S. Elections*, Center for American Progress (July 8, 2021), <https://www.americanprogress.org/issues/democracy/reports/2021/07/08/501364/enhancing-accessibility-u-s-elections/> (explaining that “[t]he types of election-related hurdles that hinder or prevent voters with disabilities from participating in elections are as diverse and varied as the disability community itself,” because “[d]isability is not a monolith: It has a broad meaning and is not limited to physical or cognitive disabilities, as is so often wrongly assumed”).

<sup>36</sup> *Id.* § 6.04 (amending Tex. Election Code § 64.034).

<sup>37</sup> *Id.*

he or she assists, adding time and paperwork, and also subjecting the assistor to criminal liability for any incorrect form filled out on behalf of a voter—potentially chilling individuals from providing critical assistance at the polls. S.B. 1 also burdens individuals providing assistance to voters in the form of transportation by requiring anyone “simultaneously” providing “seven or more voters . . . with transportation to the polling place . . . [to] complete and sign a form, provided by an election officer, that contains the person’s name and address and whether the person is providing assistance solely under this section . . . .”<sup>38</sup>

S.B. 1 adds similar burdens for individuals providing a voter with assistance voting a mail ballot, requiring that such assistors enter on the official carrier envelope of the voter’s ballot, their signature, name, residence, relationship to the voter, and whether they received any compensation or benefit.<sup>39</sup> These onerous requirements may chill the provision of necessary assistance to absentee voters, including voters with disabilities, and therefore burden the exercise of the right to vote. In addition, they may increase the likelihood of ballot-rejection due to an erroneous or incomplete entry by a person providing assistance. For these reasons, these provisions burden the right to vote—yet they do nothing to facilitate election-administration or promote ballot-security, and thus serve no legitimate purpose.

#### **D. S.B. 1 Empowers Partisan Poll Watchers to Disrupt Election Administration and Could Criminalize Other Election Officials for Otherwise Lawful and Required Conduct.**

S.B. 1’s provisions regarding poll watchers are broadly drafted and create ample opportunities for arbitrary enforcement. These provisions may also have the effect of empowering partisan poll watchers to disrupt election administration and may subject election officials to new and substantial criminal offenses for conduct that they reasonably believe is lawful or required by law. Indeed, S.B. 1 provides poll watchers’ appointing authorities a private right of action to seek “(1) injunctive relief . . . including issuance of temporary orders; (2) a writ of mandamus . . . ; [and] (3) any other remedy available at law” if the watcher believes he or she was “unlawfully prevented or obstructed from the performance of the watcher’s duties . . . .”<sup>40</sup> The potential for such litigation appears likely to further empower partisan poll watchers and their appointing authorities to test their authority within the polling place while disempowering elections officials.

For example, S.B. 1 prevents a watcher from being “denied free movement where election activity is occurring within the location at which the watcher is

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<sup>38</sup> *Id.* § 6.01 (amending Tex. Election Code § 64.009 to add that “A person who simultaneously assists seven or more voters voting under this section by providing the voters with transportation to the polling place must complete and sign a form, provided by an election officer, that contains the person’s name and address and whether the person is providing assistance solely under this section or under both this section and Subchapter B.”).

<sup>39</sup> *Id.* § 6.05 (amending Tex. Election Code § 86.010).

<sup>40</sup> *Id.* § 4.10 (amending Tex. Election Code § 33.063).

serving.”<sup>41</sup> This broad right to free movement in voting spaces is enforced by penalizing, as a Class A Misdemeanor, any election official who prevents a watcher from observing an activity or procedure, who obstructs the view of a watcher, or who distances the watcher from an activity or procedure if the official “knows the watcher is entitled to observe” the activity or procedure.<sup>42</sup> S.B. 1’s “free movement” language does not provide an election official of ordinary intelligence fair notice of what conduct is prohibited. S.B. 1 does not define “free movement,” nor does the Texas Election Code. Moreover, the same “free movement” is required in the context of polling places and other vote counting locations, which are crowded and full of other election officials trying to carry out their legal obligations. If, for example, an election official is required in the performance of their duties to stand in a particular location which a poll watcher seeks to occupy to carry, is the election official required in all instances to move, at the risk of being deemed to have denied the poll watcher free movement?

S.B. 1 would also subject any election official who “intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required” to criminal penalties.<sup>43</sup> At the same time, S.B. 1 only allows election judges to call law enforcement to remove a poll watcher if the watcher commits “a breach of the peace or a violation of law.”<sup>44</sup> The bill also prohibits an election judge from removing a poll watcher based on violations of the Election Code, “unless the violation was observed by an election judge or clerk”—thus likely preventing an election judge from taking appropriate action to remedy some Election Code violations by poll watchers, if such violations are observed only by voters or other poll watchers.<sup>45</sup>

### **E. Potential Violations of Federal Law**

S.B. 1’s foreseeable disparate impact on Black, Latino and disabled voters, the lack of any neutral justification for the provisions, and the financial coercion Governor Abbott used to force the Texas legislature to return for its Second Special Session to pass an elections bill it could not pass democratically during the Regular Session,<sup>46</sup> or the First Special Session, suggest the provisions embodied in S.B. 1, individually and collectively, raise concerns under the Fourteenth and Fifteenth Amendments to the U.S. Constitution, the Voting Rights Act of 1965, Title II of the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); 52 U.S.C. § 10301; 42 U.S.C. § 12101. These same provisions appear to burden the right

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<sup>41</sup> *Id.* § 4.07 (amending Tex. Election Code § 33.056).

<sup>42</sup> *Id.* § 4.06 (amending Tex. Election Code § 33.061).

<sup>43</sup> *Id.* § 4.06 (amending Tex. Election Code § 33.051).

<sup>44</sup> *Id.* § 4.01 (amending Tex. Election Code § 32.075).

<sup>45</sup> *Id.*

<sup>46</sup> See also Cassandra Pollock, *Gov. Greg Abbott Vetoes Funding for Texas Legislature and Its Staff as Punishment For Democrats’ Walkout on Elections Bill*, Texas Tribune (June 18, 2021), <https://www.texastribune.org/2021/06/18/greg-abbott-veto-legislature-democrats/>; see Greg Abbott (@GregAbbott\_TX), Twitter (May 31, 2021, 2:13 PM), [https://twitter.com/gregabbott\\_tx/status/1399428885008236544](https://twitter.com/gregabbott_tx/status/1399428885008236544).

to vote without serving any legitimate state interest, which raises concerns under the First and Fourteenth Amendment to the U.S. Constitution. *See Burdick v. Takushi*, 504 U.S. 428 (1992) (“A court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interest put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

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For the reasons described above, LDF respectfully urges you to vote down the Conference Committee Report on S.B. 1 in its entirety. 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.

/s/ Steven Lance

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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.