



March 2, 2021

Sent via email

Senate Ethics Committee
Georgia Senate
324-A Coverdell Legislative Office Building
Atlanta, Georgia 30334

Re: Opposition to Senate Bill 241

Dear Chair Burns and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and SPLC Action Fund (“SPLC Action”) write to express in the strongest possible terms our opposition to (i) various provisions in Senate Bill (“S.B.”) 241,¹ (ii) the timing of this bill on the heels of ever-growing participation by Georgians in elections, and (iii) the process for the Committee and Senate’s consideration of this bill. We are deeply concerned the enactment of S.B. 241 will create unnecessary barriers and burdens on voters that disproportionately impact racial minority, low-income, elderly, rural, disabled, and student voters and may violate federal laws, including the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, the Voting Rights Act of 1965, and the Americans with Disabilities Act. As the Committee has now voted to recommend this bill for passage, we urge you to vote no on S.B. 241 and preclude its enactment.

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

¹ As of 7:00 p.m. today, March 2, 2021, this Committee has still not publicly posted the substitute bill for S.B. 241 that it passed out of Committee. This testimony, which the Chair confirmed would be accepted, is written to address what has been identified by this Committee as substitute A to S.B. 241 (LC 280273S).

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

Yet S.B. 241 is written to undermine significant progress to expand voting rights and ballot access in Georgia, especially for voters of color. Although the process by which this bill is being heard has not afforded sufficient—let alone meaningful—opportunities to assess and review this elections bill, we draw your attention to Sections 4, 6, 7, and 12 for now.³ For the reasons detailed below, we urge you to vote no on S.B. 241 and withdraw it from any further committee hearings.

I. Section 4 – Multistate Voter Registration System Participation

Section 4 will require Georgia to participate in a “multistate voter registration system” in order to “cross-check” the eligibility of Georgia voters. As we discussed in our previous written testimony, reliance on multistate programs to “cross-check” voter registration may produce inconsistent, inaccurate, and in some cases, discriminatory results.⁴ Accordingly, a racial impact study should be conducted *before* mandating any participation in a multistate program that will be used to identify and ultimately purge voters.⁵

II. Section 6 – Repeal of No Excuse Absentee Voting

Absentee voting opportunities are essential to ensuring voters can safely, securely, and freely participate in our democracy. In 2005, the Georgia General Assembly enacted no-excuse absentee voting, recognizing this tool as an essential mechanism for election administration and voting access.⁶ No-excuse absentee

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

³ LDF and SPLC Action may supplement our written testimony after the final version passed out of this Committee is publicly posted.

⁴ Written Testimony in Opposition to House Bill 241, LDF and SPLC (Feb. 24, 2021), https://www.naacpldf.org/wp-content/uploads/Written-Testimony-on-SB-241_2021.02.24_LDF-and-SPLC_final-002.pdf [*hereinafter* February 24 Written Testimony].

⁵ *Id.*

⁶ Thirty-three other states and Washington D.C. do not require an excuse from voters who wish to vote absentee or by mail. *VOPP: Table 1: States with No-Excuse Absentee Voting*, National Conference

voting, for example, gives voters the option to cast their ballot without facing the crowds and potential long lines with in-person voting, as well as the flexibility to balance personal and professional obligations that may make voting in-person untenable. Indeed, absentee vote-by-mail voting, for example, set records for the November 3, 2020 general election. These opportunities also reduce the number of voters left who still may cast their ballot in-person during advance voting or on Election Day, thereby reducing crowding and long lines. And as described below, absentee voting is safe and secure.⁷

Yet S.B. 241 seeks to reduce the efficacy of absentee voting by unnecessarily repealing no-excuse absentee voting and imposing new burdensome limitations on which voters can make use of absentee ballots. This Committee's purported justifications are neither based in fact and supported by data and analyses nor do they outweigh the likely harms the bill can cause. Majority Leader Dugan argued repealing no-excuse absentee voting is necessary to reduce the costs of processing absentee ballots, relieve stress on election workers, and increase the certainty that absentee ballots are counted.⁸ But he has not offered any facts, data, or analyses to corroborate these claims. He has not provided any reasons why budgetary changes would not alleviate these concerns. Moreover, as a practical matter, any purported processing costs or election-worker stress concerns cannot outweigh access to the ballot and, even if they could, the concerns would not be mitigated by eliminating no-excuse absentee voting.⁹ Elections cost money and costs will be shifted elsewhere. Costs will continue to be borne by the state because voters with excuses will continue to use this method, and the state will bear the costs and election workers will bear the stress of providing in-person voting, for those voters who can access it. Moreover, if there are concerns over the number of absentee ballots being rejected, the solution is *not* to eliminate no-excuse absentee voting altogether. The solution is to remove any unnecessary and unwarranted barriers that cause high rejection rates, as well as implement additional safeguards to decrease the likelihood of high rejection rates.¹⁰

of State Legislatures (May 1, 2020), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-1-states-with-no-excuse-absentee-voting.aspx>.

⁷ *Record Amount of Absentee Ballots Requests for Georgia Runoff Elections*, WSB-TV (Nov. 23, 2020), <https://www.wsbtv.com/news/local/record-amount-absentee-ballots-requested-georgia-runoff-elections/6Q3C72ADE5CXVDDMIXV5TGJLAA/>.

⁸ Georgia Senate Ethics Committee Hearing on February 25, 2021, Georgia Senate 00:55:20–00:55:50 (Feb. 25, 2021), <https://livestream.com/accounts/26021522/events/8743306/videos/218006034> [*hereinafter* February 25 Hearing].

⁹ Courts have repeatedly held that administrative burdens and costs do not outweigh fundamental voting rights. *See, e.g., Obama for Am. v. Husted*, 697 F.3d 423, 434 (6th Cir. 2012).

¹⁰ *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, Presidential Comm. on Election Administration 1, 58 (Jan. 2014), <http://web.mit.edu/supportthevoter/www/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

The motivations behind this bill are especially suspect because it was introduced immediately after Georgia voters generally—and especially Georgia voters of color—dramatically increased their use of absentee voting in the November 2020 general election and January 2021 runoff election. Simply put, repealing no-excuse absentee voting is a solution in search of a problem.

III. Sections 7 and 12 – Photo Identification (“ID”) Requirement for Absentee Voting

This Committee’s hearings on February 25 and March 1 heighten our concerns that S.B. 241’s proposed photo ID requirement is a solution in search of a problem.¹¹ The purported justifications for a photo ID requirement to vote absentee remain pretextual. During both hearings, proponents failed to identify or offer any fact or data to corroborate claims that vote-by mail procedures in Georgia are not secure. Nor could they. According to multiple statements by Governor Kemp,¹² Lieutenant Governor Duncan,¹³ Secretary of State Raffensperger,¹⁴ and Georgia Voting Systems Manager Gabriel Sterling,¹⁵ there was no evidence of widespread vote-by-mail fraud in Georgia, nor has there ever been.¹⁶

What is clear, however, is the photo ID requirement for absentee ballots would create new and unwarranted burdens to the fundamental right to vote for many voters. Moreover, these harms would not be borne equally among voters; S.B. 241’s photo ID requirement disproportionately burdens racial minority, low-income, elderly, rural, disabled, and student voters. These voters often face challenges accessing DMV offices, photocopiers (or the ability to pay for photocopies), or the internet, and frequently have difficulty accessing a polling place to vote in-person, if vote-by-mail is unavailable to them. The photo ID requirement for absentee ballots,

¹¹ Because this Committee’s hearings and the proposed changes do not alleviate or mitigate our concerns, we refer members to our jointly submitted written testimony for ease of reference. February 25 Written Testimony, *supra* n. 4.

¹² Katherine Fung, *Gov. Kemp Says Ga. Fraud Claims ‘Have Left the Barn,’ After Trump Calls for His Resignation*, Newsweek (Dec. 30, 2020), <https://www.newsweek.com/gov-kemp-says-ga-fraud-claims-have-left-barn-after-trump-calls-his-resignation-1558140>.

¹³ Greg Bluestein, *Duncan Pushes Back on False Voter Fraud Claims: ‘We’re Better Than This,’ Atlanta Journal-Constitution* (Dec. 1, 2020), <https://www.ajc.com/politics/politics-blog/duncan-pushes-back-on-false-voter-fraud-claims-were-better-than-this/GSNRMYELPBBADHZ5RQ7LDTVHCE/>.

¹⁴ Quinn Scannlan, *‘We’ve Never Found Systemic Voter Fraud, Not Enough to Overturn the Election:’ Georgia Secretary of State Raffensperger Says*, ABC News (Dec. 6, 2020), <https://abcnews.go.com/Politics/weve-found-systemic-fraud-overturn-election-georgia-secretary/story?id=74560956>.

¹⁵ Miles Parks, *Georgia Election Official: Don’t Let Misinformation ‘Suppress Your Own Vote,’ NPR* (Jan. 4, 2020), <https://www.npr.org/2021/01/04/953321408/georgia-election-official-dont-let-misinformation-suppress-your-own-vote>.

¹⁶ *3rd Strike Against Voter Fraud Claims Means They’re Out After Signature Audit Finds No Fraud*, Secretary of State (Dec. 29, 2020), https://sos.ga.gov/index.php/elections/3rd_strike_against_voter_fraud_claims_means_theyre_out_after_signature_audit_finds_no_fraud.

combined with the prospect of additional new restrictions on the right to vote, described below, pose an intolerable and discriminatory obstacle to the ballot box for Georgia voters, especially to voters of color.

IV. Fiscal and Racial Impact Study

Any bill, particularly one as here, with such far reaching implications for the fundamental right to vote cannot be properly assessed and evaluated without understanding its full impact. As described above, the disproportionate burdens and impacts of photo ID requirements, repealing no-excuse absentee voting, and mandatory cross-check voter registration have been judicially recognized and well-documented. Moreover, the harms on the right to vote will be exacerbated by the interactions of multiple provisions that each limit voting options in different ways. The burdens placed on absentee ballots, for example, would increase voter demand for in-person voting. Several of S.B. 241's provisions could also impose significant unfunded mandates on counties that faced budgetary difficulties in the 2020 election cycle.¹⁷ All of these considerations underscore why a fiscal and racial impact analysis is necessary to understand how S.B. 241 will impact election administration and voters.

Yet LDF and SPLC Action have still not been made aware of any analysis conducted by this Committee or the Georgia General Assembly that S.B. 241 will not disproportionately harm voters of color and other voters or impose unfunded mandates on county election officials. Accordingly, before any Committee vote, either this Committee or the Georgia General Assembly must study, analyze, and publicly identify the fiscal and racial impact of S.B. 241.

V. Legislative Process

The legislative environment in which S.B. 241 has been offered calls for the rejection of this bill because it is not open, transparent, or inclusive. The original iteration was twenty-five pages and only available on the Georgia Senate's website on morning of Wednesday, February 24, 2021. Then, less than twenty-four hours later, this Committee held a hearing before all its members at 7:30 a.m. the next day, February 25, 2021.¹⁸ During that meeting, however, S.B. 241's sponsor, Majority Leader Dugan, indicated for the first time that he was making "many changes" to the bill and that he expected "several proposed amendments." For these reasons, this Committee decided the February 25 hearing would not provide any opportunity for

¹⁷ As one example, Voting Rights Lab recently conducted an analysis of the fiscal impact of the original iteration of S.B. 241. See *State and Local Fiscal Impact of SB 241*, Voting Rights Lab (Feb. 24, 2021), <https://votingrightslab.org/wp-content/uploads/2021/02/Fiscal-Impact-of-GA-SB-241.pdf>.

¹⁸ February 25 Hearing, *supra* n. 8, at 00:49:20–00:49:50.

witness input or public testimony,¹⁹ even though the Chair previously indicated that members of the public who signed up in advance and were present at 7:30 a.m. would have an opportunity to testify.

During the February 25 hearing, this Committee acknowledged the complexity of this bill, noting this is the most significant election reform since 2005.²⁰ Indeed, Majority Leader Dugan explained how the details of this bill will impact the “lives of 11 million Georgians.”²¹ These statements, along with a question from a Committee member, prompted Chair Burns to commit to making the changes to this bill available by Friday, February 26, explaining that it was important for Committee members to have the weekend for meaningful review.²² Notwithstanding Chair Burns’s commitment, this Committee failed to provide any updates to members of the public, including any posting with changes to the bill or substitute bills. Instead, the first mention of the *actual* changes to S.B. 241 and public presentation of proposed substitute bills occurred during this Committee’s hearing yesterday, March 1, at 3:00 p.m.²³ Indeed, even a Committee member affirmed at the time of the hearing that it was her first time reading the proposed changes, which were reflected in two proposed substitute bills.²⁴

Neither substitute bill was posted on this Committee’s website in advance of the hearing or during the hearing itself. As a result, members of the public therefore had to attempt to follow along with changes that were being read publicly for the first time during the hearing. Even more problematic, rather than providing an opportunity for any public review—let alone meaningful review—the Chair decided to vote on yet another amended version of the bill during yesterday’s hearing, after only limited opportunities for public testimony and no opportunity for remote testimony on the previously undisclosed S.B. 241 substitute.²⁵

Under non-pandemic circumstances, it raises serious concerns to spring hearings on the public with effectively no notice, expect people to digest an omnibus bill seeking to change many of Georgia’s election laws and procedures with little to no opportunity to review the bills, and to provide limited means for participation. That stratagem, in the context of a pandemic, when people must prepare and consider safeguards to participate in-person or prepare to participate remotely is

¹⁹ Before the February 25 hearing, the Chair indicated public testimony via remote means, including Zoom, would not be available.

²⁰ February 25 Hearing, *supra* n. 8, at 00:49:55–00:50:10.

²¹ *Id.* at 01:26:15–01:26:40.

²² *Id.* at 01:30:00–01:30:20.

²³ This Committee has kept the original twenty-five page iteration publicly posted on its website as the most current version.

²⁴ Georgia Senate Ethics Committee Hearing on March 1, 2021, YouTube 01:15:10–01:15:40 (March 1, 2021), <https://www.youtube.com/watch?v=FYnb5G0lxQ4>.

²⁵ *Id.* at 01:16:00–01:16:30.

unacceptable. Both individually, and collectively, this reflects an effort to shroud these proceedings in secrecy and unduly influence the legislative record.

The scheduling of the hearings, particularly at 7:30 a.m. in the morning, combined with limited testimony options, will exclude community members who may not be able to attend in-person hearings because they do not live in or near Atlanta, are concerned about contracting COVID-19, and/or have family or work obligations that prevent them from attending a hearing, much less one at the 7:30 a.m. hour. Moreover, failing to provide any opportunity for members of the public to review—let alone meaningfully review—substitute bills precludes necessary debate, dialogue, and other ways to engage legislators during the process. It is imperative that you hear from and listen to *all* community members who desire to provide public testimony—both in-person and through remote means—during your Committee hearings, as well as post clear guidelines for providing and receiving public input well in advance of any hearing. Equally important, this Committee cannot expect public input on changes to S.B. 241 or substitute bills that are publicly disclosed for the first time *during* a Committee hearing.

VI. Federal Protections

It is likely that S.B. 241 violates various federal laws. The facts recited above, including the sequence of events (particularly the timing of the effort to impose restrictions on absentee voting), procedural departures from ordinary legislative processes (particularly the exclusion of public participation), the lack of any neutral justification for the proposals, and the foreseeable disparate impact on Black voters and other voters of color, suggest the provisions embodied in Sections 4, 6, 7, and 12 of S.B. 241, individually and collectively raise serious concerns under the Fourteenth and Fifteenth Amendments to the U.S. Constitution and the Voting Rights Act of 1965.²⁶ These same provisions in Sections 4, 6, 7, and 12 burden the right to vote without any legitimate state interest, which may also violate the First and Fourteenth Amendments to the U.S. Constitution.²⁷ Moreover, this Committee has not offered reasonable modifications necessary to ensure voters with disabilities will not be screened out from fully and equally participating in elections, which may violate Title II of the Americans with Disabilities Act.²⁸

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²⁶ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); 52 U.S.C. 10301.

²⁷ *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)).

²⁸ 42 U.S.C. § 12131.

We agree that our elections must be safe and secure. But S.B. 241 does nothing to enhance either goal. Instead, this bill is calculated, in legislative process and substance, to attempt to minimize the participation of voters of color and other voters following the historical participation in recent elections, especially for Black voters and other voters of color. Its enactment would create unnecessary barriers, burdens, and disproportionately impact the voting rights of people of color, the elderly, people with disabilities, low-income people, rural residents, and students. It would also contravene popular mandate from recent elections and advocacy to expand voting rights in Georgia.

Our democracy requires free and open access to the sacred right to vote. As we prepare for elections this year and beyond, it is incumbent on this Committee and the Georgia General Assembly to respond to the needs of its constituents. Those needs, as demonstrated through recent Georgia elections, are to preserve and expand, rather than restrict, access to the ballot box. That goal can only be accomplished by voting no on S.B. 241 and precluding its enactment.

Sincerely,

/s/ John S. Cusick

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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.

SPLC Action Fund

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