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Written Testimony of the Southern Poverty Law Center

Submitted to the U.S. Senate Committee on the Judiciary

In connection with its March 12, 2024 hearing entitled
“The Right Side of History: Protecting Voting Rights in America”

Hearing March 12, 2024

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On behalf of the Southern Poverty Law Center (SPLC) Action Fund, we write to provide our insights regarding the issues addressed during the Senate Committee on the Judiciary’s “The Right Side of History: Protecting Voting Rights in America” hearing. We appreciate the opportunity to share our expertise documenting persistent race discrimination in voting in the five states in which the SPLC operates – Alabama, Florida, Georgia, Louisiana, and Mississippi – and on the urgent need for swift Congressional action restoring, strengthening, and modernizing the Voting Rights Act. We respectfully request this statement be included as part of the official hearing record.

The Southern Poverty Law Center: 50 Years of Protecting Civil Rights in the South

The Southern Poverty Law Center (SPLC) has for fifty years worked to expand and safeguard civil rights protections, primarily through the courts. Since its founding, SPLC has won numerous landmark legal victories on behalf of the exploited, the powerless and the forgotten. Our lawsuits have toppled institutional racism and have made significant progress in stamping out remnants of Jim Crow segregation; destroyed some of the nation’s most violent white supremacist groups; and protected the civil rights of children, women, people with disabilities, immigrants and migrant workers, the LGBTQ community, incarcerated people, and many others who faced discrimination, abuse or exploitation. In 2019—after six years of witnessing the unrelenting attack on the right to vote across our states—we added a new legal practice group focused on voting rights. Since that time, we have brought cases defending and expanding the voting rights of residents of the Deep South. Because state legislatures and executives in our states often target people of color, we are particularly focused on protecting the rights of these communities.

Our expertise stems from our deep roots in a region that has always been at the forefront of suppressing and oppressing people of color, and our approach to voting rights advocacy and litigation is informed by our longstanding relationships with communities of color that have for centuries been on the frontlines of resisting that oppression in Alabama, Florida, Georgia, Louisiana, and Mississippi.

The Decade Since *Shelby County* Has Presented Unprecedented Threats to Voters of Color and to Democracy

Just over a decade ago, a U.S. Supreme Court decision dramatically altered the landscape of voting rights in the Deep South. In *Shelby County v. Holder*, five justices struck down a key provision of the Voting Rights Act (VRA) of 1965—the preclearance coverage formula in Section 4(b)—eliminating a critical accountability tool that had protected the voting rights of Black, Indigenous and other People of Color (BIPOC) in states with a history of discriminatory voting practices for almost half a century.¹ In her dissent, the late Justice Ginsburg likened the decision nullifying the preclearance regime, which had been extremely effective at preventing

¹ *Shelby County v. Holder*, 570 U.S. 529 (2013).



discriminatory changes to voting laws,² to “throwing away your umbrella in a rainstorm because you are not getting wet.”³

Many of those states previously covered by preclearance—and many of the discriminatory, restrictive voting laws that have passed since its demise—are in the Deep South. Because of their intractable and pervasive history of racial discrimination in voting, Alabama, Georgia, Louisiana, and Mississippi were each covered by the preclearance requirement, and multiple counties in Florida were covered, as well.⁴ From emancipation and the granting of the vote to formerly enslaved people through the passage of the VRA in 1965, these states employed countless voter suppression tactics, including violence, aimed to limit Black political participation and representation. As we outline in our report *A Decade-Long Erosion, in Shelby County’s wake*, states across the Deep South passed voter suppression bills with reckless abandonment of democratic principles guaranteed by the U.S. Constitution, erecting a pervasive and damning wall of voting barriers for BIPOC voters.⁵

The *Shelby County* decision is not the only one that has undermined voting rights over the last several years. In 2018, in *Husted v. A. Philip Randolph Institute*, the Supreme Court ruled that states are permitted to target eligible voters for removal simply because they have not voted frequently enough in the eyes of state officials, willfully ignoring the plain terms of the National Voter Registration Act prohibiting the removal of voters for “failure to vote.”⁶ A year later, in *Rucho v. Common Cause*, the Supreme Court abdicated all responsibility for adjudicating violations of voting rights related to partisan gerrymandering, claiming that such questions are not the purview of the federal courts and greenlighting redistricting plans that crack and pack voters for partisan advantage.⁷ In 2021, the Supreme Court decided *Brnovich v. Democratic National Committee*, dealing another blow to the protections for voters of color in the VRA by making it harder for these voters to challenge discriminatory voting laws in court.⁸ *Brnovich* dealt with Section 2 of the VRA, which took on extra importance in the wake of *Shelby County v. Holder*; without the prophylactic protections of Section 5, voters of color have to turn to the

² Between 1965 and 2006, the U.S. Department of Justice blocked almost 1,200 proposed voting law changes in covered jurisdictions. U.S. Department of Justice, *Attorney General Merrick B. Garland Statement Regarding the 58th Anniversary of the Voting Rights Act*, August 4, 2023. <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-statement-regarding-58th-anniversary-voting-rights-act#:~:text=Between%201965%20and%202006%2C%20the,effectively%20lost%20this%20powerful%20tool.>

³ *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J. dissenting).

⁴ U.S. Department of Justice, *About Section 5 of the Voting Rights Act*, Updated November 17, 2023. <https://www.justice.gov/crt/about-section-5-voting-rights-act#:~:text=Under%20Section%205%2C%20any%20change,makes%20a%20submission%20to%20the>

⁵ *A Decade-Long Erosion: The Impact of the Shelby County Decision on the Political Participation and Representation of Black People and Other People of Color in the Deep South*, Southern Poverty Law Center, June 2023. <https://www.splcenter.org/shelby-county-decision-report>

⁶ *Husted v. A. Philip Randolph Institute*, 584 U.S. 756 (2018).

⁷ *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

⁸ *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).



courts to vindicate their voting rights *after* discriminatory laws, practices, and procedures were enacted – and often after irreparable harm has taken place. Section 2 provides protections for these harmed voters to do so, but *Brnovich* weakened those protections and has left voters of color even more vulnerable to disenfranchisement in the years since.

And it is not just the Supreme Court that is abdicating its responsibility to protect the fundamental right to vote; Americans who have had their rights violated are finding it harder and harder to find relief in the federal courts at every level. Plaintiffs and voting rights advocates are winning fewer cases in the district courts, and those they do win are facing hostile judges in the appellate courts. As described further below, the Circuit Courts representing the Deep South—the Fifth and the Eleventh—have both overturned a number of district court rulings finding racial discrimination in voting, leaving voters of color in these states with few avenues to vindicate their rights.

On top of the assault on their voting rights by state legislatures and the lack of relief in the federal courts, voters have faced additional unprecedented threats to their ability to exercise their fundamental rights. 2020 brought a global pandemic and the urgent need to adapt voting practices and procedures to allow voters to safely cast a ballot that counts – with some states rising to the challenge and others, including some in the Deep South digging in their heels on inaccessible policies. After record turnout in that election, including by voters of color, those who oppose a multiracial, inclusive democracy staged an insurrection at the U.S. Capitol attempting to overturn the election results. The lie that fueled that attempted insurrection has proven quite persistent in the four years since and led to severe and escalating threats to election workers and intimidation of voters of color. And all the while, our election infrastructure—the actual buildings, machines, and systems necessary to run elections—has been neglected and is showing its age, leaving our democracy vulnerable.

While this testimony will focus primarily on the discriminatory laws and other undemocratic machinations of state governors and legislators across the Deep South enabled by the *Shelby County* decision, each of these conditions compound and contribute to a state of significant precarity for democracy. At the root of all of them, however, is the fundamental right to vote. While this precious right has always been contested in our country, it was significantly strengthened and enjoyed relative calm for nearly a half-century, between the passage of the Voting Rights Act and the devastating *Shelby County v. Holder* decision. To stabilize our democracy and ensure our nation lives up to its most sacred ideals and values, Congress must act urgently to protect the fundamental right to vote for all Americans.

The Current Conditions of Voting Discrimination in the Deep South Demand Congress Strengthen, Update, and Modernize the VRA of 1965

Congress originally passed the Voting Rights Act in 1965 to protect voters of color from rampant and pervasive racial discrimination in voting, especially in several states with a demonstrable record of such discrimination. While racial discrimination in voting in 2024 does not look exactly



as it looked in 1965, there is no doubt it remains present and, in the Deep South, rampant and pervasive.

In the ten years following *Shelby County*, states have passed around 100 restrictive voting laws,⁹ changes to the way we vote that have fallen hardest on voters of color, voters with disabilities, low-income voters, young and elderly voters, and other marginalized communities.¹⁰ Several of those restrictive laws have passed in Alabama, Florida, Georgia, Louisiana, and Mississippi. Over the last decade, each of these states has passed at least one law making it harder for people of color to vote—in some cases in the form of omnibus legislation that takes aim at several voting mechanisms enjoyed by voters of color—and each has considered several additional measures that have yet to become law but may well in the years to come.¹¹ Each state has also faced litigation alleging discrimination in their legislative maps following the 2020 census;¹² while some of that litigation is ongoing, judges or justices have found violations of state or federal law prohibiting racial discrimination in map drawing in four of these five states.¹³

Unsurprisingly, just over a decade after the *Shelby County* decision, the gap in voter turnout between white voters and voters of color has grown.¹⁴ But it has not grown uniformly; it has grown most significantly—indeed, nearly twice as quickly—in states that were previously subject to preclearance. As it turns out, things have *not* changed in the South. These states were originally covered due to their demonstrable histories of racial discrimination in voting and the wide gaps in registration rates between white and Black voters;¹⁵ today, freed from the barrier presented to racially discriminatory voting laws by preclearance, states in the Deep South have once again

⁹ Brennan Center for Justice, *States Have Added Nearly 100 Restrictive Laws Since SCOTUS Gutted the Voting Rights Act 10 Years Ago*, June 23, 2023. <https://www.brennancenter.org/our-work/analysis-opinion/states-have-added-nearly-100-restrictive-laws-scotus-gutted-voting-rights>

¹⁰ Brennan Center for Justice, *The Impact of Voter Suppression on Communities of Color*, January 10, 2022. <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color>

¹¹ *Supra* note 5, Southern Poverty Law Center. See also *supra* note 9, Brennan Center.

¹² *Cases*, All About Redistricting, 2020 Cycle.

<https://redistricting.ills.edu/cases/?cycles%5B%5D=2020&states%5B%5D=Alabama&states%5B%5D=Florida&states%5B%5D=Georgia&states%5B%5D=Louisiana&states%5B%5D=Mississippi&sortBy=-updated&page=1>

¹³ See *Allen v. Milligan*, challenging Alabama’s congressional maps and *Stone v. Allen*, challenging Alabama’s state legislative maps; *Pendergrass v. Raffensperger*, challenging Georgia’s congressional maps and *Alpha Phi Alpha v. Raffensperger*, challenging Georgia’s state legislative maps; *Common Cause Florida v. Byrd*, challenging Florida’s congressional maps in federal court and *Black Voters Matter Capacity Building Institute v. Byrd*, challenging Florida’s congressional maps in state court; *Robinson v. Landry*, challenging Louisiana’s congressional maps and *Nairne v. Landry*, challenging Louisiana’s state legislative maps. Trial recently concluded in a case challenging Mississippi’s state legislative maps (*Mississippi State Conf. of the NAACP v. State Bd. of Election Comm’rs.*) after the 2021 redistricting cycle. While no ruling has been issued yet, courts did find that Mississippi’s State Senate map from the last cycle diluted the voting strength of Black Mississippians. See *Thomas v. Bryant*, 938 F.3d 134, 166 (5th Cir. 2019), vacated as moot, *Thomas v. Reeves*, 961 F.3d 800 (5th Cir. 2020).

¹⁴ Kevin Morris & Coryn Grange, *Growing Racial Disparities in Voter Turnout, 2008-2022*, Brennan Center for Justice, March 2, 2024. <https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022>

¹⁵ *Supra* note 4, U.S. DOJ.



pursued laws that reduce the political participation and power of communities of color. The actions of these states post *Shelby County* underscore the need to restore the VRA.

Congress must act urgently to protect the fundamental voting rights of people of color in the Deep South and across the country. When the Supreme Court ripped the heart out of the VRA, it reminded us that Congress has the ability to draft a new coverage formula that responds to current conditions of racial discrimination in voting. Congress not only has that ability, it has that responsibility – an urgent, moral responsibility. After more than a decade of inaction, Congress must move swiftly to restore, strengthen, and modernize the VRA of 1965. At the end of this testimony, we offer recommendations for how Congress can most effectively do that.

Changes to Voting Policies and Procedures in the Deep South Post-*Shelby County* Have A Discriminatory Impact on Voters of Color

States in the Deep South have enacted myriad new laws, policies, and procedures in the wake of *Shelby County* that make it harder for voters—especially voters of color—to exercise their fundamental rights. Some of these rules existed before 2013, but many of the most restrictive, suppressive laws that didn’t pass preclearance muster previously have been enacted with alacrity since the coverage formula was invalidated.

As just one measure of the difficulty of voting, a 2022 study estimating the cost of voting in all 50 states found that each of the five Deep South states ranks in the bottom 25, meaning it is relatively harder to vote.¹⁶ Mississippi ranks 50th—it is harder to vote in the state of Mississippi than in any other state in the nation—and Alabama ranks 45th.¹⁷ Many of the policies that cause the Deep South states to be low ranking are known to have a discriminatory effect; i.e., there is evidence showing the disparate impact of these policies on populations of color.¹⁸ This section details several of those policies, with notes about when, where, and how they were passed, and their negative impact on voters of color.

A. Strict Voter ID Requirements Disenfranchise Voters of Color

Within 24 hours of the Supreme Court’s decision in *Shelby County v. Holder*, Alabama implemented one of the most restrictive voter ID laws in the nation; the law has no option for voting without ID unless two election officials identify the voter and sign sworn affidavits attesting to the voter’s eligibility.¹⁹ The Alabama Legislature had approved the measure in 2011, but chose not to implement it, understanding it was unlikely to receive preclearance given that

¹⁶ University Press of Kansas, *The Cost of Voting in the American States*, as of November 8, 2022.

<https://costofvotingindex.com/>

¹⁷ *Id.*

¹⁸ *Supra* note 10, Brennan Center.

¹⁹ The law was operable as of the June 3, 2014 primary elections. Photo Voter ID, Alabama Secretary of State.

<https://www.sos.alabama.gov/alabama-votes/voter/voter-id>



similar laws across the country had been blocked because they harmed voters of color.²⁰ Freed from the obligation to check the law for discriminatory impact, Alabama swiftly implemented its voter ID law in the wake of *Shelby County*, despite clear evidence demonstrating that Black and Latinx voters are less likely to possess acceptable documentation in Alabama.²¹

Moreover, soon after the photo ID law went into effect, the state announced plans to close dozens of DMV offices, with the closures concentrated in the counties with the highest percentage of Black residents.²² At the time of the DMV closures in 2015, 26.3 percent of the total Alabama population was Black, with Black residents comprising more than 50 percent of the population in eleven counties. Driver’s license offices were closed in eight of these eleven counties, leaving only three majority-Black counties with a license-issuing office. In addition, under Alabama’s plan, license-issuing offices closed in all six counties in which Black residents comprised over 70 percent of the population. Conversely, forty license-issuing offices remained open in the fifty-five Alabama counties in which white residents comprised more than 50 percent of the population.²³ The U.S. Department of Transportation launched an investigation into the DMV closures and the limited reopening plan and found that the closures and service reductions were racially discriminatory and had “a disparate and adverse impact on the basis of race.”²⁴ Eventually, after significant public outcry, Alabama agreed to reopen the offices and increase hours in several majority-black counties.²⁵ But the discriminatory intent and impact of these closures—less than a decade ago—remains clear.

Mississippi also moved swiftly to implement a strict photo ID law in the wake of *Shelby County*. In 2012, the legislature passed a law mandating strict new requirements for voter identification, namely requiring photo ID.²⁶ However, before the law could go into effect, Mississippi had to submit the law for preclearance, to ensure it did not have a discriminatory impact. Mississippi’s preclearance application was under review when the Supreme Court announced its *Shelby County*

²⁰ Kim Chandler, *State Has Yet to Seek Preclearance of Photo Voter ID Law Approved in 2011*, AL.com, June 12, 2013. https://www.al.com/wire/2013/06/photo_voter_id.html

²¹ Maggie Astor, *Seven Ways Alabama Has Made It Harder to Vote*, The New York Times, June 23, 2018. <https://www.nytimes.com/2018/06/23/us/politics/voting-rights-alabama.html>

²² *Id.* See also, Campbell Robertson, *For Alabama’s Poor, the Budget Cuts Trickle Down, Limiting Access to Driver’s Licenses*, The New York Times, October 9, 2015. <https://www.nytimes.com/2015/10/10/us/alabama-budget-cuts-raise-concern-over-voting-rights.html>

²³ Adam Gitlin & Christopher Famighetti, *Closing Driver’s License Offices in Alabama*, Brennan Center for Justice. <https://www.brennancenter.org/our-work/analysis-opinion/closing-drivers-license-offices-alabama>.

²⁴ U.S. Department of Transportation, *U.S. Department of Transportation Takes Action to Ensure Equitable Driver’s License Office Access for Alabama Residents*, December 28, 2016. <https://www.transportation.gov/briefing-room/us-department-transportation-takes-action-ensure-equitable-driver-license-office>

²⁵ Maggie Astor, *supra* note 21.

²⁶ Mississippi House Bill 921 (2012). <https://billstatus.ls.state.ms.us/documents/2012/html/HB/0900-0999/HB0921SG.htm>



decision, releasing Mississippi from any preclearance obligations.²⁷ Within hours of the decision, lawmakers announced that they would proceed with implementing the restrictive new photo ID law.²⁸

Strict photo ID requirements such as Alabama’s and Mississippi’s effectively disenfranchise many Black and low-income voters. Residents of low-income, rural, predominantly Black areas of Mississippi frequently lack government-issued photo ID.²⁹ A 2021 study analyzing a dataset across several states found racial disparities in access to photo ID accepted for voting that persist even after accounting for covariates like education and income.³⁰ Additionally, research shows that these racial disparities in access to photo ID do, in fact, decrease actual turnout for voters of color.³¹ Indeed, the Justice Department objected to a pre-*Shelby County* 2012 Texas photo ID law on the ground that it would disproportionately affect low-income voters and voters of color,³² and a federal court blocked the law on the ground that the legislation would impose strict and unforgiving burdens on voters of color.³³

B. Polling Places Have Been Closed in Counties with High Populations of Color

In the six years following *Shelby County*, Alabama closed at least 72 polling locations across 23 counties, many without public notice and most in early 2014, immediately after *Shelby County*. At least one polling location closed in thirty-four percent of Alabama counties, including many

²⁷ Maureen Cosgrove, *Mississippi Voter ID Law Delayed Pending Federal Review*, Jurist, October 3, 2012, <https://www.jurist.org/news/2012/10/mississippi-voter-id-law-delayed-pending-federal-review/>

²⁸ H.R. Rep. No. 116-317, at 38 (2019), <https://www.congress.gov/116/crpt/hrpt317/CRPT-116hrpt317.pdf>.

²⁹ *Voter ID Proposal on Mississippi Ballot Nov. 8*, Deseret News, October 27, 2011.

<https://www.deseret.com/2011/10/27/20226382/voter-id-proposal-on-mississippi-ballot-nov-8/#in-this-oct-19-2011-photo-patricia-ball-a-50-year-old-resident-of-kosciusko-miss-said-she-opposes-requiring-people-to-show-a-driver-s-license-or-other-identification-at-the-polls-mississippians-will-decide-nov-8-whether-voters-should-be-required-to-show-government-issued-photo-identification-before-casting-ballots>

³⁰ Hearing on “Voting in America: The Potential for Voter ID Laws, Proof-of Citizenship Laws, and Lack of Multi-Lingual Support to Interfere with Free and Fair Access to the Ballot,” Committee on House Administration, 117th Congress, May 24, 2021, written testimony Dr. Matt Barreto.

<https://docs.house.gov/meetings/HA/HA08/20210524/112670/HHRG-117-HA08-Wstate-BarretoM-20210524.pdf>

³¹ Hearing on “Voting in America: The Potential for Voter ID Laws, Proof-of Citizenship Laws, and Lack of Multi-Lingual Support to Interfere with Free and Fair Access to the Ballot,” Committee on House Administration, 117th Congress, May 24, 2021, written testimony of Nazita Lajevardi. <https://www.congress.gov/117/chrg/CHRG-117hhrg45612/CHRG-117hhrg45612.pdf>

³² U.S. Department of Justice, Civil Rights Division, *Objection to state of Texas voter registration and photographic identification procedures*, March 12, 2012.

https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/1_120312.pdf

³³ Sari Horwitz, *Texas Voter-ID Law Is Blocked*, the Washington Post, August 30, 2012.

https://www.washingtonpost.com/world/national-security/texas-voter-id-law-struck-down/2012/08/30/4a07e270-f2ad-11e1-adc6-87dfa8eff430_story.html



counties in the Black Belt.³⁴ The most closures during that period—10 polling places, or 26 percent of the county’s voting sites—happened in Marshall County, which is 13 percent Latino. Mobile County, which is 35 percent Black, also closed 10 locations, or about 10 percent of its voting sites.³⁵

Counties have also drastically reduced polling places across Georgia during the same time period. Ahead of the 2018 midterms, Georgians had 214 fewer places to cast ballots than they did in 2012, with reductions to voting sites in a third of Georgia counties since the *Shelby County* decision.³⁶ Since *Shelby County*, at least eighteen counties have closed more than half of their polling places, and several have closed almost 90 percent.³⁷ Troublingly, there is evidence these closures are targeting counties with large Black populations. Of the 53 counties that had closed polling places before 2018, Black Georgians made up at least 25 percent of the population in 30 of those counties.³⁸ In advance of the 2018 election, the state moved to close polling places in 10 counties with large Black populations,³⁹ including a proposal to close seven of nine polling places in Randolph County. At the time, Black Georgians constituted 32 percent of the population of the state but 61 percent of the population of Randolph County; one of the polling places that the Board sought to close served a population that was 97% Black⁴⁰ While outcry from local and national advocates defeated the proposal in Randolph County,⁴¹ closures continued in several other counties.

Shortly after the *Shelby County* decision, counties in Florida began closing or relocating polling places, here again with implications for voters of color. In October 2013, the city of Jacksonville relocated a polling place that had been open since 2006 and overwhelmingly served Black

³⁴ The Leadership Conference Education Fund, *Polling Place Closures and the Right to Vote*, at 38, September 2019. <https://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>. See also Mary Sell, *In Some Counties, Alabama Voters Have Lost a Quarter of their Polling Sites Since 2010*, Birmingham Watch, November 2, 2018.

<https://birminghamwatch.org/counties-alabama-voters-lost-quarter-polling-places-since-2010/>

³⁵ *Id.* at 39.

³⁶ Mark Niesse, Maya T. Prabhu, & Jacquelyn Elias, *Voting Precincts Closed Across Georgia Since Election Oversight Lifted*, Atlanta Journal Constitution, August 31, 2018. <https://www.ajc.com/news/state--regional-govt--politics/voting-precincts-closed-across-georgia-since-election-oversight-lifted/bBkHxptlim0Gp9pKu7dfrN/>

³⁷ *Supra* note 34, Leadership Conference, at 31.

³⁸ *Id.*

³⁹ Matt Vasilogambros, *Polling Places Remain a Target Ahead of November Elections*, Stateline, September 4, 2018. <https://stateline.org/2018/09/04/polling-places-remain-a-target-ahead-of-november-elections/>

⁴⁰ Sam Levine, *Officials Defend Plan to Close Almost All Polling Places in Majority Black Georgia County*, the Huffington Post, August 17, 2018. https://www.huffpost.com/entry/randolph-county-polling-places_n_5b77115ce4b0a5b1febb04fc

⁴¹ Mark Niesse, *Proposal to Close Rural Georgia Precincts Soundly Defeated*, Atlanta Journal Constitution, August 24, 2018. <https://www.ajc.com/news/state--regional-govt--politics/elections-board-votes-down-proposal-close-georgia-voting-precincts/hEbQAp5OXBICMHwRgOEQWP/>



residents; in the 2012 election, 92% of the ballots cast at the site were by Black voters.⁴² Despite the city’s department of public works determining the site’s renewal proposal was the most economical and feasible of the options, the city opted to place the polling elsewhere, at a location without convenient public transportation access.⁴³ In February 2014, the Manatee County Commission approved the Supervisor of Election’s plan to reduce polling places in the county by almost a third (down to 69 from 99);⁴⁴ Manatee County is about 9 percent Black and 17 percent Latinx.⁴⁵ Further, in Pinellas County, which is 11 percent Black and 11 percent Latinx, the Supervisor of Elections refused requests by advocates in the wake of *Shelby County* to provide early voting sites within Black communities in South St. Petersburg and St. Petersburg.⁴⁶

Florida lawmakers have also taken aim at polling places serving young voters since *Shelby County*. In 2014, the Florida Secretary of State issued a directive to county election supervisors that prevented early voting sites on college campuses.⁴⁷ The directive—clearly aimed at preventing an increasingly diverse young generation of Floridians from voting—was challenged in court and eventually nullified.⁴⁸ In a 2018 ruling, a federal judge ordered Florida to provide early voting sites on several campuses, and in that November election, about 60,000 votes were cast on 11 campuses with early voting sites.⁴⁹ In the 2019 legislative session, state lawmakers passed SB 7066, which, among other provisions, took clear aim at these early voting sites by requiring campuses to “provide sufficient non-permitted parking to accommodate the anticipated number of voters” – an impractical requirement that would have shut down polling sites on many campuses.⁵⁰

⁴² Deshayla Strachan, *Black Vote May Be Threatened in Jacksonville*, Courthouse News Service, October 3, 2013. <https://www.courthousenews.com/black-vote-may-be-threatened-in-jacksonville/>

⁴³ *Id.*

⁴⁴ Sara Kennedy, *Manatee County Commission Oks Cut in Number of Voting Locations*, Bradenton Herald, November 12, 2014. <https://www.bradenton.com/news/politics-government/election/article34599378.html>

⁴⁵ United States Census Bureau, *QuickFacts: Manatee County, Florida*.

<https://www.census.gov/quickfacts/fact/table/manateecountyflorida/PST045223>

⁴⁶ Seán Kinane, *Pastors Call for Early Voting Site in Black Neighborhood; Pinellas Says No*, WMNF, September 24, 2016. <https://www.wmnf.org/pastors-call-early-voting-site-black-neighborhood-pinellas-says-no/>

⁴⁷ Florida Directive RE: DE 14-01 Early Voting – Facilities, Locations – § 101.657, Florida Statutes, January 17, 2014. <https://www.democracydocket.com/wp-content/uploads/2020/07/2014-SOS-directive.pdf>

⁴⁸ Steve Bousquet, *Federal Judge Calls Florida Ban on Early Voting at College Campuses ‘Discrimination’*, The Miami Herald, July 24, 2018. <https://www.miamiherald.com/latest-news/article215441725.html>

⁴⁹ *Are Republicans, DeSantis Making Campus Early Voting in Florida Impossible?* Tampa Bay Times, June 19, 2019. <https://www.tampabay.com/florida-politics/buzz/2019/06/19/are-republicans-desantis-making-campus-early-voting-in-florida-impossible/>

⁵⁰ Florida Senate Bill 7066 (2019) (“S.B. 7066”). <https://www.flsenate.gov/Session/Bill/2019/7066/BillText/er/PDF>. After S.B. 7066 passed, plaintiffs filed a supplemental complaint addressing the bill, and in 2020, the case was settled and the Secretary of State issued a new directive, rescinding the 2014 directive and allowing early voting sites on college campuses, regardless of the number of parking spaces. See Florida Directive 2020-01—Early Voting Sites on College and University Campuses and Fla. Stat. 101.657(1)(a), April 2, 2020. <https://andrewgoodman.org/wp->



In Louisiana, by 2019 voters had 126 fewer places to vote than they did before *Shelby County*. Since that time, two-thirds of the state’s parishes have closed polling places. The parish with the highest share of polling place closures—Winn Parish, which closed 24 percent of its polling places between the 2012 and 2018 elections—is 31 percent Black. Similarly, East Baton Rouge Parish, which is 46 percent Black, closed 10 polling places between the 2012 and 2018 elections.”⁵¹ A 2018 analysis found that polling places closures and consolidations in Louisiana “had a racially discriminatory effect, in that as the proportion of African-Americans in a precinct increased, so did their likelihood of being consolidated.”⁵²

During the same period following the *Shelby County* decision, almost 40 percent of Mississippi counties closed at least 96 polling places.”⁵³ In the city of Meridian, which had recently elected its first Black Mayor, the majority-white board of elections moved swiftly after *Shelby County* to close seven polling places.⁵⁴ In 2015, the board further proposed to relocate several polling places located in Black churches in Meridian.⁵⁵ In Madison County in 2020, 2,550 mostly Black and Latinx voters were reassigned from the precinct where they had long voted to a new, smaller precinct, a move that one resident described as moving from a site “with adequate polling stations and adequate parking to an extremely cramped polling place,” a move that would cause “chaos and confusion.”⁵⁶ Of the 2,550 voters moved, 80 percent were voters of color.⁵⁷

C. Restrictions on Vote By Mail Negatively Impact Voters of Color

During an unprecedented and deadly global pandemic, voters in the Deep South and across the country took advantage of the opportunity to vote by mail to ensure their safety and that of their

[content/uploads/2020/04/Directive-2020-01.pdf](https://www.shawndonahue13.com/uploads/2020/04/Directive-2020-01.pdf). See also *The Andrew Goodman Foundation Wins Major Student Voting Rights Victory in Florida Ahead of the 2020 Election*, Andrew Goodman Foundation, April 3, 2020. <https://andrewgoodman.org/news-list/the-andrew-goodman-foundation-wins-major-student-voting-rights-victory-in-florida-ahead-of-the-2020-election/>

⁵¹ *Supra* note 34, Leadership Conference, at 34.

⁵² Shawn J. Donahue, *The Re-Precincting of Louisiana after Shelby County: Was Race a Factor?*, Binghamton University (SUNY), 2018.

http://www.shawndonahue13.com/uploads/9/7/4/6/97469540/louisiana_paper_for_southern_donahue.pdf

⁵³ *Supra* note 34, Leadership Conference, at 36.

⁵⁴ Ari Berman, *There Are 868 Fewer Places to Vote in 2016 Because the Supreme Court Guttled the Voting Rights Act*, *The Nation*, November 4, 2016. <https://www.thenation.com/article/archive/there-are-868-fewer-places-to-vote-in-2016-because-the-supreme-court-guttled-the-voting-rights-act/>

⁵⁵ Jeff Byrd, *Reaction Mixed to Precinct Changes*, *The Meridian Star*, May 10, 2015.

https://www.meridianstar.com/news/reaction-mixed-to-precinct-changes/article_8233c35c-f6ca-11e4-aff9-83517e2166dc.html

⁵⁶ Ashton Pittman & William Pittman, *Madison County Moves 2,000 Black, Hispanic Voters to Crowded Precinct with Little Warning*, *Mississippi Free Press*, October 29, 2020. <https://www.mississippifreepress.org/6492/madison-county-moves-2000-black-hispanic-voters-to-crowded-precinct-with-little-warning>

⁵⁷ *Id.*



loved ones.⁵⁸ This new wave of Americans enjoying voting by mail included many voters of color, who, before the 2020 elections, had most often opted to vote in person.⁵⁹ In state legislative sessions in 2021, Deep South lawmakers took direct aim at the voting method, adding new restrictions and requirements that made it harder to vote by mail.

Alabama has taken aim at voting by mail over and over again since the 2020 election. In 2021, the state legislature passed HB538,⁶⁰ which shortens the absentee voting window by reducing the number of days voters have to request an absentee ballot by mail. Previously, the State accepted absentee ballot applications until five days before an election, but now the State only accepts applications received seven days prior to an election. In 2022 and 2023, lawmakers advanced bills that would restrict who can assist voters with their absentee ballot applications and ballots themselves.⁶¹ While those bills did not ultimately pass, Alabama lawmakers are actively working to restrict this option even further.

During the present legislative session, lawmakers have made restricting voting access a top priority, giving the SB1 designation to a bill that would create felonies for voters offering compensation to neighbors, community members, or civic organizations that provide absentee ballot application assistance.⁶² Particularly troubling is that compensation is undefined and can range from a salary paid to staff at a nursing home to gas money to a nephew to a plate of cookies as a thank-you gift. And while there is language to exclude disability from such penalties, the stark reality is that there are many who are disabled, but do not possess medical documentation and could be subject to prosecution.

Not only would this bill, which we anticipate will become law this year, unnecessarily criminalize Alabamians seeking assistance with an often confusing, onerous process and those simply supporting their neighbors and community, but it will also place an extra burden on Alabamians of color, who are more likely to have a disability than white Alabamians. According to the Yang-Tan Institute on Employment and Disability at Cornell University, in 2022 in

⁵⁸ *Majority of Voters Used Nontraditional Methods to Cast Ballots in 2020*, U.S. Census Bureau, April 29, 2021. <https://www.census.gov/library/stories/2021/04/what-methods-did-people-use-to-vote-in-2020-election.html>. See also *Mail-in Voting Became Much More Common in 2020 Primaries as COVID-19 Spread*, Pew Research Center, October 13, 2020. <https://www.pewresearch.org/short-reads/2020/10/13/mail-in-voting-became-much-more-common-in-2020-primaries-as-covid-19-spread/>

⁵⁹ *Id.* See also *Voting and Registration in the Election of 2018*, U.S. Census Bureau, April 2019. <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>; *Voting and Registration in the Election of 2020*, U.S. Census Bureau, April 2021. <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>

⁶⁰ Alabama House Bill 538 (2021). <https://arc-sos.state.al.us/ucp/L0614123.A11.pdf>.

⁶¹ Alabama House Bill 193 (2022). <https://legiscan.com/AL/text/HB193/id/2500784/Alabama-2022-HB193-Introduced.pdf>; Alabama House Bill 209 (2023). <https://legiscan.com/AL/bill/HB209/2023>; Alabama House Bill 193 (2022). <https://legiscan.com/AL/text/HB193/id/2500784/Alabama-2022-HB193-Introduced.pdf>; Alabama House Bill 209 (2023). <https://legiscan.com/AL/text/HB209/id/2757291/Alabama-2023-HB209-Introduced.pdf>

⁶² Alabama Senate Bill 1 (2024). <https://legiscan.com/AL/text/SB1/2024>



Alabama, 20.7 percent of Native Americans and 18.5 percent of Black people reported a disability, compared to 14.4 percent of white people.⁶³

In Florida, SB90—an omnibus voter suppression law passed in 2021—created new onerous requirements for voters who wish to vote by mail. This law came on the heels of an election in which 40 percent of votes cast by Black voters and 41 percent of those cast by Latinx voters were by mail,⁶⁴ and the restrictions make it harder for these communities to vote, by mail or otherwise. The law requires voters to share sensitive information, like the last four digits of one’s social security number, in the mail or over the phone in order to request a mail ballot, a step many voters might find worrisome.⁶⁵ The law also ended the ability of voters to request mail-in ballots for multiple election cycles, now requiring voters to submit a vote-by-mail request each election.⁶⁶ The law criminalized neighbors, community members, and third-party organizations—essentially anyone who is not family—returning completed mail ballots,⁶⁷ a provision that especially negatively impacts voters with disabilities. And, after Black Floridians voting by mail used drop boxes at much higher rates than white Floridians voting by mail,⁶⁸ the law placed severe restrictions on drop boxes, requiring they be monitored by election officials at all times and limiting their locations and hours of operation.⁶⁹ These restrictions have implications for Black and Latinx Floridians, who “tend to have stricter and more unpredictable work obligations that limit their availability during normal voting hours, and who tend to encounter longer lines at their designated polling places.”⁷⁰ In striking down many of SB90’s most discriminatory provisions, a federal judge concluded that “SB 90 effectively bans drop-box use at the specific times and the specific days that Black voters, not all Democratic voters, are most likely to use them.”⁷¹ As detailed further below, the Eleventh Circuit reversed this ruling in April 2023.

⁶³ 2022 Disability Status Report: Alabama, Yang-Tan Institute on Employment and Disability, Cornell University, 2022. <https://www.disabilitystatistics.org/report/pdf/2022/2001000>

⁶⁴ Complaint at 4, *Florida Rising v. Lee*, No. 4:21-cv-00201-AW-MJF (N.D. Fla. May 17, 2021). <https://advancementproject.org/resources/florida-rising-v-laurel-m-lee/>

⁶⁵ Florida Senate Bill S.B. 90 (2021) (“S.B. 90”). <https://www.flsenate.gov/Session/Bill/2021/90>

⁶⁶ *Id.* See also *Palm Beach County Voter Notice: Recent Changes to Florida Election Code*, Palm Beach County Supervisor of Elections, July 2021.

[https://www.voteplmbeach.gov/Portals/PalmBeach/Documents/SOE_PBCSB90%20\(1\).pdf](https://www.voteplmbeach.gov/Portals/PalmBeach/Documents/SOE_PBCSB90%20(1).pdf)

⁶⁷ *Supra* notes 65 and 66. Note that Florida law already criminalized returning more than two ballots, if the ballot assister received any kind of pay or benefit for providing the assistance. S.B. 90 removed the remuneration requirement and made it a misdemeanor to provide such ballot assistance period.

⁶⁸ Experts in the trial against SB90 demonstrated that Black voters using mail-in balloting in 2020 “had, on average, 48% and 25% greater odds” in the primary and general elections, respectively, “of voting via drop box than” white voters casting a mail-in ballot. *League of Women Voters v. Lee* (Case No. 4:21-cv-00186), Tr. at 2270-71.

⁶⁹ *Supra* note 66.

⁷⁰ Complaint at 37, *Florida State Conference of Branches and Youth Units of the NAACP v. Lee*, No. 4:21-cv-00187-WS-MAF (N.D. Fla. May 6, 2021), <https://www.naacpldf.org/wp-content/uploads/Florida-Voting-Law-Complaint.pdf>

⁷¹ *League of Women Voters of Florida v. Lee*, 595 F. Supp. 3d 1042, 1117 (N.D. Fla. Mar. 31, 2022). https://www.splcenter.org/sites/default/files/documents/final_order_following_bench_trial.pdf



Florida went even further in restricting opportunities to vote by mail two years later in SB 7050. In its latest omnibus anti-voter law, the state, among other things, shortened the deadline to request a mail ballot by two days, requires voters have an emergency to pick up a mail ballot during early voting, bans anyone but immediate family members from requesting a mail-in ballot on behalf of another voter, canceling any mail-in ballot request for a voter for whom other first-class mail was returned as undeliverable, and blocking the counting of ballots returned in the same envelope as another ballot.⁷²

Georgia's SB202 also took aim at mail voting options, after nearly 30 percent of Black voters cast their ballot by mail in 2020, compared to only 24 percent of white voters.⁷³ The law delayed and compressed the time period for requesting absentee ballots, placed limitations on the use of secure drop boxes as a means of returning absentee ballots, and created restrictions, enforced by criminal penalties, on who is allowed to assist people in submitting an application for an absentee ballot and in submitting the absentee ballot itself.⁷⁴

Louisiana was an early adopter of restrictions on vote by mail. In 2020, when many states were expanding mail voting options in response to the global pandemic, Louisiana lawmakers passed SB 75, which restricted who can serve as the witness required for absentee ballots. The law states that no person, except the immediate family member of a voter, may serve as a witness to more than one voter.⁷⁵ This year, less than a week into the regular legislative session, Louisiana lawmakers had already proposed another bill that would make it harder to vote. HB 476 would prohibit Louisianans from returning by mail more than one absentee ballot for any voter who isn't an immediate family member.⁷⁶ These types of restrictions on a common practice known as community ballot collection disproportionately impact communities of color, who are more likely to rely on neighbors, community members, or third-party organizations for support in returning their absentee ballots.⁷⁷

Not to be outdone by its neighbors, Mississippi has also tightened rules for absentee voting in the wake of 2020. During the 2023 legislative session, lawmakers passed SB2358, which bans friends, neighbors, and volunteers from non-partisan voter services groups from providing assistance to Mississippians who vote absentee and applies harsh criminal penalties to those who

⁷² Florida Senate Bill 7050 (2023) ("S.B. 7050"). <https://www.flsenate.gov/Session/Bill/2023/7050>

⁷³ Kevin Morris, *Georgia's Proposed Voting Restrictions Will Harm Black Voters Most*, Brennan Center for Justice, March 6, 2021. <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most>

⁷⁴ Georgia Senate Bill 202 (2021) ("S.B. 202"). <https://www.legis.ga.gov/api/legislation/document/20212022/201498>

⁷⁵ Louisiana Senate Bill 75 (2020) ("S.B. 75"). <https://legiscan.com/LA/text/SB75/2020>

⁷⁶ Louisiana House Bill 476 (2024) ("H.B. 476"). <https://legis.la.gov/legis/ViewDocument.aspx?d=1351012>

⁷⁷ Community ballot collection as a part of a broader informal support system among neighborhoods, communities, social circles that helps people with mobility and transportation barriers, including people with disabilities and with no access to transportation, conditions that are both more prevalent in communities of color.



do.⁷⁸ The law also fails to define the term caregiver, threatening to chill voter assistance from staff of health care institutions. Not only does the law place unnecessary and illegal burdens on voters with disabilities—a community that already faces heightened barriers and increased risk of disenfranchisement in our democracy—it also disproportionately affects Mississippians of color. Black and Native Americans in Mississippi are more likely to have a disability than white Mississippians; in 2022, 18.3 percent of Black/African Americans and 20.8 percent of Native Americans reported a disability, compared to 15.3 percent of white Mississippians.⁷⁹ Shortly after the law passed, SPLC and partners challenged the law in court and won a preliminary injunction, preventing the law from taking effect during the 2023 elections and protecting voters who need assistance and those who support them.⁸⁰

D. Voter Registration is Also Being Weaponized in Deep South States Post-*Shelby County* and Disproportionately Impact Voters of Color

Anti-voter forces are also targeting various facets of the voter registration process to diminish the voting power of communities of color.

I. *Discriminatory Exact Match Policies and Laws*

The first step to weaponizing voter registration to keep people of color from voting is to keep these communities off the registration rolls in the first place. From 2010 to 2016, Georgia employed an administrative policy that disproportionately rejected voter registrations from people of color. Under Georgia’s “exact match” policy, a voter’s registration application would not be accepted if the information therein did not perfectly match—down to a hyphen, an accent mark, or the inclusion of a middle initial—records held by the Georgia Department of Drivers Services or the Social Security Administration. The flawed policy meant that tens of thousands of applications from eligible applicants were rejected, and those rejected were disproportionately Black, Latinx, and Asian American applicants. By race, the population of voters attempting to register was 47.2 percent white, 29.4 percent Black, 3.6 percent Latinx, and 2.6 percent Asian, but among applicants who failed the exact match verification procedure, only 13.6 percent were white, while 63.6 percent were Black, 7.9 percent were Latinx, and 4.8 percent were Asian.⁸¹ Georgia maintained this policy despite its awareness of the policy’s discriminatory impact gleaned through the preclearance processes, litigation, and public testimony, and only abandoned

⁷⁸ Ballot Harvesting; Ban. MS SB 2358 (2023) <https://legiscan.com/MS/text/SB2358/id/2642217>

⁷⁹ 2022 *Disability Status Report: Mississippi*, Yang-Tan Institute on Employment and Disability, Cornell University, 2022. <https://www.disabilitystatistics.org/report/pdf/2022/2028000>

⁸⁰ *Disability Rights Mississippi, et al. v. Lynn Fitch, et al.*, filed May 31, 2023, Southern Poverty Law Center. <https://www.splcenter.org/seeking-justice/case-docket/disability-rights-mississippi-et-al-v-lynn-fitch-et-al>. Lawsuit alleges a violation of Section 208 of the Voting Rights Act. A PI was granted on July 25, 2023; the case is now on appeal before the Fifth Circuit.

⁸¹ Declaration of Christopher Brill, expert witness in lawsuit challenging Georgia’s exact match policy, *Georgia State Conference of the NAACP v. Kemp*, Exhibit 5 at 2, September 13, 2016.



the administrative policy after it was forced to through a settlement in litigation brought by civil and voting rights groups.⁸²

Yet in 2017, only months after agreeing to that settlement, Georgia enacted legislation codifying a version of the “exact match” protocol. Shortly before Georgia’s 2018 gubernatorial election between then-Secretary of State Brian Kemp and former state representative Stacey Abrams, the Associated Press reported that the Secretary of State’s office had placed on hold more than 50,000 voter registrations due to the exact match law. And although Georgia’s population was 32 percent Black, nearly 70 percent of the affected applications belonged to Black voters.⁸³ While the state eventually abandoned the deeply flawed approach to registration after again being sued over it, an untold number of Georgians of color were harmed during its years-long reign.⁸⁴

II. *Improper Removals*

Once voters of color successfully make it onto the registration rolls, they still face challenges staying on the rolls, especially in some Deep South states with overly aggressive list maintenance policies, also known as voter purges. Too often, voter purges disproportionately affect Black voters and other voters of color.⁸⁵

Improper and discriminatory removal practices are a significant problem in Georgia. One recent study of ten states across the country scored Georgia second to last in its list maintenance practices—just 27 percent out of 100—indicating that many elements of its list maintenance practices and procedures risk improperly removing eligible voters.⁸⁶ One of the reasons for this low score is Georgia removes voters who have not voted frequently enough in the eyes of its election officials, a so-called “use it or lose it” policy.⁸⁷ Relying on this policy, Georgia purged a whopping half million people from the registration rolls in one day, more than 100,000 of them

⁸² Stanley Augustin, *Voting Advocates Announce a Settlement of “Exact Match” Lawsuit in Georgia*, Lawyers’ Committee for Civil Rights Under Law, February 10, 2017. <https://www.lawyerscommittee.org/voting-advocates-announce-settlement-exact-match-lawsuit-georgia/>

⁸³ Ben Nadler, *Voting Rights Become a Flash Point in Georgia governor’s Race*, Associated Press, October 9, 2018. <https://apnews.com/article/fb011f39af3b40518b572c8cce6e906c>

⁸⁴ Stanley Augustin, *Georgia Largely Abandons Its Broken “Exact Match” Voter Registration Process*, Lawyers’ Committee for Civil Rights Under Law, April 5, 2019. <https://www.lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/>

⁸⁵ Liz Kennedy & Danielle Root, *Keeping Voters Off the Rolls: Impact of Documentary Proof of Citizenship and Illegal Voter Purges*, Center for American Progress, July 2017, <https://www.americanprogress.org/article/keeping-voters-off-rolls/>; Michael C. Herron & Daniel A. Smith, *Estimating the Differential Effects of Purging Inactive Registered Voters*, July 25, 2018, <https://esra.wisc.edu/wp-content/uploads/sites/1556/2020/11/herron.pdf>; Brief for NAACP and the Ohio State Conference of the NAACP as Amici Curiae Supporting Respondents, *Husted v. A. Philip Randolph Institute*, 584 U.S. 756 (2018) (No. 16-980), <https://advancementproject.org/resources/amicus-brief-filed-husted-v-philip-randolph-institute/>

⁸⁶ *Protecting Voter Registration: An Assessment of Voter Purge Policies in Ten States*, Demos, August 10, 2023. <https://www.demos.org/sites/default/files/2023-11/Protecting%20Voter%20Registration%20-%20Full%20report.pdf>

⁸⁷ Ga. Code §§ 21-2-234(a)-(c), 21-2-235.



for inactivity. An American Public Media (“APM”) review of the data found that Black voters were canceled at a higher rate than white voters for inactivity in six of every ten counties across Georgia and were removed at a rate of 1.25 times greater than white voters in more than a quarter of those counties.⁸⁸ The purges, moreover, have an extraordinarily high error rate. In 2019, the Secretary of State purged 313,000 voters from the rolls on the grounds that they had moved from the address provided in their registration. An expert study concluded that more than 198,000 of these voters, or 63.3 percent, had not actually moved.⁸⁹ A disproportionate number of voters whose registrations were erroneously canceled were Black or nonwhite.⁹⁰

Mississippi instituted a similar “use it or lose it” policy in 2023 with the passage of HB 1310. The new law mandates the beginning of a removal process if a voter does not vote in an election in the state for four years.⁹¹ The removal process is also triggered if the USPS reports a change-of-address, or if election officials receive “reliable information” a voter has moved from their registered address. Should the affected voters fail to reply to the confirmation notice, they will be forced to vote via affidavit until they provide proof of residency.⁹² While there is not yet data on the racially disparate impact of improper purges in Mississippi following the implementation of this law, there is good reason to fear it will similarly fall hardest on the states with a high proportion of Black voters and other voters of color. Compounding the potentially disenfranchising effects of this policy is the reality that, at 30 days Mississippi has the strictest voter registration deadline in the country,⁹³ and the state does not offer same-day voter registration, meaning voters who do not learn their registrations are cancelled until they show up at the polls have no recourse. In condemning the legislation, one Mississippi lawmaker said “People have to go through what amounts to a reregistration process after they have been registered to vote ... I think it’s punitive in nature, and there’s no reason for it other than what Mississippi appears to be satisfied with being; a state that has not learned any lessons from its history and past.”⁹⁴

Mississippi’s law is also concerning because it creates the risk that eligible voters could be flagged as non-citizens and have their registration placed on inactive status, be forced to vote via affidavit, and provide proof of citizenship within thirty days of receiving a confirmation notice; if they do not respond in time, they will be removed from the rolls entirely.⁹⁵ In nearby Texas, a

⁸⁸ Angela Caputo, Geoff Hing & Johnny Kauffman, *They Didn’t Vote ... Now They Can’t*, APM Reports, October 19, 2018. <https://www.apmreports.org/story/2018/10/19/georgia-voter-purge>

⁸⁹ Greg Palast, *Georgia Voter Roll Purge Errors*, ACLU of Georgia, September 1, 2020. https://www.acluga.org/sites/default/files/georgia_voter_roll_purge_errors_report.pdf

⁹⁰ *Id.*

⁹¹ Miss. Code § 23-15-152.

⁹² Mississippi House Bill 1310 (“H.B. 1310”). <https://billstatus.ls.state.ms.us/2023/pdf/history/HB/HB1310.xml>

⁹³ Secretary of State Michael Watson, *Voter Registration Information*, 2024. https://www.sos.ms.gov/elections-voting/voter-registration-information?ref=voteusa_en

⁹⁴ Kobee Vance, *Mississippi Legislature Passes Bill to Purge Voter Rolls*, MPB, March 29, 2023.

<https://www.mpbonline.org/blogs/news/mississippi-legislature-passes-bill-to-purge-voter-rolls/>

⁹⁵ *Supra* note 92 (“H.B. 1310”)



flawed review of the registration rolls flagged thousands of naturalized citizens—who are fully eligible and entitled to vote—as ineligible, and the Secretary of State directed counties to investigate them.⁹⁶ Further, ample evidence demonstrates that people of color are less likely to possess the documentation often required to prove their identity for the purposes of voting,⁹⁷ meaning this law is likely to disproportionately disenfranchise Mississippians of color.

III. Mass Challenges

In Georgia, anti-voter activists have brought hundreds of thousands of challenges to voter registrations and voter eligibility across the state in a coordinated effort to burden election boards and intimidate voters. In 2020, prior to the Senate runoff elections, a conservative organization challenged the right to vote of over 300,000 Georgia citizens.⁹⁸ Voting rights advocates promptly sued the organization.⁹⁹ Following unprecedented turnout of voters of color in the runoff elections, Georgia then gave the green light to frivolous voter challenges and voter intimidation through a provision in SB 202 clarifying that any Georgia citizen can bring an unlimited number of challenges to the voting rights of their fellow citizens.¹⁰⁰

Emboldened by the new law, voter challenges have run rampant across the state since then, crippling election boards and unfairly targeting voters of color, young people, and unhoused people. In fact, since Governor Kemp signed SB 202 into law, anti-voter activists have challenged the eligibility of over 100,000 Georgia voters, disproportionately targeting counties with the most Black and brown voters.¹⁰¹ In addition, while data analysis remains ongoing, voting rights advocates tracking voter challenges have found that Black voters are more likely to have their voter eligibility challenged within those counties as well.

⁹⁶ Alex Ura, *Texas Will End Its Botched Voter Citizenship Review and Rescind Its List of Flagged Voters*, Texas Tribune, April 26, 2019. <https://www.texastribune.org/2019/04/26/texas-voting-rights-groups-win-settlement-secretary-of-state/>

⁹⁷ *Supra* note 10 Brennan Center.

⁹⁸ Mark Niesse, *Eligibility of 364,000 Georgia Voters Challenged Before Senate Runoff*, Atlanta Journal Constitution, December 22, 2020. <https://www.ajc.com/politics/eligibility-of-364000-georgia-voters-challenged-before-senate-runoff/3UIMDOVRFVERXOJ3IBHYWZBWYI/>

⁹⁹ See Complaint, *Fair Fight, Inc. v. True the Vote, Inc.*, No. 2:20-cv-00302 (N.D. Ga. Mar. 22, 2021). https://fairfight.com/wp-content/uploads/2021/05/TTV-Am.-Compl.-with-exhibits_Part1.pdf?x58856. In January 2024, a federal judge ruled the challenges do not violate the VRA. See Nick Corasaniti, *Conservative Group Wins Legal Victory 2020 Voting Challenges in Georgia*, The New York Times, January 2, 2024. <https://www.nytimes.com/2024/01/02/us/politics/true-the-vote-fair-fight-georgia.html>

¹⁰⁰ *Supra* note 74, “S.B. 202”

¹⁰¹ Doug Bock Clark, *Close to 100,000 Voter Registrations Were Challenged in Georgia – Almost All by Just Six Right-Wing Activists*, ProPublica, July 13, 2023. <https://www.propublica.org/article/right-wing-activists-georgia-voter-challenges>



Without intervention, the proliferation of mass voter challenges in Georgia is only likely to increase. Indeed, the Georgia legislature is presently considering legislation to lower the standards for voter challenges and give additional rights to those who bring challenges, which would motivate even more conspiracy theorists to bring challenges while further overwhelming under-resourced local election boards.

IV. Restrictions on Third-Party Voting Registration Organizations

Third-party voter registration organizations (3PVROs) play a vital role in ensuring that all Floridians have access to the electoral process. In 2022, approximately 63 percent of the voting-age population was registered to vote in Florida according to U.S. Census Bureau estimates, which ranks Florida 47th out of the 50 states and the District of Columbia.¹⁰² Voters of color rely on 3PVROs for voter registration and participation in the political process. Indeed, 3PVROs register one out of every ten Black voters and one out of every ten Hispanic voters compared to one out of every 50 white voters.¹⁰³ Despite data showing that citizens in Florida need increased opportunities for voter registration and that 3PVROs fulfill an essential role in registering voters of color, Florida has continuously targeted these organizations and attempted to hinder their voter registration efforts.

Most recently, in 2023, Governor DeSantis signed a sweeping bill directly targeting 3PVROs and placing severe burdens on their voter registration activities.¹⁰⁴ SB 7050 effectively stopped organizations from doing their important work and risks disenfranchising the voters that the organizations are dedicated to assisting. The new law imposes onerous requirements on 3PVROs, including requiring organizations to register for every single election cycle and shortening the amount of time organizations have to return applications from 14 days to 10 days while substantially increasing the fine for late delivery. In addition, by preventing organizations from retaining an applicant's contact information, the law also prevents 3PVROs from carrying out a core function of their mission in ensuring that the community members they serve remain engaged in the political process after registration. SB 7050 also attempted to ban all non-citizens and people with certain felony convictions from collecting or handling voter registration applications on behalf of a 3PVRO and impose a fine of \$50,000 for each violation.¹⁰⁵ Overall,

¹⁰² See Voting and Registration in the Election of November 2022—Table 4a, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-586.html>

¹⁰³ See Smith, Daniel A., Expert Report Submitted on Behalf of *Florida State Conference of NAACP v. Lee*, 4:21-cv-187-MW-MAF, and *Florida Rising Together v. Lee*, 4:21-cv-201-MW-MJF, September 2021, available at <https://www.brennancenter.org/sites/default/files/2022-03/Dr.%20Daniel%20A.%20Smith%20-%20Expert%20Report.pdf>.

¹⁰⁴ *Supra* note 72 (“S.B. 7050”)

¹⁰⁵ A federal district court recently ruled that the ban on non-citizens collecting and handling voter registration applications violated the Equal Protection Clause, so this provision is not in effect at this time. See *Victory in*



the law increases the total aggregate fine an organization can face each year from \$50,000 to \$250,000. Due to these inordinately burdensome regulations, many 3PVROs ceased voter registration when the law came into effect, exactly as Florida’s anti-voter forces intended.

SB 7050 is part of a historical pattern and practice of laws targeting 3PVRO groups. The evisceration of the Voting Rights Act following the passage of *Shelby County v. Holder* has allowed restrictive voting laws and voter intimidation via legislation to proliferate.

E. Other Changes to Voting Laws Make Participation Harder for Communities of Color

Changes to voting laws in the Deep South that make it harder for people of color to vote are not confined to the areas listed above. Freed from the protections provided to these voters by preclearance, state lawmakers are pursuing sweeping changes to the way elections are run that impact nearly every aspect of the voting process.

I. *Restrictions on Curbside and Mobile Voting*

For example, accommodations for vulnerable voters have come under attack. In the final hours of the 2021 legislative session, Alabama passed HB285 banning curbside voting and prohibiting even election officers and poll workers from taking any ballots to or from the polling place on Election Day.¹⁰⁶ Curbside voting was a lifeline for voters with disabilities, elderly voters, and other high-risk voters during the 2020 elections taking place amidst a deadly pandemic,¹⁰⁷ and it has been successfully and securely used during elections outside the context of a pandemic for the ways it supports participation by these and other vulnerable communities.¹⁰⁸ But not in Alabama. Though the practice has never been used in the state, lawmakers fought tooth and nail to outlaw it in 2021 with one more law that likely has a discriminatory impact on the Black Alabamians and other Alabamians of color who are more likely to have a disability than white Alabamians.¹⁰⁹

Challenge Against Florida’s Anti-Voter Law, American Civil Liberties Union of Florida, March 1, 2024. <https://www.acluflo.org/en/press-releases/victory-challenge-against-floridas-anti-voter-law>. However, the court found the plaintiffs lacked standing to challenge the ban on people with certain felony convictions collecting and handling voter registration application, so that provision remains in place. See Rachel Selzer, *Federal Judge Upholds Provision of Florida’s Anti-Voting Law*, Democracy Docket, February 14, 2024.

<https://www.democracydocket.com/news-alerts/federal-judge-upholds-provision-of-floridas-2023-anti-voting-law/>. Trial in all three consolidated cases challenging additional provisions of the legislation begins on April 1, 2024.

¹⁰⁶ Ala. Code § 17-6-4.

¹⁰⁷ Lilian Aluri, *COVID-19 and the Disability Vote*, American Association of People with Disabilities, September 2020. <https://www.aapd.com/wp-content/uploads/2024/02/COVID-19-and-the-Disability-Vote.pdf>

¹⁰⁸ *Curbside Voting*, Election Assistance Commission, May 1, 2022.

https://www.eac.gov/sites/default/files/electionofficials/QuickStartGuides/Curbside_Voting_EAC_Quick_Start_Guide_508.pdf. See also *Curbside Voting for Voters With Disabilities*, Movement Advancement Project.

https://www.lgbtmap.org/democracy-maps/curbside_voting

¹⁰⁹ *2022 Disability Status Report: Alabama*, Yang-Tan Institute on Employment and Disability, Cornell University, 2022. <https://www.disabilitystatistics.org/report/pdf/2022/2001000>



Another innovation some states pursued to protect voters and election workers alike during the 2020 elections is mobile voting. Fulton County, Georgia, for example, purchased two mobile voting units that made stops at twenty-four different locations, including several Black churches, during the advance voting period ahead of the General Election.¹¹⁰ After historic turnout in that election, and the subsequent runoff, among Georgia voters—especially voters of color—Georgia lawmakers swiftly passed an omnibus anti-voter law that rolled back any of the voting and voter engagement methods employed by communities of color in 2020, including mobile voting.¹¹¹ SB202 restricts the use of mobile voting units to situations where an emergency is declared by the Governor, a declaration that may only occur under narrow circumstances and only after particular procedures are taken, including a convening of a special session of the General Assembly. SB202 also restricts the use of mobile voting units to supplement existing polling locations during the early voting period.¹¹²

II. *Criminalization of Providing Food and Water*

First in Florida with SB90 and, subsequently, in Georgia with SB202, lawmakers took aim at the community members and third-party organizations—like the Black church—that have historically helped keep voters hydrated and motivated by providing water and snacks to those waiting in long lines.¹¹³ This practice, often known as “line-warming,” has been a staple of non-partisan get-out-the-vote efforts for years and is used especially by civic organizations and churches in communities of color to support voters.¹¹⁴ In 2020, in the face of long lines on Election Day, free food and water from volunteers and third-party organizations helped voters sustain their strength and make it into the voting booth.

Florida’s provision in SB90 was vague, stating that non-election workers cannot engage in “any activity with the intent to influence or effect of influencing a voter” within 150 feet of a polling location.¹¹⁵ In Florida and elsewhere, voters of color are more likely to stand in long lines than white voters.¹¹⁶ In striking down the ban on line-warming in SB90, a federal judge wrote that the “Court concludes that the solicitation definition will have a disparate impact on minority voters

¹¹⁰ *Early Voting Starts Today & Fulton Mobile Voting Unites Hit the Streets*, Fulton County, October 12, 2020. <https://www.fultoncountyga.gov/news/2020/10/12/early-voting-and-fulton-mobile-voting-units-hit-the-streets>

¹¹¹ *Supra* note 74 (“S.B. 202”)

¹¹² *Id.*

¹¹³ *Supra* notes 65 (“S.B. 90”) and 74 (“S.B. 202”)

¹¹⁴ First Amended Complaint at 67, *Sixth District of the African Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260 (N.D. Ga. May 24, 2021), see “plaintiffs.”

https://www.splcenter.org/sites/default/files/documents/083_ame_et_al_fac.pdf

¹¹⁵ *Supra* notes 65 (“S.B. 90”)

¹¹⁶ M. Keith Chen, Kareem Haggag, Devin G. Pope, Ryne Rohla, *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data*, Cornell University, last revised October 31, 2020. <https://arxiv.org/abs/1909.00024>



because minority voters are disproportionately likely to wait in line to vote, and because the provision discourages third parties from helping those waiting to vote.”¹¹⁷

Georgia’s provision banning line warming came in SB202, the omnibus anti-voter bill passed in the wake of historic turnout by Georgians of color in the 2020 general and runoff elections. The provision criminalizes volunteers who provide free food, seating, and water, or any other “gifts,”—such as a folding chair or an umbrella for shade to an elderly voter—as well as other practices and materials associated with line relief, to voters standing within 150 feet of the outer edge of a polling place. It also prohibits a volunteer from coming within 25 feet of any voter standing in line, even outside of the 150-foot zone, effectively covering conduct hundreds of feet in distance from the polling place entrance.¹¹⁸ Georgians who violate this ban are subject to a misdemeanor charge.¹¹⁹ The SPLC and other civil rights organizations brought a case against SB202, challenging the line-warming ban and several other discriminatory provisions in the law.¹²⁰ Thanks to that case, a federal judge has also blocked the line-warming ban in Georgia from going into effect, at least temporarily.¹²¹

III. Changes to Election Dates and Shortened Early Voting and Runoff Periods

Provisions in recent laws passed by the Alabama and Georgia legislatures also reduced the length of time between the general election and the runoff. In Alabama’s case, SB119¹²² cut the runoff period from six weeks down to four. Similarly, state lawmakers in Georgia changed the rules for their own runoffs, reducing the period between the general and the runoff by five weeks to just 28 days.¹²³ The much-shortened turnaround time between the general and the runoff increased challenges both for election workers processing mail-in ballot requests and for people who cannot vote in person and rely on voting by mail; the change likely prevented some voters in this category from voting. The change also prevents newly eligible voters from voting in runoff elections, since Georgia’s registration deadline is 29 days before an election (one of the harshest registration deadlines in the country).¹²⁴ The law also drastically reduces the early voting period for runoffs from three weeks to just one week, with no mandatory weekend voting days,

¹¹⁷ *League of Women Voters of Florida v. Lee*, 595 F. Supp. 3d 1042, 1107 (N.D. Fla. Mar. 31, 2022). https://www.splcenter.org/sites/default/files/documents/final_order_following_bench_trial.pdf

¹¹⁸ *Supra* note 74 (“S.B. 202”)

¹¹⁹ *Id.*

¹²⁰ *Complaint, Sixth District of the African Methodist Episcopal Church v. Kemp*, 574 F. Supp. 3d 1260 (N.D. Ga. Mar. 22, 2021). <https://www.splcenter.org/seeking-justice/case-docket/sixth-district-african-methodist-episcopal-church-v-kemp>

¹²¹ *In re Georgia Senate Bill 202, No. 1:21-mi-55555-JPB* (N.D. Ga. Aug. 18, 2023) (order granting preliminary injunction). <https://www.splcenter.org/sites/default/files/documents/ame-v-kemp-line-relief-preliminary-injunction-order.pdf>

¹²² Alabama Senate Bill 199 (“S.B. 119”). <https://arc-sos.state.al.us/ucp/L0585271.AI1.pdf>; Alabama Senate Bill 31 (“S.B. 31”). <https://arc-sos.state.al.us/ucp/L0586681.AI1.pdf>

¹²³ *Supra* note 74 (“S.B. 202”)

¹²⁴ *Elections FAQ*, Georgia Secretary of State. <https://sos.ga.gov/page/elections-faq>



including Sunday voting.¹²⁵ In addition to making the already difficult lives of election workers even more complicated, this law is designed to prevent Black voters in Georgia from again exercising the power they wielded during the runoff period in 2020, when Georgia voters of all races—led by Black voters—elected their first Black Senator.¹²⁶ That year, instead of the significant drop off usually seen during runoff elections, Black voter turnout was 91.8 percent of that in November’s General Election.¹²⁷

SB202 was not Georgia’s first effort to restrict voting hours and days to limit the power of Black voters and other voters of color. Following the *Shelby County* decision and up to this very day, lawmakers in the state have repeatedly attempted to shorten the state’s early voting period. In 2014, Georgia lawmakers proposed a bill that would have reduced early voting to just 6 days for small, consolidated cities.¹²⁸ That same year, one lawmaker explained that he opposed Sunday voting at a local mall because it was “dominated by African American shoppers” and was “near several large African American mega churches” and that he “prefer[red] more educated voters than a greater increase in the number of voters.”¹²⁹ In 2015, lawmakers introduced a bill that would have reduced early in-person voting from 21 days to 12 days and restricted the availability of Sunday voting, which is disproportionately used by Black voters.¹³⁰

In 2020, Cobb County—Georgia’s third largest county and whose population is 26.6 percent Black and 14.5 percent Latinx—decided to cut the number of early voting sites for the Runoff Elections from eleven to five, despite the need to serve more than 537,000 voters.¹³¹ The closures

¹²⁵ *Supra* note 74 (“S.B. 202”)

¹²⁶ Peter Beaumont, *Why Raphael Warnock was elected Georgia’s first black US Senator*, the Guardian, January 6, 2021. <https://www.theguardian.com/us-news/2021/jan/06/why-raphael-warnock-was-elected-georgia-first-black-us-senator>

¹²⁷ Bernard L. Fraga, Zachary Peskowitz, and James Szewczyk, *New Georgia runoffs data finds that more Black voters than usual came out. Trump voters stayed home*, the Washington Post, January 29, 2021. <https://www.washingtonpost.com/politics/2021/01/29/new-georgia-runoffs-data-finds-that-more-black-voters-than-usual-came-out-trump-voters-stayed-home/>

¹²⁸ Georgia House Bill 891 (2014) (“H.B. 2014”). See also David Wickert, *Bill would allow cities to cut early voting*, the Atlanta Journal Constitution, March 11, 2014. <https://www.ajc.com/news/state--regional/bill-would-allow-cities-cut-early-voting/JFLHbVxeNCI8oWnNbPaFFL/>

¹²⁹ *Supra* note 28, H.R. Rep. No. 116-317, at 36.

¹³⁰ Georgia House Bill 194 (2015) (“H.B. 194”), <https://www.legis.ga.gov/api/legislation/document/20152016/147816>. See also Jonathan Shapiro, *Bill Cutting Early Voting Days Clears House Committee*, WABE, February 11, 2015. https://www.wabe.org/bill-cutting-early-voting-days-clears-house-committee/?utm_campaign=Peach%20Pundit%20Daily%20-%2002%2F12%2F2015%20Edition&utm_source=Signal&utm_medium=email

¹³¹ Meris Lutz, *Cobb: Fewer early voting sites than neighbors for Senate runoff*, the Atlanta Journal Constitution, December 2, 2020. <https://www.ajc.com/news/atlanta-news/cobb-to-open-fewer-early-voting-sites-than-neighbors-for-senate-runoff/ZKPIYHF5BFCYDOXTDCADZBGS5U/>. See also Vanessa Williams, *Voting rights groups alarmed after Cobb County cuts half its early-voting sites for Ga. Senate runoffs*, the Washington Post, December 7, 2020. <https://www.ajc.com/news/atlanta-news/cobb-to-open-fewer-early-voting-sites-than-neighbors-for-senate-runoff/ZKPIYHF5BFCYDOXTDCADZBGS5U/>



were concentrated in communities of color: most of the county’s Black and Latinx voters lived in an area that had previously had four polling places; Cobb County consolidated these sites into a single location.¹³² Black and Latinx voters are more likely to live in poverty than other residents and to have more difficulty traveling long distances due to limited public transportation options.¹³³ The polling place closures would have disproportionately deterred voters of color from participating in the runoffs. After public outcry and the threat of litigation, Cobb County added two sites and moved the location of a third.¹³⁴

Congressional and State Legislative Maps Passed Post-*Shelby County* Illegally Dilute the Voting Power of Communities of Color in the Deep South

The 2021 redistricting cycle was the first without the full protections of the Voting Rights Act. Previously, Alabama, Georgia, Louisiana, and Mississippi each had to preclear their proposed maps with the DOJ or a federal court to ensure they did not violate the constitutional rights of Black voters and other voters of color within their borders. Thanks to the protections of the VRA, the hundreds of attempts by these states to deny and dilute the voting power of residents of color over nearly half a century were largely blocked.

The breadth of these attempts over the decades—and the brazen discrimination in districting of the first cycle without the protections of preclearance—highlight the determination of Deep South lawmakers to prevent Black voters and other voters of color from gaining any meaningful political power at any level of government – not just back in 1965, but in the decades since right up to today.

And this decade—the first without the full protections of the VRA—map drawers in Deep South states have diluted the voting rights and political power of communities of color with impunity. In fact, six of nine previously covered states nationally, including Alabama, Georgia, Louisiana, and Mississippi, have had their congressional and state legislative maps challenged as racially discriminatory.¹³⁵ In addition, Florida—which was not covered statewide by preclearance—has faced suits for racial discrimination in redistricting post-2021; the congressional maps were

¹³² *Id.*

¹³³ *Mobility Challenges for Households in Poverty*, U.S. Department of Transportation, Federal Highway Administration, National Household Travel Survey, 2014. <https://nhts.ornl.gov/briefs/PovertyBrief.pdf>. See also Gaurav Bagwe, Juan Margitic, and Allison Stashko, *Polling Place Location and the Costs of Voting*, July 5, 2022. https://jmargitic.github.io/JM/Margitic_JMP.pdf

¹³⁴ Vanessa Williams, *After criticism, Georgia’s Cobb County restores some early-voting sites for Senate runoffs*, the Washington Post, December 9, 2020. <https://www.washingtonpost.com/politics/2020/12/09/after-criticism-cobb-county-restores-some-early-voting-sites-ga-senate-runoffs/>

¹³⁵ In addition to Alabama, Georgia, Louisiana, and Mississippi, both South Carolina and Texas are in active litigation for alleged racially discriminatory maps. See All About Redistricting, <https://redistricting.lls.edu/cases/?cycles%5B%5D=2020&states%5B%5D=Alabama&states%5B%5D=Alaska&states%5B%5D=Arizona&states%5B%5D=Georgia&states%5B%5D=Louisiana&states%5B%5D=Mississippi&states%5B%5D=South%20Carolina&states%5B%5D=Texas&states%5B%5D=Virginia&sortby=-updated&page=2>



challenged for intentional racial discrimination in violation of the US Constitution and vote dilution and retrogression in violation of the State Constitution.¹³⁶

A. Deep South States Defied the Mandates of the VRA for Decades Following 1965

In five of the six redistricting cycles since the VRA first passed, the U.S. Department of Justice or federal courts found that Alabama’s congressional and/or state legislative maps violate the voting rights of Black Alabamians.¹³⁷ In the first redistricting cycle after 1965, the Alabama legislature failed to redistrict and a three-judge federal court was forced to draw new district lines to protect voters’ rights under the Fourteenth Amendment.¹³⁸ In the next, the U.S. Attorney General denied preclearance to maps for the State House and Senate seats, finding the maps improperly retrogressive for Black voters in Jefferson County and the cities of Tuscaloosa and Mobile.¹³⁹ In the 90s, Alabama had to enter into a consent decree that created several new majority-Black state House and Senate districts¹⁴⁰ and a settlement agreement on the congressional districts that created the state’s first Black opportunity district since Reconstruction.¹⁴¹ After the 2011 redistricting cycle, a federal court struck down 12 legislative districts as unconstitutional racial gerrymanders.¹⁴²

From 1965 to 2012, Georgia’s racially discriminatory voting schemes necessitated federal intervention 187 times, including over 91 objections since the 1982 reauthorization of Section 5 of the VRA.¹⁴³ In the first redistricting cycle after the passage of the Voting Rights Act of 1965, the U.S. Department of Justice objected to the congressional redistricting plan under Section 5 of the VRA’s preclearance provisions based on its inability to conclude “that [the] new boundaries [would] not have a discriminatory racial effect on voting by minimizing or diluting black voting strength in the Atlanta area.”¹⁴⁴ The next decade, the DOJ again objected to the state’s congressional maps, and a federal court subsequently found that “There was no legitimate, nondiscriminatory reason why the Fifth District was drawn the way it was. ... The Fifth District

¹³⁶ *Common Cause Florida v. Byrd*, challenging Florida’s congressional maps in federal court and *Black Voters Matter Capacity Building Institute v. Byrd*, challenging Florida’s congressional maps in state court.

¹³⁷ *Voting Determination Letters for Alabama*, U.S. Department of Justice, Civil Rights Division.

<https://www.justice.gov/crt/voting-determination-letters-alabama>

¹³⁸ *Sims v. Amos*, 336 F. Supp. 924, 940 (M.D. Ala. 1972).

¹³⁹ U.S. Dep’t of Justice Ltr. to Ala. Att’y General Graddick, May 6, 1982.

<https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/AL-1520.pdf>

¹⁴⁰ *Kelley v. Bennett*, 96 F. Supp. 2d 1301, 1309 (M.D. Ala. 2000).

¹⁴¹ *Wesch v. Hunt*, 785 F. Supp. 1491, 1497-1500 (S.D. Ala. 1992), *aff’d sub nom.* *Camp v. Wesch*, 504 U.S. 902 (1992), and *aff’d sub nom.* *Figures v. Hunt*, 507 U.S. 901 (1993).

¹⁴² *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1348–49 (M.D. Ala. 2017)

¹⁴³ *Voting Determination Letters for Georgia*, U.S. Department of Justice, Civil Rights Division.

<https://www.justice.gov/crt/voting-determination-letters-georgia>

¹⁴⁴ Letter from David L. Norman, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to the Hon. Arthur K. Bolton, Attorney General, State of Georgia (Feb. 11, 1972),

https://www.justice.gov/crt/records/vot/obj_letters/letters/GA/GA-1140.pdf



was drawn to suppress black voting strength in Georgia.”¹⁴⁵ Georgia’s 1992 redistricting plans were similarly denied, twice, by the DOJ,¹⁴⁶ and the late Congressman John Lewis described the state’s 2011 redistricting plan as “an affront to the spirit and the letter of the Voting Rights Act.”¹⁴⁷

Plans that dilute the voting strength of people of color have also characterized Florida’s redistricting processes over the last several decades.¹⁴⁸ The U.S. Attorney General objected to the state’s 1992 Senate redistricting plan under Section 5 of the Voting Rights Act’s preclearance provisions because “the state chose to divide the politically cohesive minority populations in the Tampa and St. Petersburg areas,” while rejecting “[a]lternative plans . . . uniting the Tampa and St. Petersburg minority populations [that would have] provide[d] minority voters an effective opportunity to elect their preferred candidate to the State Senate.”¹⁴⁹ The Department of Justice also denied Section 5 preclearance to Florida’s 2002 House redistricting plan, which decreased one district’s Hispanic voting-age population from 74.4 to 27.5 percent, thereby eliminating “the effective exercise of [Collier County Hispanic voters’] electoral franchise.”¹⁵⁰

Shortly after the passage of the VRA, Louisiana, too, began developing new tactics to suppress Black voting power. Between 1965, when the VRA was first passed and Louisiana came into preclearance coverage, and 2006, when the VRA was last reauthorized, the DOJ objected to

¹⁴⁵ *Busbee v. Smith*, 549 F. Supp. 494, 514-15 (D.D.C. 1982), *aff’d mem.*, 459 U.S. 1166 (1983).

¹⁴⁶ Letter from John R. Dunne, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Mark H. Cohen, Senior Assistant Attorney General, State of Georgia (Jan. 21, 1992).
https://www.justice.gov/crt/records/vot/obj_letters/letters/GA/GA-2330.pdf

¹⁴⁷ Aaron Gould Sheinin, *GOP Redistricting Plan Would Tighten Grip on Congressional Delegation*, Atlanta Journal-Constitution, August 23, 2011. <https://www.ajc.com/news/local-govt--politics/gop-redistricting-plan-would-tighten-grip-congressional-delegation/7pf5U0xghjknRgzQUW7O8O/>

¹⁴⁸ Florida’s extensive history of discrimination against people of color has extended to all facets of political participation. *See, e.g., Madera v. Detzner*, 325 F. Supp. 3d 1269 (N.D. Fla. 2018) (“Here we are again. The clock hits 6:00 a.m. Sonny and Cher’s ‘I Got You Babe’ starts playing. Denizens of and visitors to Punxsutawney, Pennsylvania eagerly await the groundhog’s prediction. And the state of Florida is alleged to violate federal law in its handling of elections.”); JoNel Newman, *Voting Rights in Florida 1982 – 2006*, University of Miami School of Law Institutional Repository, March 2006.

https://repository.law.miami.edu/cgi/viewcontent.cgi?article=1010&context=fac_short_works; Laughlin McDonald & Daniel Levitas, *The Case for Extending and Amending the Voting Rights Act*, ACLU, at 70–107, March 2006. <https://www.aclu.org/other/case-extending-and-amending-voting-rights-act?redirect=voting-rights/case-extending-and-amending-voting-rights-act>; *Current Conditions of Voting Rights Discrimination: Florida*, Advancement Project, August 16, 2021. <https://docs.house.gov/meetings/JU/JU10/20210816/114010/HHRG-117-JU10-Wstate-HendersonW-20210816-SD011.pdf>

¹⁴⁹ Letter from John R. Dunne, Assistant Attorney General, Civil Rights Division, to Robert A. Butterworth, Attorney General, State of Florida (June 16, 1992). <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/FL-1020.pdf> (also noting there were other possible Voting Rights violations in the Florida redistricting plan beyond the five counties subject to Section 5 preclearance jurisdiction).

¹⁵⁰ Letter from Ralph F. Boyd, Jr., Assistant Attorney General, to John M. McKay, President of the Florida Senate, and Tom Feeney, Speaker of the Florida House of Representatives (July 1, 2002), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/FL-1040.pdf>



discriminatory voting changes in the state 146 times.¹⁵¹ Nearly 100 of those objections came after the last reauthorization in 1982, i.e. – many of those instances of discrimination took place not in 1965 or the years immediately following, but in recent decades. Many of these were discriminatory districting plans that would have diluted Black voting strength and others were methods of drowning out any political power of Black communities, like at-large voting schemes.

In the immediate wake of the passage of the VRA, Mississippi officials simply refused to comply with their obligations under Section 5. In 1966, the state passed multiple laws denying or diluting the voting rights of Black Mississippians, refusing to preclear them with the DOJ or a federal court as required by federal law.¹⁵² It was only after Black Mississippians challenged these laws in court and the Supreme Court ordered compliance with Sec 5¹⁵³ that the state finally submitted the laws for review and, in 1969, the DOJ objected to all of them for their racially discriminatory impact.¹⁵⁴ As with other Deep South states, this defiance was not limited to the years immediately following 1965. Between 1965 and 2006, DOJ issued 169 objections to voting changes in the state.¹⁵⁵ The majority of these objections (104) related to redistricting plans, although DOJ also objected to a panoply of other measures related to at-large elections, candidate qualification requirements, polling place relocations, open primary laws, and other laws specifically targeted to disenfranchising Black voters and diluting Black political power.

B. Alabama Continues to Dilute the Voting Power of Black Residents to this Day

One of the most egregious examples of previously covered states continuing to violate the voting and representational rights of its residents of color is the state of Alabama. Freed from the guardrails of preclearance, Alabama legislators passed a congressional map that diluted the voting rights of Black Alabamians. Despite making up 27 percent of the state’s population, and a significant share of the state’s population growth over the preceding decade,¹⁵⁶ Black Alabamians were once again packed into Congressional District 7—then the state’s lone district represented by a Black Alabamian, and itself a remedy for a VRA violation a few redistricting cycles before—or cracked across multiple districts, such that they could not ever elect a candidate of

¹⁵¹ Debo P. Adegbile, *Voting Rights in Louisiana 1982-2006*, RenewtheVRA.org, at 5, March 2006. <http://www.protectcivilrights.org/pdf/voting/LouisianaVRA.pdf>

¹⁵² Frank Parker. (1990). *Black Votes Count: Political Empowerment in Mississippi After 1965*, University of North Carolina Press; Legislative History of the Voting Rights Act Amendments of 1970 P.L. 91-285, at CRS-7, Congressional Research Serv.

¹⁵³ *Allen v. State Bd. of Elections*, 393 U.S. 544, 563–72 (1969)

¹⁵⁴ Legislative History of the Voting Rights Act Amendments of 1970 P.L. 91-285, at CRS-16-18, Congressional Research Serv.

¹⁵⁵ Robert McDuff, *The Voting Rights Act and Mississippi: 1965-2006*, 17 Rev. L. & Soc. Just. 475, 479 (2008). https://gould.usc.edu/students/journals/rlsj/issues/assets/docs/issue_17/05_Mississippi_Macro.pdf

¹⁵⁶ Thomas Spencer, *Demographic Change in Alabama, its Counties, and Cities, 2010-2020*, Public Affairs Research Council of Alabama, October 19, 2022. <https://parcalabama.org/demographic-change-in-alabama-its-counties-and-cities-2010-2020/>



their choice. The Northern District for Alabama found the map impermissibly diluted the Black vote in violation of the VRA and ordered the state to draw a new map with a second opportunity district for Black Alabamians, an order the U.S. Supreme Court subsequently upheld.¹⁵⁷ Despite this clear mandate from the courts, Alabama legislators thumbed their noses, reconvening and passing a new map that failed to remedy the VRA violation and again asking the Supreme Court to protect its racial discrimination.¹⁵⁸

While Black Alabamians fighting this discrimination ultimately prevailed, it was not before they suffered a consequential federal election under discriminatory maps that denied them their constitutional rights and, in turn, representation in Congress that could have spent the last two years legislating in their interests. This grave harm cannot be erased; it is not possible to return these two precious years to Black Alabamians. To prevent injustices like this in Alabama and elsewhere moving forward, states with a demonstrable history of discrimination in voting should once again have to preclear their legislative maps before enactment.

Further, it is not just in enacting its congressional districts that Alabama has discriminated against its Black residents; Alabama's state legislative maps also violate the rights of Black Alabamians. In *Stone v. Allen*, SPLC and co-counsel allege Alabama's state senate map dilutes the voting power of Black residents in Montgomery and Huntsville, in violation of Section 2 of the VRA.¹⁵⁹ While this case has not yet been adjudicated, given the state's posture in enacting and then defying court orders on its congressional map, there is good reason to fear the state senate map also illegally discriminates against Black Alabamians.

C. Georgians of Color Lose in Redistricting Without the Protections of the VRA

Similar to Alabama, in Georgia's first redistricting cycle post-*Shelby County*, the Georgia legislature drew discriminatory maps that diluted Black voting strength throughout the state at the congressional, state, and local level. Georgia has regularly sought to suppress the vote of people of color, and of Black voters in particular. The congressional and state legislative maps are its latest assault on the rights of Black voters and other voters of color to participate meaningfully in the democratic process and elect candidates of their choice.

In 2021, unfettered by preclearance restrictions, Georgia adopted a congressional map that diluted Black voting strength in violation of Section 2 of the Voting Rights Act. Last year, a federal court found that the map violated Section 2 of the VRA and ordered that the state draw a remedial map

¹⁵⁷ *Allen v. Milligan*, 599 US 1 (2023).

¹⁵⁸ Kate Shaw, *How the Supreme Court Should Respond to Alabama's Defiance*, The New York Times, September 12, 2023. <https://www.nytimes.com/2023/09/12/opinion/supreme-court-alabama-voting.html>

¹⁵⁹ *Stone v. Allen*, (previously *James Thomas, et al. v. John H. Merrill, et al.*), filed November 15, 2021, Southern Poverty Law Center. <https://www.splcenter.org/seeking-justice/case-docket/james-thomas-et-al-v-john-h-merrill-et-al>



creating an additional Black opportunity district.¹⁶⁰ Instead, the Georgia legislature crafted a map that dismantled Congressional District 7, a majority-minority district held by Black Congresswoman Lucy McBath, marking the second election cycle in a row that Congresswoman McBath has been forced out of her district, and did not create an additional Black opportunity district.¹⁶¹

In ongoing litigation, SPLC and co-counsel allege that the congressional map also racially gerrymandered districts by disregarding traditional redistricting principles and instead employing the tactics of “packing” and “cracking” to reduce the voting strength of Georgia’s Black voters and other voters of color.¹⁶² Specifically, plaintiffs allege that the General Assembly packed District 13 by piecing together portions of six counties to create a sprawling district with a voting age-population that is 66.7 percent Black and 81.2 percent BIPOC; cracked District 6 by removing communities of color and eliminating the opportunity for Black voters and other voters of color to continue to elect their preferred candidate, a Black woman; and cracked District 14 by moving Black communities from part of a core Metropolitan Atlanta county into a predominately white, rural district whose communities do not share their interests, and where Black voters will not be able to elect their preferred candidates.¹⁶³

In 2023, a federal court also found that the State Senate and State House maps violated Section 2 of the VRA. The state drew new maps, but instead of drawing additional Black opportunity districts to remedy the Section 2 violations as the court ordered, the State destroyed districts where Black voters had the opportunity to elect candidates of their choice. Specifically, while the enjoined House map had 69 Black opportunity districts effective for Black voters, the State’s new proposed House plan has only 68 even though the court ordered five additional Black opportunity districts in the House.¹⁶⁴ In addition, the enjoined Senate map had 19 Black opportunity districts, and the State’s new proposed Senate plan only has 20 districts when the court ordered two

¹⁶⁰ Sam Gringlas, *A Federal Judge Says Georgia’s Political Maps Must Be Redrawn for the 2024 Election*, NPR, October 26, 2023. <https://www.npr.org/2023/10/26/1208796830/georgia-redistricting-districts-judge-ruling>

¹⁶¹ Sam Gringlas, *Georgia Lawmakers Have Approved New Political Maps. Now a Judge Will Weigh in*, WABE, December 7, 2023. <https://www.wabe.org/breaking-georgia-lawmakers-have-approved-new-political-maps-now-a-judge-will-weigh-in/>

¹⁶² A federal court found that the congressional map violated Section 2 of the VRA and ordered that the legislature draw a new map. As a result, the legislature drew a new map, and adjudication of the racial gerrymandering claims has been put on hold pending appeal of the court’s ruling under the VRA.

¹⁶³ Amended Complaint, *Common Cause v. Raffensperger*, 1:22-cv-00090-SCJ-SDG-ELB, ECF No. 32, at 2 (N.D. Ga. Mar. 30, 2022).

https://www.splcenter.org/sites/default/files/documents/2022_01_07_georgia_redistricting_complaint.pdf

¹⁶⁴ Brief for Georgia State Conference of the NAACP, Georgia Coalition for the People’s Agenda, Inc., Galeo Latino Community Development Fund, Inc., Common Cause, League of Women Voters of Georgia, Jasmine Bowles, Dr. Cheryl Graves, Dr. Ursula Thomas, Dr. H. Benjamin Williams, and Brianne Perkins as Amici Curiae in Opposition to Defendant’s Proposed Remedial Maps, *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No. 1:21-cv-05337-SCJ, ECF No. 363, at 11 (N.D. Ga. Dec. 14, 2023).



additional opportunity districts.¹⁶⁵ Nevertheless, the court accepted the state’s new maps over objections from plaintiffs.¹⁶⁶

The SPLC and partners are also challenging racially discriminatory maps at the local level in Georgia. We allege that the state legislature and Board of Education in Cobb County racially gerrymandered the county’s school board districts in violation of the 14th Amendment.¹⁶⁷ Cobb County’s racial diversification has accelerated substantially since the 2010 census. According to the U.S. Census Bureau’s 2020 redistricting data, Cobb County’s white adult population decreased from 60.08 percent in 2010 to 51.25 percent in 2020, an 8.83 percentage-point decrease. By contrast, Cobb County’s communities of color all saw population growth during that period. In 2010, Cobb County’s Black population made up 25 percent of the County; it now makes up 26.6 percent of the County. Cobb County’s Latinx population made up 12.3 percent of the County in 2010; it now makes up 14.5 percent of the County.¹⁶⁸ And these trends are likely to continue in the coming years, since Cobb County’s youth population skews heavily Black and Latinx. In the face of an increasingly diverse population, the Board’s white members and the state legislators who wished to entrench the Board’s white majority took advantage of the lifting of the preclearance to enact a map in which Black and Latinx voters are packed into only three of seven districts, despite their making up most of the county’s population growth over the last decade.

D. Florida’s Maps Violate the Voting Rights of Residents of Color

There were two challenges to Florida’s congressional map this redistricting cycle, one challenging the map in state court and another in federal court. In the case challenging the congressional map in state court, plaintiffs allege the congressional map violates the Fair Districts Amendment of the Florida constitution by diminishing the ability of Black Floridians to elect a candidate of their choice.¹⁶⁹ The trial court ruled that the map is impermissibly retrogressive and denies Black Floridians the ability to elect a candidate of their choice, in violation of the state constitution, and ordered the state legislature to draw a new map that complies with the constitution. That ruling was overturned at the appeals court level in December 2023. The case is currently awaiting state supreme court review.¹⁷⁰

A separate case challenges Florida’s congressional map in federal court. Plaintiffs in this case allege that the state’s congressional map intentionally discriminates against Black voters in

¹⁶⁵ *Id.* at 11-12.

¹⁶⁶ *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No. 1:21-cv-05337-SCJ, ECF No. 375 (N.D. Ga. Dec. 28, 2023).

¹⁶⁷ Amended Complaint, *Finn v. Cobb County Board of Elections and Registration*, No. 1:22-cv-02300-ELR (N.D. Ga. June 9, 2022). https://www.splcenter.org/sites/default/files/documents/finn-cobb-county_amended-complaint.pdf

¹⁶⁸ U.S. Census Bureau, Cobb County population facts 2010 and 2020.

¹⁶⁹ *Black Voters Matter Capacity Building Institute v. Byrd*, All About Redistricting, December 29, 2023.

<https://redistricting.lls.edu/case/black-voters-matter-v-lee/>

¹⁷⁰ *Id.*



northern Florida by cracking communities to diminish their ability to elect candidates of their choice, in violation of the Fourteenth and Fifteenth Amendments.¹⁷¹ Trial took place in this case in September 2023 and plaintiffs are awaiting a ruling.

As with its neighbors, map drawers in Florida have not confined discriminatory districting to congressional maps; voters of color have faced attacks in the local districting process, as well. After the City of Jacksonville packed Black voters into just four of nine districts in north and west Jacksonville, and simultaneously cracked Black populations in other districts, thereby depressing their influence over municipal elections, the SPLC filed a lawsuit in the Northern District of Florida challenging the redistricting maps as racially gerrymandered and violative of the Fourteenth Amendment.¹⁷² The district court and the Eleventh Circuit ruled that the Jacksonville City Council had likely racially gerrymandered the city, and that Jacksonville’s proposed interim remedial map did not cure the previous racial gerrymandering, ordering the city to use a plaintiff proposed map pending final resolution of the case.¹⁷³ In the final settlement, the city agreed to adopt the court-approved interim remedial map and use it until the next census cycle. In Jacksonville’s subsequent municipal elections, candidates preferred by Black voters won five of the nine council district seats in north and west Jacksonville (a gain of one seat).¹⁷⁴

E. Louisiana Lawmakers Dilute Black Voting Power At Every Level of Government

Louisiana’s track record in redistricting was widely understood to be shot through by gamesmanship and racial discrimination. Governor John Bel Edwards vetoed the maps passed by the legislature, saying at the time, “this map violates Section 2 of the Voting Rights Act of 1965 and further is not in line with the principle of fundamental fairness that should have driven this process.”¹⁷⁵ Ultimately, the legislature overrode the governor’s veto, and the maps went into effect.

Louisiana’s Congressional map drew five white-majority districts and only one Black-majority district, meaning that “[a]lthough Black Louisianans make up 33.13 percent of the total

¹⁷¹ *Common Cause Florida v. Byrd*, All About Redistricting, November 3, 2023.

<https://redistricting.lls.edu/case/common-cause-florida-v-lee/>

¹⁷² *See* Complaint, *Jacksonville Branch of NAACP v. City of Jacksonville*, No. 3:22-cv-493 (M.D. Fla. May 3, 2022).

https://www.splcenter.org/sites/default/files/documents/jacksonville_naACP_v_city_of_jacksonville-complaint_3-22-cv-493.pdf

¹⁷³ *Jacksonville Branch of NAACP v. City of Jacksonville*, No. 3:22-CV-493, 2022 WL 17751416 (M.D. Fla. Dec. 19, 2022). <https://www.splcenter.org/sites/default/files/documents/jacksonville-naACP-v-jacksonville-preliminary-injunction-order.pdf>

¹⁷⁴ Rhonda Sonnenberg, *Black Residents of Florida City See Hope in New, Equitable Voting Maps*, Southern Poverty Law Center, January 25, 2023. <https://www.splcenter.org/news/2023/05/25/black-residents-jacksonville-equitable-voting-map>

¹⁷⁵ Governor’s Veto Letters to Speaker of the House and President of the Senate, reprinted in 2022 Official Journal and Legislative Calendar of the Proceedings of the House of Representatives and Senate of the State of Louisiana, 48th Extraordinary Sess. and 2nd Veto Sess., at 188–89, 194–95 (2022).



population and 31.25 percent of the voting age population, they comprise a majority in only 17 percent of Louisiana's congressional districts.”¹⁷⁶ Voters sued, and by June 2022, the United States District Court for the Middle District of Louisiana found a likely Section 2 violation – although a remedial map was subsequently delayed by appeals for over a year.¹⁷⁷ It was not until January 19, 2024, that Louisiana lawmakers approved a new congressional map that creates a second Black-majority U.S. House District – a map that arrived three years late for Louisiana’s voters.

Much like its sibling Southern states, Louisiana has not limited its racial discrimination in redistricting to its Congressional maps. On Feb. 8, 2024, the United States District Court for the Middle District of Louisiana found the state’s legislative maps to be racially discriminatory in violation of Section 2 of the Voting Rights Act following a seven-day bench trial. The court rejected claims that the application of the VRA was unconstitutional, and arguments that the VRA lacks a private right of action.¹⁷⁸ The decision has been appealed.

Further, Louisiana’s political subdivisions are also disenfranchising voters of color. Represented by SPLC, the Vermilion Parish chapter of the NAACP is currently fighting in court to secure fair representation for the Black voters of Abbeville,¹⁷⁹ a small town in southwestern Louisiana that has nearly as many Black residents as white residents. Rather than draw new lines for the city council district, Abbeville re-enacted the outdated lines, leaving in place a district map with gross population deviations of up to 10 percent between districts.¹⁸⁰

F. Mississippi Continues its Long Crusade of Diluting Black Political Power

Mississippi is in court for a case challenging its state legislative maps.¹⁸¹ Plaintiffs allege that the state house and senate maps unlawfully dilute the voting strength of Black Mississippians, cracking and packing them such that they cannot participate in the political process equally to white Mississippians. They also allege map drawers engaged in unjustified predominant use of race, in violation of the U.S. Constitution. In their filing, plaintiffs point out that even though Mississippi’s population “is almost 38% Black—the highest percentage of any state in the nation—and sizable Black communities exist throughout the State ... Black Mississippians have

¹⁷⁶ *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 851 (M.D. La.), *cert. granted before judgment*, 142 S. Ct. 2892, 213 L. Ed. 2d 1107 (2022), and *cert. dismissed as improvidently granted*, 143 S. Ct. 2654, 216 L. Ed. 2d 1233 (2023), and *vacated and remanded*, 86 F.4th 574 (5th Cir. 2023).

¹⁷⁷ *Id.*

¹⁷⁸ *Nairne v. Ardoin*, No. CV 22-178-SDD-SDJ, 2024 WL 492688 (M.D. La. Feb. 8, 2024).

¹⁷⁹ Complaint, NAACP, Vermilion Parish Chapter v. City of Abbeville, No. 6:23-cv-01463 (W.D. La. Oct. 17, 2023). <https://www.splcenter.org/sites/default/files/documents/naACP-vermilion-parish-abbeville-complaint.pdf>

¹⁸⁰ *Id.*

¹⁸¹ *Miss. State Conference of the NAACP v. State Bd. of Election Comm’rs*, All About Redistricting, last updated February 12, 2024. <https://redistricting.lls.edu/case/ms-naACP-v-state-bd/>



been shut out of political power for most of the State’s history.”¹⁸² Trial took place in this case in February 2024 and plaintiffs are awaiting a ruling.

In 2022, the SPLC and co-counsel filed a federal lawsuit challenging the voting district lines used to elect members of the Mississippi Supreme Court. The suit contends that the lines, which have not been adjusted in 35 years, dilute the voting strength of Black voters.¹⁸³ The state’s population is nearly 40% Black, a greater proportion than any other state. However, in the 100 years since Mississippi has elected members to its Supreme Court, there have been only four Black justices to serve – and never more than one at a time. We allege the district lines violate the VRA by unlawfully watering down the voting strength of Black Mississippians. The state’s Black population is sufficiently numerous and concentrated to form a majority in one of the three at-large voting districts that Mississippi uses to elect its nine Supreme Court justices. Yet none of the three districts has a Black majority. And voting is so racially polarized in Mississippi that in the districts as configured, Black voters typically cannot elect candidates of their choice. Our case goes to trial in August 2024.

Deep South States Have Employed Additional Undemocratic Machinations to Disenfranchise Voters of Color

It is not just laws and policies restricting ballot access that have plagued voters of color in the Deep South in the decade since the *Shelby County* decision. State lawmakers have devised additional new ways to disenfranchise, intimidate, and attempt to silence voters of color within their borders.

A. Undoing the Will of the People

One of the most egregious and high-profile examples of this troubling trend is the Florida governor and state legislature’s blatant disregard for the will of the people, as expressed through democratic elections. In November 2018, Floridians passed a historic amendment to their constitution re-enfranchising most people convicted of most felonies once they have served their time in prison.¹⁸⁴ Before Amendment 4, Florida was an extreme outlier among states, denying the voting rights of people caught up in the criminal legal system for life; before Amendment 4, the state permanently disenfranchised 1.68 million people, including 21 percent of—or *more than*

¹⁸² *Id.*; See Amended Complaint, Mississippi State Conference of the NAACP v. State Board of Election Commissioners, No. 3:22-cv-734-DPJ-HSO-LHS (S.D. Miss. Mar. 3, 2023). <https://redistricting.ils.edu/wp-content/uploads/MS-naacp-20230303-amd-complaint.pdf>

¹⁸³ Complaint, White v. State Board of Election Commissioners, No. 4:22-cv-00062-MPM-JMV (N.D. Miss. Apr. 25, 2022). <https://www.splcenter.org/seeking-justice/case-docket/dyamone-white-et-al-v-state-board-election-commissioners-et-al>

¹⁸⁴ Tim Mak, *Over 1 Million Florida Felons Win Right to Vote With Amendment 4*, NPR, November 7, 2018. <https://www.npr.org/2018/11/07/665031366/over-a-million-florida-ex-felons-win-right-to-vote-with-amendment-4>



one if five—Black Floridians people and other people of color.¹⁸⁵ Recognizing the injustice and anti-democratic nature of this longstanding policy, a near supermajority of Floridians come together across race and class to say “no more” and to restore the fundamental right to vote to their friends and neighbors. People across the state and around the country cheered and breathed a sigh of relief – democracy can prevail when enough people care and show up.

As soon as the legislative session opened the following year, Governor Ron DeSantis and the majority in the legislature moved swiftly to undercut the clear mandate of the people of Florida, and to undermine the democratic process. By June of 2019, Florida lawmakers had enacted SB 7066, which creates wealth-based hurdles to voting by requiring the returning citizens recently re-enfranchised by Amendment 4 to pay certain legal financial obligations (LFOs) associated with their sentence—like fines, fees, court costs, and restitution, including when it is converted to a civil lien and cannot be enforced by criminal contempt—before they can register to vote and cast their ballot.¹⁸⁶ As many of these returning citizens were living in poverty before going to prison, and had no ability to pay these legal financial obligations after their release, SB 7066 effectively re-disenfranchised an enormous segment of the population that had recently won its voting rights.¹⁸⁷ As one of five consolidated cases, the SPLC challenged SB7066 as an unconstitutional poll tax that discriminates against people based on their wealth.¹⁸⁸ Though the district court held that aspects of Florida’s “pay-to-vote” system were unconstitutional,¹⁸⁹ the Eleventh Circuit reversed and vacated that ruling.¹⁹⁰

SB7066 significantly undermined Floridians’ overwhelming support for Amendment 4; paying off LFOs was not a requirement contemplated by the proponents, the press, and the voters of Florida who passed the amendment and believed “at least 1.4 million people would have their right to vote immediately restored.”¹⁹¹ But, as usual, lawmakers in Florida had different plans for the state. In the chaos that followed the passage of SB 7066, returning citizens and election workers alike were perplexed by the confusing, opaque system for determining a voter’s

¹⁸⁵ *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, The Sentencing Project, 2016. <https://www.sentencingproject.org/app/uploads/2022/08/6-Million-Lost-Voters.pdf>

¹⁸⁶ Florida Senate Bill 7066 (“S.B. 7066”). <https://www.flsenate.gov/Session/Bill/2019/07066>

¹⁸⁷ Khushbu Shah, *After Florida’s ex-felons won the right to vote, Republicans are taking it away*. The Guardian, May 3, 2019, <https://www.theguardian.com/us-news/2019/may/03/after-floridas-ex-felons-won-the-right-to-vote-republicans-are-taking-it-away>

¹⁸⁸ *McCoy v. DeSantis*, No. 19-cv-304 (N.D. Fla. 2019) (Consolidated with *Jones v. DeSantis*, Consolidated Case No. 19-cv-300 (N.D. Fla. 2019); *McCoy, et al. v. DeSantis, et al.*, The Southern Poverty Law Center (Apr. 3, 2021), <https://www.splcenter.org/seeking-justice/case-docket/mccoy-et-al-v-desantis-et-al>.

¹⁸⁹ *Jones v. DeSantis*, 462 F. Supp. 3d 1196, 1250 (N.D. Fla. 2020).

¹⁹⁰ *Jones v. Governor of Fla.*, 975 F.3d 1016 (11th Cir. 2020).

¹⁹¹ Michael Morse, *The Future of Felon Disenfranchisement Reform: How Partisanship and Poverty Shape the Restoration of Voting Rights in Florida*, 109 CALIF. L. REV. 1143, at 46 (2021).



eligibility, including whether they owed certain fines and fees, and if so, how much.¹⁹² Most recently, a lawsuit challenging the implementation of SB 7066 has revealed the egregious effects this unwieldy system has had on returning citizens.¹⁹³

B. Criminalization of Voting

Undoing the results of democratic elections and undermining the will of the people has not been enough for those in power in the Deep South. Lawmakers have gone further to actively criminalize the act of voting, particularly for voters of color.

For example, in Florida in the 2022 legislative session, lawmakers passed SB524 creating an Office of Election Crimes and Security within Florida’s Department of State to investigate and prosecute alleged crimes related to voting.¹⁹⁴ Since its creation, Florida’s so-called “election crimes police force” has arrested and re-criminalized Floridians who were simply attempting to exercise the voting rights they believed were restored by Amendment 4 – in some cases because election officials told them so and provided a voter registration card.¹⁹⁵ The racial animus motivating both SB 7066 and the subsequent “election security” activities has also been laid bare: this new police force has primarily harassed Floridians of color; of the 19 high-profile arrests in August 2022, 15 were Black.¹⁹⁶

Georgia has had its own share of harassing, criminalizing, and attempting to intimidate voters of color. In 2012, a Black woman in Coffee County helped her nephew, a first-time voter, figure out how to use the voting machine. She was subjected to a three-year-long State Election Board investigation and ultimately, indicted on felony charges.¹⁹⁷ While the assistor was quickly acquitted by a jury, local elected officials have acknowledged that this very public prosecution has made Georgians reluctant to ask for or provide needed help. In 2014, then-Secretary of State Kemp launched a criminal investigation into a non-partisan, non-profit organization, the New

¹⁹² See, e.g. Rhonda Sonnenberg, *Florida Sets Up Formerly Incarcerated People to Vote – Then Arrests Them*, Southern Poverty Law Center, August 11, 2023. <https://www.splcenter.org/news/2023/08/11/florida-laws-criminalize-voting-returning-citizens>

¹⁹³ *Florida Rights Restoration Coalition v. DeSantis*, No. 23-cv-22688, Compl., at 6 (July 19, 2023) (“Since the Amendment was passed in 2018, the Defendants have created and perpetuated a bureaucratic morass that prevents people with prior felony convictions from voting, or even determining whether they are eligible to vote.”).

¹⁹⁴ Fla. Stat. § 97.022.

¹⁹⁵ See Nicole Lewis and Alexandra Arriaga, *Florida’s Voter Fraud Arrests Are Scarring Away Formerly Incarcerated Voters*. The Marshall Project, November 4, 2020. <https://www.themarshallproject.org/2022/11/04/florida-s-voter-fraud-arrests-are-scarring-away-formerly-incarcerated-voters>

¹⁹⁶ Wayne Washington, *Voter intimidation? Black voters over-represented among those arrested so far for election crimes*, The Palm Beach Post, October 10, 2022. <https://www.palmbeachpost.com/story/news/2022/10/10/black-voters-over-represented-among-those-arrested-election-crimes/10436294002/>

¹⁹⁷ Joel Anderson, *She Worked to Turn Georgia Blue and Got Arrested for It. Again*, Slate, November 16, 2020 <https://slate.com/news-and-politics/2020/11/georgia-black-voting-rights-olivia-pearson.html>



Georgia Project, after the voter engagement group registered 85,000 new voters.¹⁹⁸ Immediately after the historic turnout election of 2020, the State renewed similar criminal investigations, again targeting the New Georgia Project along with individual voters, many of whom are voters of color.¹⁹⁹

The bills and laws described above in Mississippi (SB2358)²⁰⁰ and Alabama (SB1)²⁰¹ also serve to chill both voters and assisters alike, and to cynically and unnecessarily criminalize the act of exercising one's fundamental right to vote.

C. Removing Democratically Elected Leaders

Deep South lawmakers have not stopped at denying people of color their voting rights. They are going further in recent years, stymying the democratic process altogether in specific communities with significant Black populations and other populations of color.

For example, in Alabama in 2022, a Black attorney won the Democratic nomination to serve on the bench in Alabama's 10th Judicial Circuit Court in Birmingham; there was no opposition in the general election, so she seemed likely to win the seat. Shortly after, Judge Clyde Jones announced his retirement from the seat, effective immediately, creating a vacancy. Hudson applied to the Jefferson County Judicial Commission to fill the vacancy. However, rather than place Hudson—the clear choice of the voters represented by the seat—in the role, the Alabama Judicial Resources Allocation Commission voted to relocate the judgeship out of diverse Birmingham to majority-white Madison County. The commission's vote to transfer the judgeship broke along racial lines, with all white members voting for the move and all the Black members voting against it. During a meeting before the commission's vote, members of the public overwhelmingly voiced their opposition to the move. Further, testimony at the meeting noted that the Legislature had the funds to create 20 new judgeships, which should have rendered a transfer from one county to another unnecessary. The SPLC and allies brought a case against this undemocratic move, in order to restore the seat—and the results of a democratic election—to the people of Birmingham, though the case was ultimately dismissed.²⁰²

In 2023, Mississippi passed HB1020, a notoriously anti-democratic law that created a separate, unelected court over parts of Jackson, Mississippi, the state's capital and an overwhelmingly

¹⁹⁸ Steve Benen, *Why was the New Georgia Project subpoenaed?* MSNBC, September 24, 2014.

<https://www.msnbc.com/rachel-maddow-show/why-was-the-new-georgia-project-subpoenaed-msna419696>

¹⁹⁹ Georgia Secretary of State. (2020, December 2). *Secretary Raffensperger Launches Investigation into Groups Encouraging Fraudulent Registrations*. <https://sos.ga.gov/news/secretary-raffensperger-launches-investigation-groups-encouraging-fraudulent-registrations>

²⁰⁰ Ballot Harvest; Ban, S.B. 2358 (Mississippi 2023). <https://legiscan.com/MS/text/SB2358/id/2642217>

²⁰¹ Absentee voting; prohibit assistance in preparation of; exceptions provided, S.B.1 (Alabama 2024). <https://legiscan.com/AL/bill/SB1/2024>

²⁰² Complaint, *Hudson v. Ivey*, No. 03-CV-2022-900892.00 (Al. Cir. Ct. Montgomery County, July 19, 2022). <https://www.splcenter.org/seeking-justice/case-docket/hudson-v-ivey>



Black city. The law allowed for court personnel, including judges and prosecuting attorneys, to be appointed by white, statewide officials rather than elected by the more than 80 percent of Jackson’s population who are Black Mississippians.²⁰³ Civil rights organizations and the U.S. Department of Justice sued Mississippi for its discriminatory and anti-democratic maneuvers; the DOJ stating that provisions of HB1020 “discriminate on the basis of race in violation of the U.S. Constitution by shifting authority over the county’s criminal justice system away from democratically-elected judges and prosecutors elected by Black voters.”²⁰⁴ In September 2023, the Mississippi Supreme Court ruled that the part of the law that allowed the white, conservative Chief Justice of that court to appoint four judges to the Hinds County Circuit Court was unconstitutional.²⁰⁵

Similarly, in Florida in August 2023, Governor DeSantis suspended democratically elected state attorney Monique Worrell, a Black woman and the state’s only Black female state attorney, over his opposition to her criminal legal reforms.²⁰⁶ Worrell’s reforms included measures supported by her constituents, such as curtailing the use of cash bail, expanding programs diverting children convicted of nonviolent offenses away from incarceration, and implementing procedures to prevent police misconduct. Worrell was elected with a supermajority of votes in November 2020, and until her suspension, Worrell represented the diverse voters of Orange and Osceola counties as State Attorney in the Ninth Judicial Circuit, Florida’s third largest judicial circuit. Governor DeSantis justified the suspension by citing “neglect of duty” and “incompetence,”²⁰⁷ but the facts in the Ninth Judicial Circuit—crime rates dropped by nearly 10 percent and murders dropped about 13 percent in 2021 compared to 2020, and in 2023 violent crime in Orlando was down 10 percent and shootings down 30 percent compared to 2022²⁰⁸—make clear that the suspension of this Black elected leader was otherwise motivated. In November 2023, SPLC filed a federal lawsuit claiming the suspension effectively disenfranchised nearly 400,000 voters who cast

²⁰³ Capitol Complex Improvement District judicial jurisdiction, H.B 1020 (Mississippi 2023). <https://legiscan.com/MS/bill/HB1020/2023>; Brower, M. (2023, April 24). *Mississippi Legislature Passes Bill Creating Unelected Court in Jackson*. Democracy Docket. <https://www.democracymarket.com/news-alerts/mississippi-legislature-passes-bill-creating-unelected-court-in-jackson/>

²⁰⁴ Office of Public Affairs (2023, July 12). *Justice Department Challenges Racially Discriminatory Provisions of New Mississippi Law Targeting Hinds County*. U.S. Department of Justice. <https://www.justice.gov/opa/pr/justice-department-challenges-racially-discriminatory-provisions-new-mississippi-law>

²⁰⁵ Emily Wagster Pettus, *Mississippi high court blocks appointment of some judges in majority-Black capital city and county*. AP news. September 21, 2023. <https://apnews.com/article/jackson-mississippi-courts-appointed-judges-5d5b81ba98c034e5be4d4e3d4a0e5b97>

²⁰⁶ Southern Poverty Law Center, *Governor Improperly Suspends Florida’s Only Black Female State Attorney*, October 6, 2023. <https://www.splcenter.org/news/2023/10/06/florida-governor-suspends-black-female-state-attorney>

²⁰⁷ Mary Ellen Klas, *State attorney is latest example of DeSantis’ use of power to suspend elected officials*. Tampa Bay Times, August 9, 2023. <https://www.tampabay.com/news/florida-politics/2023/08/09/state-attorney-is-latest-example-desantis-use-power-suspend-elected-officials/>

²⁰⁸ Florida Department of Law Enforcement (2021). *Statewide Judicial Circuit Offense Report January-December 2021*. [https://www.fdle.state.fl.us/CJAB/UCR/UCR/2021/Annual/Judicial Circuit Offense Report 2021A.aspx](https://www.fdle.state.fl.us/CJAB/UCR/UCR/2021/Annual/Judicial%20Circuit%20Offense%20Report%2021A.aspx)



ballots for Worrell and undermined the fundamental fairness and integrity of the electoral process.²⁰⁹

While a fully restored and strengthened Voting Rights Act may not protect against these particular subversions of the voting rights of people of color, the law—and the preclearance provision in particular—played an important deterrent role, warning actors with anti-democratic tendencies against going too far to achieve their ends. The blatant disregard for the will of their residents—and for democratic institutions and norms themselves—are coming from state legislators and executives emboldened by the absence of preclearance and by the failure of Congress to act to protect the rights of voters of color.

Appeals Courts Are Undermining Voting Rights Victories in Lower Courts

In the absence of the preclearance provision of the VRA—which protected communities of color from discriminatory laws and maps like those described above for nearly a half century—these communities and voting rights advocates have to go to court to attempt to vindicate the fundamental voting rights of Americans of color. These cases can only be filed after discriminatory laws and maps have taken effect and, often, after irreparable harms have occurred. What’s more, the cases are lengthy and extremely resource-intensive. It is not uncommon for multiple elections to take place with discriminatory policies and maps in place before voters’ rights are vindicated, if they are at all. In her 2024 testimony to the Senate Judiciary Committee, Sophia Lin Lakin of the American Civil Liberties Union cited 2 years as the average duration of the organization’s Section 2 cases.²¹⁰ And these cases are extraordinarily demanding and expensive—costing plaintiffs and taxpayers hundreds of thousands if not millions of dollars²¹¹—diverting critical resources and expertise from other democracy-advancing pursuits.

Costliness and duration aside, cases under Section 2 of the VRA and under the U.S. Constitution do sometimes result in the vindication of the voting rights of people of color, as described in some of the cases above.²¹² Federal district court judges are reviewing the facts of racial discrimination in voting practices and procedures—in the Deep South and elsewhere—and finding in favor of the plaintiffs.

²⁰⁹ *Caicedo, et al. v. DeSantis* (filed November 30, 2023). <https://www.splcenter.org/seeking-justice/case-docket/caicedo-et-al-v-desantis>

²¹⁰ The Right Side of History: Protecting Voting Rights in America Hearing before the U.S. Senate Committee on the Judiciary, 118th Congress (2024). <https://www.judiciary.senate.gov/committee-activity/hearings/the-right-side-of-history-protecting-voting-rights-in-america>

²¹¹ NAACP Legal Defense Fund (2018 August 13). *The Cost (in Time, Money, and Burden) of Section 2 of the Voting Rights Act Litigation*. https://www.naacpldf.org/wp-content/uploads/Section-2-costs-08.13.18_1.pdf

²¹² *Allen v. Milligan*, 599 U. S. 1 (2023). *Florida Rising v. Lee*, No. 4:21-cv-00201-AW-MJF (N.D. Fla. May 17, 2021).



However, all too often these days, these facts are being denied, and these victories are overturned in the appellate courts. Again and again, judges on the federal circuit court bench are overturning findings of discrimination from the district courts and allowing discriminatory laws and policies to continue harming voters of color and our democracy.

Nowhere is this more true than in the Deep South. The Eleventh Circuit, covering Florida, Georgia, and Alabama, and the Fifth Circuit, covering Mississippi and Louisiana (and Texas) have overturned district-level victories for voters again and again.

A. Fifth Circuit

In August 2023, a three-judge panel of the Fifth Circuit handed down a landmark ruling in a case brought by the SPLC aimed at ending the lifetime ban on voting for people convicted of certain crimes, calling the practice a violation of the Eight Amendment to the U.S. Constitution’s prohibition on cruel and unusual punishment.²¹³ For well over a century, the law in Mississippi has permanently disenfranchised most people convicted of felonies, often for years after they had completed their sentences and were back home living in their communities. And because of the discriminatory nature of the criminal legal system in Mississippi and across the country, Black voting-age Mississippians were disenfranchised at over twice the rate of white voting-age Mississippians.²¹⁴ The district court recognized the suit’s race-based equal protection argument in August 2019.²¹⁵ The discriminatory impact of this law should not be surprising, considering it was enshrined in Mississippi’s 1890 constitution, a document specifically intended to prevent formerly enslaved people and their descendants from gaining political influence.²¹⁶

Then, in August 2023, a three-judge panel of the Fifth Circuit ruled that the policy is, in fact, cruel and unusual punishment under the Eighth Amendment.²¹⁷ While this was a tremendous victory and was originally upheld by a panel of the circuit court, less than two months later, the full Fifth Circuit agreed to rehear the case en banc and to put that victory on hold in the

²¹³ *Hopkins v. Sec’y of State Delbert Hosemann*, 76 F.4th 378 (5th Cir.), reh’g en banc granted, opinion vacated sub nom. *Hopkins v. Hosemann*, 83 F.4th 312 (5th Cir. 2023). In its original complaint, the SPLC also argued the law was a violation of the Fourteenth Amendment’s Equal Protection Clause.

²¹⁴ *Id.*

²¹⁵ *Harness v. Hosemann*, No. 3:17-CV-791-DPJ-FKB (S.D. Miss. Aug. 7, 2019) (order).

https://www.splcenter.org/sites/default/files/documents/mssd-3_2018-cv-00188-00021.pdf

²¹⁶ *Mississippi Begins Analyzing its Racist Constitution of 1890*, The New York Times, December 12, 1985.

<https://www.nytimes.com/1985/12/12/us/mississippi-begins-analyzing-its-racist-constitution-of-1890.html>

²¹⁷ *Hopkins v. Hosemann*, 76 F.4th 378, 387 (5th Cir. 2023), *vacated*, 83 F.4th 312 (5th Cir. 2023).

<https://www.splcenter.org/sites/default/files/documents/hopkins-v-hosemann-opinion-us-court-appeals-fifth-circuit.pdf>



interim.²¹⁸ While we do not yet know how the full circuit will rule, we cannot take for granted the initial pro-voter ruling will hold.

B. Eleventh Circuit

In May 2020, a federal district judge in Florida ruled the Florida Governor and legislatures' attempt to continue to disenfranchise voters post-Amendment 4 by requirement that returning citizens pay LFOs before they can vote, as described above, represented an “unconstitutional pay-to-play system.”²¹⁹ This was a victory for the returning citizens who had fought so hard for their voting rights, for the voters of Florida who passed Amendment 4 with a near supermajority, and for democracy. However, in September 2020, the Eleventh Circuit overturned this decision, ruling that the LFO requirement for reenfranchisement was not a poll tax,²²⁰ and in so doing permitting the ongoing disenfranchisement of tens of thousands of Floridians, including many Floridians of color.

As described above, Florida's 2021 monster voter suppression omnibus, SB90, took aim at various methods of voting used by voters of color in the state. Accordingly, after a thorough review of the facts presented by plaintiffs, the district court judge found that the state “enacted some of SB 90's provisions with the intent to discriminate against Black voters” and struck pieces of the law down as violations of the VRA and 14th and 15th Amendments.²²¹ Exceptionally, after noting that Florida has “repeatedly, recently, and persistently acted to deny Black Floridians access to the franchise,” the judge finds that “Under any metric, preclearance is needed,” and ordered Florida under preclearance coverage.²²² As a consequence of its repeated attempts to deny Black Floridians their voting rights, Florida would, for a period of ten years, have to receive preapproval of voting law changes from the DOJ or a federal court before enacting them.

However, the victory for voters of color was short-lived. Just two months after this major victory for voting rights, the Eleventh Circuit paused the district court's decision pending appeal. In blocking the lower court's decision, the Eleventh Circuit allowed the discriminatory provisions of SB90 to go into effect for the 2022 election. Subsequently, the Eleventh Circuit largely reversed the district court's ruling, allowing almost all provisions of SB90 to stand indefinitely.²²³

In Georgia, district court judges have also issued rulings recognizing racial discrimination and protecting the rights of voters of color only to be overruled by the Eleventh Circuit. For example,

²¹⁸ *Hopkins v. Hosemann*, 83 F.4th 312 (5th Cir. 2023).

<https://www.splcenter.org/sites/default/files/documents/hopkins-v-hosemann-court-order-petition-rehearing.pdf>

²¹⁹ *Jones v. DeSantis*, 462 F.Supp. 3d 1196, 1203 (N.D. Fla. 2020). <https://www.democracydocket.com/wp-content/uploads/2021/10/420-2020-05-24-dct-opinion-on-merits.pdf>

²²⁰ *Jones v. Governor of Fla.*, 975 F.3d 1016, 1026 (11th Cir. 2020).

²²¹ *League of Women Voters of Florida v. Lee*, 595 F. Supp. 3d 1042 (N.D. Fla. Mar. 31, 2022).

https://www.splcenter.org/sites/default/files/documents/final_order_following_bench_trial.pdf

²²² *Id.*

²²³ *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905 (11th Cir. 2023).



in 2022, a federal district court judge ruled that Georgia’s at-large method of electing commissioners for the Public Service Commission (PSC) diluted Black voting strength in violation of Section 2 of the VRA.²²⁴ The state appealed and moved for a stay of the decision pending appeal, which the Eleventh Circuit granted, effectively halting relief for Black voters in the 2022 election.²²⁵ The Eleventh Circuit then reversed the district court’s decision in 2023, which has again prevented relief for Black voters in 2024.²²⁶ Georgia’s Secretary of State recently decided to postpone the PSC elections yet again this year because the lawsuit is still pending.²²⁷ That means that the state has yet to hold elections for two commission seats currently held by white men whose terms expired at the end of 2022, including one commissioner appointed to fill the seat in 2021 who has never had to run for election as a result of the Eleventh Circuit’s rulings denying justice to voters of color.

The Eleventh Circuit has also prevented Black voters from having the opportunity to elect candidates of their choice at the local level. Late last year, a district court judge found that the Cobb County School Board had likely racially gerrymandered district maps in violation of the 14th amendment to diminish the voting strength of voters of color and preserve a white majority on the board.²²⁸ The court ordered that the Georgia legislature draw new maps, which should have resulted in an additional district for voters of color to elect their candidate of choice in elections this year.²²⁹ Instead of voters of color having that opportunity, the Eleventh Circuit has prevented relief to voters of color by staying the district court’s decision pending appeal, which leaves the racially gerrymandered maps in place for this year’s election.²³⁰

Finally, while not immediately affecting voters of color in the Deep South, late last year a three-judge panel of the Eighth Circuit issued an outrageous ruling—that there is no private right of action in the VRA—that undermines long-standing precedent and takes the court out of step with several of the other circuits, which have affirmed the right of action.²³¹ Just as concerning and

²²⁴ *Rose v. Raffensperger*, 619 F. Supp. 3d 1241 (N.D. Ga. 2022), *rev’d sub nom. Rose v. Sec’y, State of Georgia*, 87 F.4th 469 (11th Cir. 2023).

²²⁵ *Rose v. Sec’y, State of Georgia*, No. 22-12593, 2022 WL 3572823 (11th Cir. Aug. 12, 2022), *vacated sub nom. Rose v. Raffensperger*, 143 S. Ct. 58, 213 L. Ed. 2d 1143 (2022).

²²⁶ *Rose v. Sec’y, State of Georgia*, 87 F.4th 469 (11th Cir. 2023).

²²⁷ Mark Niesse, *Georgia utility elections called off, leaving Republicans in office*, Atlanta Journal Constitution, Mar. 6, 2024. <https://www.ajc.com/politics/georgia-utility-elections-called-off-leaving-republicans-in-office/AQ35BHWVHNBJNFTGN6KSWGRS64/>

²²⁸ *Finn, et al. v. Cobb County*, No. 1:22-cv-02300-ELR, ECF No. 212 (N.D.Ga. Dec. 14, 2023).

<https://www.splcenter.org/sites/default/files/documents/order-finn-v-cobb-county-board-elections.pdf>

²²⁹ *Id.*

²³⁰ *Finn, et al. v. Cobb County*, No. 23-14186, ECF No. 29 (11th Cir. Jan. 19, 2024); Southern Poverty Law Center. (2024, January 22) *Cobb County Voters File Emergency Motion in Lawsuit Challenging Cobb County School Board Map*. <https://www.splcenter.org/presscenter/cobb-county-voters-file-emergency-motion-lawsuit-challenging-cobb-county-school-board>

²³¹ *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, No 22-1395 (11th Cir. 2023). <http://media.ca8.uscourts.gov/opndir/23/11/221395P.pdf>



confounding, the full Eighth Circuit declined to rehear the case en banc, effectively disenfranchising untold voters of color in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

The SPLC recently won a favorable ruling related to the private right of action from a district judge in our case against Alabama’s state senate map.²³² However, either the Eleventh Circuit—following the Eighth Circuit’s lead—or the Supreme Court, when it eventually resolves the now circuit split on whether a private right of action exists within the VRA, could take that win away, and with it, the ability of voters of color to fight for their voting rights in court.

* * *

As this testimony has made clear, the attacks on the voting and representational rights of people of color in the Deep South are persistent and acute, to this very day. States across the Deep South have enacted law after law and map after map that take direct aim at the political power of Black, Latinx, Asian American, Native American, and other voters of color. A decade after the Supreme Court gutted the VRA and opened the floodgates to these assaults, the impact is abundantly clear: countless voter of color have had their voting rights denied, and as a result, the turnout gap between white voters and voters of color is large and growing.²³³

Congress Has the Power and the Mandate to Restore and Modernize the Voting Rights Act

While the problem was created by the Supreme Court, in its overturning of a regime that had protected the voting rights of people of color, especially in the Deep South, for nearly a half-century, the solution lies with Congress. Congress has the responsibility under the Fourteenth²³⁴ and Fifteenth Amendments²³⁵ to legislate to ensure equal protection and to protect the voting rights of people of color. And, for the last decade, it has the urgent mandate to pass new legislation that fully and effectively does so. However, Congress has failed to act to fulfill this responsibility and meet this mandate.

On behalf of voters of color in the Deep South, we urge Congress to act swiftly to combat race discrimination in elections and protect our voting rights. Specifically, we urge Congress to restore, strengthen, and modernize the Voting Rights Act of 1965 so that voters of color enjoy the full protections of one of the most successful civil rights laws of all times. Such legislation should restore the powerful prophylactic that is geographic preclearance to full robustness, by enacting a

²³² *Stone v. Allen*, 2:21-cv-01531 (N.D. Ala. 2024), <https://redistricting.ils.edu/case/stone-v-allen/>

²³³ *Supra* note 14.

²³⁴ U.S. Const. amend. XIV

²³⁵ U.S. Const. amend. XV



formula that covers states with a demonstrated record of ongoing and recent discrimination in voting practices and procedures and redistricting plans. Such legislation should also create a preclearance coverage plan for voting practices known to have a discriminatory effect, especially in jurisdictions with large populations of color. Legislation restoring the Voting Rights Act must also strengthen recourse for voters of color whose rights have been infringed upon, diluted, or denied even in the presence of strong preclearance provisions, so that voters may seek relief in the courts. Related, such legislation must unequivocally clarify the existing private right of action in the Voting Rights Act, since the presence of such has been questioned by some federal courts recently. It must also clarify that proximity to an election is not cause for failing to prevent or remedy voting law changes that would irreparably harm voters of color.

We appreciate the opportunity to submit this statement. For more information about SPLC's work protecting voting rights in the Deep South, please contact Laura Williamson, Senior Policy Advisor, Voting Rights at laura.williamson@splcenter.org. We stand ready to work with subcommittee members to address these critical issues.