



February 24, 2021

The Honorable Zoe Lofgren
Chairperson
Committee on House Administration
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

The Honorable Rodney Davis
Ranking Member
Committee on House Administration
U.S. House of Representatives
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairperson Lofgren & Ranking Member Davis:

As part of the February 25, 2021, Committee on House Administration hearing entitled “Strengthening American Democracy,” we write to provide the views of the Southern Poverty Law Center (SPLC) Action Fund. We ask that this statement be included as part of the official hearing record.

The SPLC Action Fund is dedicated to fighting for racial justice alongside impacted communities in pursuit of equity and opportunity for all. We work primarily in the Southeast United States where we have offices in Alabama, Georgia, Florida, Louisiana, Mississippi, and Washington, D.C. The SPLC Action Fund promotes policies and laws that will eliminate the structural racism and inequalities that fuel oppression of people of color, immigrants, young people, women, low-income people, and the LGBTQ+ community.

As Deputy Legal Director, I lead a team of legal, organizing, and technical experts working to empower voters and eliminate disenfranchisement and discrimination in voting in the Deep South—primarily Alabama, Georgia, Florida, Louisiana, and Mississippi. Launched in early 2019, [SPLC’s Voting Rights Practice Group](#) works in collaboration with community partners and organizers to engage and mobilize voters, restore voting rights to people with felony convictions, pursue electoral policy reforms, and bring litigation to challenge unconstitutional and discriminatory voting practices. Our efforts including expanding access to the ballot, ensuring equal access to the ballot—including efforts around the 2020 Census and redistricting—

election administration, and community outreach and engagement.¹ In partnership with the Community Foundation of Greater Atlanta, we launched [Vote Your Voice](#)—an initiative in which we are investing up to \$30 million in nonpartisan, nonprofit voter outreach organizations in our focus states to increase voter registration and participation among people of color.²

VOTER SUPPRESSION IS ALIVE & WELL IN THE DEEP SOUTH

What is clear from our work in the Deep South over the last 40 years—and the work of our sister organizations dating back to the passage of the Voting Rights Act of 1965 (VRA)—is that efforts to disenfranchise Black people and historically marginalized communities are alive and well. The 2020 election season, in which election officials in many southern states failed to protect voters and their loved ones during a deadly pandemic, revealed not only deep faults in our electoral system, but also the resilience and dedication of voters in the Deep South. Only through bold, decisive action can lawmakers ensure that voters are protected from efforts to exclude them from the political process. This is especially urgent in the Deep South, where voters have been without the full protections of the Voting Rights Act for nearly eight years and state legislatures in 2021 are attempting to further roll back access to the ballot. To protect voters and our democracy, this Congress must prioritize passage of the For the People Act (S.1/H.R. 1)—legislation that will implement structural democracy reforms to protect and strengthen the right of all citizens to vote and participate in our political processes.

***Shelby County, Ala. v. Holder* & the Onslaught of Voter Suppression in Its Wake**

The single most devastating moment for voters in the last decade was the 2013 Supreme Court decision in *Shelby County, Ala. v. Holder*, which demolished the heart of the Voting Rights Act of 1965. The decision rendered Section 5 unenforceable, releasing states and localities with histories of racial discrimination in voting from the requirement to receive federal approval before making any new voting changes.³ Of SPLC Action’s focus states, all but Florida were covered by Section 5 in full, and Florida was covered in part. In the nearly eight years since the *Shelby County* decision, Congress has been unable to pass a new coverage formula.⁴ And the onslaught of discriminatory and burdensome voting changes that have been documented—some of which were challenged in court—not only demonstrate the errors of the *Shelby County* majority in getting rid of Section 5’s protections, but also reveal the urgency of passing a new coverage formula to protect voters from officials who seek to restrict, not protect, the vote.⁵

¹ Southern Poverty Law Ctr., Voting Rights, <https://www.splcenter.org/our-issues/voting-rights> (last visited Feb. 19, 2021).

² Southern Poverty Law Ctr., Vote Your Voice, <https://www.splcenter.org/vote-your-voice> (last visited Feb. 19, 2021). The Vote Your Voice campaign seeks to: empower communities of color by aiding them in their fight against voter suppression; support Black- and brown-led voter outreach organizations often ignored by traditional funders; support and prototype effective voter engagement strategies; and re-enfranchise returning citizens despite intentional bureaucratic challenges.

³ *Shelby Cty, Ala. v. Holder*, 570 U.S. 529 (2013).

⁴ PBS News Hour, *House passes bill to restore key parts of Voting Rights Act*, Dec. 6, 2019, <https://www.pbs.org/newshour/politics/house-passes-bill-to-restore-key-parts-of-voting-rights-act>.

⁵ Although not the subject of this testimony, the SPLC Action Fund urges the 117th Congress to prioritize swift passage of the John R. Lewis Voting Rights Advancement Act. The only remedy for the harm caused by the loss of Section 5 is to restore the full power of the Voting Rights Act and revive the federal government’s ability to block proposed voting practices that will harm voters before they occur. The John R. Lewis Voting Rights Advancement

Between the reauthorizations of the VRA in 1982 and 2006, the DOJ blocked more than 700 proposed voting changes because of their discriminatory impact; more than 100 changes in Alabama were blocked from 1969 to 2008.⁶ More than 800 additional proposed changes were altered or withdrawn voluntarily after the DOJ requested additional information.⁷ When a misguided majority of the Supreme Court invalidated the coverage formula for Section 5, the late Justice Ruth Bader Ginsburg wrote in her dissent:

The sad irony of today’s decision lies in its utter failure to grasp why the VRA has proven effective. The Court appears to believe that the VRA’s success in eliminating the specific devices extant in 1965 means that preclearance is no longer needed. With that belief, and the argument derived from it, history repeats itself.⁸

As Justice Ginsburg predicted, history has repeated itself. In fact, much of the progress gained by enforcement of Section 5 has been rolled back.⁹ Indeed, within a day of the *Shelby County* decision, Texas implemented a racially discriminatory photo ID law, and North Carolina passed a voter suppression law that a federal court later ruled targeted Black voters with “almost surgical precision.”¹⁰ Since the decision, advocates, journalists, and voters have attempted to track the many and varied voting changes that have occurred in previously covered states and localities. In SPLC Action’s five focus states, these changes range from discriminatory registration requirements and closures of polling places to illegal purges of registered voters and discriminatory election and redistricting plans.¹¹

In February 2020, we published the report [*Alive and Well: Voter Suppression and Election Mismanagement in Alabama*](#).¹² It analyzed the impact of Alabama’s lack of early voting, onerous restrictions on absentee voting, confusing felony re-enfranchisement procedures, lack of adequate public education, poorly trained poll workers, and other obstacles and failures.

Act would restore Section 5 by ensuring that the new coverage formula speaks to “current conditions,” in compliance with the *Shelby County* ruling. Any new coverage formula must respond both to the nationwide impact of voter suppression efforts and the depth and extent of recent efforts to disenfranchise voters of color and other vulnerable groups. The John R. Lewis Voting Right Advancement Act, which was developed after extensive hearings that found significant evidence that barriers to voter participation persist for people of color and language-minority voters in Black, Asian American, Latinx, and Indigenous communities, accomplishes both goals.

⁶ Southern Poverty Law Ctr., *Alive & Well: Voter Suppression & Election Mismanagement in Alabama* 9 (Feb. 10, 2020), https://www.splcenter.org/sites/default/files/splc_voter_suppression_in_alabama_report.pdf.

⁷ *Id.*

⁸ *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 592 (2013) (Ginsburg, J., dissenting).

⁹ P.R. Lockhart, *How Shelby County v. Holder upended voting rights in America*, Vox, June 25, 2019, <https://www.vox.com/policy-and-politics/2019/6/25/18701277/shelby-county-v-holder-anniversary-voting-rights-suppression-congress>.

¹⁰ See Brennan Ctr. for Justice, *The Effects of Shelby County v. Holder* (Aug. 6, 2018), <https://www.brennancenter.org/our-work/policy-solutions/effects-shelby-county-v-holder>.

¹¹ See, e.g., *id.*; Vann R. Newkirk II, *How Shelby County v. Holder Broke America*, July 10, 2018, <https://www.theatlantic.com/politics/archive/2018/07/how-shelby-county-broke-america/564707/>; Sam Levine & Ankita Rao, *In 2013 the supreme court gutted voting rights—how has it changed the US?*, June 25, 2020, <https://www.theguardian.com/us-news/2020/jun/25/shelby-county-anniversary-voting-rights-act-consequences>.

¹² Southern Poverty Law Ctr., *Alive and Well: Voter Suppression and Election Mismanagement in Alabama* (Feb. 10, 2020), <https://www.splcenter.org/20200210/alive-and-well-voter-suppression-and-election-mismanagement-alabama>.

Alabama is the epicenter of the struggle for voting rights: Bloody Sunday in Selma was the catalyst for the passage of the VRA and nearly 50 years later just up the road in Shelby County, a case began that would strike down the VRA's most effective provision. Following the *Shelby County* decision, Alabama implemented a photo voter ID law despite documented evidence that Black and low-income voters are less likely to possess an acceptable ID as compared to white voters.¹³ The state then closed 31 driver's license offices in predominantly Black counties, which made it even more difficult for voters to obtain acceptable photo ID. The state eventually reopened the offices, but only after intense public pressure to reverse its decision.¹⁴

States and local jurisdictions across the South have continued to implement discriminatory and burdensome laws, policies, and practices since the *Shelby County* decision.¹⁵ Some of these laws have been challenged in court, but the breadth of potentially harmful voting changes—known and unknown—taking place since *Shelby County*—cannot be overemphasized.¹⁶

Voter Suppression in the Deep South Was Robust Before *Shelby County*, Rooted in Jim Crow

Voter suppression in the Deep South was buoyed by the *Shelby County* decision, but it was already standing on a strong foundation of laws and policies rooted in Jim Crow. There was good reason the VRA received strong bipartisan support each time it was up for reauthorization, including as recently as 2006, where it passed overwhelmingly in the House and unanimously in the Senate and was signed into law for a 25-year extension by President George W. Bush.

Many of SPLC Action's focus states continue to operate under their post-Reconstruction constitutions, and their elected officials pass and enforce discriminatory and burdensome laws and refuse to enact commonsense reforms to make voting a simple, fair, and accessible process for all voters.

Felony Disenfranchisement

The laws with arguably the most damaging impact are felony disenfranchisement laws, which are found all around the country, but have roots in the Deep South. All five of SPLC Action's target states have felony disenfranchisement laws on the books. Though small changes have been made over the years, these racist, Jim Crow-era schemes continue to strip citizens of their fundamental right to vote.

¹³ Am. Compl., *Greater Birmingham Ministries v. State of Alabama*, 2:15-cv-02193-LSC (N.D. Ala May 3, 2016), <https://www.naacpldf.org/wp-content/uploads/Greater-Birmingham-Ministries-v.-Alabama-Amended-Complaint.pdf>.

¹⁴ Bryan Lyman, *Alabama Will Reopen Closed DMV Offices in Black Counties*, Oct. 20, 2015, <https://www.governing.com/topics/politics/drivers-license-offices-will-reopenon-limited-basis.html>.

¹⁵ See, e.g., Wendy Weiser & Max Feldman, Brennan Ctr. for Justice, *The State of Voting 2018* (June 5, 2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_State_of_Voting_2018.pdf; Jonathan Brater, et al., Brennan Ctr. for Justice, *Purges: A Growing Threat to the Right to Vote* (2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_Purges_Growing_Threat.pdf.

¹⁶ NAACP Legal Defense & Educational Fund, Inc., *Democracy Diminished: State & Local Threats to Voting Post-Shelby County, Alabama v. Holder* (updated Nov. 13, 2020), <https://www.naacpldf.org/wp-content/uploads/State-local-responses-post-Shelby-11.12.20-final.pdf>.

Alabama's felony disenfranchisement law is rooted in its 1901 constitution, which is still used today. The constitution barred anyone convicted of a "crime of moral turpitude" from voting. Not all felony convictions are disqualifying, but what constitutes a crime of moral turpitude was not defined for over 100 years. Thus, county registrars simply decided for themselves what offenses were crimes of moral turpitude. This lack of a clear standard allowed registrars to make arbitrary and often discriminatory decisions. The patchwork enforcement resulted in many being denied the right to vote, and others not even attempting to navigate such an unworkable, unjust system. In 2017, Alabama passed the Defining Moral Turpitude Act to standardize policies for felony disenfranchisement and create a uniform process for rights restoration.¹⁷

The Defining Moral Turpitude Act was a step forward, but there is much room for improvement. For example, Alabama does not allow individuals still on probation or parole to have their rights restored. This policy unnecessarily disenfranchises Alabamians who should have a voice in their communities. The state also requires individuals to pay off all the fines, fees, and restitution related to the disqualifying felony before their rights can be restored, an impossible hurdle for many Alabamians, especially those who are lower income. Alabama's rights restoration process is also needlessly complex. People with felony convictions must complete a Certificate of Eligibility to Register to Vote before their rights can be restored.¹⁸ The application can take up to 44 days to complete, turning the simple act of registering to vote into a lengthy process.

Further, the Defining Moral Turpitude Act did not fix all the points of confusion in Alabama's disenfranchisement scheme. Thousands of Alabamians may still have been improperly denied the right to vote because registrars are often unsure how to treat federal and out-of-state convictions.¹⁹ In 2020, the SPLC and co-counsel Campaign Legal Center began representing Angelique Harris, a woman denied her right to register to vote in Madison County, Alabama, because of a prior federal felony conviction. Her federal conviction does not match any of the Alabama crimes of moral turpitude; thus, under Alabama law, she should not be barred from voting. Because of the flaws in the Defining Moral Turpitude Act, and the secretary of state's failure to provide adequate guidance to registrars, however, Ms. Harris was denied her right to vote by the county registrar ahead of the 2020 election. The SPLC and CLC have appealed her denial of registration and will continue to seek justice for Ms. Harris and those in her situation.²⁰

Florida bars more of its citizens from voting than any other state. Nearly 900,000 Floridians were unable to vote during the 2020 election because of a felony conviction.²¹ It should not have been this way. In November 2018, Florida voters overwhelmingly approved Amendment 4, a landmark constitutional amendment that restored the voting rights of 1.4 million people with

¹⁷ ACLU of Ala., Guidelines for Alabama Voters Convicted of Crimes, <https://www.aclualabama.org/sites/default/files/handout-votingrightsrestoration.pdf> (last visited Feb. 18, 2020).

¹⁸ *Id.*

¹⁹ Connor Sheets, *In Alabama, some felons are wrongly being barred from voting*, Oct. 30, 2020, <https://www.al.com/news/2020/10/in-alabama-some-felons-are-being-wrongly-barred-from-voting.html>.

²⁰ *Id.*

²¹ The Sentencing Project, *Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction* 13 (2020), <https://www.sentencingproject.org/wp-content/uploads/2020/10/Locked-Out-2020.pdf?eType=EmailBlastContent&eId=5610f89b-0ccb-47cf-94f4-06e0cc374ce3>.

felony convictions.²² It was the largest expansion of voting rights since the Voting Rights Act. During the following legislative session, however, the Florida legislature undermined this victory with the passage of S.B. 7066. The law is a modern-day poll tax, requiring people with felony convictions to pay all the fines, fees, and restitution associated with their case before they can register to vote. It has prevented hundreds of thousands of people re-enfranchised by Amendment 4 from voting, solely because they cannot afford to pay.

S.B. 7066 has a particularly adverse impact on women of color, who are generally paid less than their male and white female counterparts. In Florida, nearly a quarter of Black women live below the poverty line. More than 43% of Black women with a felony conviction are unemployed. Many Floridians with felony convictions cannot pay their legal financial obligations, but Black women are much more likely to struggle to pay.

In July 2019, SPLC filed a federal lawsuit, *McCoy v. DeSantis*, which challenged S.B. 7066 as an unconstitutional poll tax that also contradicts the intent and plain language of Amendment 4. The litigation was consolidated with three other cases brought by sister organizations including the Campaign Legal Center, the ACLU, the ACLU of Florida, the Brennan Center for Justice, and the NAACP Legal Defense & Educational Fund, Inc. After an eight-day trial and extensive presentation of evidence, the district court issued a favorable ruling for the plaintiffs striking down S.B. 7066 as unconstitutional, but the decision was overturned on appeal by the Eleventh Circuit Court of Appeals.²³

S.B. 7066 includes a provision creating a sentence modification process, ostensibly allowing people unable to pay their fines and fees to convert them to community service hours. But no process has been put in place statewide to allow citizens to apply for this program. Hundreds of thousands of Floridians remain barred from voting with no feasible method of recourse.

Georgia's felony disenfranchisement system dates to the late 19th century and, like Alabama's, declares "a felony involving moral turpitude" disqualifying. No statutory provision defines "moral turpitude," so Georgia has chosen to treat *all* felony convictions as disqualifying. The state automatically restores voting rights, but unfortunately only does so when all probation and parole are complete. In 2020, more than 275,000 Georgians were prevented from voting because they were either incarcerated or on probation or parole.²⁴ This number is so high in part because Georgia imposes some of the longest probation sentences in the nation, an average of 6.3 years, almost double the national average.²⁵

Unlike Florida and Alabama, Georgia does not require payment of legal financial obligations other than fines before restoring a person's voting rights. In September 2020, Secretary of State Brad Raffensperger clarified that a person's sentence should be considered complete even if they

²² Nancy Abudu, *We Won a Major Victory for Voting Rights*, Southern Poverty Law Ctr., Feb. 20, 2020, <https://www.splcenter.org/news/2020/02/20/we-won-major-victory-voting-rights>.

²³ Southern Poverty Law Ctr., Active Case: McCoy, et al. v. Desantis, et al., <https://www.splcenter.org/seeking-justice/case-docket/mccoy-et-al-v-desantis-et-al> (last visited Feb. 18, 2021).

²⁴ The Sentencing Project, *supra* note 21.

²⁵ Amy Fettig, *Thousands of People With Felony Convictions Won't Be Able to Vote in GA Runoff*, The Hill, Nov. 25, 2020, <https://thehill.com/opinion/campaign/527510-thousands-of-people-with-felony-convictions-wont-be-able-to-vote-in-ga-run>.

still owe fees or restitution.²⁶ This clarification was a step forward for people with convictions, but too many Georgians are still unnecessarily barred from voting because they are on probation or parole.

Louisiana voting rights advocates secured a victory in 2019 for people with felony convictions with the passage of Louisiana Act No. 636. Before Act 636, Louisianans with felony convictions could have their voting rights restored only after they finished parole and probation. Now, people who are still on probation or parole but have been out of prison for five years (or never went in the first place) may have their voting rights restored.²⁷ Act 636 gave 40,000 Louisianans who were previously barred from voting a path to voting rights restoration. They still face barriers to registration, though.

In October 2020, Voice of the Experience (VOTE), the organization that led the push for Act 636, issued a demand letter to Louisiana Secretary of State R. Kyle Ardoin and Commissioner of Elections Sherri Wharton Hadsky.²⁸ They urged the state to remove administrative barriers blocking formerly incarcerated Louisianans from registering to vote. Newly enfranchised voters are currently required to jump through administrative hoops and provide unnecessary paperwork before they can register.

Mississippi²⁹ has a felony disenfranchisement system also rooted in racism and white supremacy, based on its 1890 constitution, still in effect today. Citizens lose their right to vote if they are convicted of one of 22 disqualifying crimes. Between 1994 and 2017, more than 50,000 Mississippians were convicted of one of these crimes, and almost no one has been able to restore their voting rights. The only paths to restoration are a pardon from the Governor or having an individual suffrage bill in one's name passed through both houses of the legislature.³⁰ The arcane suffrage bill process is nearly impossible for the average citizen to navigate. Only 40 people have had their rights restored via this process since 2012. Not only is the rights restoration process

²⁶ Georgia Sec'y of State, Register to Vote, https://sos.ga.gov/index.php/Elections/register_to_vote (last visited Feb.18, 2021).

²⁷ Editorial Board, *Our Views: Thanks to New Law, More Louisiana Voters Have a Stake in Democracy*, The Advocate, Mar. 1, 2019, https://www.theadvocate.com/baton_rouge/opinion/our_views/article_2bd6919c-3b6d-11e9-a86c-9733299a2efb.html.

²⁸ PR Newswire, *Civil Rights Group Demands Action by State of Louisiana to Remedy Violations of Federal Voting Rights Law*, Cision, Oct. 23, 2020, <https://www.prnewswire.com/news-releases/civil-rights-group-demands-action-by-state-of-louisiana-to-remedy-violations-of-federal-voting-rights-law-301158988.html>.

²⁹ In Mississippi's 1890 constitution, which was specifically written to re-establish white supremacy after Reconstruction, the state established a quasi-electoral college system for electing statewide offices. Candidates running for state office had to win both the popular vote *and* a majority of the state's house districts. Otherwise, the election was decided by the Mississippi House of Representatives. Because of racial gerrymandering, this rule made it nearly impossible for Black candidates to win. Though the state's population is only 56% white, 66% of House districts are majority-white. Dallas Breen, *Mississippi Just Got Rid of Its Electoral College-Like Election Process*, U.S. News, Jan.5, 2021, <https://www.usnews.com/news/best-states/articles/2021-01-05/mississippi-ends-electoral-college-like-election-process>. Not since Reconstruction has Mississippi elected a Black candidate to a statewide office. In 2020, Mississippi voters finally chose to end this two-tier election process for statewide offices, passing a constitutional amendment to remove the requirement. On the same ballot, Mississippi also voted to remove the Confederate battle emblem from the state flag.

³⁰ Bobby Harrison, *Study: 11% of All Mississippians, 16% of Black Mississippians Can't Vote Because of Felony Convictions*, Mississippi Today, Oct.19, 2020, <https://mississippitoday.org/2020/10/19/study-11-of-all-mississippians-16-of-black-mississippians-cant-vote-because-of-felony-convictions/>.

functionally nonexistent, but Mississippians can be permanently disenfranchised if convicted of several minor offenses, including felony bad check and timber larceny.

When white politicians designed this scheme in the 1890s, their goal was to disenfranchise Black citizens and reinstitute white supremacy. More than 100 years later, the law continues to disproportionately disenfranchise its intended targets. A 2018 *Mississippi Today* analysis found that 62% of those banned from voting between 1994 and 2017 were Black, even though Black people made up only 36% of the state's voting-age population.³¹

In March 2018, the SPLC and Simpson Thacher & Bartlett LLP filed suit against the state in *Hopkins v. Hosemann*, arguing that the lifetime voting ban violates the Eighth Amendment's prohibition on cruel and unusual punishment, the First Amendment's right to political expression and association, and the equal protection clause of the Fourteenth Amendment. The legal team presented oral arguments to the Fifth Circuit Court of Appeals in December 2019 and is still awaiting a decision from the court.

Redistricting, Racial Gerrymandering, & Prison Gerrymandering

The redistricting process has been one of the most effective tactics used to disenfranchise Black voters and the Black community in the South. Federal and state laws require the redrawing of district lines following the release of decennial census numbers. Usually, congressional and state legislative districts take priority both in terms of completion and attention. But local redistricting is often where communities can effectively wield their political power in a manner that has direct, positive effects on their lives. In the South, white politicians have historically used redistricting to minimize Black political power. Black residents have had to combat racial gerrymandering, partisan gerrymandering, prison gerrymandering, and other unconstitutional attempts to minimize their political strength. Following the historic election of our nation's first woman of color as vice president, Georgia's first Black senator, and more people of color in county and local governments, the upcoming redistricting cycle will provide an opportunity for ill-intentioned elected officials to use redistricting to reduce the power of Black voters.

To protect the political power of Black people and other people of color in the Deep South, jurisdictions should redistrict with a common set of principles that enhance transparency, public participation, and the adoption of fair districting plans. Community involvement ensures officials are abiding by these principles.

Today, *partisan* gerrymandering has become an effective disguise for *racial* gerrymandering; however, the Supreme Court has held that "partisan gerrymandering claims present political questions beyond the reach of the federal courts," and that federal judges must abstain from redrawing corrective plans with the aim of more fairly distributing political power.³²

³¹ Alex Rozier, *Racial Disparity Conspicuous Among Mississippians Banned From Voting*, *Mississippi Today*, Feb. 22, 2018, <https://mississippitoday.org/2018/02/22/racial-disparity-conspicuous-among-mississippians-banned-voting/>.

³² *Rucho v. Common Cause*, 139 S. Ct. 2484, 2506-07 (2019).

Prison populations have also been manipulated to give the appearance of equal representation, while violating those basic principles. A prime example is in Jefferson County, Florida, where the county attempted to include all 1,157 people housed in a prison in one of its districts even though those incarcerated could not vote and only nine out of the 1,157 were residents of Jefferson County prior to their incarceration.³³ The plaintiffs argued the plan violated the principle of “one person one vote” under the Fourteenth Amendment.³⁴ The court struck the plan down as unconstitutional, and the community was able to play a much more active role in the ultimate plan the county adopted.³⁵

One solution to these gerrymanders is to establish independent redistricting commissions. Independent commissions can alleviate the partisan influences that often shroud the redistricting process and help voters feel their interests are reflected in redistricting plans.

As 2020 Elections & COVID-19 Pandemic Showed, Deep South Electoral System Needs Repair

Efforts to suppress the political participation of voters of color, younger voters, new citizens, voters with disabilities, and voters who are low-income are widespread. Elected officials resist commonsense reforms that would make voting simple and accessible to all, including online voter registration, no-excuse absentee voting, early voting, and automatic voter registration. In much of America, in-person voting on Election Day is no longer the most common voting method. In SPLC Action’s focus states, it remains the only option for millions of people. In the Deep South, Black, Latinx, and Indigenous voters face a series of racist, systemic barriers to voting, including long lines and closed polling places, overbroad and discriminatory purges of registered voters, and overt voter intimidation.

Time, Place, & Manner Restrictions During the Pandemic

Curtailing voters’ choices about where, when, and how they vote will suppress participation in the best of times. During the 2020 election season, amid the COVID-19 pandemic, these policies made voting a potentially deadly act for voters, their families, and their communities. Without early and absentee voting options, thousands of voters would need to gather at the polls on Election Day—often in small local churches, libraries, and community centers where it is impossible to practice social distancing. The pandemic turned the most common and accessible method of voting in the Deep South into a public health threat.

Restrictive voting policies also compounded existing inequities in voting access between white and Black citizens. People of color—Black people, in particular—have been disproportionately affected by COVID-19, suffering more hospitalizations and deaths than other populations.³⁶

³³ *Calvin v. Jefferson Co.*, 172 F.Supp.2d 1292, 1296 (N.D. Fla. 2016).

³⁴ *Id.* at 1298.

³⁵ *Id.* at 1326.

³⁶ Ctrs. for Disease Control & Prevention, Hospitalization and Death by Race/Ethnicity, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> (last updated Feb. 12, 2021).

Voting in person was a risk for everyone in 2020, but it was an even greater one for Black Americans.

For the 2020 election cycle, each of SPLC Action’s focus states—Alabama, Florida, Georgia, Louisiana, and Mississippi—needed significant changes to their election processes to create a safe and accessible voting experience, though some had more work to do than others. Both Florida and Georgia already had no-excuse absentee voting, but they needed to make the application process more accessible and to prepare for an enormous increase in absentee voting. Alabama, Mississippi, and Louisiana do not offer no-excuse absentee voting, and all three states have unnecessary, burdensome requirements that make absentee voting risky for those who do qualify. Reforms approved easily in one state sparked strong opposition in others. Alabama’s secretary of state allowed voters who feared COVID-19 exposure at the polls to vote absentee using an existing excuse but failed to remove other hurdles and bans curbside voting.³⁷ In Louisiana, Republicans in the state legislature vehemently opposed even modest expansions to absentee voting.³⁸ And in Mississippi, most voters do not qualify to vote absentee, but those who do must seek out a notary not once, but twice to cast their absentee ballot. Overall, every state did something, but no state did enough to ensure voters were not asked to choose between their health and their vote in 2020. With co-counsel, the SPLC represented Black voters, high-risk voters, voters with disabilities, membership organizations, and voter engagement organizations to ensure that voters in [Alabama](#),³⁹ [Mississippi](#),⁴⁰ and [Louisiana](#)⁴¹ were not disenfranchised.

Not only was casting a ballot dangerous, but election administrators also faced new challenges.⁴² Election officials had to quickly evaluate and modify standard election procedures to reduce the risk of spreading COVID-19. County election offices and polling places were often not large enough to accommodate social distancing and were inappropriate to use during a pandemic. Additional funding from the CARES Act helped facilitate some of this work, but the strain on officials was still immense. In just a few months, they had to reevaluate every piece of the election system, all during one of the highest-profile elections in recent memory.

Ballot Curing & Rejection

After a ballot is cast, it may still be held as challenged or rejected by election officials for a variety of reasons and may not be immediately counted. Absentee ballot rejections were

³⁷ Press Release, Alabama Sec’y of State, Secretary of State Issues New Guidance on Absentee Voting for November 3 General Election (July 20, 2020), <https://www.sos.alabama.gov/newsroom/secretary-state-issues-new-guidance-absentee-voting-november-3-general-election>.

³⁸ Sam Karlin, *Louisiana Mail-In Voting Would Be Rolled Back in November Under New Proposal*, The Advocate, Aug. 17, 2020, https://www.theadvocate.com/baton_rouge/news/politics/elections/article_2dbba520-e08e-11ea-b613-6f79fbe0dc20.html.

³⁹ Southern Poverty Law Ctr., *People First of Alabama, et al. v. John Merrill, et al.*, <https://www.splcenter.org/seeking-justice/case-docket/people-first-alabama-et-al-v-john-merrill-et-al> (last visited Feb. 22, 2021).

⁴⁰ Southern Poverty Law Ctr., *Parham v. Watson*, <https://www.splcenter.org/seeking-justice/case-docket/parham-v-watson> (last visited Feb. 22, 2021).

⁴¹ Southern Poverty Law Ctr., *Telisa Clark, et al. v. John Bel Edwards, et al.*, <https://www.splcenter.org/seeking-justice/case-docket/telisa-clark-et-al-v-john-bel-edwards-et-al> (last visited Feb. 22, 2021).

⁴² Letter from Don Davis, Judge of Probate of Mobile County, Alabama, to Secretary of State John Merrill, (May 4, 2020),

particularly important during the 2020 election, because people across the country voted by absentee ballot at extraordinary rates, many for the first time. In states like Georgia, where voters historically have less experience voting by mail, absentee ballot rejections were especially common. For instance, election officials rejected 11,818 absentee ballots in Georgia’s June 2020 primary election, and voters of color were disproportionately represented among them.⁴³ Nearly 20% of those ballots were rejected for a missing signature.⁴⁴ Another nearly 10% were rejected based on a strict Georgia rule that allows election officials to reject absentee ballots when signatures do not appear to match the voter’s signature on file.⁴⁵

As a result of lawsuits and advocacy, including by the SPLC and our partners, states including Georgia, Florida, Mississippi, and Louisiana now permit voters to “cure” their challenged or rejected ballots.⁴⁶ Ballot curing provisions generally require election officials to notify the voter that their ballot has been challenged or rejected and provide the voter an opportunity to correct the ballot within a short period following the election. Such notices may never reach a voter due to mail delays or strains on county ballot processing, effectively negating the intended effect of notice and cure laws. Moreover, absentee ballot-tracking websites in Georgia and Florida are consistently unreliable, providing too-late updates of ballot rejections, which preclude a voter from taking timely corrective action. And Mississippi and Louisiana have no tracking systems at all.

To ensure voters received notice of their challenged or rejected ballots, the SPLC operated a call, text, and canvass program ahead of the 2020 general election and January 2021 runoff election in Georgia to provide information on how to cure their ballots. In the general election, the SPLC Ballot Curing Program called more than 3,000 voters in Georgia and Florida and texted 481 others. In the January runoff elections in Georgia, the SPLC Ballot Curing Program called 2,611 voters, texted 1,073, and knocked on 260 doors. These efforts and those of similar groups, helped to halve the absentee ballot rejection rate in the general election and January runoff election as compared to the rejection rates in the June primary.⁴⁷

Despite the decrease in rejection rates, voters faced significant obstacles in curing their ballots. Even if a voter received notice that their ballot was cured or challenged, many county election offices required a voter to take corrective action in person. Not only did the in-person requirement present a significant burden during the COVID-19 pandemic, particularly for elderly or immune-compromised voters who may have chosen to vote absentee to avoid exposure to the virus, but this requirement was also onerous for voters with physical disabilities, those who work, and those who have unreliable access to transportation. Further exacerbating these burdens

⁴³ See Kevin Morris, Brennan Ctr. for Justice, *Digging into the Georgia Primary* (Aug. 24, 2020), <https://www.brennancenter.org/our-work/research-reports/digging-georgia-primary>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ O.C.G.A. §§ 21-2-386(a)(1)(C); 21-2-419(c); Fla. Stat. § 101.68(4).

⁴⁷ Secretary of State of Georgia, Brad Raffensperger, also acknowledged the reduction in absentee ballot rejections was likely the result of extra-governmental group efforts to help voters cure their absentee ballots. See Georgia Sec’y of State, Number of absentee ballots rejected for signature issues in the 2020 election increased 350% from 2018, https://sos.ga.gov/index.php/elections/number_of_absentee_ballots_rejected_for_signature_issues_in_the_2020_election_increased_350_from_2018.

was the short cure period in both Georgia and Florida. In Georgia, voters have three days following an election and in Florida only two.⁴⁸ State curing provisions are a step in the right direction, but they must be reformed to ensure every eligible voter's ballot is counted.

Voters Need More Protection from Voter Suppression

2020 revealed how difficult it is for many people to register to vote, cast a ballot, and have their vote count. State and local officials who find it politically advantageous to suppress the political participation of certain groups have gone relatively unchecked for nearly eight years. According to the Brennan Center for Justice, between 2010 and 2020, state lawmakers from across the country introduced hundreds of measures that would make it harder to vote.⁴⁹ Overall, 25 states have implemented voting restrictions: 15 have more restrictive voter ID laws, 12 have laws making it harder for citizens to register and stay registered, 10 made it more difficult to vote early or by absentee ballot, and three made it harder to restore voting rights to people with past criminal convictions.⁵⁰

In the SPLC's focus states, these changes include burdensome photo ID laws in Alabama and Mississippi; a discriminatory and burdensome requirement to pay off legal financial obligations before voting in Florida; a discriminatory "signature match" law in Georgia, and polling place consolidations and closures in Black and Latinx communities across the region.⁵¹ These restrictions around the country target voters of color. Seven of the 11 states with the highest Black turnout in 2008 have new voting restrictions in place.⁵² Eight of the 12 states with the largest Hispanic population growth between 2000 and 2010 passed laws making it harder to vote. All this targeting is working. Black, Hispanic, and younger voters all report longer wait times than white and older voters.⁵³

In the face of a deadly pandemic and myriad barriers to registering, casting a ballot safely, and having their vote counted, voters in SPLC Action's focus states *still* managed to increase turnout during the 2020 general election.⁵⁴ Voters went to extreme, even life-threatening measures to ensure that their voices were heard. But voters' ability to overcome unnecessary, burdensome, and discriminatory hurdles to voting does not mean these hurdles can or should remain in place. Because for every voter who was able to vote, there are more who were prevented by voter suppression laws. Every eligible voter who desires to vote should face no barriers to doing so. In the Deep South, however, voters require protection from elected officials who disagree, like Secretary of State of Alabama, John Merrill, who has stated that "[j]ust because you turned 18 doesn't give you the right to do anything. If you're too sorry or lazy to get up off your rear and to

⁴⁸ O.C.G.A. §§ 21-2-386(a)(1)(C); 21-2-419(c); Fla. Stat. § 101.68(4)(b).

⁴⁹ Brennan Ctr. for Justice, *New Voting Restrictions in America* (updated Nov. 18, 2019), <https://www.brennancenter.org/sites/default/files/2019-11/New%20Voting%20Restrictions.pdf>,

⁵⁰ *Id.*

⁵¹ *Id.* at 2.

⁵² Craig Newmark & Brennan Center, *Why Is it So Hard to Vote in America? And What We Can Do to Fix It* (Mar. 28 2016), <https://www.brennancenter.org/sites/default/files/analysis/voting-in-america-infographic-FINAL.pdf>.

⁵³ *Id.*

⁵⁴ Drew Desilver, *Turnout soared in 2020 as nearly two-thirds of eligible U.S. voters cast ballots for president*, Pew Rsch. Ctr., Jan. 28, 2021, <https://www.pewresearch.org/fact-tank/2021/01/28/turnout-soared-in-2020-as-nearly-two-thirds-of-eligible-u-s-voters-cast-ballots-for-president/>.

go register and vote, or to register electronically, and then to go vote, then you don't deserve that privilege.”⁵⁵

Despite Secretary Merrill’s misguided and offensive statement, we know voting is a *right*, not a privilege. We need affirmative action to protect voters from state lawmakers and election officials that have felt empowered to burden, suppress, and discriminate against voters. The electorate is doing its part to stand up to voter suppression by organizing and voting; the federal government must act to ensure voters do not have to fight so hard to have a voice in their community.

BOLD ACTION REQUIRED TO PROTECT FUNDAMENTAL RIGHT TO VOTE & DEMOCRACY ITSELF

In September 2020, the SPLC Action Fund published its Vision for a Just Future, an urgent, transformative action agenda for a more equitable and compassionate nation, including a call to expanding voting rights and promote voter engagement.⁵⁶ It calls for the enactment of the For the People Act (S.1/H.R. 1), which includes several SPLC Action priorities, including implementing automatic voter registration and same-day registration; restoring voting rights to people with felony convictions; making Election Day a national holiday; requiring early voting and expanding access to vote-by-mail; and redistricting reform.

Post-2020 Backlash in Southern Legislatures Demands Action to Protect Voters

The COVID-19 pandemic revealed how challenging or impossible it is for many to access their right to vote, especially post-*Shelby County*. But even in the face of widespread voter suppression tactics, voters in 2018 produced record turnout and elected candidates dedicated to democracy reform. Many states have also introduced pro-voter bills. Unfortunately, pro-voter reforms have been slow in SPLC Action’s focus states. In fact, Alabama and Mississippi have resisted early voting and no-excuse absentee voting, even when voters demonstrated the demand for both during the 2020 election.

Although we are only two months into 2021, myriad voter suppression bills have been introduced in state legislatures across the South. In Georgia, even though there is no evidence of voter fraud, legislation has been introduced to roll back access to absentee and early voting that boosted turnout in the state’s presidential and runoff elections.⁵⁷ In Alabama, laws have been introduced that would eliminate the Governor’s and the Secretary of State’s ability to take

⁵⁵ WSFA, *AL Secretary of State criticized for comments in voting rights documentary*, WSFA12 News, Nov. 3, 2016, <https://www.wsfa.com/story/33627690/al-secretary-of-state-criticized-for-comments-in-voting-rights-documentary/>.

⁵⁶ SPLC Action Fund, *Our Vision for a Just Future: An urgent, transformative action agenda for a more equitable and compassionate nation* (Sept. 2020), https://www.splcactionfund.org/sites/default/files/SPLC-Vision-for-a-Just-Future_SEP24-2020.pdf.

⁵⁷ Jane C. Timm, *Georgia Republicans vow legislation to limit mail voting despite no evidence of fraud*, NBC News, Dec. 8, 2020, <https://www.nbcnews.com/politics/donald-trump/georgia-republicans-vow-legislation-limit-mail-voting-despite-no-evidence-n1250431>; Stephen Fowler, *Georgia Republicans File Sweeping Elections Bill to Limit Early & Absentee Voting*, Feb. 19, 2021, <https://www.npr.org/2021/02/19/969497398/georgia-republicans-file-sweeping-elections-bill-to-limit-early-and-absentee-vot>.

executive action for elections during states of emergency; notably, such action was used to allow any Alabama voter to vote absentee during the COVID-19 pandemic, and no evidence of fraud was brought forward.⁵⁸ Mississippi has introduced two harmful, discriminatory, and unreliable voter purge bills: one that would remove voters from the rolls who fail to vote for six consecutive years, and a second that would purge voters who fail to provide documentary proof of citizenship. Without the full protection of the VRA intercepting these laws, decisive federal action is needed to protect voters.

The For the People Act (S.1/H.R.1)

The For the People Act (S.1/H.R.1), introduced in the 117th Congress in 2020, represents a transformative vision for our democracy that would ease access to the ballot box and protect against voter suppression. H.R. 1 would roll back discriminatory practices that have harmed voters and citizens of color for decades, particularly in the Deep South. Among other important changes, it would:⁵⁹

Rights Restoration. Restore voting rights for people with felony convictions in federal elections, re-enfranchising approximately 4.7 million voters nationwide.⁶⁰ Reforming felony disenfranchisement has bipartisan support; in November 2018, 65 percent of Florida voters cast their ballots to restore the right to vote for more than 1.4 million people, and in 2018, a law passed in Louisiana with bipartisan support to re-enfranchise thousands of Louisianans with past felony convictions.

Reform voter registration. It would modernize America's voter registration system and improve access to the ballot box by establishing automatic voter registration (AVR), same-day registration (SDR), and online registration for federal elections, and ensuring that all registration systems are inclusive and accessible for people with disabilities. These reforms are especially important in the Deep South where, for example, Mississippi has no online registration and neither Mississippi, Alabama, nor Louisiana have AVR or SDR.

Reform redistricting. It would ensure that people choose their representatives, not the other way around, by requiring states to draw congressional districts using independent redistricting commissions that are bipartisan and reflect the demographic diversity of the region. It would establish fair redistricting criteria and ensure compliance with the VRA to safeguard voting rights for communities of color. The Deep South states have been the subject of dozens of lawsuits challenging racially discriminatory redistricting plans.

⁵⁸ See H.B. 531, Reg. Sess. (Ala. 2021); Alabama Sec'y of State, COVID-19 Resources Related to Voting, <https://www.sos.alabama.gov/covid-19-voting-resources> (last visited Feb. 22, 2021). The Secretary of State most recently used his authority to extend the COVID-19-related excuse for all state, county, or municipal elections during the Governor's state of emergency. If this law is passed, he would no longer be authorized to do so.

⁵⁹ For a detailed annotation of the bill, see Brennan Center for Justice, Annotated Guide to H.R. 1, the For the People Act of 2019 (Apr. 13, 2020), <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-hr-1-people-act-2019>.

⁶⁰ The Sentencing Project, 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016, at 14, <https://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

End prison-based gerrymandering. It would require the U.S. Census Bureau to count people who are incarcerated at their last-known residence, not the prison where they are housed. The current practice is to count incarcerated people as living in the communities where they are incarcerated, entitling those communities to a larger share of legislative seats and government resources. But most incarcerated people have little or no connection to the communities where they are incarcerated and typically return to their home communities upon release. Prison-based gerrymandering also has a demonstrable racial impact given the disproportionate impact of the criminal justice system on the Black community and the placement of prisons in majority-white counties. Ending this discriminatory and unconstitutional practice would restore political power to the communities where it belongs.

Reform & update absentee ballot systems. It would implement no-excuse absentee ballots for federal elections and remove all existing barriers like witness, photo ID, or notarization requirements. It would make it easier to request and receive an absentee ballot by requiring online access to applications, prepaid postage, and secure drop boxes and polling place drop-off. It would also require that absentee ballots in federal elections be accessible for voters with disabilities. Finally, it would ensure that absentee ballots are more likely to be counted by providing voters with notice of and an opportunity to cure deficiencies like signature match errors and requiring that any ballots mailed by election day but received within 10 days after election day shall be counted. Each of these provisions will improve access to absentee ballots in SPLC Action’s focus states in at least one way.

Combat voter purges. It would overturn the Supreme Court’s troubling 2018 decision in *Husted v. A. Philip Randolph Institute*, which allowed Ohio to conduct massive purges from its voter rolls based on nonvoting. Such practices disproportionately target marginalized voters. Voting should not be a “use it or lose it” right. Laws such as the one in *Husted* have been introduced in states like Mississippi during the 2021 legislative session, threatening to remove voters who choose not to vote. These laws are contrary to the letter and spirit of the National Voter Registration Act and threaten to remove voters who have not moved, but just chose not to vote, which is within their right to do.

Create a federal holiday and ensure early voting and polling place notice. It would make Election Day a federal holiday. It would also require at least 15 consecutive days of early voting in federal elections. The bill would also require that voters be given a minimum of seven days’ notice if the state decides to change their polling place location. In states like Alabama and Mississippi, where there is no early voting, these provisions would provide voters crucial access to the ballot.

The For the People Act would significantly modernize federal elections around the country, especially in the Deep South, where voter suppression is the rule, not the exception. State legislators and officials have resisted commonsense reforms like online voter registration and automatic voter registration while advancing and maintaining voter suppression policies like felony disenfranchisement, restrictive photo ID laws, massive voter purges, and polling place

closures. **H.R.1 represents a giant step forward in improving access to the ballot in the Deep South—the birthplace of the voting rights movement—where it is still much too hard to vote.**

Thank you for holding this hearing to address the critical need for democracy reform, especially in the Deep South, which has felt the loss of Section 5 of the Voting Rights Act most profoundly. We look forward to your continued leadership on this important matter and are eager to continue working with you toward a fairer electoral system for all.

Respectfully,

A handwritten signature in black ink, appearing to read 'Nancy G. Abudu', written in a cursive style.

Nancy G. Abudu
Deputy Legal Director
SPLC Action Fund