

December 22, 2021

Mr. Fernand de Varennes
UN Special Rapporteur on minority issues

Via email: ohchr-minorityissues@un.org

Dear Mr. de Varennes,

I write in follow up to your meeting with my colleague Ann Beeson during your recent country visit to the United States. We greatly appreciate the time and attention you devoted to your discussion with her, and we are grateful for this opportunity to provide the additional information you requested in the several areas outlined below.

- ***Data showing the discriminatory impact of felon disenfranchisement laws on minorities, nationally and/or in our five states.***

As mentioned in SPLC's submission prior to your country visit, it is estimated that more than five million individuals in the US are denied the right to vote due to felony conviction records, with more than half of those individuals residing in the South. Even in states where bars based on conviction have been eased, new laws that require formerly incarcerated people to pay off all court debt, such as fines, fees, and restitution, before having their voting rights restored virtually guarantee that many will never be able to vote. For example, voters in Florida overwhelmingly approved a law that automatically restored voting rights to about 1.4 million disenfranchised voters in 2018. But in 2019, the Florida legislature passed a new law prohibiting the newly re-enfranchised from voting until they paid off all of their court-related debt,¹ which can amount to tens of thousands of dollars and act effectively as a lifetime bar.

Data estimates compiled by The Sentencing Project as of 2020 illustrate the racially disparate impact of these disenfranchisement laws on Black people in SPLC's target states of Alabama, Florida, Georgia, Louisiana and Mississippi:

¹ [Voting Rights Restoration Efforts in Florida](#), Brennan Center for Justice, 11 September 2020.

Total Disenfranchised Due to Felony Convictions

State	Total Disenfranchised	Voting Age Population	Percent Disenfranchised
Alabama	328,198	3,671,110	8.94%
Florida	1,132,493	14,724,113	7.69%
Georgia	275,089	7,254,693	3.79%
Louisiana	76,924	3,452,767	2.23
Mississippi	235,152	2,228,659	10.55

Black Americans Disenfranchised Due to Felony Convictions

State	Total Disenfranchised	Voting Age Population	Percent Disenfranchised
Alabama	149,716	962,519	15.55%
Florida	338,433	2,194,488	15.42%
Georgia	145,601	2,322,275	6.27%
Louisiana	47,951	1,087,270	4.41%
Mississippi	130,501	817,493	15.96%

Given the deep political divisions in the US, results of state and national elections often come down to very thin margins, making these disparities potentially outcome determinative. For example, in the 2018 election for governor in Georgia, white Republican Brian Kemp defeated Black Democrat Stacey Abrams by a margin of only about 1.4% of the votes counted.² In the 2020 Presidential election, which former-President Trump and some of his allies continue to falsely claim he won, official vote counts showed Trump winning Florida by just over 3%, while Biden prevailed in Georgia by only 0.23%.³

- ***Data showing the discriminatory impact of racial gerrymandering in redistricting.***

The current cycle of redistricting taking place across the US is being manipulated to dilute the voting power of Black and other racial minority groups, despite their representing a majority of US population growth since the last cycle. As of 20 December 2021, 26 lawsuits have been filed in seven US states challenging new district maps as either racially discriminatory or as partisan gerrymandering, which has a racially disparate impact even if not intentionally based on racial motivations. In Alabama, Black voters are challenging new district maps that employ both “packing” and “cracking” to dilute the Black vote – many Black voters are packed into a single district, and the remainder cracked among multiple districts to prevent their votes from swaying elections all but a single district. In Texas, Black, Latinx, and Asian voters, together with civil rights organizations and the US Department of Justice, are challenging the use of cracking and packing that has resulted in an increase in white voting power despite

² [Georgia Governor Election Results](#), The New York Times, 28 January 2019.

³ [Presidential Election Results: Biden Wins](#) (interactive map), The New York Times.

most of the population growth in the last decade having been non-white. According to the Brennan Center, white people are the majority of eligible voters in 60% of the newly drawn districts despite accounting for less than 40% of population growth, and the two new Congressional seats Texas gained as a result of the recent census were gerrymandered to give them white majority districts.⁴

- ***Data showing that public school funding is disproportionately low in districts with higher percentages of minority students, and that funding decreases over time as the percentage of minority students increases in specific districts.***

Employment discrimination, housing and school segregation, and political disfranchisement and criminalization of Black and Brown people reside at the intersection of class and race, and are rooted in the American history of enslavement. These ills are now perpetuated largely through seemingly innocuous systems that have helped create and exacerbate educational inequities in the United States. In many US states, funding is based largely on property taxes, creating huge gaps in funding between wealthier districts that serve mostly white students and poorer districts where the student population is mostly Black or Brown.⁵

Local control and local funding of education means perpetuating the other geographic-based racial and economic divides that have long existed. Because of this, there currently is a “\$23 billion gap between white and nonwhite school districts, even though they serve the same number of children.”⁶ “White school districts average revenue receipts of almost \$14,000 per student, but non-white districts receive only \$11,682. That’s a divide of over \$2,200, on average, per student.”⁷ Meanwhile, the districts that serve predominantly non-white children have far less political power. “[T]here are more than six times as many predominantly white [school] districts as those that serve primarily non-white populations.”⁸

Adjacent to the funding disparities within the public education system is another insidious reality that enables white flight and poses a growing threat to equitable funding for the education of Black and Brown children. Following the *Brown v. Board of Education* and *Brown II* decisions, by 1969, more than 200 private segregation academies were set up in states across the South. Seven of those states—Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana—maintained tuition grant programs that gave vouchers to incentivize white students to leave desegregated public school districts. The legacy of those segregation academies is still strong and growing.

Private schools are much more likely to serve white students than students of color, and current tuition voucher programs exacerbate school segregation. A UCLA Civil Rights Project

⁴ [Redistricting Litigation Roundup](#), Brennan Center for Justice, 20 December 2021.

⁵ [Inequality in Public School Funding: Key Issues & Solutions for Closing the Gap](#), American University School of Education, 10 September 2020.

⁶ *\$23 Billion*, EdBuild, February 2019, at 2.

⁷ *Id.*

⁸ *Id.*

report showed white students were “substantially overrepresented” in private schools, while Hispanic and Black students were underrepresented.⁹ In five Southern states (Alabama, Florida, Georgia, Louisiana and Mississippi), one in five students live below the poverty line, more than half are considered low income and one in three is Black.¹⁰ Private school voucher programs funnel public funding to this racially disparate and inequitable system.

Private schools in the South tend to have the largest overrepresentation of white students. In Mississippi, 83% of students attending private schools are white, but white students only make up 47% of the state’s student population, a difference of 35%. A Century Foundation study analyzing the Louisiana voucher program confirmed “that black students typically used vouchers to leave public schools where their race was overrepresented, but white students tended to leave public schools where their race was underrepresented.”¹¹ The study concluded that, “[o]n balance, voucher programs are more likely to increase school segregation than to promote integration or maintain the status quo.” Even where the disproportionality seems less pronounced, such as in Florida, the segregative effect of private schools is stark. The increase in Black and Latinx students attending private schools in Florida appears in many cases to be Black and Latinx students moving from segregated public schools to new, segregated private schools – with almost 1000 new private schools over eight years and the number of private schools serving 75% or more Black and Latinx population more than doubling. Florida, which leads the nation in private school voucher programs, now siphons away around \$1 Billion of public funds each year from public schools for these segregation schemes. Considering that Florida increased its spending for voucher programs by 310% from FY 2008 to FY 2018 and, during the same period, decreased per-pupil funding for public education by 13.4% (and now spends more than \$4000 less per pupil each year than the national average),¹² the growing trend towards privatization is particularly alarming.

⁹ Jongyeon Ee et al., *Private Schools in American Education: A Small Sector Still Lagging in Diversity* 15 (UCLA Civil Rights Project, Working Paper, 2018), https://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/private-schools-in-american-education-a-small-sector-still-lagging-in-diversity/Ee-Orfield-Teitell-Private-School-Report_03012018.pdf.

¹⁰ *Inequity in School Funding* (Southern Poverty Law Center and Education Law Center, Report, 2021), https://www.splcenter.org/sites/default/files/leg_cr_school_funding_inequities_report_2021_final.pdf.

¹¹ Halley Potter, Century Found., *Do Private School Vouchers Pose a Threat to Integration?* (Mar. 21, 2017), <https://tcf.org/content/report/private-school-vouchers-pose-threat-integration>.

¹² *Inequity in School Funding*, n.2.

- ***Data indicating that the attack on critical race theory is a deliberate strategy of the far-right to undermine support for public education, prevent students from learning the accurate history and impact of racism, and thwart multi-racial democracy.***

As the Working Group of Experts on Persons of African Descent concluded after its 2016 US country visit, the “school curriculum in each state should reflect appropriately the history of the transatlantic trade in Africans, enslavement and segregation.”¹³ Public opinion surveys show that most US adults agree racism is a systemic issue that continues to harm members of racial minority groups, and at least a plurality believe students should be exposed to the issue of systemic racism in schools.¹⁴ However, conservative groups opposing this characterize such education as unpatriotic, and claim it serves to make white students feel ashamed or guilty about their racial identity. Conservative politicians at all levels of government oppose teaching about the existence and effects of racism and, under the guise of opposition to so-called “critical race theory,” have begun taking steps to prohibit the teaching of accurate historical accounts of the role of race and of Black Americans in US history, some even going so far as to ban books touching on matters of race.¹⁵

A number of new state laws or regulations prohibit instruction about unconscious bias, discrimination, privilege, and oppression. For example, a recently adopted Florida Board of Education Rule prohibits teaching “the theory that racism is not merely the product of prejudice, but that racism is embedded in American society and its legal systems,” and provides that “instruction may not . . . define American history as something other than the creation of a new nation based largely on universal principles stated in the Declaration of Independence.”¹⁶ The rule also expressly prohibits the use of any materials from the “1619 Project,” which seeks to place the African slave trade and its consequences accurately into the framework of US history. Yet elsewhere, Florida law *requires* the teaching of such concepts as “the ramifications of prejudice, racism and stereotyping, and what it means to be a responsible and respectful person” in the context of instruction about the Holocaust.¹⁷ A host of other states controlled by conservative governors and legislatures have adopted or are moving to adopt measures prohibiting instruction about racism, with authorities in at least thirteen states having already done so.

Nikki Haley, former South Carolina Governor and US Ambassador to the United Nations during the Trump administration, claims that teaching students about these issues amounts to telling white children they are bad, and telling Black or Brown children that they are less capable and will always be victims. She urges state governors to reject federal funding related

¹³ *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, 18 August 2016, A/HRC/33/61/Add.2, at para. 118.

¹⁴ [Poll: The real reason Republicans are so riled up about “critical race theory,”](#) Yahoo! News, 1 July 2021.

¹⁵ E.g. [In Texas, a Battle Over What Can Be Taught, and What Books Can Be Read](#), The New York Times, 10 December 2021; [Calls to Ban Books by Black Authors Are Increasing Amid Critical Race Theory Debates](#), Education Week, 30 September 2021.

¹⁶ Florida Board of Education, Rule 6A-1.094124, Required Instruction Planning and Reporting.

¹⁷ [Florida’s Holocaust Mandate](#), Holocaust Education Resource Council.

to classes that teach about race.¹⁸ Far-right politicians in the US House of Representatives have introduced legislation that would prohibit the Department of Education from funding proposed US history and civics education programs that reflect the diversity of the student body and create inclusive learning environments by, for example, “tak[ing] into account systemic marginalization, biases, inequities, and discriminatory policy and practice in American history.” A Republican member of Congress sponsoring the bill claimed that such a program would “teach our next generation to hate America”¹⁹

In June 2021, Nebraska Governor Pete Ricketts publicly opposed what he labeled “critical race theory” on his radio program.²⁰ He called for parents to engage, claiming it would divide Americans, called it “un-American,” and stated it contained a “lot of very socialist-type idea.” Ricketts’ statements typify the politicization and defiant opposition that has been brought by people who use the term CRT to push for changes in education, specifically limiting discourse about racial bias and hard American history, while either not understanding or intentionally misrepresenting what CRT actually means. Following the recent election of conservative Republican Glenn Youngkin to the office of Virginia governor, Christopher Rufo, who publicly brought CRT opposition to the political fore, credited Youngkin’s CRT opposition for the win and hinted at further efforts to come: “Glenn Youngkin made critical race theory the closing argument to his campaign and dominated in blue Virginia,” he tweeted. “We are building the most sophisticated political movement in America — and we have just begun.”²¹

Political attacks on inclusive education are driven by an extremist far-right movement in the US that has a long history of opposing public education systems, racial integration, LGBTQ acceptance, and public health measures for children, such as vaccine requirements. Extreme far-right forces are both ideologically opposed to inclusive education and are using public mischaracterizations of it as an organizing tool in an effort to shift the US socio-political climate further to the right. In the last year, the US has experienced immense growth in this movement with new far-right organizations focused on schools, education, youth and public health, and leading to physical violence and threats to local democracy.

This concerted attack on educational instruction about issues of racism and discrimination, wrongfully but successfully labeled as “critical race theory,” has also increasingly led to intimidation, harassment, threats, and even violent assaults against students, teachers and school board members. Combined with similar problems related to COVID precautions, the threats to people associated with schools have become so extreme that the National School Boards Association asked the Department of Justice to intervene. The Association’s letter, since removed from its website after aggressive backlash, “detailed more than twenty

¹⁸ [Former UN Ambassador Nikki Haley calls for “every governor in the United States” to BAN funding for critical race theory in schools](#), The Daily Mail, 13 July 2021.

¹⁹ [Press Release: Cawthorn Introduces Bill to Prevent Biden Administration Funding of Critical Race Theory](#), Republican Committee on Education & Labor, 12 May 2021.

²⁰ [Gov. Ricketts says he is “opposed to critical race theory,”](#) Omaha World-Herald, 16 June 2021.

²¹ [How did Republicans turn critical race theory into a winning electoral issue?](#), The Guardian, 3 November 2021.

examples of violence, harassment and intimidation.”²² As a result, the Federal Bureau of Investigation is now tracking threats against educators.²³ A Texas school principal, the first Black principal at his mostly white school, recently resigned after being put on administrative leave over accusations that he was teaching “critical race theory.” The accusations arose after the principal wrote a letter to the community expressing grief over the police shootings of George Floyd, Breonna Taylor and Ahmaud Arbery.²⁴ Intimidation of educators also is not limited to K-12 schools. A University of Florida professor filed a grievance after university officials told faculty not to use words like “critical” or “race” in course materials.²⁵

I hope that this correspondence has provided the additional material you desired in preparation of your report to the Human Rights Council. Please do not hesitate to contact me if you need anything further or have any questions.

With best regards,



LISA W. BORDEN

Senior Policy Counsel, International Advocacy

²² [National School Board Association Letter to President Biden](#), 29 September 2021; [First look: Thousands of school board members urge Biden to protect them](#), Axios, 30 September 2021.

²³ [FBI tracking threats against educators after complaints from school boards, leaked email shows](#), District Administration, 17 November 2021; [Memo from US Attorney General Merrick Garland](#), October 4, 2021.

²⁴ [North Texas principal resigns to end fight over whether he was teaching “critical race theory,”](#) Texas Tribune, 10 November 2021.

²⁵ [Critical race theory becomes flashpoint for GOP, UF heading into legislative session](#), Miami Herald, 01 December 2021.