



May 24, 2021

Sent via email

Louisiana Committee on House & Governmental Affairs
P.O. Box 94062
Baton Rouge, LA 70804
c/o h&ga@legis.la.gov

Re: Opposition to S.B. 224

Dear Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), Anti-Defamation League, Louisiana Progress, Power Coalition for Equity and Justice, Puentes New Orleans, Urban League of Louisiana, and Voice of the Experienced (VOTE) write to express our opposition to S.B. 224.¹ We are deeply concerned that the enactment of S.B. 224 will impose unnecessary barriers and burdens that will disproportionately impact the rights of Black voters and other voters of color, naturalized citizens, voters with disabilities, elderly voters, young voters, and low-income voters—and may violate federal laws, including the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution and the Voting Rights Act of 1965. For these reasons, **we urge you to vote no on S.B. 224.**

¹ See S.B. 224, Louisiana Senate (2021), <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1212321>.

As nonprofit, nonpartisan civil rights organizations, our aim is to ensure that all voters have full, meaningful, and unburdened access to the right to vote. Equitable voting opportunities are critical to ensuring that Louisiana voters can safely, securely, and freely participate in our democracy. Increasing voting access builds a healthier, more inclusive democracy. Accordingly, the Louisiana legislature should be considering measures to preserve and expand voting rights and voting access—not measures that would erode these fundamental guarantees.

Yet S.B. 224 is written to undermine progress to expand voting rights and ballot access in Louisiana, especially for Black voters and other voters of color, voters with disabilities, elderly voters, and low-income voters. S.B. 224 in its original form targeted the use of absentee-by-mail drop boxes even though such drop boxes—while successfully used in other states during last year’s elections—have not been employed across Louisiana.² The bill’s proponents abandoned that language after finding it inapt.³ Instead of deferring the bill, the sponsors took new aim at the early voting process by changing the bill to create burdensome and unnecessary identification requirements after it was too late to introduce a separate bill to this alternative end.⁴ As Senator Price noted during the May 5, 2021 Committee on Senate and Governmental Affairs meeting, the summary of the bill “to prohibit the use of ballot drop boxes” no longer described *any* portion of the legislation and he questioned whether the new bill content was germane to the original version.⁵ In its new form, S.B. 224 threatens to improperly invalidate ballots and burden voters who qualify to vote absentee by mail and any early in-person voters who do not have a state I.D. or social security number—disproportionately voters of color, young voters, and naturalized citizens.⁶

² National Conference of State Legislators, VOPP: Table 9: Ballot Drop Box Definitions, Design Features, Location and Number, (last updated Apr. 23, 2021), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-9-ballot-drop-box-definitions-design-features-location-and-number.aspx>.

³ See Amendments proposed by Louisiana Senate Committee on Senate and Governmental Affairs to Senate Bill No. 224 by Senator Cloud (2021), <https://legis.la.gov/legis/ViewDocument.aspx?d=1221245>.

⁴ *Id.* See also La. Senate, 2021 Session Restricted Subject Matter, https://legis.la.gov/legisdocs/21rs/21RS_Senate_Bulletin.pdf (listing Apr. 21, 2021 as the deadline to introduce new bills).

⁵ See, e.g., May 5, 2021 Meeting of the La. Comm. on Sen. and Governmental Affairs at 1:31:00/2:53:16, https://senate.la.gov/s_video/videoarchive.asp?v=senate/2021/05/050521SG (last visited May 17, 2021).

⁶ Brennan Center for Justice, *Citizens without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification* (2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

Absentee-by-mail requirement

Louisiana already limits absentee-by-mail qualifications to a small subset of voters compared to other states.⁷ Now, S.B. 224 aims to limit critical methods of accessing the vote by adding additional burdens to the process. Senate Committee Amendment 4 to S.B. 224 requires that voters include the number of their Louisiana driver's license or special identification card or the last four digits of the voter's social security number if the voter does not have a Louisiana driver's license or special identification card on the application for an absentee ballot as well as the outer flap of the return envelope of the ballot.⁸ This is *in addition to* a sworn affidavit that voters must sign attesting to their identity and the accuracy of their statements.⁹ Requiring voters to include an ID number or social security number is an arbitrary, cumbersome, and unnecessary burden in light of the standing measures to confirm the identity of the requesting voter.¹⁰ Further, this additional requirement would place a drain on state and local election official resources and time by adding an additional and excessive confirmation process. These new restrictions on absentee-by-mail would risk disenfranchising voters based on procedural technicalities and would thereby deny Louisiana citizens their fundamental right to vote. And these requirements will cause more voters to attempt to vote in person, leading to longer lines and wait times for all voters on Election Day.

Louisiana is required, under federal law, to permit eligible voters who lack a driver license, state identification card, or Social Security Number (SSN) to register to vote.¹¹ As both Louisiana law and the federal Help America Vote Act (HAVA) recognize, some qualified voters have neither a driver license, a state identification card, nor an SSN.¹² These voters largely include newly naturalized citizens, who are

⁷ See La. R.S. 18:1303; see also National Conference of State Legislatures, *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options* (Sept. 24, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last visited May 14, 2021) (noting that two-thirds of states allow any voter to request and absentee-by-mail ballot without offering an excuse); Elaine Kamarck, Yousef Ibreak, Amanda Powers, and Chris Stewart, *Voting by mail in a pandemic: A state-by-state scorecard*, BROOKINGS (Oct. 2020), <https://www.brookings.edu/research/voting-by-mail-in-a-pandemic-a-state-by-state-scorecard/> (grading Louisiana with a “D” on vote-by-mail opportunities during the COVID-19 pandemic).

⁸ S.B. 224 Amendments, *supra* n. 2.

⁹ La. R.S. 18:1306(E)(1)(f).

¹⁰ See, e.g., April 15, 2020 Meeting of the La. Comm. on Sen. and Governmental Affairs at 8:50/3:08:32, https://senate.la.gov/s_video/videoarchive.asp?v=senate/2020/04/041520S~G_0 (last visited May 15, 2021) (Sec. of State Kyle Ardoin addressing legislators in reference to a proposed expansion of absentee-by-mail qualifications during the COVID-19 pandemic stated, “Our plan would still require voters to request a ballot, allow us to compare the requester's signature and addresses to confirm it is the correct voter at the correct address. These are safeguards we have in place to prevent voter fraud in other elections, and we have confidence in them...”).

¹¹ 52 U.S.C. § 21083(a)(5)(A)(ii).

¹² *Id.* (providing that, if a voter-registration applicant “has not been issued a current and valid driver's license or a social security number,” states must “assign the applicant a number which will

predominantly people of color.¹³ Yet S.B. 224’s language appears calibrated to exclude such voters from requesting absentee-by-mail ballots. This provision serves no legitimate purpose and will bar some voters—who are disproportionately voters of color—from the absentee-by-mail process.

S.B. 224’s purposeless restrictions on voting absentee by mail are especially concerning because they come immediately after an election in which Louisiana’s Black voters cast ballots before Election Day at unprecedented levels.¹⁴

In-person, early voting requirement

Senate Committee Amendment 4 further requires that persons voting in-person early must disclose the last four digits of the social security number if they do not have an accepted form of photo ID.¹⁵ Again, this is *in addition to* requiring voters to list their date of birth and mother’s maiden name and sign a sworn affidavit¹⁶—that carries criminal penalties for falsification.¹⁷ Once again, this requirement is an unnecessary burden that threatens to deter and disenfranchise voters.

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The November 2020 general election was conducted under the extraordinarily challenging circumstances of a global pandemic. Yet, even in this crisis, state leaders—including the Secretary of State—have consistently lauded the efficiency and security of Louisiana’s voting processes.¹⁸ Indeed, the secure administration of

serve to identify the applicant for voter registration purposes”); La. R.S. 18:101.1(B) (providing that voter-registration applicants who “do not have a Louisiana driver’s license, Louisiana special identification card, or social security number,” may verify their identity and register to vote by providing “(a) A copy of a current and valid photo identification,” or “(b) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the applicant.”).

¹³ See Abby Budiman, Luis Noe-Bustamante & Mark Hugo Lopez, *Naturalized Citizens Make Up Record One-in-Ten U.S. Eligible Voters in 2020*, PEW RESEARCH CENTER (Feb. 26, 2020), https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2020/02/GMD_2020.02.26_Immigrant-Eligible-Voters.pdf.

¹⁴ Mark Ballard, *Louisiana early voting numbers are shattering records; here’s who is turning out*, THE ADVOCATE (Oct. 19, 2020), https://www.theadvocate.com/baton_rouge/news/politics/elections/article_8b08f3cc-1261-11eb-8fcf-d780a48b60b9.html (“Twice as many Black voters, 22% more in-person voters and three times more mail-in voters ha[d] cast ballots during the first two days of early voting in Louisiana for the Nov. 3 presidential election compared with the first two days of early voting in 2016.”).

¹⁵ S.B. 224 Amendments, *supra* note 3.

¹⁶ La. R.S. 18:1309(D)(1)(b)

¹⁷ La. R.S. 18:1461.2.

¹⁸ Press Release, La. Sec. of State, Secretary of State Provides Recap of Nov Election and Update On Voter Registration Deadlines (Nov. 4, 2020), <https://www.sos.la.gov/OurOffice/PublishedDocuments/11042020ElectionDayRecapRegistrationDeadline.pdf> (stating that the Sec. Ardoin “couldn’t be more pleased” with the administration of the November 2020 presidential election.).

the early voting methods in Louisiana means there is no rational justification for the provisions of S.B. 224.¹⁹ In light of this record of successful and secure election administration in Louisiana, no legitimate state interest would be furthered by imposing the severe and needless restrictions on voting access set forth in S.B. 224.

The facts recited above suggest that S.B. 224 likely violates multiple federal laws. The original content of the bill, which targeted a voting method that is not used in Louisiana; introduction of an entirely new bill through an amendment; the lack of any neutral or legitimate justification for the proposals; the timing of new restrictions on early voting after historic turnout by Black voters using that method of voting; and the foreseeable disparate impact on Black voters and other voters of color show that S.B. 224's provisions individually and collectively raise serious concerns under the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Section 2 of the Voting Rights Act, *see Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977) and 52 U.S.C. 10301. These same provisions burden the right to vote without any legitimate state interest, which may also violate the First and Fourteenth Amendment to the U.S. Constitution.²⁰

For the foregoing reasons, we respectfully urge the House and Governmental Affairs Committee to vote “no” on S.B. 224. Please feel free to contact Victoria Wenger at 646-385-0471 or by email at vwenger@naacpldf.org with any questions or to discuss these concerns in more detail.

Sincerely,

/s/ Victoria Wenger

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¹⁹ Ryan Lucas, *Barr Says No Election Fraud Has Been Found By Federal Authorities*, NPR (Dec. 1, 2020), <https://www.npr.org/2020/12/01/940819896/barr-says-no-election-fraud-has-been-found-by-federal-authorities>.

²⁰ *See Burdick v. Takushi*, 504 U.S. 428 (1992) (“A court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiffs seeks to vindicate’ against ‘the precise interest put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

Co-signed by:

ACLU of Louisiana
Anti-Defamation League South Central
League of Women Voters of Louisiana
Louisiana Progress
National Conference of Jewish Women
Greater News Orleans Section
Power Coalition for Equity and Justice
Puentes New Orleans
Southern Poverty Law Center Action Fund
Urban League of Louisiana
Voice of the Experienced (VOTE)

NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.