



March 18, 2021

*Sent via email*

Special Committee on Election Integrity  
Georgia House of Representatives  
131-A State Capitol  
Atlanta, Georgia 30334

**Re: Opposition to Senate Bill 202**

Dear Chair Fleming and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and SPLC Action Fund (“SPLC Action”) write to express in the strongest possible terms our opposition to (i) various provisions in Senate Bill (“S.B.”) 202,<sup>1</sup> (ii) the timing of this bill on the heels of ever-growing participation by Georgians in elections, and (iii) the House’s and Senate’s process for consideration of this bill. We are deeply concerned the enactment of S.B. 202 will create unnecessary barriers and burdens on voters that disproportionately impact the voting rights of people of color, the elderly, people with disabilities, low-income people, rural residents, and students and may violate federal laws, including the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, the Voting Rights Act of 1965, and the Americans with Disabilities Act. For these and those detailed below, we urge you to vote no on S.B. 202 and not move it forward to the House Rules Committee.

As nonprofit, nonpartisan civil rights and racial justice organizations, our aim is to ensure that all voters, particularly Black voters and other voters of color, have

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<sup>1</sup> This testimony is written to address S.B. 202 (LC 28 0325S), which was first shared on social media as a potential substitute bill. As of 8:00 a.m. today, March 18, 2021, this version is not posted on the Georgia General Assembly’s website. SB 202, Georgia General Assembly (Mar. 17, 2021), <https://www.legis.ga.gov/legislation/59827>. Because this bill also incorporates provisions of S.B. 241, we also refer this Committee to our previously submitted testimony on S.B. 241. Written Testimony in Opposition to Senate Bill 241, LDF and SPLC Action (March 2, 2021), [https://naacpldf.org/wp-content/uploads/Written-Testimony-on-SB-241\\_03.02.21\\_LDF-and-SPLC-1.pdf](https://naacpldf.org/wp-content/uploads/Written-Testimony-on-SB-241_03.02.21_LDF-and-SPLC-1.pdf) [*hereinafter* March 2 Written Testimony]; Written Testimony in Opposition to Senate Bill 241, LDF and SPLC Action (Feb. 24, 2021), [https://www.naacpldf.org/wp-content/uploads/Written-Testimony-on-SB-241\\_2021.02.24\\_LDF-and-SPLC\\_final-002.pdf](https://www.naacpldf.org/wp-content/uploads/Written-Testimony-on-SB-241_2021.02.24_LDF-and-SPLC_final-002.pdf) [*hereinafter* February 24 Written Testimony].

full, meaningful, and non-burdensome access to the one fundamental right that is preservative of all other rights: the right of citizens to access the ballot box and elect candidates of their choice. In this way, the vote is both a tangible measure of what we are and aspire to be as a nation. For these reasons, we, along with other voting rights and pro-democracy groups, have enthusiastically supported the expansion of equitable voting options, including absentee and advance voting, in Georgia.

Equitable voting options have been critical to ensuring Georgia voters can safely, securely, and freely participate in our democracy. They also reflect the straightforward understanding that increasing voting access builds a healthier and more inclusive democracy. The availability of equitable voting options made it possible for Georgia voters to turn out in historic numbers for the November 3, 2020 general election and January 5, 2021 runoff election.<sup>2</sup> To ensure the endurance and stability of this historic turnout, the Georgia General Assembly should be considering measures that would preserve and expand voting rights and voting access.

Yet S.B. 202 is written to undermine significant progress to expand voting rights and ballot access in Georgia, especially for voters of color. Although we have concerns about several provisions within the current iteration of S.B. 202, in this letter we draw your attention primarily to Sections 16, 24, 25, 26, 27, and 32.<sup>3</sup> For the reasons detailed below, we urge you to vote no on S.B. 202 and withdraw it from consideration in any further committee hearings.

## **I. Section 16 – Multistate Voter Registration System Participation**

If Georgia participates in a “multistate voter registration system,” Section 16 will require the Secretary of State to use that system to cross-check the eligibility of Georgia voters for “list maintenance on the list of eligible electors.” As we conveyed in our previous written testimony, reliance on multistate programs to “cross-check” voter registration may produce inconsistent, inaccurate, and in some cases, discriminatory results.<sup>4</sup> These issues occur because the underlying data in these programs concerning another state’s voter files may be incomplete or inaccurate. In addition to these data concerns, many states, for example, describe the “date of registration” for their voters in different ways—e.g., some states may use when the voter first registered, while other states may use the last time a voter updated his or her voter registration—which increases the likelihood that a voter will be inaccurately flagged as having changed residence. Accordingly, a racial impact study

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<sup>2</sup> Brittany Gibson, *Record Turnout in Georgia, but Mostly Before Election Day*, The American Prospect (Jan. 5, 2021), <https://prospect.org/politics/record-turnout-in-georgia-but-mostly-before-election-day/>; Adam Edelman, *It’s Too Important Now: Record Turnout, Black Voters Fuel Democratic Hopes in Georgia*, NBC News (Nov. 1, 2020), <https://www.nbcnews.com/politics/2020-election/it-s-too-important-now-record-turnout-black-voters-fuel-n1245416>.

<sup>3</sup> LDF and SPLC Action plan to supplement our written testimony based on changes to S.B. 202, including any amendments and bill substitutes that are considered or approved by this Committee.

<sup>4</sup> March 2 Written Testimony and February 24 Written Testimony, *supra* n. 1.

should be conducted *before* mandating any participation in a multistate program that will be used to identify and ultimately purge voters.<sup>5</sup>

## II. Sections 24 and 26 – Photo Identification (“ID”) Requirement for Absentee Voting

Absentee voting has been critical to ensuring that voters have equitable and safe access to the ballot box, especially for elections during the COVID 19 pandemic, which has had a particularly dire impact on Black and other communities of color. Absentee vote-by-mail voting, for example, set records for the November 3, 2020 general election.<sup>6</sup> Yet the proposed addition of a photo ID requirement for absentee voting will dramatically limit absentee ballot access by imposing discriminatory and unnecessary burdens on voters.

The purported justifications for this photo ID requirement are pretextual. Proponents have argued that it is necessary to protect against voter fraud. But vote-by-mail is a safe, secure, reliable, and accessible method of voting that has been used by members of our military since the Civil War.<sup>7</sup> Five states currently conduct all elections entirely by mail, and at least 21 other states allow certain smaller elections to be held entirely by mail.<sup>8</sup> Forty-seven states hold elections with vote-by-mail procedures that do not include a photo ID requirement. Since 2000, more than 250 million votes have been cast via mail ballots in all 50 states.<sup>9</sup> Notwithstanding false claims to the contrary, fraud rates are infinitesimally small.<sup>10</sup> The same is true in Georgia. According to multiple statements by Governor Kemp,<sup>11</sup> Lieutenant Governor

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<sup>5</sup> *Id.*

<sup>6</sup> *Record Amount of Absentee Ballots Requested for Georgia Runoff Elections*, WSB-TV (Nov. 23, 2020), <https://www.wsbtv.com/news/local/record-amount-absentee-ballots-requested-georgia-runoff-elections/6Q3C72ADE5CXVDDMIXV5TGJLAA/>.

<sup>7</sup> Alex Seitz-Wald, *How Do You Know Voting by Mail Works? The U.S. Military’s Done it Since the Civil War*, NBC News (Apr. 19, 2020), <https://www.nbcnews.com/politics/2020-%20election/how-do-you-know-voting-mail-works-u-s-military-n1186926>.

<sup>8</sup> *Colorado, Hawaii, Oregon, Washington and Utah Conduct Elections Entirely by Mail*. AllMail Elections (aka Vote-By-Mail), National Conference of State Legislatures (Mar. 24, 2020) <https://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>; *Preparing Your State for an Election Under Pandemic Conditions*, Brennan Center for Justice (last updated Jun. 29, 2020) <https://www.brennancenter.org/our-work/research-reports/preparing-your-state-election-under-pandemic-conditions#t3>.

<sup>9</sup> Wendy R. Weiser and Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, Brennan Center for Justice (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysisopinion/false-narrative-vote-mail-fraud>.

<sup>10</sup> *Id.*

<sup>11</sup> Katherine Fung, *Gov. Kemp Says Ga. Fraud Claims ‘Have Left the Barn,’ After Trump Calls for His Resignation*, Newsweek (Dec. 30, 2020), <https://www.newsweek.com/gov-kemp-says-ga-fraud-claims-have-left-barn-after-trump-calls-his-resignation-1558140>.

Duncan,<sup>12</sup> Secretary of State Raffensperger,<sup>13</sup> and Georgia Voting Systems Manager Gabriel Sterling,<sup>14</sup> there was no evidence of widespread vote-by-mail fraud in Georgia, nor has there ever been.<sup>15</sup> These statements and findings underscore why Georgia's vote-by-mail laws and procedures remain safe, secure, and reliable.

False allegations of voter fraud harken back to debunked conspiracy theories and corrosive myths.<sup>16</sup> It should therefore come as no surprise that S.B. 202's proponents have failed to identify or offer concrete facts and data to corroborate vague claims that absentee voting processes in Georgia are not secure.<sup>17</sup> Georgia has relied on vote-by-mail procedures for decades. Equally telling, the motivations behind this bill are suspect because it was introduced immediately *after* Georgia voters generally—and especially Georgia voters of color—dramatically increased their use of absentee voting in the November 2020 general election and January 2021 runoff elections. Simply put, the photo ID requirement is a solution in search of a problem.

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<sup>12</sup> Greg Bluestein, *Duncan Pushes Back on False Voter Fraud Claims: 'We're Better Than This,'* Atlanta Journal-Constitution (Dec. 1, 2020), <https://www.ajc.com/politics/politics-blog/duncan-pushes-back-on-false-voter-fraud-claims-were-better-than-this/GSNRMYLELPBBADHZ5RQ7LDTVHCE/>.

<sup>13</sup> Quinn Scannlan, *'We've Never Found Systemic Voter Fraud, Not Enough to Overturn the Election:'* Georgia Secretary of State Raffensperger Says, ABC News (Dec. 6, 2020), <https://abcnews.go.com/Politics/weve-found-systemic-fraud-overturn-election-georgia-secretary/story?id=74560956>.

<sup>14</sup> Miles Parks, *Georgia Election Official: Don't Let Misinformation 'Suppress Your Own Vote,* NPR (Jan. 4, 2020), <https://www.npr.org/2021/01/04/953321408/georgia-election-official-dont-let-misinformation-suppress-your-own-vote>.

<sup>15</sup> *3rd Strike Against Voter Fraud Claims Means They're Out After Signature Audit Finds No Fraud,* Secretary of State (Dec. 29, 2020), [https://sos.ga.gov/index.php/elections/3rd\\_strike\\_against\\_voter\\_fraud\\_claims\\_means\\_theyre\\_out\\_after\\_signature\\_audit\\_finds\\_no\\_fraud](https://sos.ga.gov/index.php/elections/3rd_strike_against_voter_fraud_claims_means_theyre_out_after_signature_audit_finds_no_fraud).

<sup>16</sup> Alison Durkee, *'No Evidence' of Election Fraud in Battleground States, Statistical Analysis Finds as Trump Continues False Claims,* Forbes (Feb. 19, 2021), <https://www.forbes.com/sites/alisondurkee/2021/02/19/no-evidence-of-election-fraud-in-battleground-states-statistical-analysis-finds-as-trump-continues-false-claims/?sh=252533183315>; *The Myth of Voter Fraud,* Brennan Center for Justice (Feb. 2021), <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/myth-voter-fraud>; Jonathan Raymond, *Georgia Sec. of State Issued Letter Refuting Fraud Claims Ahead of Electoral Vote Count,* 11Alive (Jan. 7, 2021), <https://www.11alive.com/article/news/politics/elections/brad-raffensperger-election-fraud-debunking-letter/85-753d4d72-df54-4019-a493-095f418050eb>; Hope Yen, Jeff Amy, and Michael Balsamo, *AP FACT CHECK: Trump's Made Up Claims of Fake Georgia Voters,* AP (Jan. 3, 2021), <https://apnews.com/article/ap-fact-check-donald-trump-georgia-elections-atlanta-c23d10e5299e14daee6109885f7dafa9>; Susan McCord, *Georgia Officials Debunk 'Secret Ballot Suitcase' Claim; To Recertify Results for Biden,* The August Chronicle (Dec. 7, 2020), <https://www.augustachronicle.com/story/news/politics/elections/presidential/2020/12/07/secret-suitcase-magic-ballots-actually-bag-ballots-packed/3858322001/>.

<sup>17</sup> Nor have proponents of adding similar photo ID requirements in this Committee identified or offered concrete facts and data to corroborate similar unfounded and vague claims. Written Testimony in Opposition to House Bill 531, LDF and SPLC Action Fund (Feb. 22, 2021), [https://www.naacpldf.org/wp-content/uploads/Written-Testimony-on-HB-531\\_2021.02.21\\_LDF-and-SPLC\\_final.pdf](https://www.naacpldf.org/wp-content/uploads/Written-Testimony-on-HB-531_2021.02.21_LDF-and-SPLC_final.pdf).

What remains clear and well documented, however, is how any addition of a photo ID requirement for absentee voting would create new and unwarranted burdens, if not outright barriers, for many voters. S.B. 202 would, for example, require voters to provide a Georgia driver's license or acceptable state ID card number when *applying* for an absentee ballot. This requirement creates a barrier for voters who do not have an acceptable photo ID and burdens voters who would need to obtain them to vote absentee. Moreover, voters who lack access to printers, scanners, copiers, or the Internet would have difficulty complying with this absentee voting requirement.

These harms would not be borne equally among voters. Indeed, enactment of S.B. 202 unduly burdens the fundamental right to vote of people of color, the elderly, people with disabilities, low-income people, rural residents, and students—all populations who disproportionately face challenges accessing DMV offices, a photocopier, and the ability to pay for photocopies, or a polling place to vote in-person. For instance, 16.6% of Georgia's voting-age citizens who lack access to a vehicle live more than 10 miles from a state office that issues ID.<sup>18</sup> Almost all of these citizens live in rural areas where public transportation is unavailable.<sup>19</sup> These areas also house high concentrations of people of color and people living in poverty.<sup>20</sup> The same groups of people would face similar challenges in accessing a photocopier to copy their ID, which S.B. 202 would require of voters without a driver's license or state ID. For the elderly, people with disabilities, students, and others who cannot physically cast a ballot in-person and therefore rely on vote-by-mail, the burden of S.B. 202's ID requirements on the right to vote is particularly acute. Such exacerbating factors and their impact on people of color and other historically disenfranchised groups have led stringent ID requirements adopted by other states to be invalidated as violating the U.S. Constitution, Section 2 of the Voting Rights Act of 1965, or both.<sup>21</sup>

Moreover, the photo ID requirement, along with the proposal to require voters to include their date of birth for voting absentee, would also exacerbate existing racial disparities in absentee ballot rejections. As it stands, without these additional requirements that Black and other voters of color may be disproportionately unable

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<sup>18</sup> Keesha Gaskins and Sundeep Iyer, *The Challenge of Obtaining Voter Identification*, Brennan Center for Justice (2012), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Challenge\\_of\\_Obtaining\\_Voter\\_ID.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Challenge_of_Obtaining_Voter_ID.pdf).

<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.* at 1, 5.

<sup>21</sup> *See, e.g., North Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016) (finding North Carolina voter ID law was motivated by discriminatory racial intent, and noting “legislatures cannot restrict access to the franchise based on the desire to benefit a certain political party” in violation of Section 2 and the Fourteenth and Fifteenth Amendments) (internal citations omitted); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (finding Texas voter ID law was racially discriminatory under Section 2 of the Voting Rights Act); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017) (finding Texas voter ID law was enacted with racially discriminatory purpose in violation of the Fourteenth and Fifteenth Amendments).



or burdened to satisfy, there are well-documented and long-standing racial disparities in absentee ballot rejections in Georgia.<sup>22</sup> Data from recent elections reported by the Brennan Center for Justice reflects that racial disparities continue, which is consistent with previous literature.<sup>23</sup>

Tellingly, the purported need for a photo ID requirement in absentee voting also comes in the wake of a historic election. Black Georgians, for example, comprised 30.3% of absentee voters, and a total of 36.7% of voters by mail were Georgians of color.<sup>24</sup> Because Black and Latino voters have been found to experience longer wait times compared to white voters for in-person voting options,<sup>25</sup> vote-by-mail options will continue to be a critical option moving forward to avoid long lines and wait times. These options were equally critical to voters with disabilities who otherwise could be forced to wait in very long lines and may face other accessibility challenges with in-person voting. Moreover, Georgia had a 66% increase in total turnout for the 2020 general election, which included a 523% increase in mail-in ballots, and a 22% increase in early in-person voting.<sup>26</sup> In light of these participation rates, the disparate impact of photo ID laws on historically disenfranchised groups, and the lack of a legitimate basis for enacting this law, S.B. 202 is intended to and will harm racial minority, low-income, elderly, rural, disabled, and student voters.

### III. Section 25 – Limitations on Secure Drop Box Availability

The addition of secure drop boxes during the June 2020, November 2020, and January 2021 elections offered Georgia voters a safe, secure, and accessible method to cast their ballots, particularly against a global pandemic that remains unabated.<sup>27</sup> The Georgia State Board of Elections (“State Board”) recognized the importance of trusting counties with the autonomy to make secure drop boxes broadly available to voters.<sup>28</sup> This flexibility was necessary to ensure voters had meaningful access to

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<sup>22</sup> Enrijeta Shino, Mara Suttman-Lea, and Daniel A. Smith, *Determinants of Rejected Mail Ballots in Georgia’s 2018 General Election*, Political Research Quarterly (2021), <https://journals.sagepub.com/doi/abs/10.1177/1065912921993537>; Kevin Morris, *Digging into the Georgia Primary*, Brennan Center for Justice (Aug. 24, 2020), <https://www.brennancenter.org/our-work/research-reports/digging-georgia-primary>; see also Pema Levy, *Georgia County and Secretary of State Sued for Rejected Minority Absentee Ballots at High Rates*, Mother Jones (Oct. 16, 2018), <https://www.motherjones.com/politics/2018/10/georgia-county-and-secretary-of-state-sued-for-rejecting-minority-absentee-ballots-at-high-rates/>.

<sup>23</sup> *Id.*

<sup>24</sup> U.S. Elections Project, *Georgia Early Voting Statistics*, <https://electproject.github.io/Early-Vote-2020G/GA.html> (last updated Nov. 5, 2020).

<sup>25</sup> Hannah Klain, Kevin Morris, and Rebecca Ayala, *Waiting to Vote*, Brennan Center (June 3, 2020), <https://www.brennancenter.org/our-work/research-reports/waiting-vote>. [hereinafter Klain et al.]

<sup>26</sup> Georgia Votes, <https://www.georgiavotes.com/2020-general/> (last updated Jan. 5, 2021).

<sup>27</sup> See Emil Moffatt, *Georgia Voters Keep Filling Up Drop Boxes, But Could January Runoffs be Their Last Hurrah*, WABE (Dec. 16, 2020), <https://www.wabe.org/georgia-voters-keep-using-drop-boxes-but-could-january-runoffs-be-their-last-hurrah/>.

<sup>28</sup> For the emergency orders for the November 2020 general and January 2021 runoff elections, see State Board’s SEB Rules 183-1-14-0.9-.15 and 183-1-14-0.8-.14, respectively. *Rules and*

secure drop boxes, and it minimized crowding and alleviated the risk of long lines during in-person voting, as well as alleviated the concerns with mail delivery. Secure drop boxes are necessary to providing equitable voting options, and we condemn this bill's creation of unnecessary barriers and attempts to codify secure drop box limitations into Georgia election law.<sup>29</sup>

Section 25 will severely limit the availability of accessible, equitable, and safe drop boxes in four ways. *First*, Section 25 provides that secure drop boxes may only be established at and inside of advance voting locations, eliminating the flexibility provided to counties in recent elections to place secure drop boxes at any government office, which is important in counties where there are limited advance voting locations. *Second*, Section 25 mandates secure drop boxes will only be available during the same hours as the advance voting location in which they are sited. This restriction would eliminate the flexibility under the State Board's rule that allowed counties to provide secure drop boxes during evening hours and weekends. *Third*, Section 25 prohibits secure drop box availability after the advance voting period ends, eliminating the flexibility to provide drop boxes during the days immediately before the election and on Election Day itself. *Fourth*, Section 25 creates a new mandate for in-person "constant surveillance" of secure drop boxes by an election official, licensed security guard, or law enforcement official, which may pose serious voter intimidation concerns for Black voters and other voters of color.<sup>30</sup> These limitations are unnecessary and will dramatically reduce the efficacy of drop boxes, especially for voters of color.

Proponents of these provisions claim they are necessary to mitigate purported and unsubstantiated election and voter fraud. These arguments again harken back to debunked conspiracy theories and corrosive myths.<sup>31</sup> Neither the House nor Senate has offered any concrete evidence to corroborate vague ballot collection or voter fraud claims. Nor could it. The State Board mandated specific security measures, including drop boxes being under continuous, 24-hour video surveillance for the November 2020 general election and January 2021 runoff elections.<sup>32</sup> Moreover, absentee ballots

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*Rulemaking of the State Election Board*, State Board (Feb. 2021), [https://sos.ga.gov/index.php/elections/state\\_election\\_board](https://sos.ga.gov/index.php/elections/state_election_board).

<sup>29</sup> Although Section 1 directly refers to secure drop boxes, Section 25 proposes counties may use a "secured receptacle" to "collect and store absentee ballots which have been voted by elector." Because "secured receptacle" is not defined and the same language in Section 25 previously referred to secure drop boxes, we will use the term secure drop boxes until this Committee provides a definition or explanation for a "secured receptacle."

<sup>30</sup> Sam Levine, *Georgia City Under Fire for Moving Polling Location to Police Station*, HuffPost (Oct. 9, 2019), [https://www.huffpost.com/entry/jonesboro-georgia-polling-location\\_n\\_5d9e0979e4b06ddfc51272f0](https://www.huffpost.com/entry/jonesboro-georgia-polling-location_n_5d9e0979e4b06ddfc51272f0).

<sup>31</sup> *Supra* n. 16.

<sup>32</sup> *RULE 183-1-14-0.8-14 Secure Absentee Ballot Drop Boxes*, State Board (July 1, 2020), <https://sos.ga.gov/admin/files/Table%20of%20Contents%20for%20SEB%20Rule%20183-1-14-0.8-14.pdf>; *RULE 183-1-14-0.8-14 Secure Absentee Ballot Drop Boxes*, State Board (Nov. 23, 2020), <https://sos.ga.gov/admin/uploads/SEB%20Rule%20183-1-14-0.8-14.pdf>.

deposited through secure drop boxes go through the same identification processes as do absentee ballots received from other sources. Proponents have failed to identify any reasons why the protections in the State Board’s emergency rule for drop box availability and security are insufficient.

Georgia voters—especially racial minority, low-income, elderly, and disabled voters—have come to rely on drop boxes as a safe and an important option for casting a ballot. For many voters—especially those with personal or professional commitments that limit their availability during normal voting hours, or those with medical conditions—casting an in-person ballot during advance voting or on Election Day may be an untenable option. In addition, based on the widely reported issues with the United States Postal Service, which will continue to linger,<sup>33</sup> some of these voters are not confident about returning their absentee ballot by mail. The only acceptable option for many voters is to bring their absentee ballot personally to a secure drop box.

It is therefore critical that the Georgia General Assembly, at minimum, continue to provide counties with the same flexibility to make drop boxes available that was afforded by the State Board’s emergency rules, without the additional placement, security, and time restrictions proposed in Section 25.

#### **IV. Section 27 – Limitations on the Total Hours for Advance In-Person Voting and the Attack on Sunday Voting and “Souls to the Polls”**

Advance voting opportunities are essential to ensuring voters can safely, securely, and freely participate in our democracy. They are important mechanisms that give voters the option to cast their ballots without facing the crowds and long lines on Election Day, as well as the flexibility to balance personal and professional obligations that make voting on Election Day untenable. These opportunities also reduce the number of voters left who still may cast their ballot on Election Day, thereby reducing crowding. Indeed, a Presidential Commission on Election Administration, a bipartisan commission of experts, has recommended the expansion of advance voting opportunities to both improve voters’ experiences with voting and promote confidence in election administration across the country.<sup>34</sup> 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 [typically]

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<sup>33</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-mail-delivery-delays-continue-across-the-country>.

<sup>34</sup> *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, Presidential Comm. on Election Administration, 1, 56 (Jan. 2014), <http://web.mit.edu/supportthevoter/www/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf> (identifying as a key recommendation “states should expand opportunities to vote before Election Day”).



contained twelve-hour period of the traditional Election Day.”<sup>35</sup> Even Secretary of State Raffensperger has acknowledged the importance of advance voting, remarking, “Georgia is recognized as a national leader,” in part, because it has “at least 16 days of early voting.”<sup>36</sup> The record-breaking turnout during the advance voting periods in the November 2020 and January 2021 elections demonstrates the ongoing need for meaningful and robust advance voting options for both election officials and voters.<sup>37</sup>

Despite this clear mandate supported by data and demand, however, S.B. 202 would severely limit the total number of advance voting hours and days. This bill restricts advance voting hours to only 9:00 a.m. to 5:00 p.m. during weekdays. If counties do not exercise discretion to extend those voting hours from 7:00 a.m. to 7:00 p.m. on weekdays, then voters within those counties could see a reduction of more than at least 100 hours of advance voting opportunities under S.B. 202.<sup>38</sup> Likewise, the bill limits weekend voting to one Saturday and only one other weekend voting day, which could eliminate Sunday voting altogether in counties.<sup>39</sup> In the 2020 general election, for example, over 250,000 or 9.9% of Georgia voters voted on the weekend, many of whom would no longer be able to do so under these provisions.<sup>40</sup>

Limiting the number of hours for advance voting—and in particular the attack on Sunday voting—is likely to have a cascading effect, contributing to even longer lines during the remaining advance voting days and even on Election Day.<sup>41</sup> Even with the levels of advance voting currently required under Georgia law, before any cuts as contemplated by this legislation, many Georgians have experienced unacceptably long lines and wait times to vote during recent elections.<sup>42</sup> Cuts to advance voting options will make these hours-long lines even longer.

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<sup>35</sup> *Id.* at 55–56

<sup>36</sup> *Georgia Easy Voter Registration Options Break New Records*, Georgia Sec. of State (2020), [https://sos.ga.gov/index.php/elections/georgia\\_easy\\_voter\\_registration\\_options\\_break\\_new\\_records](https://sos.ga.gov/index.php/elections/georgia_easy_voter_registration_options_break_new_records). [*hereinafter* Georgia Secretary of State].

<sup>37</sup> *Supra* n. 2.

<sup>38</sup> Richard Fausset, Nick Corasaniti, and Mark Leibovich, *Why the Georgia G.O.P.’s Voting Rollbacks Would Hit Black People Hard*, N.Y. Times (Mar. 3, 2021), <https://www.nytimes.com/2021/03/03/us/politics/georgia-voting-laws.html?action=click&module=Spotlight&pgtype=Homepage> [*hereinafter* Fausset *et al.*]

<sup>39</sup> Under this Section, counties are otherwise prohibited from extending advance voting hours and days outside of the provisions explicitly authorized.

<sup>40</sup> This data is based on internal numbers publicly shared by Fair Fight Action.

<sup>41</sup> Fausset *et al.*, *supra* n. 38.

<sup>42</sup> Carrier Levine, Kimberly Cataudella, and Stephen Fowler, *Georgia Republicans Want to Reshape Voting Laws, Burdening Voters of Color*, Center for Public Integrity (Mar. 5, 2021), <https://publicintegrity.org/politics/elections/ballotboxbarriers/georgia-voting-republicans-reshape-laws-voters-of-color/> [*hereinafter* Levine *et al.*]; Danny Hakim, Reid Epstein, and Stephanie Saul, *Anatomy of an Election ‘Meltdown’ in Georgia*, N.Y. Times (July 25, 2020), <https://www.nytimes.com/2020/07/25/us/politics/georgia-election-voting-problems.html>

Black voters and other voters of colors would disproportionately be harmed by these cuts to weekend advance voting.<sup>43</sup> For the 2020 November election, Black voters used weekend advance voting at a higher rate than white voters in 43 of the 50 of Georgia's largest counties,<sup>44</sup> and overall in 107 of Georgia's 159 counties.<sup>45</sup> Most significantly, by attacking Sunday voting, this bill could end "Souls to the Polls," which is widely known in Georgia and elsewhere as a practice in which Black voters worship together on Sunday morning and then march or share rides to vote.<sup>46</sup> Through these efforts, churches have provided Black congregants with critical transportation and logistical help.<sup>47</sup> "Souls to the Polls" has been critical to increasing Black voter turnout in Georgia.<sup>48</sup> The attack on "Souls to the Polls" represents a direct assault on the right to vote for Black Georgians.

Georgia has been on notice for several years that Black and other voters of color rely on advance voting and Sunday voting in particular. Indeed, in at least 2014, 2015, 2016, and 2018, the Georgia General Assembly faced widespread criticism and

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<sup>43</sup> Kevin Morris, *Georgia's Proposed Voting Restrictions Will Harm Black Voters Most*, Brennan Center for Justice (Mar. 6, 2021), <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most> [hereinafter Morris]; Levine et al., *supra* n. 42; see also *Access to Polls: Assessment of Early Voting Wait Times in Georgia's General Election and Potential Effects of Voting Restrictions in Runoff*, Center for New Data 1, 11–16 (Dec. 7, 2020), [https://docs.google.com/document/d/1ttCb9zRiyU5s\\_icUEUGe7vq1TVsygcAMKap7YG42ks/edit#heading=h.umkpm0t6vbld](https://docs.google.com/document/d/1ttCb9zRiyU5s_icUEUGe7vq1TVsygcAMKap7YG42ks/edit#heading=h.umkpm0t6vbld).

<sup>44</sup> Ari Berman, *Georgia Republicans are Doubling Down on Racist Voter Suppression*, Mother Jones (Feb. 19, 2021), <https://www.motherjones.com/politics/2021/02/georgia-republicans-voter-suppression-bill/>.

<sup>45</sup> Fausset et al., *supra* n. 38.

<sup>46</sup> Rebecca Brenner Graham, *Attacking Sunday Voting is Part of Tradition of Controlling Black Americans*, Wash. Post (Mar. 4, 2021), <https://www.washingtonpost.com/outlook/2021/03/04/attacking-sunday-voting-is-part-long-tradition-controlling-black-americans/> ("Souls to the Polls" is 'a small group of churches working together to mobilize voters that would let their voices be heard in a community whose voices mattered.' Though this movement began officially in the 1990s, its spirit traces its roots to using Sundays as a refuge from the week during enslavement. Sunday offered some variety, as well as limited opportunities to exercise autonomy. This was especially true of Sunday worship, as faith and spirituality were central to sustaining life and building culture amid inhumane conditions.").

<sup>47</sup> Nick Corasaniti and Jim Rutenberg, *In Georgia, Republicans Take Aim at Role of Black Churches in Elections*, N.Y. Times (Mar. 6, 2021), <https://www.nytimes.com/2021/03/06/us/politics/churches-black-voters-georgia.html> ("Voting as a congregation also offered a form of haven from the intimidation and violence that often awaited Black voters at the polls.") [hereinafter Corasaniti et al.].

<sup>48</sup> Stephen Fowler, *Georgia Republicans File Sweeping Elections Bill to Limit Early and Absentee Voting*, GPB (Feb. 19, 2021), <https://www.npr.org/2021/02/19/969497398/georgia-republicans-file-sweeping-elections-bill-to-limit-early-and-absentee-vot>; Melissa Stern, *Prayer March and "Souls to the Polls" Take Place Leading Up to Georgia Runoff Election*, CBS46 (Jan 2., 2021), [https://www.cbs46.com/news/prayer-march-and-souls-to-the-polls-take-place-leading-up-to-georgia-runoff-election/article\\_6469534a-4d46-11eb-8a62-b7d96bdfa9f0.html](https://www.cbs46.com/news/prayer-march-and-souls-to-the-polls-take-place-leading-up-to-georgia-runoff-election/article_6469534a-4d46-11eb-8a62-b7d96bdfa9f0.html); Greg Bluestein, *Georgia Democrats Push "Souls to the Polls" With Sunday Voting*, Atlanta Journal-Constitution (Oct. 30, 2016), <https://www.ajc.com/blog/politics/georgia-democrats-push-souls-the-polls-with-sunday-voting/y1mEvfUULsYpl5oWAgZmIM/>.

outcry when it repeatedly attempted to cut advance voting opportunities, including Sunday voting.<sup>49</sup> Chair Fleming is well aware of these specific concerns because he was the lead sponsor of a bill submitted in 2014 seeking to cut weekend advance voting, despite widespread opposition.<sup>50</sup> Simply put, any attempt to limit advance voting opportunities, especially weekend and Sunday voting, is a direct attack against the voting rights of Black Georgians.

Neither the House nor Senate has not addressed or responded to these long-standing and well-documented concerns. Nor has either provided *any* explanation why limiting advance voting hours and days, including limiting weekend voting, serves a legitimate state interest. S.B. 202's proponents claim these restrictions are necessary for uniformity among counties. But this purported justification is belied by Section 27's provisions; under them, counties would continue to maintain some discretion for setting hours during weekdays and for choosing a weekend voting day. Putting aside the disconnect between the provisions and purported justification, proponents do not offer any explanation of why uniformity, at the expense of limiting equitable voting options, is beneficial to election administrators and voters. Nor could they: meaningful and robust advance voting opportunities, especially weekend and Sunday voting, is critical to free, fair, and secure elections given the modern-day demands of work, family, and other obligations.

## V. Section 32 – Banning Linewarming

Section 32 would criminalize volunteers from providing free food and water to voters standing in long lines, as well as other practices associated with linewarming.<sup>51</sup> Federal<sup>52</sup> and state<sup>53</sup> law already prohibit what Section 32 proponents are purporting to address: prohibiting knowingly or willfully paying, offering to pay, or accepting anything of monetary value in exchange for voting. Nor has the Secretary of State cited to any complaint about linewarming activities running afoul of Georgia law in recent elections.<sup>54</sup> And the U.S. Department of Justice

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<sup>49</sup> See, e.g., *Democracy Diminished: State and Local Threats to Voting* Post-Shelby County, Alabama v. Holder 1, NAACP LDF, 21–22 (Nov. 13, 2020), <https://www.naacpldf.org/wp-content/uploads/State-local-responses-post-Shelby-11.12.20-final.pdf> [hereinafter *Democracy Diminished*].

<sup>50</sup> *Id.*

<sup>51</sup> Corasaniti et al., *supra* n. 47.

<sup>52</sup> See 52 U.S.C. § 10307(c); see also 18 U.S.C. § 597.

<sup>53</sup> O.G.C.A. § 21-2-570.

<sup>54</sup> Jonathan Raymond, *Georgia Election Officials Say They Will Crack Down on Giving Stuff to People Voting in Lines*, 11Alive (Dec. 30, 2020), <https://www.11alive.com/article/news/politics/elections/georgia-elections-officials-line-warming-crackdown/85-afb28fc8-f0aa-4cab-800d-443bc58ddca8>.

has already issued guidance urging election offices to provide chairs and other accommodations to voters who need them while waiting in line.<sup>55</sup>

What is clear is how this ban would disproportionately impact Black voters and other voters of color. Black voters and other voters of color disproportionately experience longer wait times and longer lines during in-person voting.<sup>56</sup> To aid voters in these long lines, especially during the pandemic, Black churches have played a critical role providing free snacks and personal protective equipment and continue to do so moving forward.<sup>57</sup>

Rather than seeking to criminalize volunteers providing free necessities, the Georgia General Assembly should be considering and passing legislation that would mitigate one of the primary reasons for linewarming: long lines. As described throughout this testimony, S.B. 202's provisions, individually and collectively, will create a cascading effect that will lead to longer lines and wait times during in-person voting, which will disproportionately impact voters of color.

## VI. Fiscal and Racial Impact Study

As we repeatedly conveyed to this Committee, any bill, particularly one as here, with such far reaching implications for the fundamental right to vote cannot be properly assessed and evaluated without understanding its full impact. A full impact study is particularly important because the harms to the right to vote will be exacerbated by the interactions of multiple provisions that each limit voting options in different ways.<sup>58</sup> For instance, burdens placed on absentee ballots and the restrictions on drop box availability would increase voter demand for in-person advance voting, yet this bill also restricts the total number of hours and days of advance voting. These concerns will be exacerbated by continued widespread polling place closures throughout Georgia, which do not appear to show any signs of abatement.<sup>59</sup> As described above, these changes are going to disproportionately impact Black and other voters of color.

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<sup>55</sup> See *The Americans with Disabilities Act and Other Federal Law Protecting the Rights of Voters with Disabilities*, U.S. Dept. of Justice, Civil Rights Div. (Sept. 2014), [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.htm](https://www.ada.gov/ada_voting/ada_voting_ta.htm).

<sup>56</sup> Klain et al., *supra* n. 25; Levine et al., *supra* n. 42.

<sup>57</sup> Corasaniti et al., *supra* n. 47.

<sup>58</sup> In addition to the provisions described in this letter, several other provisions in S.B. 202 including, but not limited to, Sections 8 and 13 (restricting counties from accepting grants for election-related costs from non-profit organizations), Section 19 (restricting mobile voting options), Section 24 (reducing time period to apply and submit absentee ballots), and Sections 33 and 34 (disenfranchising voters who vote in the out of precinct), will impact voting access.

<sup>59</sup> Democracy Diminished, *supra* n. 49, at 29–31; *Democracy Diverted: Polling Place Closures and the Right to Vote*, The Leadership Conference on Civil and Human Rights 1, 31–33 (Sept. 2019), <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>; see also *The Great Poll Closure*, The Leadership Conference on Civil and Human Rights, (Nov. 1, 2016), <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

These changes will also create enormous stress on election administrators. Severe limitations on absentee voting and advance voting options will lead to longer lines for in-person voting, especially for Black voters who have been historically underserved on Election Day.<sup>60</sup> Indeed, after extremely long lines during the June 2020 primary election, state and local officials had to take steps to increase funding and provide more equitable voting options.<sup>61</sup> These efforts were helpful to cut down long wait times and mitigate barriers and burdens for the November 2020 general and January 2021 runoff elections. Yet S.B. 202 severely restricts critical and equitable voting options, while at the same time imposes significant unfunded mandates on counties that faced budgetary difficulties in the 2020 elections.<sup>62</sup>

LDF and SPLC Action have still not been made aware of any analysis conducted by this Committee or the Georgia General Assembly that S.B. 202 will not disproportionately harm voters of color and other voters. And this Committee did not respond to requests by witnesses to conduct a fiscal and racial impact analysis during its consideration of other election-related bills, including House Bill (“H.B.”) 531.<sup>63</sup> Accordingly, before any Committee vote, either this Committee or the Georgia General Assembly must study, analyze, and publicly identify the fiscal and racial impact of S.B. 202.

## VII. Legislative Process

Providing the public with accessible and meaningful opportunities to provide input and review bills should be foundational to the legislative process and we urge you to make it a necessary part of the process as these bills move forward. These considerations are especially important because a bill like S.B. 202 will dramatically alter Georgia’s election system by restricting access to the ballot box. Majority Leader Dugan, for example, has already acknowledged that the original iteration of S.B. 202 would impact the “lives of 11 million Georgians,”<sup>64</sup> and if enacted, would be the most significant election reform since 2005.<sup>65</sup> The public must have a voice in the process given that potential outcome.

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<sup>60</sup> Corasaniti et al., *supra* n. 47.

<sup>61</sup> Levine et al., *supra* n. 42.

<sup>62</sup> *Id.*; *State and Local Fiscal Impact of SB 241*, Voting Rights Lab (Feb. 24, 2021), <https://votingrightslab.org/wp-content/uploads/2021/02/Fiscal-Impact-of-GA-SB-241.pdf>; *Fiscal Impact of Certain Election Administration Bills Under Consideration in the Georgia General Assembly*, Voting Rights Lab (Feb. 22, 2021), <https://votingrightslab.org/wp-content/uploads/2021/02/Fiscal-Impact-of-Georgia-Election-Bills.pdf>.

<sup>63</sup> March 2 Written Testimony and February 24 Written Testimony, *supra* n. 1.

<sup>64</sup> Georgia Senate Ethics Committee Hearing on February 25, 2021, Georgia Senate 01:26:15–01:26:40 (Feb. 25, 2021), <https://livestream.com/accounts/26021522/events/8743306/videos/218006034>.

<sup>65</sup> *Id.* at 00:49:55–00:50:10.



Yet the legislative environment in which S.B. 202 has been offered calls for the rejection of this bill because it is neither open, transparent, or inclusive.<sup>66</sup> As LDF described in our letter to this Committee, the process for considering voting-related bills in the House fared no better for H.B. 531.<sup>67</sup> Indeed, this Committee held a hearing yesterday, March 17, on the ninety-three page S.B. 202 substitute omnibus bill, which was only shared publicly an hour before the 3:00 p.m. Then, this Committee plans to hold another hearing on S.B. 202 less than twenty-hours after confirm this was the proper substitute bill being considered.

Under non-pandemic circumstances, it raises serious concerns to spring hearings on the public with effectively no notice, expect people to digest an omnibus bill seeking to change many of Georgia's election laws and procedures, and to orchestrate who can participate and exclude others. That stratagem, in the context of a pandemic, when people must prepare and consider safeguards to participate in-person or prepare to participate remotely is unacceptable. Both individually, and collectively, this reflects an effort to shroud these proceedings in secrecy and unduly influence the legislative record, as well as limit and exclude members of the public from contributing to the legislative process. Accordingly, we reiterate LDF's following requests,<sup>68</sup> which at a bare minimum, should include:

- a. Adopt uniform and transparent procedures for public testimony that ensure equal and full access, including remote testimony options for all hearings. Post procedures online and establish simple mechanisms to allow the public to sign-up in advance, especially for remote testimony.
- b. Post all legislative language, including bills, amendments, and substitutes, on the House and Senate websites at least 24 hours before any language is considered or voted on by either Committee or on the House or Senate floor.
- c. Conduct comprehensive fiscal and racial impact assessments of all proposed voting-related changes.
- d. Hold all future hearings during regular business hours.

### **VIII. Federal Protections**

It is likely that S.B. 202 violates various federal laws, as referenced above. The facts recited above, including the sequence of events (particularly the timing of the

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<sup>66</sup> Letter from LDF, to the Senate Ethics Committee and House Special Committee on Election Integrity (Mar. 8, 2021), [https://naacpldf.org/wp-content/uploads/2021-03-08\\_Letter-from-LDF-to-the-House-Special-Committee-on-Election-Integrity-and-Senate-Ethics-Committee.pdf](https://naacpldf.org/wp-content/uploads/2021-03-08_Letter-from-LDF-to-the-House-Special-Committee-on-Election-Integrity-and-Senate-Ethics-Committee.pdf) (detailing the flawed legislative processes and procedures in the House and Senate for considering voting-related bills in committee).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 5.

effort to impose this restriction on absentee and advance voting), procedural departures from ordinary legislative processes (particularly the calculated and strategic exclusion of public participation), the lack of any neutral justification for the proposals, and the foreseeable disparate impact on Black voters and other voters of color, suggest the provisions embodied in Sections 24, 25, 26, 27, and 32 of S.B. 202, individually and collectively raise serious concerns under the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Section 2 of the Voting Rights Act of 1965. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); 52 U.S.C. 10301.<sup>69</sup> These same provisions in Sections 24, 25, 26, and 27, burden the right to vote without any legitimate state interest, which may also violate the First and Fourteenth Amendment to the U.S. Constitution.<sup>70</sup> Moreover, this Committee has not offered reasonable modifications necessary to ensure voters with disabilities will not be screened out from fully and equally participating in elections, which may violate Title II of the Americans with Disabilities Act. 42 U.S.C. § 12131.

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We agree that our elections must be safe and secure. But S.B. 202 does nothing to enhance either goal. The prospect of its passage poses an intolerable threat to voting access for Georgia voters, especially voters of color. This bill is calculated in legislative process and substance to attempt to minimize the participation of voters of color and other voters in our political life following the historical participation in recent elections, especially for Black voters and other voters of colors. Its enactment would create unnecessary barriers, burdens, and disproportionately impact the voting rights of people of color, the elderly, people with disabilities, low-income people, rural residents, and/or students. It would also contravene popular mandate from recent elections and advocacy to expand voting rights in Georgia.

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<sup>69</sup> In Sections 24 and 26, the specific requirement to provide an elector’s date of birth for absentee voting may also violate another provision in the Voting Rights Act that prohibits any requirement that is not material in determining whether an individual is qualified to vote under state law. 52 U.S.C. § 10101 (a)(2)(B). This provision is “intended to address the practice of requiring unnecessary information for voter registration with the intent that such requirements would increase the number of errors or omissions on the application forms, thus providing an excuse to disqualify potential voters.” *Schwieb v. Cox*, 340 F.3d 1284, 1294 (11th Cir. 2003). An elector’s “year of birth is not material to determining the eligibility of an absentee voter,” because a county can confirm the identify of a voter with other information that is provided through absentee voting. See *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1309 (N.D. Ga. 2018). Adopting this rationale, a federal court held “that absentee mail-in ballots rejected solely because of an omitted or erroneous birth date must be counted.” *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1340–41 (N.D. Ga. 2018).

<sup>70</sup> 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 plaintiffs’ rights.’”) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

Our democracy requires free and open access to the sacred right to vote. As we prepare for elections this year and beyond, it is incumbent on this Committee and the Georgia Legislature to respond to the needs of its constituents. Those needs, as demonstrated through recent Georgia elections, are to preserve and expand, rather than restrict, access to the ballot box. That goal can only be accomplished by voting no on S.B. 202 and withdrawing it from consideration in any further committee hearings.

Sincerely,

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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.

### SPLC Action Fund

SPLC Action Fund is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. SPLC Action Fund is the 501(c)4 affiliate organization to the Southern Poverty Law Center. For more information, visit [www.splcactionfund.org](http://www.splcactionfund.org).