



**Written Testimony of Sherrilyn Ifill
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**Submitted to the
United States House of Representatives Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

**In connection with its January 20, 2022 hearing entitled
“Voter Suppression and Continuing Threats to Democracy”**

I. INTRODUCTION

Good morning, Chairman Cohen, Vice Chairwoman Ross, Ranking Member Johnson, and members of the Subcommittee. My name is Sherrilyn Ifill, and I am President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”). Thank you for the opportunity to testify this morning on the present crisis for voting rights and our democracy, and the urgency of enacting federal legislation which fully restores the Voting Rights Act of 1965, sets minimum standards for access to the ballot, protects election workers, and combats the subversion of free and fair elections.

A. The Fierce Urgency of This Moment

This Subcommittee meets today 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. And the threat of our democracy breaking apart at the seams and sliding irreversibly into authoritarianism—ceasing to exist as everyone alive today has known it—has not been as acute since the Civil War.

Earlier this week, the nation celebrated the life and legacy of Dr. Martin Luther King, Jr. Dr. King, of course, fought vociferously for the right to vote, and said in 1957: “Give us the ballot and we will no longer have to worry the federal government about our basic rights.”¹ He also famously spoke of the “fierce urgency of now” and the prescient notion that in “this unfolding conundrum of life and history, there is such a thing as being too late.”²

The urgency of this moment could not be fiercer. Exactly one week ago, the U.S. House again fulfilled its constitutional responsibility by passing the Freedom to Vote: John R. Lewis Act to safeguard voting rights and directly address the clear and present danger of targeted vote suppression.³ Despite clarion calls to action by millions and the outspoken condemnation of anti-voter laws by grassroots activists

¹ Martin Luther King, Jr., Give Us the Ballot, Address Delivered at the Prayer Pilgrimage for Freedom (May 17, 1957), <https://kinginstitute.stanford.edu/king-papers/documents/give-us-ballot-address-delivered-prayer-pilgrimage-freedom>.

² Rev. Dr. Martin Luther King, Jr. “Beyond Vietnam: A Time to Break Silence” (April 4, 1967), http://inside.sfuhs.org/dept/history/US_History_reader/Chapter14/MLKrivside.htm

³ Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021–2022), <https://www.congress.gov/bill/117th-congress/house-bill/5746/all-actions?r=7&overview=closed&q=%7B%22roll-call-vote%22%3A%22all%22%7D>.

in Black and brown communities,⁴ voting rights advocates,⁵ nonpartisan election law experts,⁶ influential Black executives in corporate America,⁷ corporations such as Coca Cola and Delta Airlines,⁸ sports associations like Major League Baseball,⁹ film industry icons,¹⁰ religious leaders,¹¹ and more, the U.S. Senate has not found the will to push past an obscure rule with a racist history to act in concert with the House.

Last week President Biden spoke in Georgia—where my organization is in litigation and local leaders are on the front lines of this fight—and put our present challenge in stark but appropriate terms. Consequential moments of history, he said, present a choice: “Do you want to be on the side of Dr. King or George Wallace? Do you want to be on the side of John Lewis or Bull Connor? Do you want to be on the side of Abraham Lincoln or Jefferson Davis?”¹² We must not squander this historic moment. The nation must stay laser focused on the battle to protect voting rights and save our democracy in the coming weeks, and every single U.S. senator must be forced

⁴ Jane C. Timm, *Progressive groups unite to oppose Texas GOP's voting restrictions*, NBC NEWS (Jun. 28, 2021), <https://www.nbcnews.com/politics/elections/progressive-groups-unite-oppose-texas-gop-s-voting-restrictions-n1272459>; *Georgia-Based Disability Rights Groups Join Fight Against Georgia's Anti-Voter Law S.B. 202*, THE ARC (May 2, 2021), <https://thearc.org/georgia-disability-groups-join-fight-voter-law>.

⁵ See e.g. LDF's Janai S. Nelson's testimony before the Senate Judiciary Committee on July 14, 2021, <https://www.judiciary.senate.gov/imo/media/doc/Nelson%20-%20Testimony.pdf>

⁶ See e.g. “Can the Federal Government Stop States' Restrictive Voting Laws?” National Public Radio (June 1, 2021), <https://www.npr.org/2021/06/01/1002219075/can-the-federal-government-stop-states-restrictive-voting-laws>

⁷ Andrew Ross Sorkin & David Gelles, *Black Executives Call on Corporations to Fight Restrictive Voting Laws*, THE N.Y. TIMES (Mar. 31, 2021), <https://www.nytimes.com/2021/03/31/business/voting-rightsgeorgiacorporations.html>.

⁸ David Gelles, *Delta and Coca-Cola Reverse Course on Georgia Voting Law, Stating “Crystal Clear” Opposition*, THE N.Y. TIMES (Mar. 31, 2021), <https://www.nytimes.com/2021/03/31/business/delta-coca-colageorgia-voting-law.html>; Andrew Ross Sorkin & David Gelles, *Hundreds of Companies Unite to Oppose Voting Limits, but Others Abstain*, THE N.Y. TIMES (Apr. 14, 2021), <https://www.nytimes.com/2021/04/14/business/ceoscorporate-america-votingrights.html?smtyp=cur&smid=tw-nytimes>.

⁹ Kevin Draper et. al., *M.L.B. Pulls All-Star Game From Georgia in Response to Voting Law*, THE N.Y. TIMES (Apr. 6, 2021), <https://www.nytimes.com/2021/04/02/us/politics/mlb-all-star-game-moved-atlanta-georgia.html>.

¹⁰ Kimberly Chin, *Will Smith Movie Pulls Production Out of Georgia Over GOP Voting Law*, THE WALL STREET JOURNAL (Apr. 12, 2021), <https://www.wsj.com/articles/will-smith-movie-emancipation-pulls-production-out-of-georgiaovergop-voting-law-11618257076>.

¹¹ Lakisha Lemons, *Faith leaders fight back against what they call voter suppression bills*, SPECTRUM NEWS 1 (Apr. 14, 2021), <https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2021/04/14/faith-leaders-fight-backagainst-voter-suppression-laws>.

¹² Joseph Biden, Pres., United States, Remarks by President Biden on Protecting the Right to Vote (Jan. 11, 2022) <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/01/11/remarks-by-president-biden-on-protecting-the-right-to-vote/>.

to confront this choice as many times as necessary to move this nation forward onto the right side of history.

B. The Purpose of My Testimony

My purpose today is to make plain the depth of the crisis we face, the urgency of addressing it, and fact that Congress has the clear tools and responsibility to do so. To complement LDF's previous testimony in support of the John Lewis Voting Rights Advancement Act,¹³ I will focus on four key topics.

First, the January 6th Insurrection was an avatar of a growing white supremacist backlash against the rising power of voters of color that mirrors the Jim Crow backlash against Reconstruction in the South, and finds clear expression in the questioning of the 2020 vote count in communities of color, the hundreds of restrictive voting laws introduced in nearly every state in 2021, and the vicious harassment of election workers we've seen over the past year. Second, this threat has only grown in the face of congressional inaction and is ongoing and acute right now. It is compounded by the fact that we are experiencing the first decennial redistricting process in six decades without the full protections of the Voting Rights Act, and states and localities across the country have already moved aggressively to weaken the voices of Black and brown voters. Third, LDF and our partner organizations are litigating aggressively to protect Black and brown voters, but we cannot secure such protection alone. Finally, the only way to ensure American democracy endures is for Congress to act immediately to fulfill its constitutional duty to protect the right to vote.

C. LDF's Voting Rights Legacy and Current Work

Since its founding in 1940 by Thurgood Marshall, LDF has been a leader in the fight to secure, protect, and advance the voting rights of Black voters and other communities of color.¹⁴ LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality in every area of life. Through litigation, public policy, and public education, LDF's mission has remained focused on seeking structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. In advancing that mission, protecting the right to vote for African Americans has been positioned at the epicenter of our work.

¹³ LDF Staff have testified before the Senate Judiciary Committee (4/20/21 & 7/14/21); the House Committee on Administration (6/24/21); and the House Judiciary Committee (8/16/21).

¹⁴ LDF has been an entirely separate organization from the NAACP since 1957.

Beginning with *Smith v. Allwright*,¹⁵ LDF’s successful U.S. Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has been fighting to overcome a myriad of obstacles to ensure the full, equal, and active participation of Black voters.

The importance of the right to vote to the integrity of our democracy cannot be overstated. Indeed, Thurgood Marshall—who litigated LDF’s watershed victory in *Brown v. Board of Education*,¹⁶ 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* as his most consequential case. He held this view, he explained, because he believed that the 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.

Despite the guarantees of the 14th and 15th Amendments, the Voting Rights Act of 1965 (“VRA”), and other federal voting rights statutes, racial discrimination and targeted suppression of the rights of Black voters persist, and the need for litigation by LDF and other civil rights organizations has not abated. Indeed, in the years since the infamous 2013 Supreme Court decision in *Shelby County, Alabama, v. Holder*,¹⁷ methods of voter suppression have metastasized across the country. LDF helped to litigate the *Shelby* case, including presenting argument in the Supreme Court in defense of the constitutionality of Section 5 of the Voting Rights Act and importance of pre-clearance to the protection of voting rights. The Supreme Court’s decision in *Shelby*, disabling this key provision, has had a devastating effect on the voting rights of racial, ethnic, and language minorities in this country.

As part of our voting rights work, 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. Our PTV and VRD initiatives 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. Prior to

¹⁵ 321 U.S. 649 (1944).

¹⁶ 347 U.S. 483 (1954).

¹⁷ 570 U.S. 529 (2013).

Election Day, PTV equips voters with non-partisan educational materials, answers questions about how to register to vote and what identification is needed on Election Day, and provides information on local voting laws and practices that may affect voters during the election process. On Election Day, PTV volunteers visit polling sites to ensure voters are informed of their state’s voting requirements, answer questions about how to comply with election laws, and, when necessary, engage in rapid response actions to ensure every eligible voter is able to cast a ballot.

LDF is also a founding member of the non-partisan civil rights Election Protection Hotline (1-866-OUR-VOTE), administered by the Lawyers’ Committee for Civil Rights Under Law. The Election Protection hotline coalition works year-round to ensure that all voters have an equal opportunity to vote and have that vote count. Election Protection provides Americans from coast to coast with comprehensive information and assistance at all stages of voting—from registration to absentee and early voting, to casting a vote at the polls.

In addition, in anticipation of the current redistricting cycle, LDF built a team of attorneys, trainers, policy advocates, and organizers to educate communities about what’s at stake and how to engage in the process, push lawmakers to draw fair lines, and sue states and localities that proceed with maps that dilute Black voters’ voices.

II. FROM HISTORIC TURNOUT TO VIOLENT & SUSTAINED BACKLASH

Black Americans are facing a unmitigated assault on our voting rights, and an unprecedented attack on our democracy, fueled by a White supremacist backlash against an historic election in which voters of color made our voices heard and made a decisive difference across the nation.

A. The 2020 Election Makes History

The 2020 election was not beset with large-scale fraud, as claimed by some.¹⁸ It also did not, as numerous news reports suggested, “go smoothly.”¹⁹ Accounts from LDF’s Voting Rights Defender and Prepared to Vote teams, detailed in the LDF Thurgood Marshall Institute’s latest *Democracy Defended* report,²⁰ reveal the depth and breadth of the issues voters faced. From vote-by-mail restrictions that are unnecessary at any time and particularly absurd during COVID to voter intimidation

¹⁸ 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>

¹⁹ 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>.

²⁰ Thurgood Marshall Institute, *Democracy Defended*, NAACP LDF (Sept. 2, 2021), https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf.

to poll closures and long lines, Black voters faced a litany of barriers to the ballot. And the arc of voter suppression extended beyond Election Day in an unprecedented campaign to disrupt the counting and certification of ballots and overturn the election's results.²¹

Yet, the 2020 election was historic. Voters overcame a host of obstacles with determination and resilience. Two-thirds of eligible voters participated in 2020, which is the highest turnout rate recorded since 1900 but actually the highest turnout ever given the significant expansion of both the population and who is eligible to vote since the turn of the twentieth century.²² Black voter turnout was greater than 65% and nearly matched records set when President Obama was on the ballot.²³

This historic election culminated 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.²⁴ 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 2008.²⁵ Black voters drove this historic participation, with Black turnout dropping just 8% from the general election

²¹ 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>; Bill Bostock, *Videos show Trump protesters chanting 'count those votes' and 'stop the count' outside separate ballot-counting sites in Arizona and Michigan*, BUSINESS INSIDER (Nov. 5, 2020), <https://www.businessinsider.com/videos-trump-protesters-michigan-arizona-vote-count-2020-11>; Jake Lahut, *Dozens of pro-Trump protesters chant 'Fox News sucks' outside major election HQ in Arizona, with several reportedly trying to get inside as votes are being counted*, BUSINESS INSIDER (Nov. 4, 2020), <https://www.businessinsider.com/video-fox-news-sucks-chant-crowd-outside-maricopa-election-arizona-2020-11?r=US&IR=T>; Maura Ewing et al., *Two charged with carrying weapons near Philadelphia vote-counting site amid election tensions*, THE WASH. POST (Nov. 6, 2020), <https://www.washingtonpost.com/nation/2020/11/06/philadelphiaattack-plot-vote-count-election/>.

²² 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>.

²³ Michael P. McDonald, *Voter Turnout Demographics*, UNITED STATES ELECTIONS PROJECT (accessed Jan. 14, 2022), <http://www.electproject.org/home/voter-turnout/demographics>.

²⁴ 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/>.

²⁵ *Id.*

compared with an 11% decline among White voters.²⁶ The result was the election of the first Black and Jewish senators in Georgia history.²⁷

This historic turnout was no accident, and was not driven by the stakes alone. Civil rights and 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 voting process.²⁸

The Herculean effort it took to help Black and brown voters overcome barriers to the ballot in the 2020 election is not constitutional or sustainable. The backlash to the results, however, was immediate.

B. The January 6th Backlash

American history has arguably been a halting journey towards political equality. Eight of the 17 post-Bill of Rights amendments to the U.S. Constitution have expanded the franchise directly or who is included in “we the people” more broadly.²⁹ This journey, however, has never been a straight line; progress is often followed by backlash and retrenchment.

The progress of Reconstruction was followed by nearly a century of Jim Crow “Black Codes” in the South. The progress of LDF’s landmark *Brown v. Board of Education* case was followed by “massive resistance” and segregation academies.³⁰ Throughout the South, communities chose to shutter public infrastructure rather than share it equally—literally drain public pools rather than let Black and White children swim together.³¹ More recently, robust public demonstrations of anguish and anger over George Floyd’s murder and countless examples of police devaluing Black lives have produced modest criminal justice reforms and facilitated an important

²⁶ 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/>.

²⁷ 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>

²⁸ 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>

²⁹ U.S. CONST. amends. XIII, XIV, XV, XVII, XIX, XXIII, XXIV, XXVI.

³⁰ *Report: Segregation in America*, EQUAL JUSTICE INITIATIVE (2018), 20–39, <https://segregationinamerica.eji.org/report.pdf?action=purge>.

³¹ HEATHER MCGHEE, THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER (2021).

national conversation about structural racism, but have also lead to a sharp backlash in the form of White-led state legislatures and school boards passing so-called “anti-critical race theory” measures that mandate a false, sanitized version of American history.³²

a. The Racist Roots

The backlash to historic 2020 voter turnout among people of color has been swift and severe—a new chapter of an old story. Immediately after the election a campaign asserting that the 2020 election was stolen through rampant fraud began and those participating in that effort sought to disrupt the counting and certification of the presidential election and to ultimately to overturn its results. That campaign was orchestrated by extremist factions incited at least in part by former President Trump.³³ The sharp racial divide between those promoting the stories of rampant fraud and those who accept the results of the 2020 election is no coincidence, as assertion itself is steeped in racism.³⁴

Who exactly was assumed too incompetent to run a clean election or crime-prone and disloyal enough to intentionally manipulate the system? It was Black elections officials and voters in Black population centers such as Detroit (where election officials counting votes were mobbed and harassed),³⁵ Philadelphia (where the FBI helped local police arrest two men with weapons suspected of a plot to interfere with ballot counting),³⁶ or the Atlanta metro region (where it was alleged that hundreds of thousands of ballots mysteriously appeared).³⁷ Or, Latinos in places like Arizona where robust turnout among the Latino population was decisive and

³² *In Defense of Truth*, NAACP LDF (accessed Jan. 19, 2022), <https://www.naacpldf.org/truth/>.

³³ Romero, Dewan & McDonnell Nieto del Rio, *supra* note 21; *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/>.

³⁴ 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>.

³⁵ Bostock, *supra* note 21.

³⁶ Ewing et al., *supra* note 21.

³⁷ 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>.

protestors attempted to infiltrate ballot counting headquarters and tamper with vote counting.³⁸ .

b. The Insurrection

After challenging election results in communities of color, the next step in the 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 House Select Committee’s and Department of Justice’s ongoing investigations confirms that the violence was not a spontaneous reaction by a worked-up crowd, but rather a planned coup attempt abetted by encouragement or deliberate inaction at the highest levels.³⁹

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,⁴⁰ expanding the proliferation of conspiracy theories,⁴¹ and flouting the rule of law. 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.”⁴² 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 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.’”⁴³ Many photographs from the January 6th insurrection were disturbing, but one in particular encapsulated the event’s

³⁸ Lahut, *supra* note 21.

³⁹ 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,” <https://www.justice.gov/usao-dc/one-year-jan-6-attack-capitol>.

⁴⁰ 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>.

⁴¹ 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>.

⁴² Hakeem Jefferson & Victor Ray, *White Backlash is a Type of Racial Reckoning, Too*, FIFTYTHREEEIGHT (Jan. 6, 2022), <https://fivethirtyeight.com/features/white-backlash-is-a-type-of-racial-reckoning-too/>.

⁴³ *Id.*

historical significance and the stakes for our Republic: the image of an insurgent inside the U.S. Capitol brandishing a Confederate flag.⁴⁴

c. The Backlash Continues as State Legislatures Block Access to the Ballot

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. Whereas in a bygone era discriminatory intent in voting restrictions was dressed up in ideals such as securing a more informed and invested electorate, the new justification is fighting imaginary voter fraud, a phantom conjured only to attack. Fueled by the false assertions of voter fraud and a stolen election, lawmakers sought to ensure that 2020's robust turnout among voters of color could not be repeated. Legislators introduced more than 400 bills in nearly every state aiming to restrict the franchise.⁴⁵ Nineteen states enacted a total of 37 laws that roll back voting rights and erect new barriers to the ballot.⁴⁶

Justice Ginsburg, in her *Shelby* dissent, compared efforts to combat voter suppression in the states to “battling the Hydra.”⁴⁷ According to Greek mythology, for every head cut off the monstrous Hydra, two more would grow in its place.⁴⁸ The preclearance provision of the Voting Rights Act was designed to address the Hydra problem—to eliminate adaptive, and unrelenting discriminatory voting practices. Yet, Hydra-like proliferation is exactly what we see unfolding in the states.

Critically, many of these laws are directly targeted at cutting off pathways to the ballot box that Black and brown voters used successfully in 2020. For example, after Black voters adjusted to the pandemic by voting absentee, S.B. 90 in Florida severely curtailed the use of unstaffed ballot return drop boxes and effectively eliminated community ballot collection.⁴⁹ And in Georgia and Texas, after strong early in-person turnout among Black voters, lawmakers initially moved to outlaw or

⁴⁴ 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/>.

⁴⁵ *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>.

⁴⁶ *Id.*

⁴⁷ *Shelby County*, 570 U.S. at 560 (Ginsburg, J., dissenting).

⁴⁸ *Hydra: Greek Mythology*, BRITANNICA.COM (last accessed May 24, 2021), <https://www.britannica.com/topic/Hydra-Greek-mythology>.

⁴⁹ *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.

limit Sunday voting in a direct attack on the “souls to the polls” turnout efforts undertaken by many Black churches.⁵⁰ The final law in Georgia hampers vote-by-mail, cuts back on early voting, and more.⁵¹ And the new omnibus voting law in Texas, S.B. 1, 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 Latino voters in Texas’s largest cities in 2020.⁵²

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.⁵³ 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 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.⁵⁴

⁵⁰ 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/>.

⁵¹ See S.B.202, <https://www.legis.ga.gov/api/legislation/document/20212022/201498>

⁵² 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/>.

⁵³ Compl. for Decl. and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. Sept. 7, 2021), ECF No. 1.

⁵⁴ Interview by Adam Lioz, Senior Policy Counsel for LDF, with Jeffrey Clemmons (Jan. 10, 2022) (on file with author).

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, so they need a backup plan. To advance this backup plan, thus there is currently an effort to extend the arc of voter suppression beyond Election Day to facilitate the sabotage and subversion of election results. The primary approach is to replace nonpartisan, good-faith election workers with those who will adhere to a particular outcome.

In 2021, 32 laws were enacted in 17 states which allow state legislatures to politicize, criminalize, or otherwise interfere with elections.⁵⁵ 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.⁵⁶

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—the law that LDF is challenging in court—allowed the State Election Board to assume control of county boards.⁵⁷ Through this bill and separate legislation to reorganize county election boards, several black election board members or supervisors have been replaced with White conservatives.⁵⁸ 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.⁵⁹ 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.⁶⁰

⁵⁵ 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>.

⁵⁶ *Id.*

⁵⁷ 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/>.

⁵⁸ *Id.*

⁵⁹ *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 (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.

⁶⁰ *Id.*

Criminalization provisions expose good-faith election officials to unreasonable risk for doing their jobs. For example, Texas’ S.B.1, which LDF is challenging, contains a provision that exposes election judges who take action to prevent poll watchers from harassing voters to possible criminal sanctions.⁶¹ 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.⁶² 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 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.⁶³ Women serving as Secretaries of State in battleground states have been singled out for particularly nasty treatment. 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----- b-----.”⁶⁴ 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.”⁶⁵

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.⁶⁶ Nearly one-third have already felt unsafe and almost 20% have been threatened on the job.⁶⁷ This is driving a wave of retirements, leading the director of the Center for Election Innovation and Research

⁶¹ Compl. for Decl. and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00848 (W.D. Tex. Sept. 7, 2021), ECF No. 1.

⁶² Tex. Election Code §§ 33.057, 33.058.

⁶³ Linda So & Jason Szep, *Special Report: Reuters unmask 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/>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Brennan Center for Justice, *Local Election Officials Survey 6* (June 16, 2021), <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey>.

⁶⁷ *Id.* at 7.

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.”⁶⁸

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.⁶⁹

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 strategy for subverting election results: thousands of election officials with experience and integrity are being replaced by individuals who are on a mission to achieve a particular election outcome, regardless of whether that outcome aligns with the votes cast by the electorate.

III. DEMOCRACY IN PERIL: THE PRESENT THREAT

The backlash to 2020 and lack of federal response has brought us to a fraught moment in 2022. The accumulation of aggressive gerrymandering, critical midterm elections approaching without federal protections, additional state laws making it harder to vote and easier to subvert the will of the people, and constant threats to poll workers marks a clear and present danger for our democracy.

⁶⁸ 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>.

⁶⁹ Interview with Jeffrey Clemmons, *supra* note 54.

A. Drawing Political Maps Under a Weakened Voting Rights Act Can Lead to a Decade of Diluted Voices

The political maps legislatures and local jurisdictions are drawing right now will shape the landscape of political possibility through 2031. As we meet today, with more than 30 states having completed their legislative maps, we are now more than halfway through the first redistricting process in six decades without the full protections of the Voting Rights Act, and our democracy is being severely weakened.⁷⁰

a. *District Lines Shape Political Voice*

Drawing political lines is perhaps the single most powerful way to strengthen or dilute the political voice of any person or cohesive group. Until the landmark “one person, one vote” cases of the 1960s, rural landowners enjoyed sharply more political influence than urban residents because district lines routinely valued territory or political boundaries over basic political equality.⁷¹ And throughout American history, entrenched incumbents have proven adept at manipulating district boundaries to protect their own election prospects, their political parties’ power, and—most starkly—undermine the voice and power of Black and brown residents in their states and communities.

To prevent Black voters from attaining fair representation, mapmakers often “pack” Black voters into as few districts as possible so that a Black population of 35%, for example, can elect one candidate of choice by a wide margin rather than three or four. At the same time, they will often “crack” Black populations into several districts so that Black voters cannot make a meaningful difference in any of them.

From 1970—just after the “reapportionment revolution” forced line-drawers to adhere to the one-person, one-vote principal—through the 2010 redistricting cycle, the preclearance protection of Section 5 of the Voting Rights Act was a 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.⁷² Section 2 of the Voting Rights Act has been a complementary tool, allowing Black and brown

⁷⁰ *2022 Redistricting: States are redrawing every congressional district in the U.S. Here is where we stand.*, POLITICO (Jan. 14, 2022), <https://www.politico.com/interactives/2022/congressional-redistricting-maps-by-state-and-district/>.

⁷¹ See e.g., *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964).

⁷² 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).

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*.⁷³ The result is that Black communities have entered the current redistricting cycle with a shredded shield, more exposed to the manipulations of designed to weaken their political power.

b. Our Political Leaders Do Not Reflect Our Nation's Growing Diversity

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.⁷⁴ Put another way, White Americans occupied nearly 90% of elected offices in the U.S. despite forming just over 60% of the population.

c. Underrepresentation of People of Color is Likely to Get Worse in the Coming Decade

The current districting process threatens to make this skewed representation even worse. The nation has grown substantially more diverse since 2010,⁷⁵ 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.

The White population has decreased from 63.7% to 57.8% of population since the 2010 Census, meaning that more than 42% of Americans are now people of color.⁷⁶ The Latino population grew by 23% since 2010, compared to just 4.3% non-Latino

⁷³ 594 U.S. ____ (2021).

⁷⁴ *Datasets, The Electability Myth: The Shifting Demographics of Political Power in America*, REFLECTIVE DEMOCRACY CAMPAIGN, <https://wholeads.us/datasets/>.

⁷⁵ 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>.

⁷⁶ *Id.*

population growth.⁷⁷ The Black population grew by nearly 6%.⁷⁸ 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.⁷⁹

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.”⁸⁰ 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 bipartisan examples.⁸¹ In Texas, “communities of color accounted for 95 percent of the state’s population growth last decade. Yet, not only did Texas create no new electoral opportunities for minority communities, [but] their maps often went backwards.”⁸² The pattern has continued—so much so that Li noted just last week that “[p]eople of color are getting shellacked in redistricting” this cycle.⁸³

A December 2021 *New York Times* article detailed how Black elected officials are being systematically driven from positions of power by carving up their districts and at times forcing them to run against other incumbents.⁸⁴ The article cites at least two dozen examples, including former Congressional Black Caucus chair G.K.

⁷⁷ Press Release, U.S. Census Bureau, *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>.

⁷⁸ 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>.

⁷⁹ 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>.

⁸⁰ *Id.* at 3.

⁸¹ 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>.

⁸² *Id.*

⁸³ Michael Li (@mcpli), Twitter (Jan. 13, 2022, 2:33 PM), <https://twitter.com/mcpli/status/1481711130020130816>.

⁸⁴ 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>.

Butterfield of North Carolina, who is retiring and called the situation a “five-alarm fire.”⁸⁵ LDF’s own Deputy Director of Litigation Leah Aden averred that “[w]ithout a doubt it’s worse than it was in any recent decade.”⁸⁶

B. Critical Midterm Elections Are Here, Without Federal Protections

As more maps are drawn each day, the 2022 elections are set to begin: early voting for the March 1 Texas primary starts in just 25 days.⁸⁷ Without much-needed federal protections, Black and brown voters will be heading to the polls facing new restrictive and suppressive laws.

LDF client and 2020 Texas election judge Jeffrey Clemmons is concerned about the state’s new voter suppression law’s effect on its ability to run a smooth primary in the coming weeks. “Without some [] federal protections for poll workers, we’re going to be facing a shortage again,” he says.⁸⁸ “I don’t think that we’re going to be able to fill all those positions this time around because of the fear of prosecution that’s come from bills like S.B. 1 that place all these new onerous restrictions on election workers to do their job.”

Vote-by-mail could serve as an alternative, but the state’s fifth-largest county has rejected approximately half of its recent ballot applications, citing S.B. 1’s new requirements.⁸⁹ The counties housing Houston and San Antonio have also reported substantial rejection rates.⁹⁰ It is highly likely that thousands of Texans will be disenfranchised in the first test of the new law in the nation’s first 2022 primary election.

C. Emboldened by Congressional Inaction, States Will Pass More Anti-Voter Laws

The threat from state laws that increase barriers to the ballot or facilitate election subversion has not abated, but rather grown stronger in the face of congressional inaction. Of the more than 400 bills introduced last year, at least 152 in 18 states have carried over into the coming legislative session, and more than a dozen bills were pre-filed by December in anticipation of the 2022 session.⁹¹ We

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Texas Secretary of State, VOTETEXAS.GOV, <https://www.votetexas.gov/voting/when.html>.

⁸⁸ Interview with Jeffrey Clemmons, *supra* note 54.

⁸⁹ Eugene Scott, *Election officials in Texas reject hundreds of ballot applications under state’s new voting restrictions*, WASH. POST (Jan. 14, 2022), https://www.washingtonpost.com/politics/texas-voting-ballots-republicans/2022/01/14/97c3d2de-7580-11ec-b202-b9b92330d4fa_story.html.

⁹⁰ *Id.*

⁹¹ *Resource: Voting Laws Roundup: December 2021*, *supra* n. 45.

expect to see hundreds more introduced and dozens more passed in hard-right legislatures in the months to come. Like in 2021, we expect these bills to target the specific ways that Black and brown voters have made their voices heard in recent elections. Absent congressional action, it will be harder to vote in 2022 for millions of Americans.

In a particularly egregious example, just this week Florida Governor Ron DeSantis asked the state legislature to fund an unprecedented election crimes police force, accountable to the Governor with a mandate to “investigate, detect, apprehend, and arrest anyone for an alleged violation” of the state’s election laws.⁹² The proposal alarmed local elections officials and the legislature has yet to take it up—but some are already touting it as a “model” for other states.⁹³

D. Election Subversion Plans Are in High Gear

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. Secretary of State races 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 is at least one candidate who claims the 2020 election was stolen or otherwise questions its legitimacy.⁹⁴ The explicit strategy is clear -sow distrust in the electoral process.

IV. LITIGATION IS A CRITICAL YET LIMITED TOOL TO PROTECT BLACK AND BROWN VOTERS

In the face of such sustained threats, LDF and our partner organizations have stepped up our litigation efforts across the country. We are using the tools we have—

⁹² Lori Rozsa & Beth Reinhard, *Florida governor proposes special police agency to monitor elections*, WASH. POST (Jan. 18, 2022), <https://www.washingtonpost.com/nation/2022/01/18/florida-governor-proposes-special-police-agency-monitor-elections/>.

⁹³ *Id.*

⁹⁴ *‘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 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>.

the Constitution and a weakened Voting Rights Act—to counter the recent wave of voter suppression laws and push state legislatures to respect Black voters’ voices in the districting process. We can curb the worst abuses, but we cannot fully protect our communities or make affirmative progress without congressional action.

A. Pushing Back on Voter Suppression Laws

Had the Supreme Court not gutted the heart of the Voting Rights Act in 2013, many of the 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.⁹⁵ 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. In Justice Ginsburg’s words, we are fighting the Hydra.

LDF is currently litigating cases against 2021 voter suppression laws in Georgia, Florida, and Texas. 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—demonstrating the seriousness of their discrimination claims.

a. *Georgia*

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”). By early February, Georgia legislators had filed sweeping legislation to limit early and absentee voting.⁹⁶

LDF, jointly with the Southern Poverty Law Center (“SPLC”), provided oral and written testimony throughout the 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.⁹⁷ Yet, the Georgia General Assembly refused

⁹⁵ 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. 45.

⁹⁶ 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>.

⁹⁷ *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/>.

to conduct any racial-impact study of these bills—legislation that would carry forward the state’s troubling history of voting discrimination.⁹⁸

On March 17, 2021, with little notice to EIC members, let alone members of the public, an EIC member introduced a substitute bill to Senate Bill 202 (“S.B. 202”), which expanded 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 closed-door session.⁹⁹ 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.¹⁰⁰

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, the Delta Sigma Theta Sorority, Inc, Georgia ADAPT, Georgia Advocacy Office, and Southern Christian Leadership Conference.¹⁰¹ Plaintiffs raise the following federal constitutional and statutory voting claims: (1) intentional racial discrimination and discriminatory results under Section 2 of the VRA; (2) intentional racial discrimination under the Fourteenth and Fifteenth Amendments; (3) an unconstitutional burden on the right to vote under the First and Fourteenth Amendments; and (4) an unconstitutional burden on the right to freedom of speech and expression concerning the ban on line relief under the First Amendment. Plaintiffs are also challenging S.B. 202 for discrimination on the basis of disability under Title II of the American Disabilities Act, discrimination on the basis of

⁹⁸ 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.

⁹⁹ 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>

¹⁰⁰ *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/>.

¹⁰¹ *Id.*

disability under 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 December 2021, the U.S. District Court, Northern District of Georgia denied Defendants’ motion to dismiss our claims, so the case is moving forward towards discovery and a potential trial.

b. Florida

Florida was not far behind Georgia in channeling backlash into new voting restrictions. On May 6, 2021, Governor DeSantis signed into law a broad voter suppression bill known as S.B. 90.¹⁰² 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 including: (1) restrictions and new requirements for standing 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.¹⁰³

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.”¹⁰⁴ Judge Walker also denied Defendants’ motions for summary judgment on all but one claim on December 17, 2021. The case is set for a 10-day bench trial beginning on January 31, 2022.

c. Texas

On September 7, 2021, Governor Abbott of Texas signed S.B. 1, one of the most restrictive voting laws in the country. During its passage, 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

¹⁰² 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/>.

¹⁰³ *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/>.

¹⁰⁴ 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.

proponents of the omnibus election bill rammed it through the legislative process, which the Governor aided by extending the normal legislative session twice and threatening the funding of legislative staff salaries.¹⁰⁵

After submitting testimony and advocating against the bill as it made its way through the Texas legislature, LDF was ready. We filed a lawsuit challenging S.B. 1 on the same day it was signed.¹⁰⁶

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 Latino 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.¹⁰⁷ S.B. 1 targeted means and methods of voting primarily used by Black and Latino voters. 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 Latino voters had disproportionately relied on to vote. S.B. 1 also imposes burdens and intrusive documentation requirements on individuals who provide assistance to voters or transport them to the polls, subjecting the assistants 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. Already due to S.B. 1, Texas counties have been forced to reject a huge percentage of vote-by-mail applications.¹⁰⁸

¹⁰⁵ 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/>.

¹⁰⁶ 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.

¹⁰⁷ 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>.

¹⁰⁸ 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.

In our lawsuit, LDF, along with our co-counsel from The Arc and Reed Smith, argues that S.B. 1 discriminates against Black and Latino 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.¹⁰⁹ 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 Latino voters, incarcerated voters, and voters with disabilities can access the franchise through providing voter education and voter assistance. We also represent a local election judge—a private citizen who at 22 years old, has already dedicated himself to civic engagement, including by volunteering to administer the 2020 election at his local polling place. Many of our clients testified against S.B. 1 and its predecessor bills in the Texas legislature, illuminating how the bill would block access to the ballot for voters of color and voters with disabilities.

LDF filed an amended complaint in the lawsuit on December 1, 2012,¹¹⁰ and is currently opposing a motion to dismiss and engaging in discovery. A bench trial is tentatively set for July 5, 2022 in federal court in Texas.

B. Fighting for Fairer Maps

Discriminatory maps advanced without VRA Section 5’s protections are also being challenged through litigation. 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.¹¹¹ LDF is currently involved in redistricting lawsuits in Alabama and South Carolina, and we are monitoring the process and assessing the need to litigate in a number of additional places.

a. *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.¹¹² As a result, a Black

¹⁰⁹ *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/>.

¹¹⁰ Am. Compl. for Decl. and Injunctive Relief, *Houston Justice v. Abbott*, No. 5:21-cv-00844 (W.D. Tex. Dec. 1, 2021), ECF No. 139.

¹¹¹ *Redistricting Across States*, ALL ABOUT REDISTRICTING, <https://redistricting.lls.edu/> (accessed Jan. 18, 2022).

¹¹² *Wesch v. Hunt*, 785 F. Supp. 1491, 1498 (S.D. Ala. 1992), *aff’d sub nom. Camp v. Wesch*, 504 U.S. 902 (1992).

congressperson was elected from Alabama for the first time since Reconstruction.¹¹³ 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.¹¹⁴ Indeed, Alabama is one of only 10 states where no Black person has ever won statewide elective office.¹¹⁵

For some time now, it has been possible to create two majority-Black congressional districts in Alabama.¹¹⁶ 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.¹¹⁷

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 is anything but transparent. In September 2021, the state's Legislative Reapportionment Office held 28 public hearings, all but one of which—at the State Capitol—were held during regular business hours when working Alabamians were unlikely to attend.¹¹⁸ 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.¹¹⁹ 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 conducted.¹²⁰

On November 4, 2021, Alabama enacted a congressional map under which Black Alabamians have a meaningful chance to see their preferred candidate elected

¹¹³ Compl., *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (N.D. Ala. Nov. 16, 2021), ECF No. 1 (“*Milligan* Compl.”).

¹¹⁴ 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).

¹¹⁵ Summer Ballentine, *Analysis: 10 states still haven't elected minority statewide*, ASSOCIATED PRESS (Sept. 3, 2016), <https://apnews.com/article/6d70082a5f854109aee7874e915c6631>.

¹¹⁶ 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.

¹¹⁷ *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>.

¹¹⁸ 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>.

¹¹⁹ *Id.* (quoting State Senator Jim McClendon stating that “there won’t be any surprises” in the new congressional plan).

¹²⁰ *Milligan* Compl., *supra* n. 122, ¶¶ 50-71.

in only one out of the state's seven congressional districts.¹²¹ 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.¹²²

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 care. 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 process as the congressional plan, similarly distorts Black representation, and LDF has challenged this plan on behalf of Greater Birmingham Ministries, the Alabama State Conference of the NAACP, and four individual voters.¹²³ District lines are drawn to pack and crack Black voters to limit their electoral effectiveness in the state legislature. Districts are drawn in a virtual menagerie of shapes that join disparate pockets of Black voters or carve up Black communities to limit their influence.¹²⁴

This distortion also works to deprive Black voters of influence on local issues. Under Alabama's constitution, counties must seek authorization from the state

¹²¹ See Stipulation of Facts, *Milligan v. Merrill*, No. 2:21-cv-01530-AMM (N.D. Ala. 2021), ECF No. 53.

¹²² *Milligan* Compl., *supra* n. 122.

¹²³ Compl., *Thomas v. Merrill*, No. 2:21-cv-01531-AMM (N.D. Ala. 2021), ECF No. 1 (“*Thomas* Compl.”), available at <https://www.naacpldf.org/wp-content/uploads/COMPLAINT-Thomas-v.-Merrill.pdf>.

¹²⁴ *Id.*

legislature for any significant legislative changes, affecting issues from local water supplies to the structure of government.¹²⁵ As a practical matter, those decisions are made by the delegation of state legislators who represent any part of the county.¹²⁶

Sanitation, perhaps the most basic foundation of human health, provides an apt example of how diluted representation at the federal and state levels can have a compounding effect. Alabama’s Black belt has long suffered from inadequate waste treatment—so much so that in November 2021 the Civil Rights Division of the U.S. Department of Justice opened an investigation into “whether the Alabama Department of Public Health and the Lowndes County Health Department operate their onsite wastewater disposal program and infectious diseases and outbreaks program in a manner that discriminates against Black residents of Lowndes County...”¹²⁷ One Black belt resident who is forced to use a so-called “straight pipe” rudimentary homemade sewage system noted that as a result, “[w]e cannot put the toilet paper in the toilet like other people. We have to put it in the trash.”¹²⁸

The \$1 trillion infrastructure legislation passed with bipartisan votes in both the House and Senate in November 2021 offers a rare chance for transformation; the package contains nearly \$12 billion to upgrade sanitation systems in small communities.¹²⁹ Accordingly, the federal infrastructure package provides the opportunity to address the black belt’s longstanding waste treatment problems such as that seen in Lowndes County. The former mayor of Lowndes County called it a “once-in-a-lifetime chance to finally make things right, if we get it right.”¹³⁰ Yet, the only member of Alabama’s congressional delegation to vote for the legislation was Rep. Terri Sewell, who represents the one district in the state where Black voters are able to select a candidate of choice.¹³¹

Even now, there is no guarantee that the money will be used effectively or go to the places that need it most. While the funding is intended to be targeted to communities most in need, states have wide discretion in how to disburse it. According to the *New York Times*, “while the funding is likely to lead to substantial improvements, there are no guarantees it will deliver the promised benefits to

¹²⁵ *Id.* ¶ 33.

¹²⁶ *Id.*

communities that lack the political power or the tax base to employ even the few employees needed to fill out applications for federal aid.”¹³²

So, now each community is dependent upon their state representatives to help deliver much-needed funds. Again, Black Alabamans’ lack of equal representation threatens to cost them key resources.

b. 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.¹³³ And, in every redistricting cycle since Congress enacted the VRA, voters have been forced to go into court to seek redress from discriminatory maps.¹³⁴

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 eight South Carolina voters.¹³⁵ The initial complaint was the result of the legislature adjourning for the year without considering new maps, threatening 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.¹³⁶

The legislature did return to consider maps before 2021 came to a close, but failed to produce a congressional map and crafted state-level district boundaries that dilute the voices and votes of the state’s Black residents. On December 10, 2021 Governor McMaster signed into law Act 117 which set maps for the State House and Senate; and on December 23, 2021 LDF’s clients amended their complaint to

¹³² Thrush, *supra* n. 143.

¹³³ 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>.

¹³⁴ *Id.* ¶ 43.

¹³⁵ 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>.

¹³⁶ *Id.*

challenge the State House map as a racial gerrymander that was the product of intentional discrimination.¹³⁷

South Carolina’s map-drawing process was largely inaccessible and unresponsive to public input. In August and October of 2021, South Carolina NAACP sent letters to the House Committee expressing concern about lack of transparency and proposing legislative maps that would redress population disparities and create opportunities for Black voters to elect candidates of choice.¹³⁸ The House Committee invited public input on its draft plan on November 10, with less than 48 hours’ notice.¹³⁹ The House Judiciary Committee subsequently amended and adopted the initial plan with no public input.¹⁴⁰ During full House consideration of the plan, multiple Black legislators pointed out that it would result in several Black incumbents being forced to compete in primary elections, thereby reducing Black voters’ voice in the legislature.¹⁴¹

Ultimately, the House plan racially gerrymandered at least 28 districts through both “packing” and “cracking” and failed to account for geographic shifts in the state’s Black population that should have created more opportunities for Black voters to influence electoral outcomes.¹⁴²

c. Louisiana

In Louisiana, where Black people are an even larger share of the population than in Alabama, we are seeing the same pattern of packing Black voters under the guise of complying with the Voting Rights Act. The state is poised to pass redistricting plans that continue to pack Black Louisianans into a single congressional district stretching from New Orleans to Baton Rouge.¹⁴³

d. 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

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.

¹³⁸ *Id.* ¶¶ 70, 71.

¹³⁹ *Id.* ¶ 75.

¹⁴⁰ *Id.* ¶¶ 85–95.

¹⁴¹ *Id.* ¶¶ 91, 93.

¹⁴² *Id.* ¶¶ 105–159.

¹⁴³ 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>.

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

C. We Cannot Litigate Our Way Past This Threat

Although LDF has engaged in a robust litigation effort to protect Black voters, we cannot litigate our way out of the present crisis. Seeking to restore the freedom to vote through case-by-case litigation in the face of the current onslaught is like playing whack-a-mole with diminished tools. Voting rights litigation can be slow and expensive, often costing parties millions of dollars.¹⁴⁴ The cases also expend significant judicial resources.¹⁴⁵ Additionally, the average length of Section 2 cases is two to five years.¹⁴⁶ In the years during a case’s pendency, thousands—and, in some cases, millions—of voters are effectively disenfranchised.¹⁴⁷

V. CONGRESS HAS THE POWER & RESPONSIBILITY TO PROTECT OUR DEMOCRACY

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 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. The legislation currently pending before the Senate, the Freedom to Vote: John Lewis Act (FTVJRLA), will address our current problems in several distinct ways.

First, the preclearance provisions of the Voting Rights Act would be restored and thus states with a recent history of discrimination in voting would be required to

¹⁴⁴ *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>.

¹⁴⁵ 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).

¹⁴⁶ 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).

¹⁴⁷ 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).

submit the redistricting maps and voting laws for review before they went into effect.¹⁴⁸

Second, the legislation would 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 restoring the legal standards for bringing Section 2 claims, , and establishing a new nationwide prohibition against diminishing the ability of voters of color to access the ballot or elect candidates of choice.¹⁴⁹

Third, , the FTVJRLA sets a broad set of minimum standards for ballot accessibility for federal elections which would preempt many of the restrictive practices deployed through the new state laws. States would be required to offer Same Day Registration, robust early voting and vote-by-mail opportunities, accept a broad range of voter identification, and more.¹⁵⁰

Fourth, the legislation outlaws partisan gerrymandering for congressional districts.¹⁵¹ This helps communities of color by undercutting a key excuse lawmakers give for undermining their political voice—it was about partisanship, not race¹⁵²--and by reducing the chances that leaders elected by these communities are marginalized within the elected bodies in which they serve.

Finally, the legislation contains a set of key protections against the harassment of election workers and subversion of our elections. This includes 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.¹⁵³

VI. THE HISTORICAL STAKES OF THIS MOMENT

The Supreme Court's actions in *Shelby* and *Brnovich*; a four-year gap in the Department of Justice's enforcement of voting laws;¹⁵⁴ a global pandemic with

¹⁴⁸ Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021–2022) § 9016(c)

¹⁴⁹ *Id.* at §§ 9001-9002.

¹⁵⁰ *Id.* at §§ 1031, 1202, 1301-1305, 1801.

¹⁵¹ *Id.* at §§ 5001-5008.

¹⁵² 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>

¹⁵³ Freedom to Vote: John R. Lewis Act, H.R. 5746, 117th Cong. (2021–2022) §§ 3001-3301.

¹⁵⁴ The former administration filed only one Section 2 case in roughly four years. See U.S. Dep't of Justice, *Justice Department Reaches Agreement with Chamberlain School District, South Dakota, under the Voting Rights Act* (May 28, 2020), <https://www.justice.gov/opa/pr/justice-department-reaches-agreement-chamberlain-school-district-south-dakota-under-voting>; U.S. Comm'n on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States* (2018), https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

sharply unequal consequences by race; the drive by States to raise new barriers to the ballot; and new attempts to subvert fair election outcomes after Election Day have come together to create an urgent crisis for our democracy, and especially for voters of color.

The recent Census confirmed that we are growing more diverse by the day and the great question before us is whether we will embrace a truly inclusive, multiracial democracy or retrench into racial hierarchy like we did during Jim Crow. We shall be a democracy in name only if we continue to allow voter suppression and discrimination to subvert the will of our nation's increasingly diverse electorate.

VII. CONCLUSION

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? This moment, right now, January 2022, may be the pivotal moment. What we do now will shape the next century.

Black Americans have a special place in U.S. history, calling the nation towards its highest ideals. We have been raising alarm bells for years. Since the Supreme Court's 2013 *Shelby County, Alabama v. Holder*¹⁵⁵ ruling undercut the heart of the Voting Rights Act, LDF has stepped up our warnings about the devastating consequences for our democracy. During the House debate to reauthorize the VRA in 2006, the late Congressman John Lewis commented on the continued need for a preclearance framework: "Yes, we have made some progress. We have come a distance. We are no longer met with bullwhips, fire hoses, and violence when we attempt to register and vote. But the sad fact is, the sad truth is discrimination still exists, and that is why we still need the Voting Rights Act."¹⁵⁶ Congressman Lewis's observation remains equally true today, and it is fitting that the legislation before the U.S. Senate that can address our acute crisis is named after him. We call on the Senate to immediately pass this critical legislation.

¹⁵⁵ 570 U.S. 529 (2013).

¹⁵⁶ 152 Cong. Rec. H5164 (daily ed. July 13, 2006) (statement of Rep. Lewis).