

July 10, 2021

Submitted via email to the House Constitutional Rights & Remedies Committee

House Constitutional Rights & Remedies Committee
Texas House of Representatives
Texas Capitol E.2806
P.O. Box 2910
Austin, TX 78701

RE: LDF Opposition to House Bill 3

Dear Chair Ashby, Vice Chair Thompson and Members of the House Constitutional Rights & Remedies Committee:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes to express our strong opposition to Texas House Bill 3 (“H.B. 3”).¹ 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.² Yet H.B. 3 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 empower partisan poll watchers to disrupt 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 few of H.B. 3’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 H.B. 3 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,

¹ H.B. 3, 87th Leg., 1st Spec. Sess. (Tex. 2021).

² 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”).



the Voting Rights Act of 1965, the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. We urge you to vote “no” on H.B. 3.

A. H.B. 3 Bans Drive-Thru Voting, Tightens the Ban on Straight Ticket Voting and Eliminates 24 Hour Voting.

H.B. 3 would eliminate 24-hour early voting,³ prohibit drive-thru voting,⁴ and ban any ballot design or system of voting that incorporates the time-saving features of “straight-ticket” voting.⁵ These provisions of H.B. 3 target methods and means of voting used disproportionately by Black and Latino voters, particularly in the 2020 election in which these voters participated in record numbers.⁶

H.B. 3 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 stationary structure.⁷ Drive-thru voting is used in urban centers in Texas, which are disproportionately home to Black and Latino Texans, and has 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.⁸ 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.⁹

³ H.B. 3, §§ 3.08-09.

⁴ *Id.* §§ 3.11, 3.12.

⁵ *See id.* § 3.13.

⁶ *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/>; 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>.

⁷ H.B. 3, §§ 3.11-3.12 (Section 3.11 amending Tex. Election Code § 85.061(a) such that in any countywide early voting polling place “shall be located inside ~~at~~ each branch office that is regularly maintained for conducting general clerical functions of the county clerk, except as provided by Subsection (b). If a suitable room is unavailable inside the branch office, the polling place may be located in another room inside the same building as the branch office.”; Section 3.12 amending Tex. Election Code § 85.062(b) such that “A polling place established under this section may be located, subject to Subsection (d), at any place in the territory served by the early voting clerk and may be located inside ~~in~~ any building ~~[stationary structure]~~ as directed by the authority establishing the branch office.”).

⁸ Tex. Election Code § 85.062.

⁹ *See Hotze v. Hollins*, No. 4:20-cv-03709, 2020 WL 6437668 (S.D. Tex. Nov. 2, 2020).

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. H.B. 3’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.

H.B. 3 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, especially voters in large and diverse urban areas, must wait to cast a ballot.

H.B. 3 eliminates straight-ticket voting once and for all by providing 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.”¹⁰ 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.¹¹ 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.¹² H.B. 3’s 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 to cast a ballot in person.¹³

H.B. 3 eliminates 24-hour voting by generally preventing voting from occurring “earlier than 6 a.m., or later than 10 p.m.”¹⁴ This limits early voting hours that are most accessible and convenient for individuals who work non-traditional work hours,

¹⁰ H.B. 3, § 3.13 (amending Tex. Election Code § 124.002 to add 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.”).

¹¹ *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”).

¹² 2020 WL 6601593 at *10.

¹³ 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).

¹⁴ H.B. 3, §§ 3.08-09 (amending Tex. Election Code § 85.005 and Tex. Election Code 85.006(b)).

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 by people of color. This provision of H.B. 3 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, H.B. 3'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 well-documented and foreseeable discriminatory effect on Black and Latino voters.¹⁵ This result may also violate the Voting Rights Act of 1965 and the First and Fourteenth Amendments to the U.S. Constitution.¹⁶

B. H.B. 3 Imposes Severe Burdens to the Already Limited Vote By Mail Process in Texas, Adding Burdensome ID Requirements and Matching Provisions as well as Eliminating Mail Ballot Drop Boxes.

H.B. 3 imposes a myriad of new restrictions that will make it more difficult for voters to obtain and cast a vote-by-mail (VBM) ballot, disproportionately to the detriment of Black, brown, disabled and elderly voters. Each of these provisions threatens to erode access to voting opportunities. Their likely combined effects raise even greater concerns. By imposing further restrictions to Texas's already burdensome VBM process, H.B. 3 will frustrate the VBM process for qualified individuals, make it more likely that lawfully cast VBM ballots will be discarded, and decrease the likelihood that a voter who could cast a VBM ballot, will chose to do so. These restrictions will likely force more Texans who qualify to vote by mail to attempt

¹⁵ *Texas Alliance for Retired Ams. v. Hughs*, 489 F. Supp. 3d 667, 686–691 (S.D. Tex. 2020).

¹⁶ *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").

to vote in person, leading to longer wait times for all voters—and outright disenfranchisement for some.

First, H.B. 3 will make it more difficult for voters to apply for VBM ballots by imposing an unnecessary identification requirement. When applying for or returning a VBM ballot, under H.B. 3, 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.¹⁷ If there is any discrepancy among the numbers provided, the voter’s application or ballot must be rejected.¹⁸

This additional hurdle creates a heightened risk that a voter will be disenfranchised due to hyper-technical errors. In addition, a voter who obtains one of these forms of identification *after* applying for a VBM ballot, but *before* returning it, may have their ballot rejected because the number they provide on their carrier envelope does not match the number supplied on their application, through no fault of their own. Moreover, the stakes of a rejected application or VBM ballot—including potential disenfranchisement—counsel strongly against imposing needless identification requirements. Voting is a fundamental right, and any burden on that right must be justified by a legitimate and countervailing state interest.¹⁹ Subjecting absentee voters to a potentially confusing identification requirement is also unnecessary, because it is already a crime in Texas to provide false information on a VBM ballot application, to knowingly vote or attempt to vote while ineligible, or to vote or attempt to vote by impersonating another person.²⁰

Second, H.B. 3 will impose new restrictions on how eligible voters may receive VBM ballot applications, by prohibiting election officials from “distribut[ing] an application form for an early voting ballot to a person who did not request an application”—even if the voter is duly registered and eligible to vote by mail.²¹ Further, H.B. 3 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.²² These restrictions on how an eligible Texas voter may

¹⁷ H.B. 3, §§ 5.02, 5.03, 5.05, 5.06, 5.10.

¹⁸ *Id.* §§ 5.05, 5.10.

¹⁹ *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 plaintiffs 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)); *see also Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, at *6 (N.D. Fla. Oct. 16, 2016) (“If disenfranchising thousands of eligible voters does not amount to a severe burden on the right to vote, then this Court is at a loss as to what does.”).

²⁰ *See* Tex. Elec. Code §§ 84.001, 276.013.

²¹ H.B. 3, § 7.04.

²² *Id.*

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

Third, H.B. 3 will make it more difficult for voters to return their VBM ballots in person by banning drop boxes—and by imposing a uniquely strict form of Texas’s voter ID law on in-person ballot return. H.B. 3 would require any “in-person delivery of a marked ballot” to be “received by an election official at the time of delivery.”²³ This provision 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.²⁴ 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.²⁵ 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,²⁶ some voters are not confident about returning absent voter ballots by mail.

The bill’s restrictions on VBM access are especially troubling because they are likely to disproportionately burden historically marginalized groups. For example, Black and Latino voters are less likely to be able to take time off work²⁷ and are

²³ See H.B. 3, § 4.09.

²⁴ 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.

²⁵ 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/>.

²⁶ 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>.

²⁷ 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

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,²⁸ H.B. 3'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.

H.B. 3'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.²⁹ 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 2016.³⁰ Voters of color specifically accounted for 40% of the total votes cast in Texas in the 2020 general election.³¹ Importantly, 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%).³²

C. H.B. 3 Empowers Partisan Poll Watchers to Disrupt Election Administration and Criminalizes Other Election Officials for Otherwise Lawful and Required Conduct.

H.B. 3's provisions regarding poll watchers are broadly drafted and may create opportunities for arbitrary enforcement. These provisions may also have the effect of empowering partisan poll watchers to disrupt election administration and may

be able to take off from work” to vote during business hours than workers in higher-paying, salaried jobs).

²⁸ H.B. 3, § 4.09.

²⁹ 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>.

³⁰ 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/>.

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

³² 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).

subject election officials to new and substantial criminal offenses for conduct that they reasonably believe is lawful or required by law.

For example, H.B. 3 would prevent a watcher from ever being “denied free movement where election activity is occurring.”³³ H.B. 3 proposes to enforce this broad right of poll watchers to free movement in voting spaces 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, and/or who distances the watcher from an activity or procedure.³⁴ This “free movement” language does not provide an election official of ordinary intelligence fair notice of what conduct is prohibited. H.B. 3 does not define “free movement,” nor does the Texas Election Code. Moreover, this “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. In carrying out those activities if, for example, an election official is required to stand in a particular location in which a poll watcher seeks to occupy, is the election official required in all instances to move, to prevent a poll watcher from being denied free movement?

H.B. 3 goes even further and provides that the appointing authority for a watcher has a private right of action to seek “(1) injunctive relief including a temporary order; (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” or rejected for service.³⁵

H.B. 3 would subject to criminal penalties any election official who “intentionally or knowingly refuses to accept a watcher for service when acceptance of the watcher is required.”³⁶ This provision of H.B. 3 may not provide an election official with notice of whether she can knowingly refuse to accept a poll watcher for behavior elsewhere prohibited in the Texas Election Code.

³³ H.B. 3, § 4.04 (amending Tex. Election Code § 33.056 such that a watcher is entitled to observe [~~conveniently~~] near enough to see and hear the election officers conducting the observed activity, except as otherwise prohibited by this chapter. Adds that except as provided by 33.057(b) (prohibiting watcher being present at a voting station and observing the voting of a voter’s ballot), a watcher may not be denied free movement where election activity is occurring within the location at which the watcher is serving.”).

³⁴ H.B. 3, § 4.06 (amending Tex. Election Code 33.061 adding that no public official may “an activity or procedure that the person knows the watcher is entitled to observe, including by taking any action to obstruct the view of a watcher or distance the watcher from the activity or procedure to be observed in a manner that would make observation not reasonably effective.”).

³⁵ H.B. 3, § 4.07 (amending Tex. Election Code § 33.063).

³⁶ H.B. 3, § 4.03 (amending Tex. Election Code § 33.051).

D. H.B. 3 Appears to Improperly Limit the Scope of Assistors at the Polls and Erects General Burdens to Voters Requiring Assistance.

H.B. 3 appears to erect general barriers and limits on voters 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.

H.B. 3 will likely make it more difficult for voters needing assistance to obtain it. The bill proposes to require any individual who provides assistance to any voter to fill out a form, stating “(1) the name and address of the person assisting the voter; (2) the relationship to the voter of the person assisting the voter; and (3) whether the person assisting the voter received or accepted any form of compensation or other benefit from a candidate, campaign, or political committee.”³⁷ H.B. 3 would also require an assistor provide this information on the carrier envelope of the voter’s mail ballot.³⁸

The assistor must also take an oath affirming, under penalty of perjury, that the voter “represented to me they are eligible to receive assistance because of 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” and confirming the assistor confined their 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.”³⁹ By adding time, paperwork and potential criminal investigation to the costs associated with providing voting assistance, the aforementioned provisions of H.B. 3 will likely chill individuals from providing critical assistance to other voters

Moreover, Section 6.03 of H.B 3 would remove the following forms of assistance provided for under Texas law: “answering the voter’s questions, [] stating propositions on the ballot, and [] naming candidates and, if listed, their political parties.”⁴⁰ But the scope of an eligible voter’s right to receive assistance to vote is set by Section 208 of the Voting Rights Act of 1965,⁴¹ among other applicable federal laws. Section 208 of the Voting Rights Act explains that

³⁷ H.B. 3, § 6.02 (amending Tex. Election Code § 64.0322).

³⁸ *Id.*

³⁹ H.B. 3, § 6.03 (amending Tex. Election Code § 64.034).

⁴⁰ H.B. 3, § 6.03 (amending Tex. Election Code § 64.034 such that “I 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; [~~answering the voter’s questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties;~~]).”)

⁴¹ 52 U.S.C. § 10508.

“Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter’s employer or agent of that employer or officer or agent of the voter's union.”⁴²

The State of Texas recently argued in litigation in federal court that the phrase “to vote” in Section 208 of the Voting Rights Act meant only the literal act of marking the ballot, so the right to “assistance by a person of the voter's choice” referenced in the section applies only to the literal act of marking the ballot.⁴³ This appears to be the standard H.B. 3 seeks to impose. But the Fifth Circuit responded in that case that, “‘To vote,’ ... plainly contemplates more than the mechanical act of filling out the ballot sheet. It includes steps in the voting process before entering the ballot box, ‘registration,’ and it includes steps in the voting process after leaving the ballot box, ‘having such ballot counted properly.’”⁴⁴ As the Fifth Circuit pointed out, the definition lists “casting a ballot” as only one example in a non-exhaustive list of actions that qualify as falling within the ambit of “to vote.”⁴⁵

Accordingly, assistance must be defined broadly and include all steps necessary for a voter entitled to vote using assistance to effectively cast a ballot. In many circumstances, this will require the voter to ask the assistor questions and may also require the assistor to state the propositions on the ballot and state candidates.

E. Potential Violations of Federal Law

The facts recited above, including H.B. 3’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 a Special Session to pass an elections bill it could not pass democratically during the Regular Session,⁴⁶ suggest the provisions embodied in H.B. 3, 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

⁴² *Id.*

⁴³ *OCA-Greater Houston v. Texas*, 867 F.3d 604, 614 (5th Cir. 2017).

⁴⁴ *Id.* at 615.

⁴⁵ *Id.*

⁴⁶ 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.

U.S.C. § 10301; 42 U.S.C. § 12101. These same provisions appear to burden the right to vote without serving any legitimate state interest, which also 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 plaintiffs 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)).

For the reasons described above, LDF respectfully urges you to vote “no” to H.B. 3. 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

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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.