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the January 6th Attack on the United States Capitol**

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I. INTRODUCTION

Thank you for the opportunity to directly submit this statement to the Select Committee to Investigate the January 6th Attack on the United States Capitol. No other act of mass violence in modern history has threatened the existence of our Republican form of government more than the insurrection that occurred at the United States Capital a mere sixteen months ago. The goal of the insurrectionists was clear: to effectuate a violent coup, deny the will of the majority of voters, and upend the functioning of our increasingly multi-racial, multi-ethnic democracy. Therefore, it is essential to the security and endurance of our democracy that this committee understand the January 6th attack in its full context: as a manifestation of broad white supremacist backlash against robust democratic participation by people of color. This backlash has been fueled in part by the false narrative that rampant voter fraud occurred in communities of color and also by a deep-seated fear that the changing racial and ethnic demographics in the United States and the increasing racial and ethnic diversity of the electorate threaten the existing power structure premised on white supremacy. Moreover, the insurrection was preceded and followed by a rash of racially discriminatory voter suppression laws aimed at Black and Brown Americans and which continue to threaten the integrity of our electoral process. Faced with the added specter of future mass violence in our electoral process, Congress must not only address the threat to our democracy by investigating the January 6th attack but also by enacting legislation to fully protect the right to vote and ensure against election subversion.

A. Statement of Purpose and Outline

The purpose of this testimony is to make clear the explicit connection between the violence of January 6th and the legal retrenchment that both preceded and followed it, and to insist that Congress cannot address the root cause of the Insurrection without acting to build a more inclusive, multiracial, multi-ethnic democracy by protecting what the late Congressman John Lewis called the “precious, almost sacred” right to vote for Black and Brown Americans.¹

I briefly discuss the history of racial progress and backlash in the United States; show how a false narrative about elections stolen through massive voter fraud has served as a coded appeal to white racial resentment and a central frame that connects the January 6th Insurrection with widespread efforts to restrict the

¹ Rep. John Lewis: ‘Your Vote Is Precious, Almost Sacred’, PBS Newshour (Sep. 6, 2021), <https://www.pbs.org/newshour/show/rep-john-lewis-your-vote-is-precious-almost-sacred>.

franchise; highlight the historic 2020 turnout of voters of color that intensified the current backlash; detail the various ways the backlash has taken shape since 2020; and explain how furthering progress on race and preventing future insurrection both require solutions that promote a truly inclusive, multi-racial democracy, starting at the ballot box and that protect our elections from subversion.

B. LDF and Our Work

LDF is America’s premier legal organization fighting for racial justice. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF also defends the gains and protections won over the past 80 years of civil rights struggle and works to improve the quality and diversity of judicial and executive appointments.

Since its founding in 1940, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color.² LDF’s founder Thurgood Marshall—who litigated LDF’s watershed victory in *Brown v. Board of Education*,³ which set in motion the end of legal segregation in this country and transformed the direction of American democracy in the 20th century—referred to *Smith v. Allwright*,⁴ the 1944 case ending whites-only primary elections, as his most consequential case. He held this view, he explained, because he believed that the right to vote, and the opportunity to access political power, was critical to fulfilling the guarantee of full citizenship promised to Black people in the 14th Amendment to the U.S. Constitution. LDF has prioritized its work protecting the right of Black citizens to vote for more than 80 years—representing Martin Luther King Jr. and the marchers in Selma, Alabama in 1965, litigating seminal cases interpreting the scope of the Voting Rights Act, and working in communities across the South to strengthen and protect the ability of Black citizens to participate in a political process free from discrimination.

In addition to a robust voting rights litigation docket, LDF has monitored elections for more than a decade through our Prepared to Vote initiative (“PTV”) and, more recently, through our Voting Rights Defender (“VRD”) project, which place LDF staff and volunteers on the ground for primary and general elections every year to conduct non-partisan election protection, poll monitoring, and to support Black political participation in targeted jurisdictions—primarily in the South. LDF is also a founding member of the non-partisan civil rights Election Protection Hotline (1-

² LDF has been an entirely separate organization from the NAACP since 1957.

³ 347 U.S. 483 (1954).

⁴ 321 U.S. 649 (1944).

866-OUR-VOTE), presently administered by the Lawyers' Committee for Civil Rights Under Law.

II. RACE IN THE UNITED STATES: A HISTORY OF PROGRESS & BACKLASH

America's history has been a halting and fraught journey concerning racial equality. This journey, however, has never been a straight line. In fact, the story of multiracial democracy in the United States is a tale of progress, backlash, and retrenchment—at times followed by further progress, yet often long-delayed.⁵ This pattern is clear in the experience of Black Americans across four centuries. The backlash that follows moments of progress can take many forms. Two manifestations, however, are consistent and concrete: violence and legal changes intended to relegate Black people to the margins of democratic society. We've experienced several of these cycles throughout American history, and our current moment shows all the signs of this same pattern.

A. Cycles of Progress and Backlash

The first substantial step towards racial equality in the United States came through the post-Civil War amendments to the Constitution, which ushered in an era known as Reconstruction. During this period, the federal government enforced new rules protecting the civil and voting rights of Black people in the South, and as a result Black people began to build political power through elected office and economic stability through institutions such as trade unions.⁶ This moment of progress, however, engendered a severe backlash wherein the influence and dominance of white supremacy was restored through violence and laws, in a period known as Redemption.⁷ Following the Compromise of 1877, the federal government withdrew its enforcement of the rules protecting the civil and voting rights of Black people and the Supreme Court ruled that courts would not protect Black people's civil rights against private actors⁸ resulting in nearly a century of racial terror through lynchings, mob violence and Jim Crow "Black Codes" enforcing strict segregation and second-class citizenship ensued.⁹ It was not until the Civil Rights Movement of the

⁵ Indeed, eight of the seventeen post-Bill of Rights amendments to the U.S. Constitution expanded the franchise directly or expanded the constitutional rights and protection to ensure a more inclusive vision of "we the people" over the course of XX years. U.S. CONST. amends. XIII, XIV, XV, XVII, XIX, XXIII, XXIV, XXVI.

⁶ Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (2019)

⁷ *Id.*

⁸ *U.S. v. Cruikshank*, 92 U.S. 542 (1876).

⁹ Foner *supra* note 6.

1960s, and specifically the Voting Rights Act of 1965, that the racial caste system reestablished through Redemption began to give way.

This pattern of progress and retrenchment has repeated throughout American history. In the early 20th Century, Black Americans began to leave the South—often under cloak of darkness—to escape the yoke of Jim Crow and seek fairer treatment and economic opportunity in the cities of the North.¹⁰ This “Great Migration” of approximately six million people provided opportunities unfathomable in the Redemption South. Yet those who migrated North were not met with open arms. The backlash from Northern whites and the national power structure manifested in myriad ways, but perhaps the most painful and lasting was redlining—a process through which mortgage lenders enforced strict residential segregation and robbed Black Americans of the single biggest opportunity to build generational wealth.¹¹ Ironically, the same federal government that briefly enforced Southern Blacks’ rights during Reconstruction now drove their deprivation in Northern cities through its racist housing policy¹² among other racially discriminatory practices.

Similarly, the progress of LDF’s landmark *Brown v. Board of Education* case which ended decades of legal segregation in America’s public schools, was followed by “massive resistance” and segregation academies.¹³ In addition to defying the law to maintain racial hierarchy throughout the South, communities chose to shutter public infrastructure rather than share it equally—even draining public pools rather than allowing Black and white children to swim together.¹⁴

Keeping with this insidious pattern, the progress of electing the nation’s first Black president in 2008 was followed by a substantial mobilization of white Americans through the Tea Party movement who pushed back vehemently against policies that once received bipartisan support (such as health insurance mandates) and questioned President Barack Obama’s birthplace and thus his legitimacy as

¹⁰ Isabel Wilkerson, *The Warmth of Other Suns: the Epic Story of America's Great Migration* (2011).

¹¹ Richard Rothstein, *The Color of Law* (2018); Lisa Rice, *Long Before Redlining: Racial Disparities in Homeownership Need Intentional Policies*, Shelterforce (Feb. 15, 2019), <https://shelterforce.org/2019/02/15/long-before-redlining-racial-disparities-in-homeownership-need-intentional-policies/>; Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1998); Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (2005); Robert C. Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, MA: Harvard University Press, 1998).

¹² See generally *Color of Law*.

¹³ *Report: Segregation in America*, EQUAL JUSTICE INITIATIVE (2018), 20–39, <https://segregationinamerica.eji.org/report.pdf?action=purge>.

¹⁴ HEATHER MCGHEE, *THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER* (2021).

president.¹⁵ More recently, robust public demonstrations of anguish and anger over George Floyd’s murder and countless other examples of police devaluing Black lives with wanton violence generated an important national conversation about structural racism. However, these multi-racial efforts to confront police violence against communities of color have been met with sharp backlash in the form of white-led state legislatures and school boards passing so-called “anti-critical race theory” measures that mandate that our public school systems teach students an inaccurate, sanitized version of American history and ban an increasing number of books about race, including some classic texts that have long been part of the public school curricula.¹⁶

B. The Response to the 2020 Presidential Election Fits the Pattern of Cyclical Backlash

The 2020 Presidential election and its aftermath fit the longstanding cyclical pattern of progress and backlash that continually thwarts efforts at cementing durable change to perfect our union. In 2020, communities of color drove robust voter turnout leading to electoral results that challenged the political status quo. The violence on January 6th and the attendant effort to override the valid outcome of the 2020 Presidential election were one concrete form of backlash, and the rash of anti-voter laws introduced and enacted in states across the country, building on a wave of voter suppression efforts that preceded the election,¹⁷ was another. Both responses were fueled by a common false narrative rooted in racism and the project of white supremacy. What will happen next remains an open question. Whether we confront this backlash head-on and advance towards further progress or backslide into what some have justly called Jim Crow 2.0 depends in significant part upon Congress’ response to the current moment.

III. FRAMING THE 2020 BACKLASH: FALSE RHETORIC OF STOLEN ELECTIONS CONNECTS JANUARY 6TH TO ONGOING VOTER SUPPRESSION

Coded racial appeals have served as an overarching frame for the backlash against the 2020 election. Those seeking to stoke racial resentment for their political and economic advantage began laying the groundwork for this frame for many years prior to 2020. For decades, those seeking to restrict the franchise have used false

¹⁵ Robb Willer, Matthew Feinberg & Rachel Wetts, *Threats to Racial Status Promote Tea Party Support Among White Americans* (May 4, 2016). Available at SSRN: <https://ssrn.com/abstract=2770186> or <http://dx.doi.org/10.2139/ssrn.2770186>

¹⁶ *In Defense of Truth*, NAACP LDF (accessed Jan. 19, 2022), <https://www.naacpldf.org/truth/>.

¹⁷ Will Wilder, *Voter Suppression in 2020*, Brennan Center for Justice (Aug. 20, 2020), <https://www.brennancenter.org/our-work/research-reports/voter-suppression-2020>.

concerns about voter fraud to justify barriers to the ballot.¹⁸ This framework began to take center stage during the prior administration. When President Trump won the 2016 election through the Electoral College but fell more than 3 million total votes short of Hillary Clinton, he told his supporters that there was only one reasonable explanation: millions of people had voted illegally for Clinton, masking his true victory among legitimate voters.¹⁹ With no actual evidence of voter fraud to support his claim, Trump set up the Presidential Commission on Election Integrity allegedly to find it.²⁰ The Commission produced no such evidence and shut down amidst credible allegations of secrecy, mismanagement, and discriminatory intent.²¹ Nonetheless, the mere creation of this high-level government commission stoked doubt about the sanctity of our elections and likely helped legitimize the false claim of rampant voter fraud for some.

Heading into the 2020 election, President Trump also told his supporters repeatedly that he could only lose through massive fraud;²² and he refused to say definitively whether he would accept the election results if he lost.²³ When Trump did in fact lose the 2020 Presidential election—both the popular vote and the Electoral College—his supporters echoed his false statements that rampant fraud explained the outcome, and both the Trump campaign and legions of its most loyal supporters used this frame as a central theme to guide their activities in the aftermath. In response to false claims that the 2020 election was stolen through rampant fraud,

¹⁸ German Lopez, *The case against voter ID laws, in one chart*, Vox.com (August 6, 2015), <https://www.vox.com/2015/8/6/9107927/voter-id-election-fraud>; See also, Quinn Scanlan, 'We've never found systemic 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-overturnd-election-georgia-secretary/story?id=74560956>; *Debunking the Voter Fraud Myth*, Brennan Center for Justice (Jan. 31, 2017), https://www.brennancenter.org/sites/default/files/analysis/Briefing_Memo_Debunking_Voter_Fraud_Myth.pdf.

¹⁹ Glenn Kessler, *Donald Trump's bogus claim that millions of people voted illegally for Hillary Clinton*, Washington Post (Nov. 27, 2016), <https://www.washingtonpost.com/news/fact-checker/wp/2016/11/27/trumps-bogus-claim-that-millions-of-people-voted-illegally-for-hillary-clinton/>.

²⁰ *President Announces Formation of Bipartisan Presidential Commission on Election Integrity*, the White House (May 11, 2017), <https://trumpwhitehouse.archives.gov/briefings-statements/president-announces-formation-bipartisan-presidential-commission-election-integrity/>.

²¹ Jessica Huseman, *A Short History of the Brief and Bumpy Life of the Voting Fraud Commission*, ProPublica (Jan. 4, 2018), <https://www.propublica.org/article/a-short-history-of-the-brief-and-bumpy-life-of-the-voting-fraud-commission>.

²² Zachary Wolf, *The 5 key elements of Trump's Big Lie and how it came to be*, CNN (May 19, 2021), <https://www.cnn.com/2021/05/19/politics/donald-trump-big-lie-explainer/index.html>.

²³ David Leonhardt, *Trump's Refusal to Concede*, New York Times (Nov. 12, 2020), <https://www.nytimes.com/2020/11/12/briefing/ron-klain-jeffrey-toobin-tropical-storm-eta.html>.

extremist factions orchestrated a campaign to disrupt the counting and certification of the presidential election and ultimately to overturn its results.²⁴

This false narrative of voter fraud is rooted in racism and connects the violence of January 6th to the litany of voter suppression laws taken up by nearly every state. First, the sharp racial divide between those promoting and believing these false claims and those who accept the results of the 2020 election is one indication of how the phantom fraud frame is in fact steeped in racism.²⁵ Second, views about whether the 2020 election was stolen appear to be correlated with views on race. Third, the connection between the embrace of the false fraud narrative and regressive attitudes about race has manifest in legislatures across the country. For example, state legislators who were the authors or lead sponsors of some of the most aggressive 2021 voter suppression laws have also introduced legislation banning so-called “critical race theory” from being taught in schools; barred the removal of Confederate monuments; and responded to racial justice protests about police brutality against Black people by increasing criminal penalties for protest-related activities.²⁶

²⁴ Simon Romero, Shaila Dewan & Giulia McDonnell Nieto del Rio, *In a Year of Protest Cries, Now It’s ‘Count Every Vote!’ and ‘Stop the Steal!’*, THE N.Y. TIMES (Nov. 5, 2020), <https://www.nytimes.com/2020/11/05/us/electionprotests-vote-count.html>; *LDF Issues Statement Condemning Breach of U.S. Capitol, Attempted Coup by Supporters of President Trump*, NAACP LDF (Jan. 6, 2020), <https://www.naacpldf.org/press-release/ldf-issues-statement-condemning-breach-of-u-s-capitol-attempted-coup-by-supporters-of-president-trump/>.

²⁵ Belief in the Big Lie narrative is sharply divided by partisanship, which is highly correlated with race. See Joel Rose & Liz Baker, *6 in 10 Americans say U.S. democracy is in crisis as ‘Big Lie’ takes route*, NPR (Jan. 3, 2022), <https://www.npr.org/2022/01/03/1069764164/american-democracy-poll-jan-6>. In addition, “Republicans most likely to believe that racism and discrimination are not a problem are also the most devout believers in the Stop the Steal narrative.” Lee Drutman, *Theft Perception*, VOTER STUDY GROUP (June 2021), <https://www.voterstudygroup.org/publication/theft-perception>.

²⁶ See AR H.B. 1218, 93rd Gen. Assemb., Reg. Sess., (Ark. 2021) (banning school curricula that “promotes societal division” on the basis of race, among other factors), available at <https://www.arkleg.state.ar.us/Bills/Detail?id=HB1218&ddBienniumSession=2021%2F2021R>; AR H.B. 1231, 93rd Gen. Assemb., Reg. Sess., (Ark. 2021) (banning teaching the 1619 Project), available at <https://www.arkleg.state.ar.us/Bills/Detail?id=HB1231&ddBienniumSession=2021%2F2021R>; AR H.B. 1761, 93rd Gen. Assemb., Reg. Sess., (Ark. 2021) (banning educational materials that portray any group of people as inherently racist, that argue that any group of people should feel guilt or shame due to race, and that the United States is systemically racist), available at <https://www.arkleg.state.ar.us/Bills/Detail?id=HB1761&ddBienniumSession=2021%2F2021R>; AR S.B. 12, 93rd Gen. Assemb., Reg. Sess., (Ark. 2021) (adding schools to list of institutions that are not allowed to promote “divisive concepts” including that any group of people is inherently racist), available at <https://www.arkleg.state.ar.us/Bills/Detail?id=SB12&ddBienniumSession=2021%2F2021S2>; and TX S.B. 3, 82nd Leg., 2nd Sess., (Tex. 2021) (banning curricula that promote the idea that anyone is inherently racist by virtue of their race, whether consciously or unconsciously, an individual bears responsibility for actions undertaken in the past by members of the same race, or the advent of slavery

Perhaps the clearest sign that the January 6th insurrection and the recent rash of anti-voter laws are not separate phenomena, but rather are two expressions of white racial anxiety about shifting power dynamics in the United States, is that both have strongholds in places where the white population is declining, either absolutely or in relation to people of color.

in the now-United States constituted the true founding of the United States, among other ideas), available at <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=872&Bill=SB3>. *See also* TX S.B. 1663, 86th Leg., Reg. Sess., (Tex. 2019) (banning the removal monuments that have existed for at least 40 years, among other restrictions), available at <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=SB1663>; AR S.B. 553, 93rd Gen. Assemb., Reg. Sess., (Ark. 2021) (banning the removal of monuments that pertain to any war, including the Civil War), available at <https://www.arkleg.state.ar.us/Bills/Detail?id=SB553&ddBienniumSession=2021%2F2021R>; *and* FL S.B. 288, 2019 Sen., (Fla. 2019) (banning removal, alteration, concealment, etc. of statutes or memorials commemorating veterans or military organizations, including during the Civil War), available at <https://www.flsenate.gov/Session/Bill/2019/288/?Tab=BillText>. *See also* GA S.B. 403, 2021-2022 Gen. Assemb., Reg. Sess., (Ga. 2022) (providing immunity for law enforcement transporting individuals to mental health facilities), available at <https://www.legis.ga.gov/legislation/61506>; AL H.B. 284, 2021 Leg., Reg. Sess., (Ala. 2021) (providing liability protection for law enforcement officials taking individuals with mental illness to a mental health facility and removing requirement that such officials go through the involuntary commitment process before doing so), available at <https://legiscan.com/AL/text/HB284/id/2271288>; TX H.B. 1788, 87th Leg., Reg. Sess., (Tex. 2021) (creating immunity for schools, school districts, and security personnel for “reasonable actions” taken by school security personnel to preserve safety), available at <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=87R&Bill=HB1788>; *and* FL S.B. 826, 2021 Sen., (Fla. 2021) (extending sovereign immunity to members of Child Protection Teams), available at <https://www.flsenate.gov/Session/Bill/2021/826/?Tab=BillText>. *See also* AR S.B. 300, 93rd Gen. Assemb., Reg. Sess., (Ark. 2021) (prohibiting parole for certain firearm possession cases), available at <https://www.arkleg.state.ar.us/Bills/Detail?id=SB300&ddBienniumSession=2021%2F2021R>, AR H.B. 1866, 92nd Gen. Assemb., Reg. Sess., (Ark. 2019) (imposing time limits on when someone can apply for a pardon), available at <https://www.arkleg.state.ar.us/Bills/Detail?id=HB1866&ddBienniumSession=2019%2F2019R>; AR H.B. 1064, 93rd Gen. Assemb., Reg. Sess., (Ark. 2021) (increasing the loopback period for certain DWI offenses for the purpose of sentence enhancements), available at <https://www.arkleg.state.ar.us/Bills/Detail?id=HB1062&ddBienniumSession=2021%2F2021R>; KY H.B. 215, 2022 Gen. Assemb., Reg. Sess., (Ky. 2022) (removing pretrial diversion and increasing minimum penalties for certain drug trafficking offenses), available at <https://apps.legislature.ky.gov/record/22rs/hb215.html>; GA S.B. 479, 2021-2022 Gen. Assemb., Reg. Sess., (Ga. 2022) (for firearm possession cases, charges a separate offense for each firearm possessed), available at <https://www.legis.ga.gov/legislation/61936>, *and* GA S.B. 359, 2021-2022 Gen. Assemb., Reg. Sess., (Ga. 2022) (providing minimum criminal penalties for a series of crimes, including some firearm felonies, and requiring the maximum sentence for certain repeat offender elder or child abuse crimes), available at <https://www.legis.ga.gov/legislation/61213>.

The Chicago Project on Security & Threats analyzed various characteristics of 716 people who have been charged with crimes related to January 6th.²⁷ After examining several factors, the Project determined that (other than county size) the strongest predictor of insurrection participation was residing in a county with a substantial decline in white population since 2015.²⁸ The authors conclude that their “analysis suggests that local decline of the non-Hispanic white population has a galvanizing effect, and counties that have had higher rates of non-Hispanic white population decline in the last half-decade are likely to produce insurrectionists at a higher rate.”²⁹ They note further that, “[g]iven the overwhelming whiteness of the population of insurrectionists, the finding that counties with higher rates of demographic change are also counties that sent more insurrectionists even when controlling for a host of competing factors is consistent with a political movement that is partially driven by racial cleavages and white discontent with diversifying communities.”³⁰

In sum, the false narrative around stolen elections is not just about a single politician or a single election but rather it effectively foments and channels a broader wave of status insecurity and racial resentment. It is a common progenitor of both the violence and attempt to erase the results of the 2020 election that occurred on January 6th and the widespread effort to restrict access to the ballot.

IV. VOTERS OF COLOR OVERCAME BARRIERS TO ASSERT CONSEQUENTIAL POLITICAL POWER IN 2020

The 2020 election was not beset with large-scale fraud, as those promoting the January 6th insurrection have claimed.³¹ It also did not, as numerous news reports suggested, “go smoothly.”³² Accounts from LDF’s Voting Rights Defender and Prepared to Vote teams, detailed in the LDF Thurgood Marshall Institute’s latest *Democracy Defended* report,³³ reveal the depth and breadth of the issues voters faced, especially voters of color. From onerous vote-by-mail restrictions during a pandemic

²⁷ Robert Pape et al., *American Face of Insurrection: Analysis of Individuals Charged for Storming the US Capitol on January 6, 2021*, Chicago Project on Security and Threats (Jan. 5, 2022), [https://d3qi0qp55mx5f5.cloudfront.net/cpost/i/docs/Pape_-_American_Face_of_Insurrection_\(2022-01-05\)_1.pdf?mtime=1641481428](https://d3qi0qp55mx5f5.cloudfront.net/cpost/i/docs/Pape_-_American_Face_of_Insurrection_(2022-01-05)_1.pdf?mtime=1641481428)

²⁸ *Id.* at 21.

²⁹ *Id.* at 18.

³⁰ *Id.* at 21-22.

³¹ Melissa Block, *The clear and present danger of Trump’s enduring ‘Big Lie’*, National Public Radio (December 23, 2021), <https://www.npr.org/2021/12/23/1065277246/trump-big-lie-jan-6-election>.

³² Sherrilyn Ifill, *No, This Election Did Not Go ‘Smoothly,’* SLATE (Nov. 9, 2020), <https://slate.com/news-andpolitics/2020/11/2020-election-voting-did-not-go-smoothly.html>.

³³ Thurgood Marshall Institute, *Democracy Defended*, NAACP LDF (Sept. 2, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf.

to voter intimidation, poll closures and unreasonably long lines, Black voters in particular faced a litany of barriers to the ballot.

Yet, participating in the 2020 Presidential election was historic. Voters overcame a host of obstacles with determination and resilience. Two-thirds of eligible voters casted ballots in the 2020 Presidential election.³⁴ This is the highest turnout rate recorded since 1900; but it actually represents the highest turnout ever given the significant expansion of both the general population and the population of eligible voters since the turn of the twentieth century.³⁵ Black voter turnout was greater than 65% and nearly matched records set when President Obama was on the ballot.³⁶

The historic turnout continued on January 5, 2021 with Georgia's runoff election. Turnout in runoff elections, which occur after Election Day, is typically modest, and at times anemic. But, with control of the U.S. Senate at stake, and the opportunity to elect candidates who reflected the growing diversity of the state, a record 60% of Georgians turned out in the January runoff.³⁷ The 4.4 million Georgians who cast ballots on January 5th was more than double the number who voted in the previous record turnout runoff election in 2008.³⁸ Black voters drove this historic participation, with Black turnout dropping just 8% from the general election compared with an 11% decline among White voters.³⁹ The result was the election of the first Black and Jewish senators in Georgia's history.⁴⁰

This historic turnout was no accident and was not driven by the stakes alone. National civil rights and civil liberties groups and Black-led grassroots organizations in Georgia had spent years challenging attempts to restrict access to the ballot and building substantial voter outreach campaigns to educate voters regarding the stakes of federal, state, and local elections and assist communities as they navigate the

³⁴ Michael P. McDonald, *National General Election VEP Turnout Rates, 1789-Present*, UNITED STATES ELECTIONS PROJECT, Jan. 14, 2022, <http://www.electproject.org/national-1789-present>.

³⁵ *Id.*

³⁶ Michael P. McDonald, *Voter Turnout Demographics*, UNITED STATES ELECTIONS PROJECT (accessed Jan. 14, 2022), <http://www.electproject.org/home/voter-turnout/demographics>.

³⁷ Nathaniel Rakich et al., *How Democrats Won the Georgia Runoffs*, FIVETHIRTYEIGHT (Jan. 7, 2021, 2:47 PM), <https://fivethirtyeight.com/features/how-democrats-won-the-georgia-runoffs/>.

³⁸ *Id.*

³⁹ Mark Niesse & Jennifer Peebles, *Turnout dip among Georgia Republicans flipped U.S. Senate*, THE ATLANTA J.-CONST. (Feb. 2, 2021), <https://www.ajc.com/politics/turnout-dip-among-georgia-republicans-flipped-us-senate/IKWGEGFEEVEZ5DXTP7ZXXOROIA/>.

⁴⁰ Steve Peoples, Bill Barrow, and Russ Bynum, *Warnock, Ossoff win in Georgia, handing Dems control of Senate*, ASSOCIATED PRESS (Jan. 6, 2021), <https://apnews.com/article/Georgia-election-results-4b82ba7ee3cc74d33e68daadaee2cbf3>.

voting process.⁴¹ The Herculean effort it took to help Black and Brown voters overcome barriers to the ballot in the 2020 election is not sustainable, however, nor should it be required given the protections guaranteed by the U.S. Constitution. The backlash to the results of this historic turnout and its consequences was immediate.

V. THE POST-2020 BACKLASH IN ACTION

A new chapter of an old story, the backlash to historic 2020 voter turnout among people of color has been swift and severe. As with past reactions to racial progress the post-2020 backlash has featured both violence and legal regression—in this case in the form of efforts to restrict the franchise. Based on the false narrative of voter fraud, this violence and votes backlash began with campaign operatives questioning vote totals in Black and Brown communities. It continued through a violent insurrection at the U.S. Capitol focused on invalidating the election results and thus the political power exercised by the Black and Brown communities and accelerated through both successful efforts to erect barriers to the ballot and a regressive redistricting cycle that severely constricts the ability of voters of color to assert their full strength at the polls. It continues to this day with active plans to subvert future elections.

A. Questioning Vote Totals in Black and Brown Communities

The spark to this particular backlash was the turnout among voters of color, especially Black voters, that led to President Biden’s victory in the 2020 election. President Trump and his allies reacted immediately by asserting claims of massive fraud and questioning vote totals, specifically targeting Black elections officials and voters in Black population centers such as Detroit (where election officials counting votes were mobbed and harassed),⁴² Philadelphia (where the FBI helped local police arrest two men with weapons suspected of a plot to interfere with ballot counting),⁴³ and the Atlanta metro region (where Trump alleged that hundreds of thousands of ballots mysteriously appeared).⁴⁴ Similarly, President Trump and his allies alleged fraud in places like Arizona where robust turnout among the Latino population was

⁴¹ Anna North, *6 Black women organizers on what happened in Georgia—and what comes next*, Vox (November 11, 2020), <https://www.vox.com/21556742/georgia-votes-election-organizers-stacey-abrams>.

⁴² Bostock, *supra* note 41.

⁴³ Ewing et al., *supra* n. 41.

⁴⁴ Jeff Amy, Darlene Superville, & Jonathan Lemire, *GA election officials reject Trump call to ‘find’ more votes*, ASSOCIATED PRESS (Jan. 4, 2021), <https://apnews.com/article/trump-raffensperger-phone-call-georgia-d503c8b4e58f7cd648fbf9a746131ec9>.

decisive. Again, we saw coordinated attempts to infiltrate ballot counting headquarters and tamper with vote counting.⁴⁵

Wayne County, Michigan emerged as a central focus of attempts to translate the false narrative regarding voter fraud into actual subversion of a free and fair election. On November 20, 2020, LDF filed a lawsuit on behalf of the Michigan Welfare Rights Organization and three individuals alleging that President Trump’s attempt to prevent Wayne County, Michigan from certifying its election results was a clear example of intimidating those charged with “aiding a[] person to vote or attempt to vote” in violation of the Voting Rights Act, and that this intimidation was aimed at disenfranchising Black voters..⁴⁶

The Complaint explained how race was a driving factor in the Michigan certification debate: “During [a meeting of the Wayne County canvassing board], one of the Republican Canvassers said she would be open to certifying the rest of Wayne County (which is predominately white) but not Detroit (which is predominately Black), even though those other areas of Wayne County had similar discrepancies [between ballot numbers and poll book records] and in at least one predominantly white city, Livonia, the discrepancies were more significant than those in Detroit.”⁴⁷

Subsequently, on December 21, 2020, LDF amended its Complaint, adding the NAACP as a Plaintiff, and alleging that President Trump and his supporters made similar efforts to disenfranchise voters—and especially Black voters—in other states, including Georgia, Pennsylvania, Wisconsin, and Arizona.

The Amended Complaint summarizes the racial discrimination central to the post-election strategy to invalidate the political voice of Black and Brown communities:

Under the specter of preventing “fraud,” Defendants engaged in a conspiracy, executed through a coordinated effort, to disenfranchise voters by disrupting vote counting efforts, lodging groundless challenges during recounts, and attempting to block certification of election results through intimidation and coercion of election officials and volunteers. These systematic efforts – violations of the VRA and the Ku Klux Klan Act – have largely been directed at major metropolitan areas with large Black voter populations. These include Detroit, Milwaukee, Atlanta, Philadelphia, and others. . . . Because President Trump lost the popular vote in Michigan and other states that were necessary for a majority of

⁴⁵ Lahut, *supra* n. 41.

⁴⁶ Complaint, *Mich. Welfare Rights Org. v. Trump*, Civ. Action 20-3388 (EGS) (D.D.C. Apr. 1, 2022). Available at <https://www.naacpldf.org/wp-content/uploads/Trump-Campaign-Complaint.pdf>.

⁴⁷ Complaint at ¶ 27 at 7. *Mich. Welfare Rights Org. v. Trump*.

the electoral college, Defendants worked to block certification of the results, on the (legally incorrect) theory that blocking certification would allow state legislatures to override the will of the voters and choose the Trump Campaign's slate of electors... On November 19, 2020, President Trump's personal lawyer Rudy Giuliani, and others, held a press conference at the RNC headquarters in Washington, D.C., where they repeated false allegations of fraud and openly discussed their strategy of disenfranchising voters in Detroit and Wayne County. At that press conference, Mr. Giuliani asserted without evidence that the Trump campaign had identified 300,000 "illegitimate ballots," and stated: "These ballots were all cast basically in Detroit that Biden won 80-20," and "it changes the result of the election in Michigan, if you take out Wayne County."⁴⁸

In sum, the strategy to block election certifications by alleging fraud and questioning vote totals was not only a political ploy to rescue a failed candidacy. But by focusing the efforts on cities and counties with large populations of voters of color, the strategy was also to advance a narrative that people of color are not legitimate actors in our democracy (as voters or election officials).

B. The January 6th Insurrection

After challenging election results in communities of color, the next step in the violence and votes backlash was the January 6th Insurrection—just one day after Black voters asserted their power in Georgia. The violent attack on the Capitol on January 6th was a brazen, virulent, and deadly manifestation of the concerted effort to undermine our democracy, to overthrow the government, and to negate the votes cast by our communities. The information unveiled through the ongoing investigations of this Committee and the Department of Justice confirms that the violence was foreseeable and part of a larger planned coup attempt abetted by encouragement or deliberate inaction at the highest levels.⁴⁹ The founder of the Oath Keepers and ten others have been charged with "seditious conspiracy"⁵⁰ and

⁴⁸ Complaint at 18-21 *Mich. Welfare Rights Org. v. Trump*.

⁴⁹ Paul LeBlanc, *The January 6 committee formed 6 months ago. Here's what it's uncovered*, CNN (January 4, 2022), <https://www.cnn.com/2021/12/29/politics/january-6-committee-investigation-trump-what-matters/index.html>; Department of Justice, *One Year Since the Jan. 6 Attack on the Capitol*, (Updated Dec. 30, 2021), <https://www.justice.gov/usao-dc/one-year-jan-6-attack-capitol>.

⁵⁰ Department of Justice, *Leader of Oath Keepers and 10 Other Individuals Indicted in Federal Court for Seditious Conspiracy and Other Offenses Related to U.S. Capitol Breach: Eight Others Facing Charges in Two Related Cases*, Department of Justice Office of Public Affairs (Jan. 13, 2022),

according to an early assessment, 13% of those arrested have had associations with militias or right-wing extremist groups.⁵¹ Perhaps most concerning, January 6th marked an embrace of political violence and previously-fringe ideologies by mainstream conservatives,⁵² a threat that has been growing for some time,⁵³ has only worsened since the Insurrection and remains of serious concern.⁵⁴

This attempt to thwart the peaceful transfer of power—the very hallmark of a functioning democracy—was the natural conclusion of years of rhetoric inciting and condoning racism and white supremacy,⁵⁵ expanding the proliferation of conspiracy theories,⁵⁶ and flouting the rule of law. More specifically, it was the direct result of false rhetoric regarding stolen elections that tapped into existing racial anxiety. As the political scientist Hakeem Jefferson and the sociologist Victor Ray have written, “Jan. 6 was a racial reckoning. It was a reckoning against the promise of a multiracial democracy and the perceived influence of the Black vote.”⁵⁷ We know this in part because “those who participated in the insurrection were more likely to come from areas that experienced more significant declines in the non-Hispanic white

<https://www.justice.gov/opa/pr/leader-oath-keepers-and-10-other-individuals-indicted-federal-court-seditious-conspiracy-and>.

⁵¹ Ayman Ismail, *We Know Exactly Who the Capitol Rioters Were*, Slate (Jan. 4, 2022), <https://slate.com/news-and-politics/2022/01/january-6-capitol-riot-arrests-research-profile.html>

⁵² (“The normalization of the conspiracies that animate their beliefs is great news for extremists, who don’t have to work nearly as hard to have their views accepted in the mainstream.”) Digital Forensic Research Lab, *Experts react to the year since January 6*, Atlantic Council (Jan. 4, 2022), <https://www.atlanticcouncil.org/in-depth-research-reports/experts-react-to-the-year-since-january-6/#perilous>; (“The Jan. 6 insurrectionists really are best understood as a product of the mainstream.”) Ayman Ismail *supra* note 60.

⁵³ Seth Jones, *The Rise of Far-Right Extremism in the United States*, Center for Strategic and International Studies (Nov. 7, 2018), <https://www.csis.org/analysis/rise-far-right-extremism-united-states>.

⁵⁴ (in a poll, 25% of Republicans believe the Qanon conspiracy and 15% of Americans believed that “American patriots may have to resort to violence”) Giovanni Russonello, *QAnon Now as Popular in U.S. as Some Major Religions, Poll Suggests*, New York Times (updated Aug. 12, 2021), <https://www.nytimes.com/2021/05/27/us/politics/qanon-republicans-trump.html>; (“Extremist movements are stronger, conspiracy networks larger, and elements of the GOP more radical, with some elected officials spreading extremist views. The prosecution of insurrectionists has not shut down groups like the racist Proud Boys and anti-government Oath Keepers, or likeminded allies who thrive online and on the streets.”) Digital Forensics Lab *supra* note 61.

⁵⁵ James Rainey & Melissa Gomez, *Asked to condemn white supremacists, Trump tells Proud Boys hate group to ‘stand by’*, THE LA TIMES (Sept. 29, 2020), <https://www.latimes.com/world-nation/story/2020-09-29/asked-to-condemn-white-supremacists-trump-tells-proud-boys-hate-group-to-stand-by>.

⁵⁶ Shirin Ghaffary, *The long-term consequences of Trump’s conspiracy theory campaign*, Vox (Nov. 20, 2020), <https://www.vox.com/recode/21546119/trump-conspiracy-theories-election-2020-coronavirus-voting-vote-by-mail>.

⁵⁷ Hakeem Jefferson & Victor Ray, *White Backlash is a Type of Racial Reckoning, Too*, FIVETHIRTYEIGHT (Jan. 6, 2022), <https://fivethirtyeight.com/features/white-backlash-is-a-type-of-racial-reckoning-too/>.

population — further evidence that the storming of the Capitol was, in part, a backlash to a perceived loss of status, what social scientists call ‘perceived status threat.’”⁵⁸

Some of the most enduring imagery from the attack on the U.S. Capitol points to race as a central, underlying factor. Many photographs from the January 6th insurrection were disturbing, but one in particular encapsulated the historical significance and the stakes for our Republic: the image of an insurgent inside the U.S. Capitol brandishing a Confederate flag.⁵⁹

C. The Backlash Accelerates: States Pass Anti-Voter Laws and Use Centennial Redistricting to Weaken the Voices of Voters of Color

The next stage of the backlash played out in state legislatures across the country through bills and laws intended to block Black and Brown Americans’ access to the ballot. In 2021 we saw a repeat of history—a steady drip of old poison in new bottles.⁶⁰ Whereas in a bygone era discriminatory intent in voting restrictions was dressed up in the alleged espousal of ideals such as securing a more informed and invested electorate, the new professed justification is fighting voter fraud, an imaginary phantom that serves as a basis to attack the right to vote. State lawmakers introduced and advanced new voting laws targeted to ensure that the robust turnout among voters of color in the 2020 Presidential election could not be repeated. Legislators introduced more than 400 bills in nearly every state aiming to restrict the franchise.⁶¹ Nineteen states enacted a total of 34 laws that roll back voting rights and erect new barriers to the ballot.⁶²

Critically, many of these laws are directly targeted at blocking pathways to the ballot box that Black and Brown voters used successfully in 2020. For example, after Black voters increased their usage of absentee ballots as a result of the pandemic, S.B. 90 in Florida severely curtailed the use of unstaffed ballot return drop boxes and effectively eliminated community ballot collection.⁶³ And in Georgia and Texas, after

⁵⁸ *Id.*

⁵⁹ Indeed, many insurrectionist donned Confederate paraphernalia. Javonte Anderson, *Capitol riot images showing Confederate flag a reminder of country's darkest past*, USA TODAY (Jan. 13, 2021), <https://www.usatoday.com/story/news/2021/01/07/capitol-riot-images-confederate-flag-terror/6588104002/> . . .

⁶⁰ Deuel Ross, *Pouring Old Poison into New Bottles: How Discretion and the Discriminatory Administration of Voter ID Laws Recreate Literacy Tests*, 45 COLUM. HUM. RTS. L. REV. 362 (2014).

⁶¹ *Resource: Voting Laws Roundup: December 2021*, BRENNAN CENTER FOR JUSTICE (Jan. 12, 2022) <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-december-2021>.

⁶² *Id.*

⁶³ See generally Compl. for Decl. and Inj. Relief, *Fla. State Conferences of Branches v. Lee*, No. 4:21-cv-00187-WS-MAF (N.D. Fla. May 6, 2021), ECF No. 1.

strong early in-person turnout among Black voters, lawmakers initially moved to outlaw or limit Sunday voting in a direct attack on the “souls to the polls” turnout efforts undertaken by many Black churches to mobilize voters to engage in collective civic participation.⁶⁴ Another law in Georgia hampers vote-by-mail, cuts back on early voting, and more.⁶⁵ The 2021 omnibus voting law in Texas eliminates a number of accessible, common sense voting methods, including “drive-thru” voting and 24-hour early voting—both methods that proved invaluable for Black and Brown voters in Texas’s largest cities in 2020.⁶⁶ In all, these laws severely restrict the ability of voters of color to cast a ballot and specifically target the ways in which these voters participated successfully in the 2020 Presidential election.

The people targeted by these laws are well aware of what is happening and are actively fighting back. Jeffrey Clemmons, a Black resident of Harris County Texas in his early twenties who was a leader in his college NAACP chapter and served as an election judge in 2020, is suing to push back on the Texas 2021 voter suppression law, represented by LDF.⁶⁷ Mr. Clemmons says:

I absolutely think that the over 400 laws that were pushed through legislatures from Texas to Georgia to curtail our rights to vote were indeed because of the incredible turnout of people of color and young people again who had never turned up to the ballot box before. We felt so motivated and so strongly about this election because we knew [what] was on the line if we didn't vote in so many instances and because we are tired of not being represented properly...And so these election laws

⁶⁴ Letter from Sam Spital et al., NAACP LDF to Texas Senate (May 29, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-Conference-Committee-Report-Opposition-Senate-20210529-1.pdf>; Letter from John Cusick et al., NAACP LDF et al., to Georgia House of Representatives, Special Committee on Election Integrity (Mar. 14, 2021), <https://www.naacpldf.org/wp-content/uploads/LDF-SPLC-Written-Testimony-on-SB202-3.18.21.pdf>. In both states, after advocacy from LDF and others, lawmakers eventually removed these blatantly discriminatory provisions from the omnibus voting bills under consideration—although in both states, the final forms of the enacted bills remained extremely harmful to voters of color. *See LDF Files Lawsuit Against the State of Florida Over Suppressive Voting Law*, NAACP LDF (May 6, 2021), <https://www.naacpldf.org/press-release/ldf-files-lawsuit-against-the-state-of-florida-over-suppressive-voting-law/>; *Civil Rights Groups Sue Georgia Over New Sweeping Voter Suppression Law*, NAACP LDF (March 30, 2021), <https://www.naacpldf.org/press-release/civil-rights-groups-sue-georgia-over-new-sweeping-voter-suppression-law/>.

⁶⁵ *See* S.B.202, <https://www.legis.ga.gov/api/legislation/document/20212022/201498>.

⁶⁶ Compl. for Decl. and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. Sept. 7, 2021), ECF No. 1, *available at* <https://www.naacpldf.org/wp-content/uploads/Houston-Justice-et-al.-v.-Abbott-et-al.-Complaint.pdf>; *see also* *Press Release: Lawsuit Filed Challenging New Texas Law Targeting Voting Rights*, NAACP LDF (Sept. 7, 2021), <https://www.naacpldf.org/press-release/lawsuit-filed-challenging-new-texas-law-targeting-voting-rights/>.

⁶⁷ Compl. for Decl. and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. Sept. 7, 2021), ECF No. 1.

are an attempt to turn back the clock on our voting rights and make sure that [] never happens again to create, you know, this environment of fear that if you vote, you're going to be punished for it.⁶⁸

Of the more than 400 bills introduced last year, at least 152 in 18 states have carried over into current legislative sessions, and more than a dozen additional bills were pre-filed by December in anticipation of the 2022 session.⁶⁹ As of January 2022, legislatures in more than half of U.S. states had introduced, pre-filed, or carried over more than 250 anti-voter bills.⁷⁰ Like in 2021, many of these bills target the specific ways that Black and Brown voters have made their voices heard in recent elections.⁷¹

In addition to enacting laws that restrict access to the ballot, several states have used the first centennial redistricting process in six decades without the full protection of the Voting Rights Act, to weaken the voices of voters of color. From 1970—just after the “reapportionment revolution” forced line-drawers to adhere to the one-person, one-vote principal⁷²—through the 2010 redistricting cycle, the preclearance protection of Section 5 of the Voting Rights Act was the most powerful tool to protect Black and Brown voters through the districting process. Section 5 certainly did not ensure that Black voters enjoyed fully equal representation throughout the country, but its anti-retrogression principle did mean that at least hostile state legislatures could not set Black voters further back after each Census.⁷³ Section 2 of the Voting Rights Act has been a complementary tool, allowing Black and Brown voters and community organizations to bring lawsuits when district maps disempowered them compared with neighboring White communities.

The Supreme Court, however, substantially weakened these protections in the 2013 *Shelby* case when it undercut the preclearance protections of Section 5 and in 2021 when the Court made Section 2 claims more challenging in *Brnovich v. DNC*.⁷⁴ The result is that Black communities entered the current redistricting cycle with a shredded shield, more exposed to the manipulations of White-dominated state legislatures than at any time since Jim Crow.

⁶⁸ Interview by Adam Lioz, Senior Policy Counsel for LDF, with Jeffrey Clemmons (Jan. 10, 2022) (on file with author).

⁶⁹ *Resource: Voting Laws Roundup: December 2021*, *supra* n. 70.

⁷⁰ Voting Laws Roundup: February 2022, Brennan Center for Justice (Feb. 9, 2022), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-february-2022?_ga=2.231456991.1301012527.1649763533-1535293244.1632777334.

⁷¹ *Id.*

⁷² See *e.g.*, *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964).

⁷³ See 52 U.S.C. 10304(b); *Beer v. United States*, 425 U.S. 130 (1976); *Florida v. United States*, 885 F.Supp. 2d 299 (D.D.C. 2012); *Texas v. United States*, 887 F. Supp.2d 133 (D. D.C. 2012).

⁷⁴ 594 U.S. ____ (2021).

Prior to the current round of redistricting, political representation in the United States was already sharply skewed. In 2019, people of color made up 39% of the U.S. population but only 12% of elected officials across the country, according to an analysis of nearly 46,000 federal, state, and local officeholders.⁷⁵ Put another way, White Americans occupied nearly 90% of elected offices in the U.S. despite forming just over 60% of the population.

The current districting process threatens to worsen this already skewed representation. The nation has grown substantially more diverse since 2010,⁷⁶ but political representation is not on track to reflect this growing diversity—and Black and Brown Americans are likely to see their representation remain static or even lose ground in many places rather than see their power increase with their numbers.

According to the U.S. Census Bureau, more than 42% of Americans are now people of color.⁷⁷ Since the 2010 Census, the Latino population grew by 23%, compared to just 4.3% non-Latino population growth.⁷⁸ The Black population grew by nearly 6%.⁷⁹ This growth was even starker among voters of color. One 2021 report projected that nearly 80% of the growth in voting eligible population would be through people of color, including 17% from Black voters.⁸⁰ These shifts, and the accompanying anxiety around power and social status, have made certain Americans vulnerable to the false fraud frame, especially in states with the most profound changes. A key backlash strategy has been to use the districting process to ensure that the power of voters of color does not grow with their numbers.

⁷⁵ *Datasets, The Electability Myth: The Shifting Demographics of Political Power in America*, REFLECTIVE DEMOCRACY CAMPAIGN, <https://wholeads.us/datasets/>.

⁷⁶ U.S. Census Bureau's Diversity Index has gone up from 54.9% to 61.1% since 2010. Eric Jensen et al., *The Chance That Two People Chosen at Random Are of Different Race or Ethnicity Groups Has Increased Since 2010*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html>.

⁷⁷ *Id.*

⁷⁸ Press Release, *2020 Census Statistics Highlight Local Population Changes and Nation's Racial and Ethnic Diversity*, U.S. CENSUS BUREAU (Aug. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html>.

⁷⁹ U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File, U.S. CENSUS BUREAU (accessed Jan. 18, 2022); U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171) Summary File, U.S. CENSUS BUREAU (accessed Jan. 18, 2022). *See also* U.S. Census Bureau, *Race and Ethnicity in the United States: 2010 Census and 2020 Census* (Aug. 12, 2021), <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>.

⁸⁰ Michael C. Li, *The Redistricting Landscape, 2021-2022*, BRENNAN CENTER FOR JUSTICE (Feb. 11, 2021), at 15, fig. 7, <https://www.brennancenter.org/our-work/research-reports/redistricting-landscape-2021-22>.

In the leadup to the current districting cycle, Brennan Center districting expert Michael Li issued a report citing the loss of Section 5 and narrowing of Section 2 of the Voting Rights Act to warn that in substantial parts of the country “there may be even greater room for unfair processes and results than in 2011, when the nation saw some of the most gerrymandered and racially discriminatory maps in its history.”⁸¹ So far, unfortunately, his predictions have largely borne out. In late November, Li noted that “[c]ommunities of color are bearing the brunt of aggressive map drawing,” citing Illinois, North Carolina, and Texas as examples.⁸² In Texas, “communities of color accounted for 95 percent of the state’s population growth last decade. Yet, not only did Texas Republicans create no new electoral opportunities for minority community communities, but their maps also often went backwards.”⁸³ The pattern has continued—so much so that Li noted in mid-January that “[p]eople of color are getting shellacked in redistricting” this cycle.⁸⁴

A December 2021 *New York Times* article detailed how White lawmakers are systematically driving Black elected officials from positions of power by carving up their districts and at times forcing them to run against other incumbents.⁸⁵ The article cites at least two dozen examples, including former Congressional Black Caucus chair G.K. Butterfield of North Carolina, who is retiring as a result and called the situation a “five-alarm fire.”⁸⁶⁸⁷

LDF has brought lawsuits challenging the anti-voter laws and the unfair redistricting maps in several states; and our allies are suing in many others. For example, six of the nine states formerly covered by Section 5 have completed at least some of their post-Census districting maps, and in five of these six states at least one map (and often more than one) is being challenged in lawsuits alleging racial discrimination.⁸⁸ Had the Supreme Court not gutted the heart of the Voting Rights Act in 2013 by rendering inoperable the requirement that jurisdictions with histories of voting discrimination “preclear” voting changes before they take hold, many of the

⁸¹ *Id.* at 3.

⁸² Michael C. Li, *Early Lessons from the Current Redistricting Round*, BRENNAN CENTER FOR JUSTICE (Nov. 30, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/early-lessons-current-redistricting-round>.

⁸³ *Id.*

⁸⁴ Michael Li (@mcpli), Twitter (Jan. 13, 2022, 2:33 PM), <https://twitter.com/mcpli/status/1481711130020130816>.

⁸⁵ Nick Corasaniti & Reid J. Epstein, *Map by Map, G.O.P. Chips Away at Black Democrats’ Power*, THE N.Y. TIMES (Dec. 18, 2021), <https://www.nytimes.com/2021/12/18/us/politics/gop-gerrymandering-black-democrats.html>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Redistricting Across States*, ALL ABOUT REDISTRICTING, <https://redistricting.alls.edu/> (accessed Jan. 18, 2022).

restrictive voting laws passed in 2021 would not have gone into effect. Five of the 19 states that passed restrictive laws were fully covered by the VRA’s preclearance provisions.⁸⁹ Now affected voters are forced to push back piecemeal, using the Constitution’s protections against intentional vote discrimination and the Voting Rights Act’s remaining protections against discriminatory impact.⁹⁰

LDF is currently litigating cases against 2021 voter suppression laws in Georgia, Florida, and Texas; and discriminatory redistricting plans in Alabama, South Carolina, and Louisiana. This litigation is an important but limited tool to protect Black and Brown Americans’ right to vote. Voting rights litigation can be slow and expensive, often costing parties millions of dollars.⁹¹ The cases also expend significant judicial resources.⁹² Additionally, the average length of Section 2 cases is two to five years.⁹³ In the years during a case’s pendency, thousands—and, in some cases, millions—of voters are effectively disenfranchised.⁹⁴

The details of these cases (described in chronological order below) show that these laws are targeted at pushing back on strong 2020 turnout among voters of color and are clearly part of the backlash unleashed through false narratives about voter fraud. These cases have survived multiple attempts to block aggrieved voters from having their day in court—such as motions to dismiss or for summary judgment—and two of them have already resulted in victories for Black voters at the trial court level. In January, a three-judge panel ordered Alabama to draw new congressional maps that give Black voters a fair opportunity to elect their preferred candidates (this ruling was put on hold by the Supreme Court).⁹⁵ A federal judge in March struck down Florida’s voter suppression law and ruled that it was the product of intentional racial discrimination.⁹⁶

⁸⁹ See U.S. DEPT OF JUSTICE, Jurisdictions Previously Covered by Section 5, <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>; *Resource: Voting Laws Roundup: December 2021*, *supra* n. 70.

⁹⁰ 594 U.S. ____ (2021).

⁹¹ *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*, NAACP LDF (Feb. 19, 2021), <https://www.naacpldf.org/wp-content/uploads/Section-2-costs-2.19.21.pdf>.

⁹² Federal Judicial Center, *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed).

⁹³ Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 92 (2005) (“Two to five years is a rough average” for the length of Section 2 lawsuits).

⁹⁴ See *e.g.*, *Veasey v. Abbott*, No. 20-40428 (5th Cir. Sept. 3, 2021), *available at* <https://www.ca5.uscourts.gov/opinions/pub/20/20-40428-CV0.pdf> (upholding grant of \$6,790,333.31 in attorneys’ fees).

⁹⁵ 21A375 *Merrill v. Milligan* 595 U. S. ____ (2022). Available at https://www.naacpldf.org/wp-content/uploads/order_-_supreme_court_alabama_case_2_7_2022.pdf.

⁹⁶ *League of Women Voters of Fla. Inc. v. Lee*, 4:21cv186-MW/MAF (N.D. Fla. Mar. 31, 2022).

a. Georgia

In addition to being the most visible place Black voters asserted power in 2020, Georgia has seen significant population growth among people of color over the last decade. According to the U.S. Census Bureau, the state’s diversity index jumped several points over the past decade, and Georgia jumped two slots to become the ninth most diverse state in the nation.⁹⁷ This made the Peach State especially vulnerable to the false fraud frame. In fact, Georgia wasted no time translating the backlash against the rising voices of voters of color into legislative action to restrict the franchise. On January 7, 2021—two days after the runoff election, and the day after the Insurrection—Georgia House Speaker David Ralston announced the creation of a Special Committee on Election Integrity (“EIC”) and by early February, Georgia legislators had filed sweeping legislation to limit early and absentee voting.⁹⁸

LDF, jointly with the Southern Poverty Law Center (“SPLC”), provided oral and written testimony throughout the legislative session to oppose omnibus bills restricting access to the right to vote, explaining that these bills would disproportionately harm low-income voters and voters of color.⁹⁹ Yet, the Georgia General Assembly refused to conduct any racial-impact study of legislation that would carry forward the state’s troubling history of voting discrimination.¹⁰⁰

On March 17, 2021, with little notice to EIC members, and members of the public, an EIC member introduced a substitute bill to Senate Bill 202 (“S.B. 202”), which expanded the legislation from three pages to over ninety pages just hours before a full hearing. With limited opportunity for meaningful engagement and review, the EIC rushed S.B. 202 through additional hearings. On March 25, 2021, the House and Senate passed S.B. 202, and the Governor signed it into law during a

⁹⁷ Racial and Ethnic Diversity in the United States: 2010 Census and 2020 Census, U.S. Census Bureau (Aug. 12, 2021), <https://www.census.gov/library/visualizations/interactive/racial-and-ethnic-diversity-in-the-united-states-2010-and-2020-census.html>.

⁹⁸ Stephen Fowler, *Sweeping Elections Bill To Limit Early And Absentee Voting*, NPR (Feb. 19, 2021), <https://www.npr.org/2021/02/19/969497398/georgia-republicans-file-sweeping-elections-bill-to-limit-early-and-absentee-vot>.

⁹⁹ *LDF and SPLC Action Fund Submit Testimony Opposing Georgia’s S.B. 202*, NAACP LDF (Mar. 18, 2021), <https://www.naacpldf.org/news/ldf-and-splc-action-fund-submit-testimony-opposing-georgias-s-b-202/>.

¹⁰⁰ Since the 2013 *Shelby* decision, the State of Georgia has enacted voting restrictions across five major categories studied by the U.S. Commission on Civil Rights: voter identification requirements, documentary proof of citizenship requirements, voter purges, cuts to early voting, and polling place closures or relocations. *Democracy Diminished*, NAACP LDF (Oct. 6, 2021), at 25-32, https://www.naacpldf.org/wp-content/uploads/Democracy-Diminished_-10.06.2021-Final.pdf.

closed-door session.¹⁰¹ One of the most restrictive voting laws of recent years, S.B. 202: (1) severely limits mobile voting; (2) imposes new identification requirements for requesting and casting an absentee ballot; (3) delays and compresses the time period for requesting absentee ballots; (4) imposes new restrictions on secure drop boxes; (5) implements out-of-precinct provisional ballot disqualification; (6) drastically reduces early voting in runoff elections; and (7) criminalizes the provision of food and water to voters waiting in line to cast a ballot.¹⁰²

On March 30, 2021, LDF, along with allies, filed a lawsuit, later amended, in the Northern District of Georgia, which challenges S.B. 202 on behalf of several groups including the Sixth District of the African Methodist Episcopal Church, Delta Sigma Theta Sorority, Inc, Georgia ADAPT, Georgia Advocacy Office, and the Southern Christian Leadership Conference.¹⁰³ The lawsuit raises several claims including racial discrimination in violation of the VRA and the Fourteenth and Fifteenth Amendments; an unconstitutional burden on the right to vote under the First and Fourteenth Amendments; an unconstitutional burden on the right to freedom of speech and expression under the First Amendment; discrimination on the basis of disability under Title II of the American Disabilities Act, and Section 504 of the Rehabilitation Act of 1973, and a violation of the Civil Rights Act of 1964's prohibition on immaterial requirements to voting.

In the 2022 legislative session, Georgia lawmakers picked up where they left off last year. After promising no further major election changes, the Georgia House nonetheless pushed through a package that sought to give the Georgia Bureau of Investigation (GBI) original jurisdiction to investigate nonexistent election crimes; reduce the number of voting machines required on Election Day; and increase mandates on elections officials without corresponding resources.¹⁰⁴ After strong pushback from elections officials and the voting rights community, the legislature removed most of the anti-voter provisions, but did pass legislation that threatens to intimidate voters by involving the GBI directly in elections.¹⁰⁵

¹⁰¹ Stephen Fowler, "Georgia Governor Signs Election Overhaul, Includes Changes to Absentee Voting," NPR (Mar. 25, 2021), <https://www.npr.org/2021/03/25/981357583/georgia-legislature-approves-election-overhaul-including-changes-to-absentee-vot>.

¹⁰² *Civil Rights Groups Sue Georgia Over New Sweeping Voter Suppression Law*, NAACP LDF (Mar. 30, 2021), <https://www.naacpldf.org/press-release/civil-rights-groups-sue-georgia-over-new-sweeping-voter-suppression-law/>.

¹⁰³ *Id.*

¹⁰⁴ GA HB1464. Regular Session 2021-2022, (Mar. 30, 2022).

¹⁰⁵ Cami Mondeaux, Georgia lawmakers pass bill giving GBI power to investigate voter fraud, Washington Examiner (Apr. 5, 2022), <https://www.washingtonexaminer.com/politics/georgia-lawmakers-pass-bill-giving-gbi-power-to-investigate-voter-fraud>.

b. Florida

Florida, which also grew more diverse in the last decade,¹⁰⁶ was not far behind Georgia in channeling the false fraud claims and resulting backlash into new voting restrictions. On May 6, 2021, Governor DeSantis signed into law a broad voter suppression bill known as S.B. 90.¹⁰⁷ The same day LDF filed a lawsuit on behalf of the Florida State Conference of the NAACP, Disability Rights Florida, and Common Cause against the Florida Secretary of State, challenging multiple provisions of the bill including: (1) restrictions and new requirements for VBM applications; (2) limitations on where, when, and how drop boxes can be used; and (3) a vague and overbroad prohibition on conduct near polling places, including potentially criminalizing offering free food, water, and other relief to Florida voters waiting in long lines.¹⁰⁸

On October 8, 2021, Chief Judge Mark E. Walker denied the Secretary of State's motion to dismiss with respect to most of our claims, noting that the allegations of intentional discrimination in our complaint drew a "a straight, shameful line from the discriminatory laws of the 1880s to today."¹⁰⁹ Judge Walker then struck down S.B. 90 in March of this year, ruling that the law violates Section 2 of the Voting Rights Act, and the First and Fourteenth Amendments to the U.S. Constitution.¹¹⁰ Because the district court found that the Florida legislature intentionally discriminated against Black voters through its enactment of S.B. 90, the court granted the Plaintiffs' request for bail-in relief, thereby retaining jurisdiction in the matter for ten years and prohibiting Florida from enacting certain voting changes without pre-approval.¹¹¹

In reaching its finding of intentional discrimination, the Court pointed to decades of troubling history, noting that "[a]t some point, when the Florida Legislature passes law after law disproportionately burdening Black voters, this Court can no longer accept that the effect is incidental."¹¹² It also discussed the specific context of the 2020 election and how S.B. 90 was framed in response. After noting a surge in vote-by-mail participation, high turnout generally, and the fact that

¹⁰⁶ Racial and Ethnic Diversity in the United States *supra* note 106.

¹⁰⁷ Gov. DeSantis Signs GOP-Backed Elections Bill at Event Closed to Local Media, ASSOCIATED PRESS (May 6, 2021), <https://www.nbcmiami.com/news/local/gov-desantis-signs-gop-backed-elections-bill/2444871/>.

¹⁰⁸ *Important Facts About LDF's Lawsuit Challenging Florida's New Voting Law*, NAACP LDF (accessed Jan. 19, 2022), <https://www.naacpldf.org/naacp-publications/ldf-blog/important-facts-about-ldfs-lawsuit-challenging-floridas-new-voting-law/>.

¹⁰⁹ Order on Motion to Dismiss at 52, *Florida State Conference of the NAACP et. al. v. Laurel Lee*, No. 4:21-cv-00187-MW-MAF (N.D. Fla 10/8/21), ECF No. 249.

¹¹⁰ <https://www.naacpldf.org/wp-content/uploads/FINAL-ORDER-SB90.pdf>

¹¹¹ *Id.* at 136.

¹¹² *Id.* at 64.

by all accounts the election was conducted without major security concerns, the court referenced the national climate and Florida's response, making an explicit connection to the January 6th Insurrection:

While Florida's election went smoothly, this Court cannot ignore reality. The 2020 election and its aftermath, on a national scale, was chaotic, though scant evidence was presented on this issue. Between the 2020 election and SB 90's introduction, then-President Trump refused to acknowledge that he had lost the election, causing an escalating crisis that culminated in a mob storming the United States Capitol on January 6, 2021. This is not determinative, but this Court cannot evaluate the Legislature's actions without at least acknowledging these events. Indeed, the [election] Supervisors' lobbyist, David Ramba, testified that considering "all of the things that were on the national news and who stole what and everything else, we knew that somebody was going to come up with a piece of legislation."

As Mr. Ramba expected, in the first legislative session after the 2020 election, the Legislature, through SB 90, made a sweeping set of changes to Florida's election code, with a specific focus on VBM. For context, between 2013 and 2020 the Legislature made no changes to VBM. And the exact justification for SB 90 as a whole, and for its constituent parts, is difficult to pin down, with sponsors and supporters offering conflicting or nonsensical rationales. Indeed, as Senator Farmer testified, the rationale for SB 90 "was perhaps the most [elusive] answer we faced."...Nor was there any evidence before the Legislature that fraud is even a marginal issue in Florida elections.¹¹³

Judge Walker's careful 288-page opinion makes clear that Florida legislators used false claims of voter fraud as a pretext to enact legislation they knew would suppress the Black vote, in direct response to robust 2020 turnout.

c. Texas

Texas is another state that experienced substantial population shifts since 2010. On September 7, 2021, Governor Abbott of Texas signed S.B. 1, one of the most restrictive voting laws in the country. As the bill advanced, members and witnesses who raised concerns—and evidence—that the bill would harm voters of color and voters with disabilities were largely ignored or chastised for uttering the word "racism" in the debate. Texas House Democrats staged a walkout and eventually left the state to break quorum and prevent the passage of such a damaging bill. But

¹¹³ *Id.* at 68-70 (internal citations omitted).

proponents of the omnibus election bill rammed it through the legislative process, which the Governor extended by two special sessions and threatened funding of legislative staff salaries in order to force passage of the bill.¹¹⁴ After submitting testimony and advocating against the bill as it made its way through the Texas legislature, LDF filed a lawsuit challenging S.B. 1 on the same day it was signed into law.¹¹⁵

The passage of S.B. 1 was a direct backlash to the record voter turnout in Texas in the 2020 election cycle and in particular, the power that Black and Brown voters exercised at the polls. Expanded early voting, drive-thru voting, and 24-hour voting facilitated this record high voter participation, particularly for urban voters of color who were more likely to use these means of access. For example, approximately 1.6 million registered voters in Harris County: 1.3 million voted early in person; over 177,000 voted by mail; and over 200,000 voted on Election Day.¹¹⁶ S.B. 1 targeted the means and methods of voting primarily used by Black and Brown voters that had facilitated a smooth, secure, and accessible election. Among its many restrictions, S.B. 1 eliminates drive-thru voting and 24-hour voting, restricts early voting hours, restricts vote-by-mail opportunities and application distribution, and bans drop boxes—innovations that had given local counties the options and flexibility they needed to help eligible voters of all backgrounds and abilities cast a ballot, and that Black and Brown voters had disproportionately relied on to vote. S.B. 1 also imposes burdens and intrusive documentation requirements on individuals who provide voters assistance or transport voters to the polls, those providing such assistance to the threat of criminal penalties for violations. Finally, by making it harder for election officials to regulate and supervise poll watchers, S.B. 1 empowers partisan poll watchers to interfere with election administration and to intimidate and harass voters at the polls.

S.B. 1 has already caused substantial problems in Texas' March 1 primary election, where counties were forced to reject a huge percentage of vote-by-mail

¹¹⁴ Heidi Pérez-Moreno, *2,100 State Workers Caught in the Crosshairs of Gov. Greg Abbott's Veto of Legislature Funding*, THE TEXAS TRIBUNE (July 2, 2021), <https://www.texastribune.org/2021/07/02/greg-abbott-veto-legislature-staffers/>.

¹¹⁵ Our lawsuit is one of six challenging S.B. 1 that have been consolidated under *La Unión del Pueblo Entero v. State of Texas*, No. 5:21-cv-00844 (W.D. Tex.), including a case brought by the U.S. Department of Justice.

¹¹⁶ Harris County Elections, Election Results Archive, *Canvass Report: Nov Live 110320 General and Special Elections*, (Nov. 16, 2020), <https://www.harrisvotes.com/HISTORY/20201103/Official%20Canvass.pdf>.

applications.¹¹⁷ 187 of Texas' 254 counties threw out 22,898 duly cast vote by mail ballots--approximately 13% of all ballots cast during primary vs. 1-2% rejected in previous elections.¹¹⁸ The rejection rate in the most populous counties was roughly 15 percent, a staggering increase from the 2020 election, where the statewide rejection rate was roughly one percent.¹¹⁹ The unprecedented vote by mail rejections seems to have a disproportionate impact on minority voters across the state. In particular, six of the nine zip codes in Harris County with the most ballot rejections were majority Black.¹²⁰

S.B. 1 has made it more difficult for voters to cast ballots, stifled innovation, undermined trust in our democracy, and chipped away at voluntary participation as election workers by making the job more difficult while adding criminal penalties for the job.

In our lawsuit, LDF, along with our co-counsel from The Arc and Reed Smith, argues that S.B. 1 discriminates against Black and Brown voters and burdens voters with disabilities in violation of the First and Fourteenth Amendments, Sections 2 and 208 of the Voting Rights Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act.¹²¹ We represent Houston Justice, the Houston Area Urban League, Delta Sigma Theta Sorority, Inc., and The Arc of Texas, organizations that have long worked to ensure Black and Brown voters, incarcerated voters, and voters with disabilities can access the franchise through providing voter education and voter assistance. Largely through volunteer efforts, these groups help vulnerable communities make their voices heard through the ballot box, for example by educating voters about their voting method options and election rules, providing transportation to the polls, distributing, and assisting with the completion of vote-by-mail applications, and helping voters with disabilities navigate the voting process and complete their ballots.

¹¹⁷ Alexa Ura, *Hundreds of Mail-in Ballot Applications are Being Rejected Under Texas' New Voting Rules*, THE TEXAS TRIBUNE (Jan. 13, 2022), https://www.texastribune.org/2022/01/13/texas-voting-mail-rejections/?utm_source=Texas+Tribune+Newsletters&utm_campaign=22dff95b59-trib-newsletters-top-story-alert&utm_medium=email&utm_term=0_d9a68d8efc-22dff95b59-101201265&mc_cid=22dff95b59.

¹¹⁸ Ross Ramsey, *Analysis: When 1 in 8 Texas mail ballots gets trashed, that's vote suppression*, Texas Tribune (Mar. 18, 2022), <https://www.texastribune.org/2022/03/18/texas-rejected-election-ballots/>.

¹¹⁹ Nick Corasaniti, *Mail Ballot Rejections Surge in Texas, With Signs of a Race Gap*, New York Times (Mar. 18, 2022), <https://www.nytimes.com/2022/03/18/us/politics/texas-primary-ballot-rejections.html>.

¹²⁰ Nick Corasaniti *supra* n. 128.

¹²¹ *Lawsuit Filed Challenging New Texas Law Targeting Voting Rights*, NAACP LDF (Sept. 7, 2021), <https://www.naacpldf.org/press-release/lawsuit-filed-challenging-new-texas-law-targeting-voting-rights/>.

S.B. 1 frustrates the mission of our clients, placing obstacles, bans, and exposure to criminal prosecution in the way of their efforts to help marginalized communities vote. But the greatest loss is for Texas voters themselves who will be disenfranchised or burdened by the web of bans and restrictions erected by the law—Black and Brown voters and voters with disabilities who relied on the methods of voting now made illegal and who counted on engagement and assistance from groups like our clients to safely cast a ballot. In intent and effect, S.B. 1 blocks their right to vote, continuing a shameful history of voter suppression in Texas.

d. Alabama

Alabama has played a special role in the Civil Rights Movement, due in significant part to its shameful history of racial discrimination in voting. In 1992, litigation forced Alabama to create a congressional district that allowed Black voters a real opportunity to elect candidates of their choice.¹²² As a result, a Black congressperson was elected from Alabama for the first time since Reconstruction.¹²³ Yet outside of that one district, Black candidates continue to face defeat in congressional elections, though many strong candidates have run and have attracted the support of the overwhelming majority of Black voters.¹²⁴ Indeed, Alabama is one of only 10 states where no Black person has ever won statewide elected office.¹²⁵

For some time now, it has been possible to create two majority-Black congressional districts in Alabama.¹²⁶ This is even more true now given that all of the state's population growth in the last decade was driven by people of color.¹²⁷ As of the 2020 Census, non-Hispanic whites have fallen to 63% of the Alabama's population while Black Alabamians have grown to just over 27% of the population.¹²⁸

¹²² *Wesch v. Hunt*, 785 F. Supp. 1491, 1498 (S.D. Ala. 1992), *aff'd sub nom. Camp v. Wesch*, 504 U.S. 902 (1992).

¹²³ Compl., *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (N.D. Ala. Nov. 16, 2021), ECF No. 1 (“*Milligan Compl.*”).

¹²⁴ U.S. House of Representatives, *Black-American Members by State and Territory, 1870–Present*, <https://history.house.gov/Exhibitions-and-Publications/BAIC/Historical-Data/Black-American-Representatives-and-Senators-by-State-and-Territory/> (last visited January 18, 2022).

¹²⁵ Summer Ballentine, *Analysis: 10 states still haven't elected minority statewide*, ASSOCIATED PRESS (Sept. 3, 2016), <https://apnews.com/article/6d70082a5f854109aee7874e915c6631>.

¹²⁶ Even in 1992, the Black population was large enough and geographically compact enough to create two majority-Black congressional districts, but Black leaders at that time believed an effective electoral opportunity for Black voters required significantly more than a bare majority. *Wesch*, 785 F. Supp. at 1498.

¹²⁷ *Alabama Population Grew 5.1% Since 2010, Surpassing 5 Million*, U.S. CENSUS BUREAU (Aug. 5, 2021), <https://www.census.gov/library/stories/state-by-state/alabama-population-change-between-census-decade.html>.

¹²⁸ *Id.*

Yet Alabama’s White power structure has refused to contend with the state’s growing diversity, preferring to maintain the status quo in a process that was anything but transparent. In September 2021, the state’s Legislative Reapportionment Office held 28 public hearings, all but one of which were held during regular business hours when working Alabamians were unlikely to attend.¹²⁹ Comments by the legislators overseeing the process indicated the outlines of the congressional plan had already been decided before the public hearings, yet no draft map was released until after the public comment period had closed.¹³⁰ And no changes were made to the plans in response to public input. Moreover, although civil rights advocates and Black state legislators asked for a racial polarization study before the legislature adopted a map that continued packing Black voters into a single congressional district, no such study was ever done.¹³¹

On November 4, 2021, Alabama enacted a congressional map under which Black Alabamians have a meaningful chance to see their preferred candidate elected in only one out of the state’s seven congressional districts.¹³² In other words, Black Alabamians are more than 27% of the population, but are a majority—and have a realistic chance of electing their preferred representatives—in only 14% of the state’s congressional districts. In contrast, White Alabamians are 63% of the population but form a majority in nearly 86% of the congressional districts. This is akin to one-person, half-a-vote for Black residents, and one-person, one-and-a-third votes for White residents.

In November, after the state adopted a congressional plan that continued the status quo, LDF sued on behalf of Greater Birmingham Ministries, the Alabama State Conference of the NAACP, and five affected voters, demanding that the state create a second district that gives Black Alabamians an equal chance to see their preferred candidates represent them in Congress.¹³³

The lack of adequate representation in Congress has real consequences for Alabama’s Black communities. Shalela Dowdy, a community organizer and captain in the U.S. Army Reserves who is one of the plaintiffs in LDF’s congressional redistricting litigation, explained how elected officials work against the needs of Alabamians in the state’s Black Belt, who disproportionately lack access to health

¹²⁹ Mike Cason, *Alabama lawmakers begin task of drawing new political districts*, AL.COM, (Aug. 31, 2021) <https://www.al.com/news/2021/08/alabama-lawmakers-begin-task-of-drawing-new-political-districts.html>.

¹³⁰ *Id.* (quoting State Senator Jim McClendon stating that “there won’t be any surprises” in the new congressional plan).

¹³¹ *Milligan* Compl., *supra* n. 122, ¶¶ 50-71.

¹³² See Stipulation of Facts, *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (N.D. Ala. 2021), ECF No. 53.

¹³³ *Milligan* Compl., *supra* n. 135.

care.¹³⁴ The region suffers from high rates of HIV and has been hit hard by COVID-19, regional hospitals have closed, doctors are often far away, and residents often cannot afford health insurance. Despite these serious issues affecting their constituents, many Alabama legislators have refused to support expanding Medicaid under the Affordable Care Act.

The state legislative plan, adopted through the same problematic process as the congressional plan, similarly distorts Black representation, and LDF has also challenged this plan. In January, a unanimous three-judge district court struck down Alabama's congressional map and ordered the state legislature to draw a new map that complies with the Voting Rights Act by including two districts where Black voters have the opportunity to elect candidates of their choice.¹³⁵ Unfortunately, the Supreme Court subsequently granted a motion to the stay the trial court's injunction of the maps, which means that the 2022 elections will take place under discriminatory maps and the underlying challenge to the maps will proceed next Term.¹³⁶

e. South Carolina

South Carolina has a long history of racial discrimination in voting and in the redistricting process in particular. During the four decades that the state was covered by the Voting Rights Act's preclearance protections, the Department of Justice objected 120 times to racially discriminatory voting changes, and at least 27 of these objections involved state or local redistricting plans.¹³⁷ And, in every redistricting cycle since Congress enacted the VRA, voters have been forced to go into court to seek redress from discriminatory maps.¹³⁸

In October 2021, LDF first filed suit regarding post-2020 Census redistricting in the state on behalf of the South Carolina State Conference of the NAACP and an individual voter.¹³⁹ Plaintiffs were forced to bring this initial complaint because of the South Carolina legislature's unnecessary delay in drawing new redistricting

¹³⁴ *Milligan* Compl., *supra* n. 135.

¹³⁵ *Singleton v. Merrill*, No. 2:21-cv-01291 (N. D. Ala.). Available at https://www.naacpldf.org/wp-content/uploads/PRELIMINARY-INJUNCTION-MEMORANDUM-OPINION-AND-ORDER.-Signed-by-Judge-Anna-M-Manasco-on-1_24_2022.-1.pdf.

¹³⁶ https://www.naacpldf.org/wp-content/uploads/order_-_supreme_court_alabama_case_2_7_2022.pdf

¹³⁷ First Amended Compl. for Inj. and Decl. Relief at 13, *South Carolina State Conference of the NAACP v. McMaster*, No. 3:21-cv-03302-JMC-TJH-RMG (D.S.C. Dec. 23, 2021), ECF No. 84, available at <https://www.naacpldf.org/wp-content/uploads/AMENDED-COMPLAINT-for-injunctive-and-declaratory-relief-against-JoAnne-Day-Clifford-J-Elder-002.pdf>.

¹³⁸ *Id.* ¶ 43.

¹³⁹ Compl. for Inj. and Decl. Relief, *South Carolina State Conference of the NAACP v. McMaster*, No. 3:21-cv-03302-JMC-TJH-RMG (D.S.C. Oct. 12, 2021), ECF No. 1, available at <https://www.naacpldf.org/wp-content/uploads/2021-10-12-SC-NAACP-v.-McMaster-Malaportionment-Complaint-FINAL-FILE-STAMPED.pdf>.

maps that respect the constitutional one-person-one-vote principle. The legislature’s failure to remedy malapportioned districts threatened to delay the process of drawing updated districts until the legislature was due back on January 11, 2022, which would have undermined the public’s and courts’ ability to evaluate the legality of new district lines before the March 30, 2022 filing deadline for primary elections.¹⁴⁰

The legislature did ultimately return to draw new State House and Senate districts before the end of 2021. South Carolina’s map-drawing process was largely inaccessible and unresponsive to public input. In August and October of 2021, LDF, South Carolina NAACP, ACLU, and other organizations sent letters to the House and Senate¹⁴¹ Committee expressing concern about the lack of transparency and proposing legislative and Congressional maps that would redress population disparities and create opportunities for Black voters to elect candidates of choice.¹⁴² The committees responsible for these maps repeatedly posted proposed plans with limited opportunities for meaningful review. As just one example, the House Committee invited public input on its draft State House map on November 10, which was posted less than 48 hours before the only public hearing it sought public testimony on the plan.¹⁴³ The House Judiciary Committee subsequently amended and adopted this initial State House map with no opportunity for public input.¹⁴⁴ The legislature also repeatedly discounted and ignored the public testimony that it did receive. And there is no indication that the legislature conducted a racially polarized voting analysis or any other analysis key to compliance with the Voting Rights Act despite repeated requests to do so.¹⁴⁵

Ultimately, the legislature evaded their constitutional obligations for redistricting. They did so by enacting State House and Congressional maps with districts that both “pack” and “crack” Black voters to dilute Black voting strength and opportunities for Black voters to elect candidates of their choice. But this result was not inevitable; the legislature had many alternative maps available to them that

¹⁴⁰ *Id.*

¹⁴¹ *LDF Sends Letter to the South Carolina House Redistricting Ad Hoc Committee About their Obligations Under Section 2 of the Voting Rights Act and the Constitution*, NAACP LDF (Aug. 9, 2021), <https://www.naacpldf.org/news/ldf-sends-letter-to-the-south-carolina-house-redistricting-ad-hoc-committee-about-their-obligations-under-section-2-of-the-voting-rights-act-and-the-constitution/>; *LDF Submits Proposed Congressional and Senate Redistricting Maps to the South Carolina Senate Judiciary Redistricting Subcommittee and the House Redistricting Ad Hoc Committee*, NAACP LDF (Oct. 8, 2021), <https://www.naacpldf.org/press-release/ldf-submits-proposed-submitting-proposed-congressional-and-senate-maps-to-the-south-carolina-senate-judiciary-redistricting-subcommittee-and-the-house-redistricting-ad-hoc-committee/>.

¹⁴² *Id.* ¶¶ 70, 71.

¹⁴³ *Id.* ¶ 75.

¹⁴⁴ *Id.* ¶¶ 85–95.

¹⁴⁵ *Id.* ¶ 9.

would have corrected for malapportionment, complied with federal and state law considerations, and relevant redistricting criteria that the legislature adopted. Now, these maps are the latest examples of a decades-long pattern by the legislature of adopting discriminatory maps. LDF's current lawsuit provides an opportunity for Black South Carolinians to have a fair chance to elect State House and Congressional candidates who adequately represent their interests.

f. Louisiana

In Louisiana, which has the second highest Black population of any state in the country, we are seeing the same pattern as in Alabama. In March, the state legislature passed redistricting plans that continue to pack Black Louisianans into a single congressional district stretching from New Orleans to Baton Rouge and into many fewer state legislative districts than fairness and their numbers in the population demand.¹⁴⁶ As in much of the South, voting in Louisiana remains stubbornly and starkly polarized along racial lines, with large majorities of white voters declining to support Black candidates. The result is that in districts in which white voters make up the majority, candidates supported by Black Louisianans do not succeed at the ballot box.

According to the 2020 census, Louisiana's Black population has grown to more than 33% while the white population has fallen to 57%.¹⁴⁷ The legislature's congressional plan, however, hands control of over 83% of the seats to white voters. A similar pattern holds in the redistricting plans for the Louisiana House of Representatives and Senate.

The legislature adopted these plans in the face of powerful community input demanding a greater voice for Black voters and despite the introduction of several alternative plans by members of the state's legislative Black caucus that would have created an additional seat in the congressional plan. At least one of the alternative plans scored as well as or better than the plan that was ultimately adopted on every measure the legislature purported to care about. The explanation from the legislature for their failure to consider these alternatives has been misinformation and, as in Alabama, unsupported claims that the Voting Rights Act requires a

¹⁴⁶ *Letter to Louisiana Senate and House Governmental Affairs Committee*, NAACP LDF (Oct. 18, 2021), <https://www.naacpldf.org/wp-content/uploads/2021.10.18-Letter-re-Louisiana-Congressional-Redistricting.pdf>.

¹⁴⁷ U.S. Census Bureau, *LOUISIANA: 2020 Census* (Aug. 25, 2021). Available at <https://www.census.gov/library/stories/state-by-state/louisiana-population-change-between-census-decade.html>.

gerrymandered majority-Black district based in New Orleans that deprives Black voters of an equal opportunity to have their voices heard anywhere else in the state.

On March 9, 2022, in response to sustained community advocacy, Governor John Bel Edwards vetoed the congressional plan passed by the legislature because it failed to include a second majority-Black congressional district. On March 30, 2022, the legislature voted to override the Governor’s veto rather than attempt to craft a compromise plan that would provide greater voting opportunities to Black Louisianans. That this was the first time in nearly three decades that Louisiana has seen a successful veto override is a testament to the legislature’s commitment to its refusal to share power with the state’s rising Black population. Hours after the veto override vote, LDF filed suit under Section 2 of the Voting Rights Act challenging the congressional plan.

a) Judicial Redistricting

Black representation on Louisiana’s Supreme Court is also under threat. Under a consent decree that resulted from a landmark decision in the case of *Chisom v. Roemer*, there is currently one member of the state supreme court who is elected from a majority-Black district.¹⁴⁸ The state recently asked the federal court to dissolve that decree and end federal oversight under the pretext of a need to redistrict to correct population imbalances. The state’s motion comes at a time when it faces pressure to add an additional majority-minority district and amid an effort to expand the size of the court from seven to nine members, which would further dilute the influence of Black voters on judicial elections.¹⁴⁹

b) Drawing Local Lines

Congressional maps and statewide plans are critical, but far from the only arena where fair districting is under attack. The one-person, one-vote principle requires thousands of jurisdictions across the country to redraw lines every decade—from county commissions and city councils to school boards. In the absence of preclearance, redistricting plans are being drawn that will affect the most intimate aspects of people’s lives for a decade with no serious scrutiny or oversight. LDF lawyers, trainers, organizers, and policy staff have spent the past six months working to make sure that local communities have the tools they need to engage meaningfully in the process. Non-profit organizations like LDF can fill some of the gap left by the *Shelby County* decision, but with no mandate that they affirmatively scrutinize and

¹⁴⁸ *Chisom v. Roemer*, 501 U.S. 380 (1991).

¹⁴⁹ See *Allen v. Louisiana*, 14 F.4th 366 (5th Cir. 2021).

justify their redistricting plans, many localities are giving little heed to the requirements of the Voting Rights Act and the Fourteenth Amendment.

D. Backlash Beyond Election Day: Subverting Election Results

The 2020 election and 2021 runoff taught entrenched interests that even in the face of formidable obstacles and deliberate barriers, Black and Brown voters can at times break through to make their voices heard. Given this lesson, we are now seeing bold and deliberate efforts to interfere with the voting infrastructure in ways that will facilitate the sabotage of elections or the subversion of election results. Two primary approaches are to provide more direct control over elections to partisan actors, and to replace nonpartisan, good-faith election workers with loyalists who strongly believe in the false narrative around stolen elections.

In 2021, 32 laws were enacted in 17 states which allow state legislatures to politicize, criminalize election administration activity, or otherwise interfere with elections.¹⁵⁰ These include measures to shift authority over elections from executive agencies or nonpartisan bodies to the legislature; roll back local authority through centralization and micromanagement; and criminalize good-faith mistakes or decisions by elections officials.¹⁵¹

These new rules allow white-dominated legislatures or statewide bodies to assert control over majority Black local jurisdictions. In Georgia, for example, another provision of S.B. 202 allowed the State Election Board to assume control of county boards.¹⁵² Through this bill and separate legislation to reorganize county election boards, several Black election board members or supervisors have been replaced with individuals closely aligned with a particular partisan ideology.¹⁵³

¹⁵⁰ *Memorandum from States United Democracy Center, Protect Democracy, and Law Forward to Interested Parties* (Dec. 23, 2021), at 2, https://s3.documentcloud.org/documents/21169281/democracy-crisis-in-the-making-report-update_12232021-year-end-numbers.pdf.

¹⁵¹ *Id.*

¹⁵² James Oliphant & Nathan Layne, *Georgia Republicans purge Black Democrats from county election boards*, REUTERS (Dec. 9, 2021), <https://www.reuters.com/world/us/georgia-republicans-purge-black-democrats-county-election-boards-2021-12-09/>.

¹⁵³ For example, H.B. 162 reconstituted the Morgan County Board of Elections, giving control over all appointments to the Board of County Commissioners, and leading directly to the removal of Helen Butler and Avery Jackson, two Black members Board members. Ms. Butler had served on the board for more than a decade without any allegations of wrongdoing and neglect, using her position to advocate for more accessible elections. *Protecting the Freedom to Vote – Recent Changes to Georgia Voting Laws and the Need for Basic Federal Standards to Make Sure All Americans Can Vote in the Way that Works Best for Them*, Hearing Before the S. Comm. On Rules and Admin, 117th Cong. 11

Furthermore, criminalization provisions of legislation expose good-faith election officials to unreasonable risk for doing their jobs. For example, Texas' S.B.1, contains a provision that exposes election judges who take action to prevent poll watchers from harassing voters to possible criminal sanctions.¹⁵⁴ This despite the fact that the Texas Election Code contains specific provisions designed to protect voters from exactly such interference—and it is the election judge's responsibility to enforce these provisions at a given polling location.¹⁵⁵ The new law thus puts good-faith election judges in a no-win situation where they can incur criminal penalties for fulfilling their duties.

Beyond legal changes, extremists who believe the 2020 election was stolen have subjected elections officials to death threats and other forms of harassment on an ongoing basis. A November 2021 Reuters Special Report documented nearly 800 threats to election workers over the previous year, including more than 100 that could warrant prosecution.¹⁵⁶

According to an April 2021 survey, approximately one-third of election officials are concerned about feeling unsafe on the job, being harassed on the job, and / or facing pressure to certify election results.¹⁵⁷ Nearly one-third have already felt unsafe and almost 20% have been threatened on the job.¹⁵⁸ This has led to a wave of retirements, causing the director of the Center for Election Innovation and Research to tell the *New York Times*, “We may lose a generation of professionalism and expertise in election administration. It's hard to measure the impact.”¹⁵⁹

(2021) (statement of Helen Butler, Exec. Dir., Ga. Coal. for the People's Agenda), https://www.rules.senate.gov/imo/media/doc/Testimony_Butler.pdf.

¹⁵⁴ Compl. for Decl. and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. Sept. 7, 2021), ECF No. 1.

¹⁵⁵ Tex. Election Code §§ 33.057, 33.058.

¹⁵⁶ In June, an Arizona man called Secretary of State Katie Hobbs' office and left a messaging saying she would hang “from a f----- tree...They're going to hang you for treason, you f----- bitch.” ¹⁵⁶ In August 2021, a Utah man who had been listening to a Mesa County, Colorado election clerk criticize Secretary of State Jena Griswold sent Secretary Griswold a Facebook message: “You raided an office. You broke the law. STOP USING YOUR TACTICS. STOP NOW. Watch your back. I KNOW WHERE YOU SLEEP, I SEE YOU SLEEPING. BE AFRAID, BE VERRY AFFRAID. I hope you die.” Linda So & Jason Szep, *Special Report: Reuters unmasks Trump supporters who terrified U.S. election workers*, REUTERS (Nov. 9, 2021), <https://www.reuters.com/legal/government/reuters-unmasks-trump-supporters-terrifying-us-election-workers-2021-11-09/>.

¹⁵⁷ Brennan Center for Justice, *Local Election Officials Survey 6* (June 16, 2021), <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey>.

¹⁵⁸ *Id.* at 7.

¹⁵⁹ Michael Wines, *After a Nightmare Year, Election Officials Are Quitting*, N.Y. TIMES (July 2, 2021), <https://www.nytimes.com/2021/07/02/us/politics/2020-election-voting-officials.html>.

This concern is almost certainly more acute for Black election officials and other election officials of color. Texas election judge and LDF client Jeffrey Clemmons, a Black man in his early twenties, says that if he works as an election worker again in the future:

I am almost certain that I am going to face probably more harassment than I did the last time around because of the heightened political environment that we're in, where people feel again as if their elections are being stolen, that you know, democracy is being undermined left and right, which it is, but of course not in the way that they think that it is. And so you're going to have people who are signing up to be poll watchers for probably partisan campaigns and coming into polling places and attempting to identify election fraud as it were through the Texas election bills...I can only imagine things I'm going to face, whether it's someone, you know, yelling belligerently at me or taking video of me when I'm just doing my job or potentially having the cops called on me because of the color of my skin and the fact that I'm working an election.¹⁶⁰

The effort to subvert elections from the inside is picking up steam. With Black and Brown election workers pushed out of the picture, those who embrace the false fraud frame are waiting in the wings to infiltrate the system. According to the *New York Times*, “[i]n races for state and county-level offices with direct oversight of elections, Republican candidates coming out of the Stop the Steal movement are running competitive campaigns, in which they enjoy a first-mover advantage in electoral contests that few partisans from either party thought much about before last November.”¹⁶¹

Secretary of State races have also been transformed by this phenomenon. Formerly about election mechanics or perhaps how much to expand voting opportunities these contests are now being driven by inaccurate claims regarding election legitimacy. In about half of this year’s 27 Secretary of State contests there’s at least one candidate who claims the 2020 election was stolen from Donald Trump, or otherwise questions its legitimacy.¹⁶²

¹⁶⁰ Interview with Jeffrey Clemmons, *supra* note 77.

¹⁶¹ Charles Homans, *In Bid for Control of Elections, Trump Loyalists Face Few Obstacles*, N.Y. TIMES (Dec. 11, 2022), https://www.nytimes.com/2021/12/11/us/politics/trump-loyalists-face-few-obstacles.html?campaign_id=9&emc=edit_nn_20211213&instance_id=47676&nl=the-morning®i_id=67300419&segment_id=76841&te=1&user_id=a026c13970046cd04a509ac0738ecf7a.

¹⁶² *The Big Lie’ Lives On, And May Lead Some to Oversee The Next Election*, NPR (Jan. 6, 2022), <https://www.npr.org/transcripts/1070864361>. Candidates have claimed that Georgia “certified the

With no pushback from Congress, those intent on subverting the next election by continuing to raise doubts about 2020 are becoming more brazen, not less. On January 15th, President Trump held his first 2022 rally in Florence, Arizona.¹⁶³ Former Trump chief strategist Stephen Bannon explained that the purpose of the rally was to kick off an attempt to decertify President Biden’s 2020 electors in four swing states.¹⁶⁴ The explicit strategy was to sow distrust and paint President Biden as an illegitimate president.

The combination of removing non-partisan or bipartisan election officials, exposing good-faith election workers to criminal penalties, and a constant stream of threats and harassment contributes to perhaps the most dangerous aspect of the efforts to subvert election results: thousands of election officials with experience and integrity are being replaced by false fraud loyalists who are on a mission to achieve a particular election outcome without regard to whether that outcome aligns with the voice and intent of the majority of the electorate.

VI. SOLUTIONS: CONGRESS HAS THE POWER AND RESPONSIBILITY TO PROTECT OUR DEMOCRACY

The U.S. Constitution gives Congress both the authority and the responsibility to act to protect our democracy. This Committee has been charged with the responsibility of diagnosing the root causes of the January 6th Insurrection and prescribing the solutions that can heal our ailing democracy. To do that work, it is critical that Congress view January 6th in its full context, and not as an isolated incident; only then does the full range of necessary solutions come into view. This includes legislation to protect the right to vote, especially for people of color; and to protect democracy from subversion.

A. Protect the Right to Vote

The purpose of the raft of 2021 voter suppression laws, the discriminatory redistricting process, and the efforts to sabotage election results is to prevent people

wrong result” and that “700,000 people are illegal voters” in the state; that Michigan added dead people to the voter file, while calling for an Arizona-style audit; that there were up to 35,000 “fictitious voters” in Pima County, Arizona; and that there was a group of secretary of state candidates “doing something behind the scenes to try to fix 2020 like President Trump said.” Ian Vandewalker & Lawrence Norden, *Financing of Races for Offices that Oversee Elections: January 2022*, BRENNAN CENTER FOR JUSTICE (Jan. 12, 2022), at 15, fig. 7, <https://www.brennancenter.org/our-work/research-reports/financing-races-offices-oversee-elections-january-2022>.

¹⁶³ *Trump rally in Arizona: Former president calls Biden ‘a disaster’ for the country*, AZCENTRAL (Jan. 14, 2022), <https://www.azcentral.com/story/news/politics/arizona/2022/01/14/trump-rally-arizona-live-updates-florence/6529316001/>.

¹⁶⁴ Ron Filipkowski (@RonFilipkowski), Twitter (Jan. 15, 2022, 11:04 AM), <https://twitter.com/RonFilipkowski/status/1482383205181366278>.

of color from ever again asserting their full voice and power. We need Congress to step up to its responsibility to ensure that we can achieve full and fair representation by passing legislation that protects the right to vote for Black and Brown Americans. Such legislation should, at a minimum, contain the following essential provisions:

- *Restore the VRA’s preclearance protections through updated coverage parameters.* Many of the states manipulating maps or passing restricting voting laws—including the six states LDF is suing—were covered by the Voting Rights Act’s preclearance protections prior to *Shelby* and would likely be covered again under a restored Voting Rights Act. Preclearance in the new law would start in 2021, so these laws would need to go through the process and could be blocked from further effect.¹⁶⁵
- *Restore and strengthen Section 2 of the Voting Rights Act, giving litigators across the country more powerful tools to push back on discrimination.* This includes clarifying the legal standards for bringing Section 2 vote denial claims after the *Brnovich* case, and that partisan motivation does not undercut a claim of racial discrimination and establishing a new nationwide prohibition against diminishing the ability of voters of color to access the ballot or elect candidates of choice.¹⁶⁶
- *Provide a broad set of minimum standards for ballot accessibility for federal elections such that the ability to exercise your right to vote is not dependent upon which state you live in..* States should be required to offer Same Day Registration, robust early voting and vote-by-mail opportunities, accept a broad range of voter identification, make Election Day a holiday, implement automatic voter registration, restore the vote to people with felony convictions and more.¹⁶⁷
- *Create a new federal statutory claim against undue burdens on the right to vote.*^[1] For harsh rules that restrict access across the board, this can provide an alternative to First and Fourteenth Amendment claims under the so-called *Anderson-Burdick* standard which has been weakened by the Supreme Court and other courts in recent years. And in cases where laws place disparate burdens on the rights of voters of color, low-income voters, women, and others, a new claim can supplement Voting Rights Act claims, which require extensive expert analysis and statistical evidence to prove and increase the chances of timely relief.

¹⁶⁵ Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021–2022) § 9016(c)

¹⁶⁶ *Id.* at §§ 9001-9002.

¹⁶⁷ *Id.* at §§ 1031, 1202, 1301-1305, 1801.

[1] *Id.* at §§ 3401-3403.

- *Outlaw partisan gerrymandering for congressional districts.*¹⁶⁸ This helps communities of color by undercutting a key excuse lawmakers give for undermining their political voice—it was about partisanship, not race¹⁶⁹--and by reducing the chances that leaders elected by these communities are marginalized within the elected bodies in which they serve.

B. Fight Election Subversion

In addition to protecting the right to vote, Congress must take action to prevent subversion of our free and fair elections. This includes enacting explicit new protections for election workers and election infrastructure, as well as a provision that prevents partisan bodies such as state legislatures from removing state and local election officials without due cause.¹⁷⁰ Congress must also update the Electoral Count Act of 1887 to fix the vague and outdated vote counting and election certification processes that provided an opening for bad-faith actors to attempt to subvert the will of the people by manipulating election results.¹⁷¹

Reform of the Electoral Count Act is far from sufficient to address the multitude of threats to ensuring free and fair democratic elections facing the nation today but it is a needed component.

VII. CONCLUSION

This Select Committee does its work at a historic moment when it is not hyperbole to say that the fate of American democracy hangs in the balance. Black and Brown Americans face the greatest assault on our voting rights since the Jim Crow Black Codes rolled back the progress made during Reconstruction. Indeed, the threat of our democracy breaking apart at the seams and sliding irreversibly into authoritarianism has not been as acute since the Civil War.

The recent Census confirmed that the Country is growing more diverse by the day and the great question before us is whether we will embrace a truly inclusive, multiracial democracy or entrench a racial hierarchy of white supremacy that has beleaguered our democracy since its inception.

¹⁶⁸ *Id.* at §§ 5001-5008.

¹⁶⁹ See e.g. Michael Wines, “Republican Gerrymander of North Carolina Maps is Upheld in Court,” THE N.Y. TIMES (Jan. 11, 2022), <https://www.nytimes.com/2022/01/11/us/politics/north-carolina-redistricting.html>.

¹⁷⁰ Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021–2022) §§ 3001-3301.

¹⁷¹ Discussion Draft “Electoral Count Modernization Act,” available at <https://www.king.senate.gov/imo/media/doc/mcg22051.pdf.pdf>, is one such proposal.

When NPR asked University of Southern California election scholar Franita Tolson to rank her concern about our democracy as a whole and the trend of false fraud narrative adherents taking over election offices in particular on a scale from one-to-ten, her response was a resounding 50.¹⁷² In April, respected election law scholar Richard L. Hasen wrote in the *Harvard Law Review* that “[t]he United States faces a serious risk that the 2024 presidential election, and other future U.S. elections, will not be conducted fairly and that the candidates taking office will not reflect the free choices made by eligible voters under previously announced election rules.”¹⁷³ I believe the threat to our democracy is even more urgent than this. If people of color are blocked from the ballot or the vote is subverted in 2022, it may be too late to steer our democracy back on course.

Historians will study the period between 2020 and 2025 for decades to come, seeking to explain the next century of American life. They will ask the question: Did we act when we had the chance, or did we squander our last, best hope to protect the freedom to vote and save our democracy? Black Americans have played a special role in our country’s history in calling the nation to honor its highest ideals. And, we have been raising alarm bells about the descent of our democracy for years.¹⁷⁴

January 6th was not an isolated incident, but rather the unfortunate consequence of powerful interests fomenting a backlash to the 2020 elections. Those interests are determined to block the emergence of an inclusive, multiracial democracy by erecting barriers to the ballot and by dismantling the non-partisan election infrastructure. Securing and protecting the freedom to vote and the integrity of our elections are essential to maintaining our still nascent democracy. Congress must act swiftly to do so before our democracy is unrecognizable, if it exists at all.

¹⁷² *The Big Lie*, *supra* n. 165.

¹⁷³ Richard L. Hansen, *Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States* (Sep. 18, 2021). *Harvard Law Review Forum*, Vol.135, 2022, UC Irvine School of Law Research Paper No. 2021-50, Available at SSRN: <https://ssrn.com/abstract=3926381>. *see also* Barton Gellman, *Trump’s Next Coup Has Already Begun*, *THE ATLANTIC* (Dec. 6, 2021), <https://www.theatlantic.com/magazine/archive/2022/01/january-6-insurrection-trump-coup-2024-election/620843/>.

¹⁷⁴ Lani Guinier & Gerald Torres, *The Miner’s Canary*, Harvard University Press (2003).