



**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W**

**STATEMENT OF DAMON T. HEWITT
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**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ADMINISTRATION
SUBCOMMITTEE ON ELECTIONS
HEARING ON
"2022 MIDTERMS LOOK BACK SERIES:
SUCCESSSES IN THE 2022 MIDTERM ELECTIONS"**

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I. Introduction

Chairwoman Lee, Ranking Member Sewell, and Members of the Subcommittee on Elections of the U.S. House of Representatives Committee on House Administration, my name is Damon T. Hewitt, and I am the President and Executive Director of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"). Thank you for the opportunity to testify today on the successes and the challenges of the 2022 midterm elections.

The Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our democracy real. The Lawyers' Committee convenes the nation's largest nonpartisan voter protection effort, the Election Protection coalition, which includes a suite of voter assistance hotlines including 866-OUR-VOTE which the organization administers. The Election Protection Coalition worked year-round with almost four hundred national, state, and community partners to provide Americans from coast to coast with comprehensive voting information and resources during the 2022 midterm elections. Our work lets us stand shoulder to shoulder with the thousands of election workers, volunteers, administrators, and organizers who carry the burden of keeping our democracy functioning at great personal costs of time, effort, and money.

On March 7, 1965, over five-hundred civil rights "foot soldiers" marched from Selma to Montgomery, Alabama to protest the denial of their right to vote.¹ These true patriots played a "significant, powerful, and historic role" during the civil rights movement of the 1960s.² They were thousands of unsung Black people, White people and other people of color, who marched not only across the Edmund Pettus bridge, but all across the South to demand their full citizenship rights. During the march from Selma, the foot soldiers gathered on the Edmund Pettus Bridge in peaceful protest.³ However, as they attempted to cross the bridge, Alabama state troopers "used tear gas . . . and beat them with clubs and whips."⁴ Their courage and sacrifice ultimately led to the passage of the Voting Rights Act of 1965.⁵

Today, the modern foot soldiers of our democracy are the volunteers, poll workers, and organizers who work tirelessly across the country to ensure that every

¹ *Who were Selma's 'Bloody Sunday' marchers? Project seeks names of civil rights foot soldiers*, AL.COM (Oct. 3, 2021), <https://www.al.com/news/2021/10/who-were-selmas-bloody-sunday-marchers-project-seeks-names-of-civil-rights-foot-soldiers.html>.

² *Foot Soldiers Oral Histories*, 58TH SELMA, <https://www.selmajubilee.com/foot-soldiers> (last visited Mar. 8, 2023).

³ Hazel Scott, *'Bloody Sunday' Exhibit to Identify Foot Soldiers*, ASU (Apr. 22, 2022), <https://www.alasu.edu/bloody-sunday-exhibit-identify-foot-soldiers>.

⁴ *Id.*

⁵ *About*, 58TH SELMA, <https://www.selmajubilee.com/mission-history> (last visited Mar. 7, 2023).

American can vote free from racial discrimination and unnecessary barriers that suffocate democracy.

Last weekend, I and other Lawyers' Committee staff had the opportunity to march with some of the original foot soldiers, as well as a new cohort of modern defenders of democracy. I was one of many thousands who had the honor of crossing the Edmund Pettis bridge with Ranking Member Sewell during the Bridge Crossing Jubilee—the annual event that honors the sacrifice of those attacked on Bloody Sunday.

But the purpose of this event is not to celebrate the end of a past problem that has now been solved. Thousands of people from all walks of life march across that bridge every year so that America does not forget that the right to vote is *still* under attack today. On that bridge this year were voters who have confronted unnecessary hurdles to the ballot box, volunteers who have seen burdensome election laws make it harder for voters to register, and election administrators, many of whom confront threats, simply for trying to do their job in good faith. While the Selma to Montgomery March includes the surviving heroes of the original march, they are joined by thousands who march with them because they know that voters—predominantly voters of color—still face unnecessary obstacles when all they want to do is cast their vote and have that vote be counted.

As Congressman John Lewis said, “Voting is the most powerful, non-violent tool we have to create a more perfect union.”⁶ Whether the sacrifice for the right to vote came in 1965 or 2022, whether it came in the form of spilled blood yesterday or standing up to intimidation today, as President Lyndon Baines Johnson said upon signing the Voting Rights Act, “denial of the right to vote is still a deadly wrong.”⁷ Congress must honor those who have sacrificed for the right to vote by fulfilling the promise of our Constitution and ensuring every American can exercise that right on an equal and non-discriminatory basis without obstruction or capricious repercussion under law.

As some have noted, the midterm elections of 2022 were a success, but we must be clear about what that success was, and what it took to achieve. We had success in a relative sense despite all the obstacles that stood in the way – but how much, and at what cost in time, talent, and treasure to get there? It was successful in terms of the size of overall voter turnout, though, as discussed below there were significant disparities between White and Black turnout in several states. But it was *not*

⁶ John Lewis, *The March for Civil Rights*, NAT'L CONST. CTR. (Sept. 17, 2013), <https://constitutioncenter.org/news-debate/americas-town-hall-programs/congressman-john-lewis-the-march-for-civil-rights>.

⁷ Lyndon B. Johnson, *Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act*, AM. PRESIDENCY PROJECT (Aug. 6, 1965), <https://www.presidency.ucsb.edu/documents/remarks-the-capitol-rotunda-the-signing-the-voting-rights-act>.

successful in terms of the ease of voting. The “success” of the 2022 election was built on the shoulders of those who expended time, money, and effort that was needed to overcome unnecessary burdens to voting. The “success” occurred despite onerous government restrictions on ballot access and tremendous pressure and threats directed towards the administrators and workers, who were instrumental in helping the elections run smoothly. The elections were “successfully” certified, despite attacks based on racist stereotypes and lies.⁸

This is not to ignore progress. Many states and localities offered early voting, voting by mail, election day registration, and other voting options, which were especially critical in an ongoing pandemic.⁹ Indeed, all of the states where the percentage of turnout of eligible voters exceeded 55% (Colorado, Maine, Michigan, Minnesota, Oregon, Vermont, Washington, and Wisconsin), offered some combination of election day registration, no excuse voting by mail, and in-person early voting. Overall, an estimated 46.6 percent of eligible voters participated – a generally high level for a mid-term election in this country, though not as high as in 2018.¹⁰ While these successes are real, and the volunteers, election workers, and officials deserve to be proud of their accomplishments, a true accounting of the 2022 elections must include not just how many are able to vote, but which people are able to vote, and the barriers they are forced to overcome to do so.

The fact is that some people—predominantly voters of color—face barriers to the ballot box that make it more difficult and more costly for them to vote than for other people. The past two years have demonstrated the precarity of this grand experiment called participatory democracy. Each election cycle, we are left to wonder and worry whether barriers to vote and attacks on democratic infrastructure will have their intended effect in suppressing the political power of voters of color, or if our infrastructure to scaffold democracy—made possible by organizations that provide voter education or assistance, and litigate—can once more hold up despite these challenges.

Now more than ever, our elections are a work in progress that requires much from the foot soldiers of our democracy. This is certainly no time to proclaim, “Mission Accomplished”. Democracy demands more.

II. Voter Suppression Before and During the 2022 Election

⁸ Erin Banco, *‘People are fearful’: Threats to midterm election workers spur law enforcement response across U.S.*, POLITICO (Nov. 3, 2022), <https://www.politico.com/news/2022/11/03/threats-midterm-election-workers-law-enforcement-00065017>.

⁹ *Early In-Person Voting*, NCSL (Aug. 30, 2022), <https://www.ncsl.org/elections-and-campaigns/early-in-person-voting>.

¹⁰ *2022 November General Election Turnout Rates*, US ELECTIONS PROJECT (Jan. 10, 2023), <https://www.electproject.org/2022g>.

This testimony contextualizes what we saw in the non-partisan, nationwide Election Protect Coalition, spotlights analysis of the growing racial disparity in participation rates; surveys of the barriers Election Protection efforts encounter in one key state (Georgia); and showcases voter experiences documented by litigation we brought in another jurisdiction (Beaumont, Texas).

Too often in 2022 election workers, civil rights organizers, litigators, and voters were forced to jam their fingers into the doorframe of opportunity while state legislators and hostile elections officials sought to slam the door closed on them. No eligible voting-age citizen, particularly historically disenfranchised Black voters, should be confronted with barriers designed to make it more difficult for them to register to vote or cast a ballot. Nor should they be limited to “participating in an empty ritual” in which the ballots cast are rejected or are rendered meaningless by discriminatory procedures or redistricting practices.¹¹

We are less than two months away from the 10th anniversary of the *Shelby County v. Holder* decision, which ripped preclearance protections from the Voting Rights Act (VRA). The floodgates of voter suppression have long been reopened. Justice Ginsberg’s famous dissenting admonishment that “[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet” seems more prophetic with each new wave of suppressive voting laws.¹² Voters of color are feeling the storm. Moreover, it must be stressed that there is no justification for the rash of restrictive election laws. They are garnished with the rhetoric of making it “harder to cheat,” but there is no evidence of widespread cheating affecting election outcomes. In fact, such claims have been widely debunked and dismissed by numerous courts and the public at large.

Throughout 2021 and 2022, states enacted bills banning or limiting the use of drop boxes for mail-in ballots, restricting early voting hours, shortening the window of time that voters had to request – and otherwise limiting use of – absentee ballots, creating new criminal and financial penalties for election administrators, and giving partisan poll watchers unfettered access to the polls. Restrictive voting laws passed in 2021 and 2022 had a meaningful impact on their intended targets—voters of color.

Texas rejected roughly one out of every eight mail ballots in the 2022 primaries due to onerous administrative requirements, such as requiring that voters list the

¹¹ MARTIN LUTHER KING, JR., A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES 307 (2003).

¹² *Shelby County, Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

same identification number they originally used to register; the impact fell disproportionately on Latino and Black voters¹³

Georgia passed new restrictive measures that targeted and limited voting methods, like early in-person voting, voting by absentee ballot, and ballot drop boxes, all of which were used much more extensively by voters of color than voting in-person on recent election days. In the November 2022 election, Georgia had a 13.3 percentage point gap between White (58.3%) and Black (45.0%) turnout of registered voters, which was significantly greater than the 8.3 percentage point gap (62.2% to 53.9%) of the previous midterm election in 2018.¹⁴ Notably turnout amongst both Black and White voters fell in 2022 as compared to 2018 despite the significant interest in Georgia elections.¹⁵

Extolling the “success” of the 2022 elections rings hollow to voters, disproportionately voters of color, who waited for hours in line at polling locations or at the only drop box in their county.¹⁶ The Election Protection coalition documents the numerous delayed openings, ballot shortages, and equipment failures which negatively affected voters, particularly voters of color, who have work, school, childcare, eldercare, or other responsibilities, and who were not always able to endure long wait times and, as a result, were unable to cast a ballot. The suppressive new requirements and rules enacted by state legislatures over the past two years that make election administration more taxing for election workers magnified the issues that communities of color have historically faced at the polls. Furthermore, these newly enacted laws have already had and will continue to have a chilling effect on patriotic citizens who would otherwise serve as election administrators. People who have worked as election administrators and workers for decades now fear prosecution, intimidation, and violence. They are citing these as reasons why they are retiring at a rapid rate, taking their skills and institutional memory with them. Most nonsupervisory election workers are nonpartisan volunteers over the age of 60.¹⁷ In fact, 1 in 5 local election officials have already declared that they will likely

¹³ Natalia Contreras, *Voters of color had mail-in ballots rejected at higher rates than white voters in Texas’ March primary*, TEX. TRIBUNE (Oct. 20, 2022), <https://www.texastribune.org/2022/10/20/voting-texas-ballot-rejections/>.

¹⁴ *Georgia Election Results*, GA. SEC’Y STATE, <https://sos.ga.gov/page/georgia-election-results> (last visited Mar. 8, 2023).

¹⁵ Sara Loving & Kevin Morris, *Georgia’s Racial Turnout Gap Grew in 2022*, BRENNAN CTR. JUST. (Dec. 16, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/georgias-racial-turnout-gap-grew-2022>.

¹⁶ Hannah Klain et al., *Waiting to Vote: Racial Disparities in Election Day Experiences*, BRENNAN CTR. JUST. (June 3, 2020), <https://www.brennancenter.org/our-work/research-reports/waiting-vote>.

¹⁷ Michael Barthel & Galen Stocking, *Older People Account for Large Shares of Poll Workers and Voters in U.S. General Elections*, PEW RES. CTR. (Apr. 6, 2020), <https://www.pewresearch.org/fact-tank/2020/04/06/older-people-account-for-large-shares-of-poll-workers-and-voters-in-u-s-general-elections/>.

step down before the 2024 elections.¹⁸ This mass exodus of election officials and election workers is certain to lead to staffing shortages that will require polling places to be closed or consolidated—a practice that has disproportionately happened in Black communities and other communities of color.¹⁹

One thing about the 2022 election cycle is clear: the magnitude of issues we experienced cannot be allowed to become the new normal. Defenders of democracy, from civil rights litigators to volunteer poll workers, have been put in a position where their collective efforts must triumph in a contest every election cycle when facing voter suppression laws that make it harder to vote, where disinformation and misinformation is disseminated with the intent of scaring voters away from voting, where there is intimidation at polling places and harassment of voters and poll workers, where poll watchers are recruited and trained to question the eligibility of voters at the polls, and where mass challenges on voter eligibility are lodged right before voting begins. These are all deliberate attacks on the right to vote, and unfortunately combating them means having a robust rapid response plan every cycle that includes election protection and emergency litigation. The Election Protection coalition will stand ready each time. This election, we largely got ahead of these threats and were able to support voters against numerous attempts to challenge, confuse, and silence them.

But we face real and growing obstacles. The worst voter suppression laws in the country—in states like Texas—are still on the books. Congress has done nothing to either stop the laws that have already been passed or to stop states from enacting even more. We also know that some who deny the very validity of fair and free elections won their races or have been appointed to oversee future elections, raising the specter of hostile state and local election officials acting in explicitly partisan and not-so-subtle racist ways in 2024.

We will continue to confront these dynamics. This means inoculating disinformation, providing voter education, launching timely legal challenges, and sustaining an election protection infrastructure that continues to take voters through every step of the voting process. From needlessly confusing registration requirements, to unnecessary challenges, to onerous ballot curing procedures, we will be there for voters.

Yet Congress and State Government must not ask voters to keep bearing these burdens with no relief in sight. The Lawyers' Committee will continue to provide

¹⁸ Miles Parks, *1 in 5 local election officials say they're likely to quit before 2024*, NPR (Mar. 10, 2022), <https://www.npr.org/2022/03/10/1085425464/1-in-5-local-election-officials-say-theyre-likely-to-quit-before-2024>.

¹⁹ *Democracy Diverted: Polling Place Closures and the Right to Vote*, LEADERSHIP CONF. EDUC. FUND (Sept. 2019), <http://civilrightsdocs.info/pdf/reports/Democracy-Diverted.pdf>.

support and guidance for every eligible voter nationwide, but we will also continue to call on Congress to act now. Democracy is only as strong as our willingness to fight for it—and we are fighting for it. We need Congress to do the same.

III. Indicators of Problems in the 2022 Midterm Elections

Comprised of 389 local, state, and national partners, Election Protection provides Americans from coast to coast with comprehensive information and assistance at all stages of voting—from registration to absentee and early voting, to casting a vote at the polls, to overcoming obstacles to their participation—and works to remove barriers to voting.

Voters can call our suite of voter protection hotlines to seek information, ask questions, and report problems—no matter how simple or complex—and receive assistance from highly trained legal volunteers. In addition to the 866-OUR-VOTE Hotline, the suite of hotlines include 888-VE-Y-VOTA (in Spanish), administered by the National Association of Latino Elected and Appointed Officials Educational Fund, to provide identical assistance to Spanish-speaking voters; 888-API-VOTE which provides assistance in Mandarin, Cantonese, Korean, Vietnamese, Tagalog, Urdu, Hindi, and Bengali, administered by APIAVote and Asian Americans Advancing Justice-AAJC and 844-YALLA-US, administered by the Arab American Institute which provides assistance in Arabic. Voters can also reach the hotline for assistance by text; through chat from the www.866ourvote.org; by direct message through the @866ourVote Twitter account and at facebook.com/866OurVote.

In addition to the hotlines, Election Protection provides both legal and grassroots assistance at polling places in 33 states. In every major election, thousands of attorneys and grassroots volunteers monitor polling locations, meet with election officials, develop legal and voter outreach materials, and engage in legal and policy advocacy, including litigation when necessary. National partner Common Cause coordinates the grassroots program along with state and local partners. Legal and grassroots volunteers work collaboratively to answer questions and aid voters at the polls during early vote and on Election Day.

Since 2004, Election Protection has amassed a record of the systemic problems Americans face when exercising their right to vote, at every step of the voting process from registration to ensuring their ballot is counted. Using this data, we have developed concrete election reform policy proposals at the local, state, and federal levels that address the true problems voters face, as well as supporting high-impact litigation to ensure our elections are free, fair, and accessible to all eligible voters.

In 2022, the 866-OUR-VOTE hotline's call volume was similar to the 2018 midterm call volume. However, there were some marked trends that are of particular note for assessing the 2022 election.

A. Timing of Calls

The timing of requests for information and assistance changed between 2018 and 2022. In 2018, almost 50% of call volume occurred on Election Day; in 2022, only about 20% of calls came in on Election Day. Although the number of calls is similar, many more voters are choosing to vote early or by mail, indicating that the massive spike in absentee voting in 2020 due to the pandemic may have caused a long-term change to the way voters interact with the election system. Although Election Protection is often thought of as an Election Day effort, the coalition works year-round to educate voters, engage election officials, and provide assistance to voters throughout the election cycle.

B. Polling Place Access and Equipment Issues

Reports to Election Protection show a small but noticeable increase in polling place access and equipment issues. Polling place access issues included late openings and early closings of voting locations; lack of language and disability access; and general access concerns, such as lack of signage and privacy. In 2022, 1.9% of all calls to the hotline regarded late openings and early closings of polling places. This represents a proportional increase from 2020 when 1.7% of calls reported access concerns. According to our database, equipment issues impacted numerous voting locations across the country on Election Day, often creating or exacerbating access concerns.

Voting equipment issues, problems with electronic poll books, scanners, insufficient supplies of paper and other voting equipment related issues, led to some polls opening late in several states, including in Georgia, Michigan, South Carolina, Arizona, Illinois, Texas and New Jersey, Utah, and Delaware, among others, and generated calls to the Election Protection hotline.

In some instances, poll managers deployed emergency paper ballots to help alleviate long lines or courts ordered extensions of the time when polls would close.²⁰

C. Voter Intimidation

Additionally, we documented increased reports of voter intimidation. Our Election Protection infrastructure received 1,648 calls regarding voter intimidation incidents, representing a small proportional increase over the 2018 midterm elections. Incidents related to later publicized reports of coordinated voter

²⁰ Julia Mueller, *Here's where voting hours were extended on Tuesday*, THE HILL (Nov. 8, 2022), <https://thehill.com/homenews/campaign/3726186-heres-where-voting-hours-were-extended/>.

intimidation campaigns,²¹ also formed a basis for litigation intervention, which is discussed in detail further below.²²

IV. Racial Disparities in Voter Turnout Continued to Grow in 2022

Racialized gaps in turnout suggest troubling disparities in how barriers to voting disproportionately, and effectively, burden communities of color. The uptick of suppressive voting laws enacted since 2020 and targeted at voters of color suggested that this disparity would worsen. Recent history since the *Shelby County* decision has also offered discouraging indications of racial disparity when voting protections have been loosened. As a Brennan Center for Justice report found, “between 2012 and 2020, the White-Black turnout gap grew between 9.2 and 20.9 percentage points across five of the six states originally covered by Section 5 of the Voting Rights Act.”²³

In 2020, turnout by voters of color continued a trend of being consistently lower than White turnout, with 70.9 percent of White voters ultimately able to cast ballots compared to only 58.4 percent of voters of color.²⁴ Changes to voting laws can have cross-cutting effects, with suppressive changes to voting practices met by grassroots mobilization, voter education and election protection efforts to counter them. However, even with efforts to mobilize voters and ensure they are able to register and vote, gaps in participation rates between racial groups can highlight the uneven burden applied by targeted voter suppression measures that can be obscured by focus on general turnout rates.²⁵

Overall voter turnout metrics cannot tell the whole story when the intent of suppressive voter legislation is to make it more difficult to vote for a targeted minority. According to Bernard L. Fraga, a professor, and elections expert “changes in [overall] voter turnout are an incomplete metric for gauging the impact of

²¹ Ali Dukakis, *Cases of alleged intimidation at Arizona ballot boxes continue to rise*, ABC:NEWS (Nov. 7, 2022), <https://abcnews.go.com/US/cases-alleged-intimidation-arizona-ballot-boxes-continue-rise/story?id=92811526>.

²² *Lawyers’ Committee for Civil Rights Under Law Gets Relief for Black Voters Facing Voter Intimidation in Texas*, LAWYER’S COMM. C.R. UNDER LAW (Nov. 8, 2022), <https://www.lawyerscommittee.org/lawyers-committee-for-civil-rights-under-law-gets-relief-for-black-voters-facing-voter-intimidation-in-texas/>.

²³ Kevin Morris et al., *Racial Turnout Gap Grew in Jurisdictions Previously Covered by the Voting Rights Act*, BRENNAN CTR. JUST. (Aug. 20, 2021), <https://www.brennancenter.org/our-work/research-reports/racial-turnout-gap-grew-jurisdictions-previously-covered-voting-rights>.

²⁴ Kevin Morris & Coryn Grange, *Large Racial Turnout Gap Persisted in 2020 Election*, BRENNAN CTR. JUST. (Aug. 6, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/large-racial-turnout-gap-persisted-2020-election>.

²⁵ John Kuk et al., *A disproportionate burden: strict voter identification laws and minority turnout*, TAYLOR & FRANCIS ONLINE (Aug. 28, 2019), <https://www.tandfonline.com/doi/full/10.1080/21565503.2020.1773280>.

election law policies or changes in policies on the burdens citizens face.”²⁶ That is because voters take steps to counter barriers to voting, and those steps are “not evidence that the barrier does not exist.”²⁷

Racial disparities in voting seem to have grown across states. This can be seen best in those states where voters are asked to provide race data when they register to vote. Above, I provided statistics from Georgia showing the large and growing disparity in White and Black turnout. In North Carolina, 58% of White registered voters voted in the 2022 general election compared to 41.8% percent of Black or African American voters. In North Carolina White voters had the highest voter turnout percentage compared to all other racial groups.²⁸ Statewide, the gap in turnout between White and Black voters in midterms is soaring, growing from 5 percentage points in 2014 and 8 points in 2018, compared to a roughly 16 percentage point gap in 2022.²⁹

My home state of Louisiana also had a shameful racial disparity in participation. 52.56% of White eligible voters cast a ballot in 2022 compared with only 37.85% of eligible Black voters.³⁰

Further, some states that have passed suppressive voting laws have seen *overall* turnout fall. In Florida, sixty-three percent of voters voted in the 2018 general election compared to 54% in 2022.³¹ Ohio had similar trends, with a fifty-five percent turnout rate in 2018,³² and then dropping down to fifty-two percent in 2022.³³ An estimated 61.2 percent of eligible White voters participated in Ohio’s 2022 election, compared to just 26.2 percent of eligible Black voters, a 35-point difference.³⁴

²⁶ Sur-Rebuttal Report of Bernard L. Fraga, In re Georgia Senate Bill 202, No. 1:21-CV-01229-JPB, 2022 WL 3573076 4 (N.D. Ga. Aug. 18, 2022).

²⁷ *Id.* at 5.

²⁸ *2022 General Election Turnout*, N.C. STATE BD. ELECTIONS, <https://www.ncsbe.gov/results-data/voter-turnout/2022-general-election-turnout> (last visited Mar. 7, 2023).

²⁹ Bob Hall, *NC voter turnout in the midterms: What the data show for various groups*, THE PULSE (Dec. 8, 2022), <https://pulse.ncpolicywatch.org/2022/12/08/nc-voter-turnout-in-the-midterms-what-the-data-show-for-various-groups/#sthash.QNHe0dH5.w2aLakDb.dpbs>.

³⁰ *State Wide Post Election Statistical Report*, LA. SEC’Y STATE, https://electionstatistics.sos.la.gov/Data/Post_Election_Statistics/statewide/2022_1108_sta.pdf (last visited Mar. 8, 2023).

³¹ *Voter Turnout*, FLA. DIVISION OF ELECTIONS (Feb. 27, 2023), <https://www.dos.myflorida.com/elections/data-statistics/elections-data/voter-turnout/>.

³² *Voter Turnout in General Elections*, OHIO SEC’Y OF STATE, <https://www.ohiosos.gov/elections/election-results-and-data/historical-election-comparisons/voter-turnout-in-general-elections/> (last visited Mar. 7, 2023).

³³ *Voter Turnout by County*, OHIO SEC’Y OF STATE, <https://www.ohiosos.gov/globalassets/elections/2022/gen/11-8-22-voter-turnout-summary.xlsx> (last visited Mar. 7, 2023).

³⁴ Lawyers’ Committee estimate. Turnout by race estimated using Ecological Inference.

It is troubling that large racial disparities, and in some cases, drops in overall turnout, have shadowed the 2022 election.

V. Voters Overcame Obstacles in Georgia, but Structural Barriers and Challenges Continue to Grow

Georgia serves as an example of how new laws that target Black voters and make it harder to vote have been confronted by Election Protection and litigation efforts. It is also a stark reminder of the difficulty and substantial resources required by advocates to address voter suppression.

Leading up to the 2022 midterm elections, administrators in Georgia across party lines spoke out against recently passed state laws that made election administration more difficult.³⁵ Despite the fact that Secretary of State Brad Raffensperger and Georgia elections official Gabriel Sterling confirmed that there was no evidence of widespread voter fraud in Fulton County or anywhere else in Georgia during the 2020 election,³⁶ the state legislature passed SB 202, which included provisions that target and make early in-person voting, voting by absentee ballot, and using ballot drop boxes more difficult, all of which were used much more extensively by voters of color than voting in-person on election day. SB 202 not only increased criminal penalties for election administrators in Georgia, but also included state takeover provisions that allow members of the State Elections Board—the majority of whom are appointed by the state legislature—to completely takeover election administration in counties and fire career election administrators.³⁷ These provisions were clearly meant to target Fulton County and other counties with a significant Black population in Georgia.

After the passage of SB 202, the Election Protection coalition received calls from voters having trouble obtaining absentee ballots. In 2020, nearly 30 percent of Black voters in Georgia voted by mail, while only 24 percent of White voters cast their ballot by mail.³⁸ Then, the Georgia legislature included several provisions that make it harder to vote by mail in SB 202. One of these provisions requires any voter who

³⁵ Maya King & Nick Corasaniti, *Local Election Officials in Georgia Oppose G.O.P. Election Bill*, N.Y. TIMES (Mar. 28, 2022), <https://www.nytimes.com/2022/03/28/us/politics/georgia-election-bill.html>.

³⁶ Bart Jansen, *Georgia Election Official: Trump Legal Team 'Intentionally Misled' Voters on Election Fraud*, USA TODAY (Jan. 4, 2021), <https://www.usatoday.com/story/news/politics/elections/2021/01/04/gabriel-sterling-trump-team-misled-voters-election-fraud-georgia/4130374001/>.

³⁷ Domingo Morel, *As Georgia's New Law Shows, When Black People Gain Local Power, States Strip That Power Away*, WASH. POST (Apr. 1, 2021), <https://www.washingtonpost.com/politics/2021/04/01/georgias-new-law-shows-when-black-people-gain-local-power-states-strip-that-power-away/>.

³⁸ Kevin Morris, *Georgia's Proposed Voting Restrictions Will Harm Black Voters Most*, BRENNAN CTR. JUST. (Mar. 6, 2021), <https://www.brennancenter.org/our-work/research-reports/georgias-proposed-voting-restrictions-will-harm-black-voters-most>.

wishes to vote absentee to print out a hard copy of an absentee ballot application, sign it with a pen, and then either return it by mail or scan the application after signing it in ink and uploading it online.³⁹ Previously, voters could simply apply for an absentee ballot online without printing and scanning the form.⁴⁰ This requirement increased the volume of paper absentee ballot applications that county elections offices across the state have to process by hand and decreased access to absentee voting for Black voters and other voters of color who do not have access to printers or scanners at home and would otherwise have to pay money to meet this strenuous requirement.

Another provision of SB 202 also had a negative impact even before the primary election day in Georgia: it cut the window for voters to request an absentee ballot by more than half from 180 days before an election to just 78 days before an election. This unnecessarily restricted the time that voters had to request absentee ballots and that election administrators had to process requests and send the ballots out.⁴¹ Unsurprisingly, many voters in Georgia did not receive their vote by mail ballots by Election Day, including many out of state Georgia college students. Over one thousand ballots simply were not mailed out at all, due to burdens on administrators caused by the law.⁴² Our Election Protection Coalition helped numerous voters who received their absentee ballots late, including two college students who were so eager to vote that they had returned their ballots to their county by express mail, but they still had not been delivered.

Perhaps the gravest threat we saw in 2022 was the abuse of citizen challenges. Made possible by a provision in SB 202 amending Georgia challenge laws⁴³ more than 65,000 Georgia voters had their eligibility challenged; one man alone challenged the eligibility of 31,000 Forsyth County voters.⁴⁴

Approximately 3,200 of those challenges had been sustained prior to November 1, 2022. Challenges in Georgia are approved by county election boards, and if approved, they take effect immediately. Often voters were caught unaware.

³⁹ *Absentee Ballot Request*, GA. SEC'Y OF STATE, <https://securemyabsenteeballot.sos.ga.gov/s/> (last visited Mar. 8, 2023).

⁴⁰ Patricia McKnight, *Georgia Sued Over Rule That Absentee Ballot Applications Be Signed in Ink*, NEWSWEEK (May 2, 2022), <https://www.newsweek.com/georgia-sued-over-rule-that-absentee-ballot-applications-signed-ink-1702733>.

⁴¹ S.B. 202, Ga. Gen. Assemb. (2021).

⁴² *Over 1K absentee ballots never mailed to some Georgia voters*, GPB (Nov. 7, 2022), <https://www.gpb.org/news/2022/11/07/over-1k-absentee-ballots-never-mailed-some-georgia-voters>.

⁴³ Mark Niese, *Voter vs. voter: Georgia conservatives target thousands for cancellation*, THE ATLANTA J. CONST. (July 26, 2022), <https://www.ajc.com/politics/voter-vs-voter-right-wing-residents-target-thousands-for-cancellation/WORGNRFPWJAF3D2PVFWP346BGI/>.

⁴⁴ Mark Niese, *Eligibility challenges impede several Georgia voters at the polls*, THE ATLANTA J. CONST. (Nov. 1, 2022), <https://www.ajc.com/politics/several-georgia-voters-report-hurdles-after-eligibility-challenges/WOUAH77TLRBD5A5HLLFSJV3S44/>.

The Election Protection coalition continued to receive reports of eligible voters appearing at their polling place seeking to cast a ballot in the 2022 general election, only to be told that they had been challenged and had to provide additional evidence of residence. Election workers then risked exacerbating the burdens of the recent change in the law due to unfamiliarity and inadequate training. One voter was initially told during early voting in Fulton County, Georgia, that she would have to cast a provisional ballot, even though she was properly registered and eligible to vote in Fulton County.⁴⁵ She contacted Election Protection and worked with our long-time coalition partner in Georgia to resolve the issue and was able to cast a regular ballot.⁴⁶

Further challenges in the 2022 elections were created by a significant number of county elections administrators retiring or resigning after the state enacted SB 202. The chief county elections administrators in the three counties that include Macon,⁴⁷ Augusta,⁴⁸ and Atlanta⁴⁹—three of the four largest cities in the state of Georgia—all resigned. They had each served in their roles for 10, 28, and 8 years respectively. The former elections director in Macon-Bibb County cited “rapidly changing elections laws” as making her job overwhelmingly stressful and motivating her decision to resign.⁵⁰

The Lawyers’ Committee sued Georgia officials over SB 202 on behalf of the Georgia State Conference of the NAACP, Common Cause, the Georgia Coalition for the People’s Agenda, Inc., the GALEO Latino Community Development Fund, Inc., League of Women Voters of Georgia, and the Lower Muskogee Creek Tribe in federal court.⁵¹ We specifically sued over SB 202’s provisions allowing the State Elections

⁴⁵ *Id.*

⁴⁶ Carlisa N. Johnson, *Early voters in Georgia face obstacles under state’s new election law*, THE GUARDIAN (Oct. 22, 2022), <https://www.theguardian.com/us-news/2022/oct/22/georgia-early-voting-obstacles-new-election-law>.

⁴⁷ Liz Fabian, *Macon-Bibb Elections Supervisor Resigns Due to Stress, Workload, New Election Laws*, WMAZ-TV (Jan. 10, 2022), <https://www.13wmaz.com/article/news/local/macon-bibb-elections-supervisor-resigns/93-8fc78126-6601-4de6-b46e-cbc56f8ae5>.

⁴⁸ Susan McCord, *Lynn Bailey, Richmond County elections chief, announces retirement after 28 years*, THE AUGUSTA CHRONICLE (June 15, 2021), <https://www.augustachronicle.com/story/news/local/2021/06/15/lynn-bailey-director-elections-richmond-county-augusta-ga-to-retire/7698364002/>.

⁴⁹ Jeff Amy & Kate Brumback, *Election Director in Georgia’s Fulton County Resigning*, ASSOCIATED PRESS (Nov. 3, 2021), <https://apnews.com/article/elections-voting-georgia-atlanta-0980431ec0eeba03471216fc264895ee>.

⁵⁰ Liz Fabian, *Macon-Bibb Elections Supervisor Resigns Due to Stress, Workload, New Election Laws*, WMAZ-TV (Jan. 10, 2022), <https://www.13wmaz.com/article/news/local/macon-bibb-elections-supervisor-resigns/93-8fc78126-6601-4de6-b46e-cbc56f8ae5>.

⁵¹ *Georgia’s SB202 is a Culmination of Concerted Efforts to Suppress the Participation of Black Voters and Other Voters of Color*, LAWYERS’ COMM. C.R. UNDER LAW, (Mar, 29, 2021), <https://www.lawyerscommittee.org/georgias-sb202-is-a-culmination-of-concerted-efforts-to-suppress-the-participation-of-black-voters-and-other-voters-of-color/>.

Board to “take over county election boards, which would give the State Elections Board unprecedented authority to target jurisdictions with a large population of Black voters and other voters of color.”⁵² Last December, the court denied the State’s attempt to dismiss our case, allowing our clients to move forward with their claims and finding that the organizations we represent have stated a plausible discriminatory purpose claim.

When the state legislature seemed poised to pass a second round of restrictions last year, one Republican member of the Forsyth County board of elections warned state lawmakers in Georgia “you’re going to cause me to lose poll workers...I have 400 poll workers that work for our board. That is 400 people that I could see telling me after May, ‘Have a nice life,’ and it’s hard enough to keep them right now.”⁵³ Despite these bipartisan warnings, state lawmakers in Georgia passed an election police force bill that gives the Georgia Bureau of Investigations the power to investigate any violation of the state’s election code, which will almost certainly include investigations of elections workers and administrators in Georgia’s predominantly Black counties.⁵⁴ In fact, elections administrators warned state legislators that involving the GBI would throw a wrench in their efforts to run elections smoothly. Specifically, Douglas County Election Director Milton Kidd warned that allowing the GBI to initiate investigations “could have a ‘chilling effect’ on poll workers and voters who might fear becoming targets of unfounded fraud accusations.”⁵⁵ The GBI could also target election administrators and poll workers for making minor, innocent administrative mistakes, prosecuting those individuals for the kinds of slip ups that do not affect the final vote count in any way.

VI. Beaumont, Texas Voter Discrimination Examples

Texas has a well-documented history of voter intimidation by poll watchers that has disproportionately affected voters of color. The courts have acknowledged this pattern before: in 2014, a federal district court described this very issue: “Minorities continue to have to overcome fear and intimidation when they vote. . . . [T]here are still Anglos at the polls who demand that minority voters identify themselves, telling them that if they have ever gone to jail, they will go to prison if

⁵² Complaint, *Georgia State Conference of the NAACP v. Brad Raffensperger*, (N.D. Ga. 2021), <https://lawyerscommittee.org/wp-content/uploads/2021/03/2021-03-28-complaint-as-filed-with-temporary-case-number.pdf>.

⁵³ Maya King & Nick Corasaniti, *Local Election Officials in Georgia Oppose G.O.P. Election Bill*, N.Y. TIMES (Mar. 28, 2022), <https://www.nytimes.com/2022/03/28/us/politics/georgia-election-bill.html>.

⁵⁴ Brad Dress, *Georgia Lawmakers Pass Bill Empowering Election Force to Investigate Voter Fraud*, THE HILL (Apr. 5, 2022), <https://thehill.com/news/3259631-georgia-lawmakers-pass-bill-empowering-election-force-to-investigate-voter-fraud/>.

⁵⁵ Stanley Dunlap, *Poll Supervisors Fret as Senate Considers Another Election Overhaul*, GEORGIA RECORDER (Mar. 22, 2022), <https://thecurrentga.org/2022/03/22/poll-supervisors-fret-as-senate-considers-another-election-overhaul/>.

they vote. Additionally, there are poll watchers who dress in law enforcement-style clothing for an intimidating effect to which voters of color are often the target.”⁵⁶

However, in this cycle we received disturbing reports of similar intimidation stemming not from poll watchers, but from poll workers themselves. During the early voting period leading up to Election Day in 2022, 866-OUR-VOTE, received complaints from voters at a historically Black polling location in Beaumont, Texas of white poll workers exclusively asking Black voters to recite their addresses out loud after their voter eligibility had already been confirmed.⁵⁷ Our team immediately investigated the allegations, and quickly filed suit on behalf of the Beaumont Branch of the NAACP and an individual Texas voter alleging that Black voters were being targeted and intimidated by White poll workers in the John Paul Davis Community Center polling place, which was located in a predominantly Black neighborhood in Beaumont.

Black voters, poll workers, and voter assistants in Beaumont provided several first-hand accounts of what they witnessed. These are just a few of their stories:

*I have never witnessed what I saw that day at the Community Center, a White poll worker loudly demanding that an elderly Black woman recite her address out loud even though she already verified her address one time and seemed to be checked in.*⁵⁸

- Declaration of Plaintiff Jessica Daye

[V]oters who I was serving at Theodore Johns Library told me that they had previously attempted to vote at the John Paul Davis Community Center and had been unable to vote. One voter was a man and one was a woman. They were both Black. One of these two voters informed me that they had requested a mail ballot and did not receive it in the mail. This voter told me that they were told they could vote a provisional ballot when they attempted to vote at the John Paul Davis Community Center. The other voter told me that they were not informed why they could not have voted at the John Paul Davis Community Center and did not know why

⁵⁶ *Veasey v. Perry*, 71 F. Supp. 3d 627, 636–37 (S.D. Tex. 2014), *aff'd and reversed on other grounds*, *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

⁵⁷ *Lawyers' Committee For Civil Rights Under Law Gets Relief for Black Voters Facing Voter Intimidation in Texas*, LAWYERS' COMM. C.R. UNDER LAW (Nov. 8, 2022) <https://www.lawyerscommittee.org/lawyers-committee-for-civil-rights-under-law-gets-relief-for-black-voters-facing-voter-intimidation-in-texas/>.

⁵⁸ Complaint at 3, *Beaumont Chapter of the NAACP v. Jefferson County, Tex.*, 1:22-cv-00488-MJT (E.D. Tex., 2022).

they had been turned away. Based on my knowledge and experience as a poll worker, there was no reason indicated by the poll pad that these voters could not have voted. They voted at the Theodore Johns Library.⁵⁹

- Declaration of Poll Worker Wilmeretta Lowe

[O] my routine trips through the polling place with voters who had requested assistance, I noticed that Black voters were repeatedly and aggressively asked to recite their address by White poll workers as they were checking in at the polling place. Again and again I saw Black voters being interrogated about their address, even after handing over their license to the poll worker and confirming their address was still correct...I saw plenty of White voters cast ballots while I was in the Community Center, but I never saw a single White voter be questioned about their address, their identification, or anything else.⁶⁰

Over the course of the ten days that I assisted voters at the Community Center, I spent a lot of time outside the polling place waiting for voters who asked for my assistance. During this time, I often talked to community members who were heading into the polls to vote or heading out of the polls having already voted. What is most alarming to me is that over the course of ten days of early voting, more than sixty voters told me they felt intimidated, uneasy, and uncomfortable voting in the Community Center. All of these stories came from Black voters. And they all centered on the same issues I was noticing: an aggressive interrogation when Black voters tried to check in, surveillance of Black voters as they worked their way through the polling place, and a failure to assist Black voters in successfully casting their votes using the new scanning machines. I have never heard so much negative feedback about the voting process in my life, but it was important for me to hear it as it motivated me to work even harder to identify voters that were in need of assistance during the voting process, and to closely observe the events happening around me.⁶¹

- Declaration of Joyce Roper (Voter Assistant)

After the Lawyers' Committee and our pro bono partner Latham & Watkins, LLP, sued in federal court, a federal judge held an emergency hearing the evening before

⁵⁹ *Id.*

⁶⁰ *Id.* at 2.

⁶¹ *Id.* at 4.

Election Day, that ran for over two hours. Ultimately, the judge issued an order granting our clients a temporary restraining order, prohibiting all election judges, clerks, workers, volunteers, or watchers at the Beaumont polling place from engaging in intimidation, including asking voters to publicly recite their addresses before allowing them to vote, standing close enough to voters to view who they were voting for, refusing to provide voters assistance with scanning their ballots, or otherwise turning eligible voters away.⁶²

VII. Conclusion

The 2022 election cycle was a “success,” but one with a cost. It still presented challenges to voters and election administrators—intimidation of election workers and administrators, rampant disinformation, staffing shortages, and unprecedented restrictions on voters. That elections proceeded, and did so “successfully,” was due to the sacrifices of voters, organizers, poll workers, election administrators, and litigators focused on protecting “the right preservative of all rights.”⁶³ They have done their part, going above and beyond what should be required of them in a free and democratic society. Now Congress must act immediately to ensure that future elections are administered safely, adequately funded, and freed from suppressive and malicious barriers to registering, casting, and counting ballots so that our democracy can continue to function and Black voters and other voters of color have equal access to the fundamental, precious right to vote.

⁶² Alexa Ura, *Texas Tribune*, *Federal judge tells Beaumont election officials not to harass or discriminate against Black voters*, TEXAS TRIBUNE (Nov. 8, 2022), <https://www.texastribune.org/2022/11/07/voting-discrimination-lawsuit-beaumont/>; Order on TRO, *Beaumont Chapter of the NAACP v. Jefferson County, Tex.*, Case 1:22-cv-00488-MJT Document 14 (E.D. Tex., 2022).

⁶³ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).