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October 16, 2018

VIA EMAIL & CERTIFIED MAIL

Jefferson County Board of Commissioners
Mitchell McGraw, Chairman
217 East Broad Street
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mmcgraw@jeffersoncountyga.gov

Re: **Voter Intimidation in Jefferson County, Georgia**

Dear Chairman and Members of the Jefferson County Board of Commissioners:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), on behalf of Black Voters Matter (“BVM”), writes to alert you that an unacceptable act of voter intimidation—which potentially violates several laws—took place in Jefferson County on Monday, October 15.¹ This intimidation appears to have been precipitated by the actions of Jefferson County officials, namely Ms. Bonnie Wells, the County Clerk, and Mr. Adam Brett, the County Administrator. We write to urge you to open an immediate investigation into this incident, and we ask that you and other County officials take immediate steps to condemn these actions and make clear that voter intimidation has no place in Jefferson County or any other area in Georgia. During this electoral season, we all should be committed to ensuring that more, not fewer, eligible voters can participate and exercise their fundamental right to vote.

According to our understanding and reporting, a group of approximately 40 senior citizens, most of whom are Black and participate in activities at Leisure Center in Jefferson County, intended to travel together to vote on Monday, the start of early voting in Jefferson County. The Center had pre-arranged transportation for them. Before the seniors’ scheduled trip to the polls, volunteers from BVM, a grass-roots organization that encourages participation by all voters, delivered a non-partisan presentation on voter outreach and the importance of exercising the right to vote. The seniors—many of whom remember a time in Georgia when people of color were systematically excluded from any meaningful participation in politics as a matter of state law—were eager to vote in this historic election and excited to do so as part of the opportunities that early voting in Georgia provides. As videos from Monday afternoon demonstrate, the atmosphere

¹ An appendix to this letter includes a brief description about the work of LDF and BVM.

as the group prepared to travel to their polling station was festive: music played, and several of the senior citizens danced.²

Leisure Center had organized a shuttle bus to transport the seniors to the polling place.³ However, many of the seniors asked if they could travel to the polls on the bus in which the BVM volunteers had arrived. BVM's bus, which was decorated with inspirational images and text, was capable of transporting the entire group and was already parked beside the senior center's shuttle. The bus contained no messages of endorsement for or against any candidate or issue on the ballot. BVM's volunteers agreed to transport the seniors to the early-voting site, and the group boarded the bus.

This was the closest the seniors would come to the polls that day. According to our understanding of the sequence of events, as the bus prepared to depart, a Leisure Center employee received an ominous telephone call from a woman who represented herself as the Jefferson County Clerk and claimed to be in conversation with the County Administrator. This caller reportedly told the Leisure Center employee that it was illegal for the seniors to travel to the polls on BVM's bus because the vehicle was not appropriately registered for that purpose.

As far as we have been able to determine, there is no provision in Georgia or Jefferson County law that provides any basis for the caller's allegation. No specialized registration is required for vehicles that transport voters to the polls. But the caller's words, apparently threatening, had their intended effect. After hanging up the phone, the Leisure Center employee was noticeably shaken. In fact, according to one observer, she appeared "scared to death." The Leisure Center employee immediately informed the event organizers that the seniors had to leave BVM's bus.

The seniors followed her instructions and exited the bus. But this setback had not shaken their resolve to vote. Upon leaving BVM's bus, they filed onto the shuttle bus, parked nearby, that Leisure Center had arranged for the specific purpose of transporting them to the polls.

Yet for reasons not immediately clear, but which may suggest the force of the caller's threats and intimidation, the Leisure Center employee subsequently told the seniors to leave this bus as well. They would not be voting today, she said. The threatening telephone call by the woman representing herself as a county official had apparently achieved its purpose.

² See Kira Lerner, *'This is live voter suppression': Black Voters Matter blocked from taking Georgia seniors to vote: Roughly 40 black seniors were told to get off a bus organized to take them to cast their votes.*, ThinkProgress (Oct. 15, 2018, 12:55 p.m.), <https://thinkprogress.org/georgia-black-voters-matter-bus-blocked-from-taking-seniors-to-vote-a3c3e6580c5b/>.

³ Such coordinated trips to polling places, including "Souls to the Polls" drives coordinated by faith leaders after Sunday church services, are a well-established tradition in the Black community in Georgia and other states. They are also a lifeline for voters who may not otherwise have readily available access to transportation.

Although the details of Monday's events are still emerging, we write this letter so that you can fully investigate this incident and determine whether Ms. Wells and/or Mr. Brett were involved in or authorized the intimidating phone call, designed to interfere with the efforts of Black senior citizens to vote and apparently with the intention of suppressing their votes.

Fortunately, there are legal protections to address such voter suppression tactics.⁴ Among them is Section 11(b) of the Voting Rights Act of 1965, which provides that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote.”⁵ Another federal statute, 18 U.S.C. § 594, makes it a crime to “intimidate[], threaten[], coerce[], or attempt[] to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote,” in a federal election.⁶ In addition, the Ku Klux Klan Act of 1871 provides that “if two or more persons conspire” to prevent someone from voting “by force, intimidation, or threat,” then the victims of voter intimidation can sue the conspirators.⁷ These laws provide protections against attempts to intimidate voters like these senior citizens from registering to vote or voting, or to intimidate groups like BVM working towards those purposes—by officials or non-officials—and have acquired renewed relevance in this twenty-first century, shamefully.

As discussed above, we have not yet been able to confirm the veracity of the caller's claim to speak with authority on behalf of the County. However, these laws proscribe the caller's conduct whether she or any other person was truly acting in any official capacity for Jefferson County or merely claiming to do so. Voter intimidation by private citizens is no less a violation of the Voting Rights Act, the Ku Klux Klan Act, and 18 U.S.C. § 594 than voter intimidation by public officials.

Thus, you should waste no time in opening an investigation into this incident. We seek your response to this letter *in writing* by Wednesday, October 17, at 5:30 p.m. (EDT). Without delay, you should condemn Monday afternoon's events and state clearly and publicly that intimidation of voters will not be tolerated. In addition, you should conduct an investigation to identify the caller and individuals working with her and determine appropriate consequences, and to satisfy yourselves that the caller did not act with any County official's knowledge or approval. Finally, you should make clear that organized efforts to transport voters to the polls are perfectly legal and have the support of the Jefferson County Board of Commissioners.

⁴ For an overview of various successful lawsuits precipitated by challenges to voter eligibility and purges, see, e.g., Jo Becker, *GOP Challenging Voter Registrations: Civil Rights Groups Accuse Republicans of Trying to Disenfranchise Minorities*, Washington Post (Oct. 29, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A7422-2004Oct28.html>.

⁵ 52 U.S.C. § 10307(b) (emphasis added).

⁶ 18 U.S.C. § 594

⁷ 42 U.S.C. § 1985(3).

As a precaution, we are copying the Georgia Secretary of State's Office on this communication.⁸ That office is also authorized to take steps that would send a message that voter intimidation in Georgia is unacceptable and can be illegal. Indeed, that office could send a notice to each of the voter registrars and other relevant election officials in Georgia's 159 counties, including Jefferson, that no form of voter intimidation or suppression can be tolerated. The educational purpose of the notice would be twofold. *First*, the notice would include information about Monday's events and the laws the caller's actions may have violated, and refute the caller's claim that vehicles driving voters to the polls require any specialized registration. *Second*, the notice would explain the procedures that Georgia state and county officials must take to enforce such laws and prevent any intimidation or suppression of Georgia voters.

Our democracy depends on free and open access to the sacred right to vote, a "fundamental political right" that is "preservative of all rights" and must be protected.⁹ "Other rights, even the most basic, are illusory if the right to vote is undermined."¹⁰ No racially discriminatory suppression of that right can be tolerated in Georgia or elsewhere. Therefore, in this contested election season, we urge you all to protect against voter intimidation and other conduct designed to suppress voting rights in your County.

Sincerely,



Sherrilyn Ifill, President & Director-Counsel
Janai S. Nelson, Associate Director-Counsel
Samuel Spital, Director of Litigation
Leah C. Aden, Deputy Director of Litigation
Steven Lance, YLS Public Interest Fellow
NAACP LEGAL DEFENSE

⁸ LDF recently requested that Georgia's Secretary of State recuse himself from any control over or involvement in voter-registration matters during the remainder of his candidacy for Governor of Georgia. *See* NAACP LDF, *LDF Sends Letter to Georgia Secretary of State, Urging Recusal from Voter Registration Process During Gubernatorial Campaign* (Oct. 12, 2018), <http://www.naacpldf.org/press-release/ldf-sends-letter-georgia-secretary-state-urging-recusal-voter-registration-process-dur>. We stand by that request, while noting that Secretary Kemp's personal conflict of interest makes it all the more necessary for the Secretary of State's Office to fulfill its election-related duties under federal and state law by protecting voters from intimidation and suppression tactics.

⁹ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); *see also* Ga. Const. art. II, § 1, ¶ II (granting an explicit right to vote).

¹⁰ *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964).

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CC (*by email**): Cliff Albright, Co-founder, Black Voters Matter*
LaTosha Brown, Co-founder, Black Voters Matter*

Nathan Deal, Governor of Georgia (*by online portal & certified mail*)
Brian Kemp, Georgia Secretary of State*
Chris Harvey, Director, Elections Division, Georgia Secretary of State's
Office*
Susan Gray, Jefferson County Elections Superintendent*

Appendix

Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black people. LDF has been involved in much of the precedent-setting litigation related to securing voting rights for people of color. *See, e.g., Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013) (LDF defending Section 5 of the Voting Rights Act before the U.S. Supreme Court). LDF uses legal, legislative, public education, and other advocacy strategies to promote the full, equal, and active participation of Black people in America's democracy. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

In recent years, LDF has successfully worked to ensure that Black voters in Georgia have the equal opportunity to elect their candidates of choice. *See Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (LDF successfully challenging the at-large electoral method to the county board of commissioners and board of education in Fayette County). LDF also has advocated against proposals that restrict access to the ballot box for Georgia's voters. In 2013, LDF successfully advocated against a proposal that would have closed all but one polling place in Baker County.¹¹ Similarly, LDF and other civil rights organizations successfully advocated against Randolph County's attempt to close all but one polling place, as well as sent letters to the other 158 counties in the state urging them to consider the impact of polling place changes on Black voters.¹² Moreover, over two successive legislative sessions in 2014 and 2015, LDF, along with other civil rights and pro-democracy organizations challenged statewide legislative bills that would have reduced the number of early voting days across Georgia's counties.¹³ In 2018, LDF and other civil rights and pro-democracy organizations successfully opposed the enactment of a legislative bill that would have shortened voting hours on

¹¹ Ltr. from Ryan P. Haygood, Director, and Leah C. Aden, Assistant Counsel, LDF, to the Baker County Board of Elections and Registration (Oct. 4, 2013) (on file with authors); Letter from Karin S. Tabb, Chairperson, Baker County Board of Elections and Registration, to Ryan P. Haygood, Director, and Leah Aden, Assistant Counsel, LDF (Oct. 7, 2013) (on file with authors).

¹² Ltr. from Sherrilyn Ifill, President and Director-Counsel, Samuel Spital, Director of Litigation, Leah C. Aden, Deputy Director of Litigation, and John S. Cusick, Equal Justice Works Fellow, LDF, to Todd Black, Randolph County Board of Elections and Registration (Aug. 22, 2018) (on file with authors); Sherrilyn Ifill, President and Director-Counsel, Samuel Spital, Director of Litigation, Leah C. Aden, Deputy Director of Litigation, and John S. Cusick, Equal Justice Works Fellow, LDF, and Sean J. Young, Legal Director, ACLU of Georgia, to Baker County Board of Elections and Registrations (Aug. 22, 2018), http://www.naacpldf.org/files/case_issue/Baker%20-%20BOE.PDF.

¹³ Zachary Roth, *In Voting Rights Win, Bill to Cut Georgia Early Voting is Dead*, MSNBC (Apr. 6, 2015), <http://www.msnbc.com/msnbc/voting-rights-win-bill-cut-georgia-early-voting-dead>; *PPG's Advocacy Halts Efforts to Reduce Early Voting in Georgia*, NAACP LDF (Mar. 24, 2014), <http://www.naacpldf.org/press-release/ppgsadvocacy-halts-efforts-reduce-early-voting-georgia>.

Election Day in Atlanta and would have effectively eliminated early voting on the Sunday before Election Day throughout Georgia.¹⁴

Black Voters Matter (BVM) is a 501(c)(4) non-profit organization, founded in 2017 by LaTosha Brown and Cliff Albright, that is dedicated to expanding Black voter engagement and participation. BVM builds upon organizing practices to support and partner with grassroots groups, organizations, and networks to help strengthen Black political infrastructure and increase awareness and discussion about issues with which Black communities are concerned, including education, health care, economic development, political representation, and voter suppression. BVM is currently conducting a bus tour across several Southern States to meet with voters and lift up examples and opportunities for change in both urban and rural communities, particularly in the Black Belt regions of Alabama and Georgia, the Panhandle region of Florida, and the Mississippi Delta region.

¹⁴ Ltr. from Leah Aden, Senior Counsel, LDF, to Members of the Georgia General Assembly (Mar. 26, 2018), <http://www.naacpldf.org/files/about-us/Ltr.%20Georgia%20General%20Assembly%20re%20S.B.%20363%203.26.18%20%28final%29.pdf>.