



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

A Decade-Long Erosion

Contents

Executive Summary	1
Introduction	2
The Fix Is In	
A Decade of Voter Suppression in the Deep South	6
Photo ID Laws	7
Polling Place Changes	7
Voter Roll Purges	8
Voting Method Restrictions	9
The Handcuffed Ballot	
The Intersection of the Criminal Legal System and the Democratic Process	10
Felon Disenfranchisement	11
The Criminalization of Voter Access	13
Underfunded and Under Attack	
The Targeting of Election Administration Over the Last Decade	14
Attacks on Election Administrators	15
Historic Underfunding of Elections & Stymieing of Third-Party Support	15
The Fight for Representation	
Political Gamesmanship During the First Redistricting Cycle Since <i>Shelby County</i>	18
Manipulation of the Redistricting Process	19
Use of Suppression Tactics to Maintain Power	20
Policy Recommendations	22
Endnotes	26

Executive Summary

The United States Supreme Court’s decision in the landmark voting rights case *Shelby County v. Holder* changed the landscape of voting rights in the Deep South.

The opinion struck down a key provision of the Voting Rights Act of 1965—Section 4(b)’s coverage formula—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. 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, leading to a pervasive and damning path of voting barriers for BIPOC voters. *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*, a report by the Southern Poverty Law Center, examines the voting rights landscape of the Deep South 10 years after the *Shelby County* decision. In this report, we outline how Southern states—including Alabama, Georgia, Florida, Louisiana and Mississippi—have created myriad hurdles in an attempt to suppress the BIPOC vote. This report focuses on the South because of the region’s intractable and pervasive history of racial discrimination in voting—a history that, since emancipation and the granting of the vote to formerly enslaved people, has been marred by numerous voter suppression tactics aimed to limit Black political participation and representation. Indeed, for several generations after passage of the 15th Amendment, Southern legislatures advanced new barriers to the vote with little to no oversight—maintaining their focus on Black voter suppression while simultaneously expanding the impact of their problematic tactics to also disenfranchise other communities of color. It was not until the Voting Rights Act of 1965 that voters of color finally had protection from this continued onslaught, making *Shelby County*’s elimination of this critical coverage all the more devastating. As a result of

this harmful decision, state legislatures across the South have operated unchecked on several fronts over the last decade to attack our democratic process and stymie BIPOC political participation.

But there is hope for a path forward. To protect and fortify BIPOC voting rights and representation, particularly in the Deep South, for the next decade and beyond, this report advances the following policy proposals:

1. Congress must pass legislation to restore and strengthen the Voting Rights Act that includes a coverage formula responsive to the current voting rights landscape. In the interim, states should pass state voting rights acts to protect BIPOC voting participation and representation now.
2. The federal government should increase funding for Department of Justice investigations of discriminatory voting practices and enforcement of voting rights laws.
3. States should restore the right to vote for people with criminal convictions without restrictions.
4. To respond to the growing demands placed on election administrators and increasing population growth in the South, the federal government should significantly increase election administration funding for state and local jurisdictions to allow them to both modernize their election infrastructure and carry out effective elections. This funding should be transparent, sustainable and predictable. Spending guidance must accompany the funding to ensure equitable distribution based on population and need.
5. States should move toward eliminating partisanship in the redistricting process and meaningfully include community input in the process.
6. Federal agencies should move swiftly and effectively to meet the goals of the Executive Order on Promoting Access to Voting, including integrating voter registration opportunities for their constituents wherever possible. ●

Introduction

“The Supreme Court has stuck a dagger into the heart of the Voting Rights Act. Although the court did not deny that voter discrimination still exists, it gutted the most powerful tool this nation has ever had to stop discriminatory voting practices from becoming law. Those justices were never beaten or jailed for trying to register to vote. They have no friends who gave their lives for the right to vote. I want to say to them, ‘Come and walk in my shoes.’”

John Lewis

Civil Rights Activist and U.S. Congressman

June 25, 2023, marks the 10th anniversary of the United States Supreme Court’s decision in *Shelby County v. Holder*, one of the most consequential voting rights cases of our time.

In this landmark 5-4 decision, the court struck down the coverage formula in Section 4(b) of the Voting Rights Act of 1965 (VRA), eliminating a preclearance process that had protected the voting rights of Black, Indigenous and other People of Color (BIPOC) for generations—especially in the Deep South. For almost half a century, the preclearance provisions of the VRA required certain covered jurisdictions with a history of racially discriminatory voting practices to secure preapproval from the U.S. Department of Justice (DOJ) or a three-judge federal panel in Washington, D.C., before changing or modifying their election practices. With the *Shelby County* decision, this critical accountability tool—also known as preclearance—came to an abrupt end.

The importance of the VRA’s preclearance process—contained in Section 5 of the VRA—cannot be overstated. Prior to the law’s passage, states and localities across the nation—with those in the Deep South among the worst actors—targeted and dismantled the Black vote through insidious voter suppression tools and tactics, such as poll taxes, grandfather clauses and literacy tests. Previous federal attempts to reel in this behavior were ineffective—for example, one historian noted that the Civil Rights Act of 1957, the first civil rights bill passed by Congress in over 80 years, “meant nothing in terms of changing how Black people lived their lives in the United States of America.”¹ While the law recognized the responsibility of the federal government to intervene to prevent discrimination, it failed to provide the robust legal enforcement tools needed to combat it. By passing the VRA and intentionally including within it a preclearance requirement, Congress sent a clear message: Legally granting the vote to Black people while simultaneously enacting endless barriers so that they could not exercise this fundamental right was antithetical to American democracy. Almost overnight, VRA preclearance transformed access to the vote. By December 1965, a quarter million new Black voters had registered to vote, and by the end of the following year, only four out of 13 Southern states had less than 50% of their Black population registered to vote.² Between 1965 and 2013, cov-

ered jurisdictions submitted over half a million proposed voting changes to the Department of Justice (DOJ) for approval;³ during that same period, DOJ blocked over 3,000 discriminatory voting changes.⁴ This expanded Black voter pool led to the diversification of the local and federal electorate and the historic election of local Black mayors, council members, state legislators and members of Congress, among others.⁵ In addition to increased voter turnout, studies have shown that the VRA also led to better economic outcomes,⁶ improved schools⁷ and lower arrest rates⁸ for Black people. *Shelby County* thus not only impacted the ballot but also Black communities’ ability to access an equitable society.

As outlined in our previous submissions to Congress,⁹ the damning effects of the *Shelby County* decision on the voting rights landscape were immediate and pervasive—particularly for BIPOC residents in the South, which includes several states previously subject to preclearance.¹⁰ Within a day of the decision, Alabama advanced a restrictive photo ID law,¹¹ with Mississippi, Texas and North Carolina following closely behind.¹² Importantly, the *Shelby County* decision not only allowed state legislatures to advance voting changes that would have previously been subject to preclearance, it also created a culture where states could think expansively about employing a broad spectrum of strategies to suppress the BIPOC vote. Beyond discriminatory photo ID laws, Southern states moved swiftly to implement additional voter suppression schemes—such as discriminatory voter roll purges, mass polling place changes, racial and partisan gerrymandering during the redistricting process, new vote-by-mail and early voting restrictions, and more.

Unfortunately, this pervasive assault on BIPOC voting rights has continued to the present day. In 2021, at least 19 states passed 34 laws restricting access to voting¹³—the highest number of laws in a decade—that appeared largely motivated by racial factors.¹⁴ Several of these bills have been omnibus—such as Georgia’s SB 202 (2021) and Florida’s SB 90 (2021)—allowing states to suppress voting rights in a number of ways with a single pen stroke. As of January 2023, state legislatures in approximately 32 states pre-filed or introduced 150 bills to restrict voting.¹⁵ Significantly, this ongoing attack on democracy has been coupled with the severe underfunding of election infrastructure, placing increasing pressure on

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understaffed election officials to carry out effective elections with limited resources.

In a glimmer of hope, the COVID-19 pandemic provided an opportunity to make voting more accessible in light of social distancing restrictions, with states across the nation—including in the South—exploring novel methods to protect access to the vote. Indeed, COVID-19, and the responsive shifts by states to protect access to the ballot, shows that where there is political will, change can occur. Due to a plethora of innovative strategies to protect access to the franchise—including expanded early voting, increased vote-by-mail options and ballot postage¹⁶—the 2020 general election had the highest voter turnout this century.¹⁷ Importantly, such efforts also took place in some Deep South states, albeit largely in response to public pressure and litigation.¹⁸ For example, Mississippi expanded curbside voting access and set a process for curing ballot signature issues (after being sued)¹⁹ and Alabama loosened some absentee voting requirements.²⁰ These states, however, quickly tightened restrictions²¹ after the public emergency passed.²²

Consequently, for most of the past decade, BIPOC voters in the Deep South have been subject to hours-long voter lines, distant polling locations, decreased windows in which to vote, disproportionate disenfranchisement due to felony convictions, strict yet unclear voting requirements, and other barriers to the ballot. And importantly, this voter suppression movement has ensnared a broad swath of BIPOC voters with unique voting needs—including those with disabilities, the elderly and others. Further, while these efforts have been largely targeted for generations to dismantle the Black vote—given the unique history of racism that African Americans have with this country and the franchise—they have also deeply affected the political participation of other communities of

color, including members of the Latino, Asian and Indigenous communities.

From the end of slavery to present day, significant advancements in Black political participation and representation have often been followed by a swift backlash and retrenchment of rights. It happened after Reconstruction. It happened after the election of the nation's first Black president. And it is happening today as we stand at a critical moment where our democracy is under attack on many fronts after the decade-long erosion of BIPOC voter access—namely, Black voter access—sparked by the *Shelby County* decision.

To be sure, the U. S. Supreme Court's recent decision in *Allen v. Milligan* is a significant win for voting rights and democracy in our country. In this case, which, like *Shelby County*, originated in Alabama, Alabama Forward's executive director and chief field and campaign strategist, Evan Milligan and Khadidah Stone, respectively, as well as other impacted voters challenged Alabama's 2021 congressional map. Plaintiffs alleged that even though Alabama's Black population of 27% should provide them with the opportunity to elect a representative of their choice in two districts, the map, as drawn, cracked this community in such a way that they can only effectively do so in one congressional district, violating VRA Section 2. Although a district court agreed with the plaintiffs, mandating Alabama to create a second Black opportunity district before the midterms, the state appealed. On June 8, 2023, the U.S. Supreme Court sided with plaintiffs, affirming the district court's ruling that Alabama's map diluted Black voting strength in violation of VRA Section 2. Not only does this decision require that Alabama redraw its map, but it may positively impact the court's decision in other pending redistricting cases before it, including *Ardoin v. Robinson*, a challenge to Louisiana's redistricting maps as violative of the VRA,²⁵

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and a redistricting case concerning South Carolina’s congressional map it agreed to hear in May 2023.²⁴

Notwithstanding the Supreme Court’s decision in *Allen v. Milligan*, it is worth noting that the court allowed the 2022 election to proceed with discriminatory maps pending the decision it rendered months later. Black voters in Alabama—and across the country—deserve equal representation in government, which helps ensure communities receive critical resources and funding for schools, libraries, affordable housing, jobs, safe infrastructure, green space, and access to affordable health care. Although the ruling reaffirms the right to fair representation for Black communities, we still have much work to do to ensure it becomes a reality.

At the federal level, Congress has yet to pass legislation to restore the Voting Rights Act to its full power—including a revised coverage formula. And it has failed to do so at a time when partisanship is at a fever pitch, with several members of Congress challenging the very nature of democracy through support for the violent Jan. 6, 2021, insurrection and conspiracies around the 2020 presidential election. And, as mentioned, state legislatures have taken advantage of no federal preclearance by ushering in waves of voter suppression bills. As we look toward the 2024 general election, equipped with the knowledge that the 2020 census data shows that our nation’s diversity is on the rise, it is imperative that we develop a plan to protect and support BIPOC political participation and representation in the face of these myriad barriers. Indeed, the future of our democracy may depend on it.

This report serves as a foundation for how advocates for democracy in the Deep South can move toward this vision of building, supporting and protecting the political participation and representation of Black people and other people of color in the region. First, it provides an outline of the current voting rights landscape throughout the South—including the numerous barriers to the ballot BIPOC voters face. Second, it explores the ever-expanding overlap of democracy and the criminal legal system. Third, it discusses the persistent underfunding of election administration and the ongoing attacks faced by election administrators. Fourth, this report highlights the first redistricting cycle since *Shelby County*, uplifting how state legislatures have attempted to use this process for partisan gains to the detriment of BIPOC voters. Last, and most importantly, the report advances bold policy proposals to outline the path forward for fortifying political participation and representation in the Deep South for communities of color for the next decade—and beyond. ●

The Fix Is In

A Decade of Voter Suppression in the Deep South

“If you’re too sorry or lazy to get up off of your rear and to go register to vote, or to register electronically, and then to go vote, then you don’t deserve that privilege. As long as I’m secretary of state of Alabama, you’re going to have to show some initiative to become a registered voter in this state.”

John Merrill

Former Alabama Secretary of State

In the immediate aftermath of the *Shelby County* decision, Southern states moved swiftly to suppress the BIPOC vote.

From enacting strict photo ID laws to closing polling places in majority-BIPOC communities to breeding a culture of fear and intimidation, state legislatures have worked strategically to limit the voting strength of communities of color. As a result, these communities have faced significant barriers in attempting to cast their ballot. In fact, Alabama and Mississippi are two of the hardest states to vote in nationwide—with Mississippi ranking as the second hardest state to vote in the U.S.²⁵ While not exhaustive, this section outlines some of the voting barriers BIPOC communities in the Deep South have had to overcome over the past decade, with a specific focus on (1) photo ID laws, (2) polling place changes, (3) voter roll purges, and (4) voting method restrictions.

Photo ID Laws

Photo identification laws, which hearken back to tactics used in the Jim Crow South, are a prevalent voter suppression tool. Despite the 24th Amendment’s prohibition on poll taxes, photo ID laws potentially stand in for such restricted practices by acting as a barrier and additional hurdle to the vote²⁶—particularly for voters of color because they are less likely to have voter ID.²⁷ As of March 2023, 36 states have photo ID requirements, with nine states, including Georgia and Mississippi, having the strictest photo ID laws in the country.²⁸ Under vague declarations of protecting against baseless “voter fraud,”²⁹ state legislatures have used photo ID laws to disenfranchise large swaths of state populations. For example, at the time that Alabama implemented its strict voter ID law for the 2014 primaries, the secretary of state reported that about 20% of Alabama’s registered voters—or about 500,000 people—lacked a driver’s license or non-driver ID, with only an estimated half of that group having another acceptable form of identification.³⁰ The state of Alabama made this deficit worse with its subsequent announcement in 2015 of the closure of 31 driver’s license offices largely concentrated in the “Black Belt;”³¹ this move was only partially reversed after public outcry.³² As another example, after strong Democratic turnout during the 2020 elections,³³ Georgia acted urgently to pass SB 202, an omnibus law that included new voter ID requirements. At the time, about 3.5% of Georgia’s 7.8 million registered voters did not

have a driver’s license or state ID number—more than half of whom were Black and lived in mostly Democratic-leaning counties.³⁴

While there is some disagreement as to the impact that photo ID laws have on elections,³⁵ there is evidence that racial animus may have a role in driving these bills. As point of fact, in striking down a North Carolina photo ID law in 2016, a federal appeals court noted that the law targeted African Americans “with almost surgical precision.”³⁶ Beyond racial intent, there have also been examples of photo ID laws being used for partisan purposes, at least ostensibly. In instances where Republican legislatures have been alleged to have passed photo ID laws to suppress political opposition, Black voters have been swept up in these efforts because they have historically voted Democratic.³⁷ As proof, a report by special counsel during the impeachment proceedings of Gov. Robert Bentley found that the aforementioned closure of 31 Alabama driver’s license offices was intended “to be rolled out in a way that had limited impact on Governor Bentley’s political allies.”³⁸ No matter what the explanation, however, the reality is that photo ID laws are a barrier to the vote that have a disproportionate impact on people of color.

Polling Place Changes

The ability to easily access a polling place to cast your vote is a critical part of the democratic process. By the same token, the manipulation of polling place numbers and locations can have an impact on BIPOC voting strength. As one can imagine, having to travel long distances to stand in long lines due to polling place closures can potentially pose a chilling effect on the vote. For example, between 2012 to 2018, Georgia county election officials shut down 8% of the state’s polling places and relocated almost 40% of precincts. An analysis by the *Atlanta Journal-Constitution* shows that precinct closures and longer distances to the polls likely prohibited an estimated 54,000 to 85,000 voters from casting ballots on Election Day in 2018—and Black voters were 20% more likely to miss elections due to long distances.³⁹ Between 1982-2005, DOJ had outright objections to 31 out of 94,261 proposed polling place changes and sent more information requests for 1,927 of the proposed changes, sustaining 29 objections after receiving this information.⁴⁰ While these numbers may seem relatively low, research shows that, beyond objections, DOJ used other tools to ensure state compliance with the VRA—including more information requests.⁴¹ Overall, states subject to federal preclearance submitted 126,751

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polling place changes to the DOJ for approval between 1965-2013—more than any other type of voting change.⁴² Post-*Shelby County*, however, states across the Deep South were completely free to begin closing polling places with impunity. In its report *Democracy Diverted*, The Leadership Conference Education Fund found 1,688 polling place closures between 2012-2018 in jurisdictions previously subject to federal preclearance.⁴³ These closures have a distinct focus in the Deep South: During this same time period, Mississippi, Louisiana, Alabama and Georgia closed 508 polling places alone. Georgia also had seven out of the top 10 closing counties by percentage;⁴⁴ thankfully, Georgia’s attempt to close seven of its nine polling locations in Randolph County, a majority-Black county, based on claims of ADA accessibility, was successfully blocked after local and national outcry.⁴⁵ Thus, as highlighted throughout *Democracy Diverted*, a heightened level of scrutiny of polling place closures is warranted given our nation’s history of voter suppression and the pronounced impact that polling place changes have on communities of color.

Polling place closures were a top issue during the 2022 midterms—notably around transportation to polling sites. After Hurricane Ian devastated Florida in 2022, Lee County consolidated almost 100 polling locations into a dozen “super sites.”⁴⁶ This action was swiftly condemned by voting rights advocates, who noted that polling places were closed in predominantly Black communities, requiring these residents to travel long distances to cast their votes in faraway locales with limited transportation options.⁴⁷ And even with the mass voter turnout in the Georgia midterms, there were complaints of a lack of transportation options (whether car, bus or otherwise) to reach polling locations,⁴⁸ with some relying on local organizations to get to the polls.⁴⁹ This sentiment was shared by Marrow Woods, a college student organizer with the Georgia Youth Justice Coalition. Woods, who lives south of Atlanta where public transportation is unreliable, found themselves in need of transportation options during the 2022 midterms. If not for their college stepping in to provide students with bussing to the polls, they are not sure how they would have been able to vote. And, even with this resource, the voting process was difficult. According to Woods, it was difficult to find accurate and up-to-date information on polling locations, with them noting that “a lot of places that we actually ended up going to with the school were

not places that were listed on their websites.” As a determined college student, Woods was ultimately successful in casting their vote with the help of their college and community, but it should not take this level of perseverance to exercise the fundamental right to vote.

Further compounding the issue, poor community outreach and public education has left many voters in the dark about polling place closures. In Alabama, voting rights groups in 2022 urged then-Secretary of State John Merrill to “publish an accurate, uniform and comprehensive list of polling locations statewide to mitigate voter confusion at the polls and the disenfranchisement that often follows.”⁵⁰ In Mississippi, county election officials made almost 100 polling place location changes between 2020 and 2022, with most of these changes going unreported on the state database used to provide polling place information to voters.⁵¹

Voter Roll Purges

In an ideal world, election officials would maintain accurate voting lists—pursuant to federal legislation like the National Voter Registration Act (NVRA) and the Help America Vote Act (HAVA)—using reliable and transparent processes to remove ineligible voters from their voter rolls. Voter purges, however, in which inappropriate procedures lead to the removal of eligible voters,⁵² have taken on new significance post-*Shelby County* as a voter suppression tool. The practice of voter purging is particularly pernicious because, all too often, voters do not realize they have been purged from the polls until they attempt to vote,⁵³ resulting in them missing deadlines to correct the issue and being dissuaded from attempting to vote in future elections. Bolstered by *Husted v. A. Philip Randolph Institute*, a 2018 Supreme Court decision that permitted states to purge infrequent voters from their rolls,⁵⁴ Southern states have taken to voter purging as a tool to manipulate the electorate. According to a Brennan Center analysis, jurisdictions no longer subject to preclearance had higher voter purge rates for the two election cycles between 2012 and 2016 than jurisdictions that were not covered by Section 5 in 2013.⁵⁵ Indeed, 2 million fewer voters would have been purged during this time if these formerly precleared states purged at the same rate as those not previously subject to preclearance.⁵⁶ In 2017, Georgia Secretary of State Brian Kemp purged over half a million voters in a single day—with an estimated 107,000 of these people removed

Over the past decade, Southern states have passed numerous bills to suppress the BIPOC vote. By way of example, the lists to the right outline some of the provisions of two omnibus bills passed in Georgia (SB 202) and Florida (SB 90).



Georgia

SB 202 (2021)

- Reduces period to request vote-by-mail ballot by over 50% and shortens runoff period.
- Adds new ID requirement to vote-by-mail application.
- Places restrictions on drop box locations and hours.
- Bans approaching voters waiting in line with food and water.
- Allows for state takeover of local election boards.



Florida

SB 90 (2021)

- Adds new ID requirement for vote-by-mail ballot applications.
- Limits drop box locations and hours.
- Adds restrictions to third-party voter registration drives.
- Bans third-party funding for elections.
- Makes it a misdemeanor for a voter to possess more than two vote-by-mail ballots, not including their own or the ballot of an immediate family member.

merely because they had not voted in prior elections.⁵⁷ Notably, this purge occurred before Kemp’s closely watched gubernatorial run against Stacey Abrams, a Democratic candidate vying to be the first Black female governor in the country.⁵⁸

In 2012, Florida attempted to remove 182,000 allegedly ineligible noncitizens from the voter rolls, later decreasing this number to 2,600.⁵⁹ Outcry soon followed, with many arguing that the determination process ensnared eligible voters,⁶⁰ was an attempt to disenfranchise Latino voters,⁶¹ and was error-prone.⁶² Strikingly, Florida attempted to purge these voters, at the direction of Republican Gov. Rick Scott, in advance of the 2012 presidential election where Florida was a key state for President Barack Obama’s reelection.⁶³ In response, the Department of Justice and advocates sued the state in several lawsuits, with claims ranging from violations of the NVRA,⁶⁴ which prohibits voter purges within 90 days of a federal election, to violations of the VRA based on Florida’s failure to seek preclearance for the plan.⁶⁵ Ultimately, it is estimated that around 85 noncitizens were removed from the polls as of Aug. 1, 2012.⁶⁶ Although a federal court in 2014 held that the 2012 purge had violated the NVRA, the battle had just begun.⁶⁷ While Florida’s median voter purge rate was 0.2% between 2008 and 2010, this number skyrocketed to over 7% between 2016 and 2018.⁶⁸ Florida, Alabama and Louisiana’s withdrawals in 2022–2023⁶⁹ from the Electronic Registration Information Center (ERIC), a nonprofit organization consisting of state election officials that assists states in keeping accurate voter rolls,⁷⁰ also signals the threat of increased voter purges in advance of consequential elections.

Voting Method Restrictions

Over the last decade, Southern states have also implemented restrictions around how and when voters can vote—particularly in the areas of early voting and absentee voting (vote by mail).

Early voting has been a central part of the Black voting experience for generations, with “Souls to the Polls” efforts across the country serving as a communal democracy exercise. Early voting, however, is extremely restricted in some Southern states: For example, Alabama and Mississippi, two states with substantial Black populations,⁷¹ fail to offer pre-Election Day in-person voting options for all voters.⁷² And while Georgia provides early voting—which was used by voters in record numbers during the 2020 and 2022 election cycles—its process is not without its

issues. SB 202 cut the state’s runoff period by about half, resulting in statewide early voting days going from 17 days to five.⁷³ As a result, and exacerbated by polling place closures, some voters had to wait over two hours to cast their vote during the 2022 midterms, with additional voters likely dissuaded by the long lines from voting at all.⁷⁴ Significantly, SB 202 also authorized partisan control of local election boards, leading some congregations to move their “Souls to the Polls” efforts to Saturday after several counties eliminated Sunday voting.⁷⁵

The absentee voting process in the Deep South is also full of potential land mines. On one hand, the process can be particularly onerous. In Mississippi, for example, most absentee voters are only eligible to vote in person and must appear before a circuit clerk or municipal clerk to cast their vote.⁷⁶ The state has a short list of voters who can vote absentee by mail, including individuals who are 65 or older, have a disability, or temporarily live outside the county of residence. Those who are required to be at work or out of town on Election Day must vote absentee in person, creating a potentially burdensome process for these voters that contradicts the very purpose of voting absentee.⁷⁷ Alabama also requires voters to satisfy certain requirements in order to be eligible to vote absentee;⁷⁸ while pending 2023 legislation would provide for no-excuse absentee voting,⁷⁹ Alabama legislators have failed to pass similar legislation in previous sessions.⁸⁰ Further, even where voters have done all they can to secure an absentee ballot, there is no guarantee that it will arrive in time for their vote to count. Advocacy organizations, including the Southern Poverty Law Center, sued Cobb County, Georgia, *twice* for failing to send ballots to as many as 20,000 voters during the 2022 election.⁸¹ This litigation came after the passage of SB 202, which slashed the request and response times for absentee ballots, placing an undue burden on voters and election officials.⁸² Florida’s passage of SB 90 also led to the cancellation of hundreds of thousands of Floridians’ mail-in ballot requests after the new law scrapped voters’ automatic ballot requests.⁸³ The sudden change left local election officials scrambling to inform voters of the new change so that they could renew their requests.⁸⁴ Lastly, even though the pandemic use of absentee ballot drop boxes during the 2020 election led to fewer absentee ballot rejections due to late submission,⁸⁵ Georgia’s SB 202 restricts drop box hours and locations, prohibits drop boxes from being outside, and increases county election administration costs by requiring in-person security.⁸⁶ ●

The Handcuffed Ballot

The Intersection of the Criminal Legal System
and the Democratic Process

“[Formerly incarcerated people] are expected to pay fines and court costs, and submit paperwork to multiple agencies in an effort to win back a right that should never have been taken away in a democracy.”

Michelle Alexander

*The New Jim Crow: Mass Incarceration
in the Age of Colorblindness*

Since the passage of the Reconstruction amendments, states have employed innovative strategies to bypass federal law to suppress the Black vote and that of other communities of color.

One stealthy way they have done so is through integrating the criminal legal system—which has disproportionately impacted people of color—into the democratic process. This practice has particularly impacted Black people, who, due to the country’s history of racism and oppression, have largely borne the destructive impact of the criminal legal system and its myriad collateral consequences.⁸⁷ Not only does arresting and imprisoning people of color remove them from the voting process, but it keeps them out of this process for extended periods of time—sometimes forever—after a felony conviction. In this section, we outline both the historic practice of felon disenfranchisement over the past decade as well as a new emerging attack on the democratic process: the criminalization of the voting process.

Felon Disenfranchisement

Felon disenfranchisement is a Jim Crow-era voting tactic that has persisted to the present. First employed as a tool after the Civil War to prevent newly enfranchised, formerly enslaved people from voting,⁸⁸ states often prohibited those convicted of “crimes of moral turpitude” from voting.⁸⁹ This categorization—which was broad to provide for the targeting of Black voters⁹⁰—led to generations of Black citizens being denied access to the franchise. According to The Sentencing Project, an estimated 4.6 million Americans are currently barred from voting because of a criminal conviction; one-third of those disenfranchised are Black⁹¹ despite Black people making up only 13% of the population.⁹² Florida continues to be the nation’s felon disenfranchisement leader as of 2022, taking away the right to vote from around 1.1 million residents; Alabama and Mississippi also disenfranchise over 8% and 10% of their adult populations, respectively.⁹³

As a result, the voices of broad swaths of largely BIPOC communities in the Deep South have been erased from our democracy. And this omission has the power to potentially change elections: Experts have long projected that the disenfran-

chisement of Florida voters with felony convictions may have changed the result of the closely contested 2000 presidential election.⁹⁴ Even when those with felony convictions have had their right to vote restored, there are ongoing barriers. In Florida, for example, advocates on both sides of the aisle⁹⁵ fought hard for the approval of Amendment 4 in November 2018, a historic ballot initiative approved by 64.55% of voters⁹⁶ that restored the right to vote to approximately 1.4 million people convicted of certain felonies at the end of their sentences.⁹⁷ This approval had a profound impact on Florida’s Black residents, who disproportionately had criminal convictions.⁹⁸ But only seven months later, Florida passed SB 7066, which required reenfranchised individuals to pay off all legal financial obligations—including fines, fees, court costs and restitution—before their right to vote could be restored.⁹⁹ For many, this new financial hurdle to the vote potentially equaled permanent disenfranchisement.¹⁰⁰ And a lack of public education on the implementation of the new law led to confusion for both potential voters with criminal convictions (who were unclear on what fines and fees they may owe)¹⁰¹ and election officials (who had to respond quickly to changing rules)¹⁰² in the face of the consequential 2020 election. This confusion and inability to pay clearly had a chilling effect on voter turnout—as of October 2020, two years after Amendment 4’s approval, approximately 67,000 people with criminal convictions (out of the estimated 1.4 million) who had their right to vote restored had registered to vote.¹⁰³ Legal challenges to the law have been unsuccessful,¹⁰⁴ and further complications emerge seemingly every year. For example, an election law approved by the Florida Legislature in 2023, SB 7050, includes a provision that voter information cards are only proof of registration, not proof of eligibility to vote; advocates have condemned this language, arguing that this language further puts the onus on people with criminal convictions to wade through a confusing bureaucratic process to determine their voting eligibility.¹⁰⁵

Alabama’s process has also led to voter confusion, with the state disenfranchising people historically for “crimes of moral turpitude” without defining what offenses were included in that category. As a result, in the past, registrars had broad discretion to employ the ban, leading to a patchwork quilt of implementation where whether you had the right to vote or not was largely dependent on the whim of local officials.¹⁰⁶ It was not until 2017 when the state passed legislation outlining the list of offenses that barred the right to vote.¹⁰⁷ Even with this increased clarity, how-

According to The Sentencing Project, an estimated 4.6 million Americans are currently barred from voting because of a criminal conviction; one-third of those disenfranchised are Black despite Black people making up only 13% of the population.

Total Voting-Eligible Adults Disenfranchised Across the Deep South in the 2020 and 2022 Elections

Adults Affected % of total population	All Adults		Black Adults		Latino Adults	
	2020	2022	2020	2022	2020	2022
Alabama	328,198 (8.94%)	318,681 (8.59%)	149,716 (15.55%)	143,557 (14.73%)	2,947 (4.20%)	3,775 (4.91%)
Florida	1,132,493 (7.69%)	1,150,944 (7.52%)	338,433 (15.42%)	291,811 (12.78%)	90,816 (3.18%)	106,709 (3.42%)
Georgia	275,089 (3.79%)	234,410 (3.13%)	145,601 (6.27%)	124,858 (5.17%)	8,551 (2.64%)	7,467 (1.98%)
Louisiana	76,924 (2.23%)	52,073 (1.50%)	47,951 (4.41%)	32,865 (3.01%)	247 (.24%)	213 (.20%)
Mississippi	235,152 (10.55%)	239,209 (10.69%)	130,501 (15.96%)	129,495 (15.74%)	1,719 (4.80%)	1,695 (4.07%)
Total	2,047,856	1,995,317	812,202	722,586	104,280	119,859

Approximately 2 million people were disenfranchised due to a felony conviction in the Deep South in both the 2020 and 2022 elections.

ever, Alabama voters who do not fall within those offenses must still apply to the Alabama Bureau of Pardons and Paroles for a certificate of eligibility to register to vote and must pay all fines, fees and other costs before receiving their certificate.¹⁰⁸ A bill introduced in the 2023 legislative session, SB 21, would eliminate the application and certificate requirement and allow for rights restoration where an individual pays fines and restitution and is on a payment plan or a community service plan for remaining costs.¹⁰⁹ And, again, the onus has been on potential voters to determine their eligibility, with some turning to litigation to do so—in 2022, a federal judge ruled that Alabama Secretary of State John Merrill had to provide the names and contact information of people barred from voting due to a criminal conviction to a local nonprofit that had requested it for outreach purposes.¹¹⁰

This confounding process is not unique to Alabama, however. Not to be outdone, many Mississippians who want to reinstate their eligibility to vote must receive a pardon from the governor or a two-thirds vote of both legislative houses, both of which have low success rates.¹¹¹ Sidney Smith III, a resident of Harrison County, Mississippi, understands this complicated process all too well. Smith was stripped of his voting rights in 1996

Source: The Sentencing Project

due to a felony conviction and “never thought it was possible” to regain his voting rights. After going to his local election officials before Election Day to ensure he would have no issue voting, Smith ran into a major hurdle: His local precinct was still showing him as ineligible. Only with the help of a local representative, who was able to guide him through the process and support him in gathering the necessary paperwork, was Smith able to get this precious right restored. Unfortunately, this is not the case for many potential voters with criminal convictions, who, frustrated with the numerous administrative hurdles, may opt out of the process altogether.

Adding an element of fear to this confusion, Florida has also created a state agency that has further dissuaded people with criminal convictions who may be eligible to vote from doing so. In early 2022, bolstered by the conspiracy of a stolen election and unsupported voter fraud claims, Florida established its Office of Election Crimes and Security.¹¹² While the ostensible purpose of the office is to review fraud allegations and conduct preliminary investigations, critics have attacked it as an unchecked attempt to crack down on the Black vote.¹¹³ In August 2022, Florida Gov. Ron DeSantis announced that the office’s investigation had led to the arrest of 20 individuals for

voter fraud who had voted despite having murder or felony sex convictions—convictions that had been excluded from Amendment 4’s purview.¹¹⁴ Despite four of these cases being dismissed and one resulting in a plea deal with a small fine,¹¹⁵ and body camera footage that showed many of those caught up in the sweep did not realize they were ineligible to vote, with some even being told they were cleared by election officials,¹¹⁶ the damage was done. As a result of the office’s actions, some voters with criminal convictions, rather than risking further criminal legal system involvement, have opted out of the democratic process altogether.¹¹⁷ This use of state authority to suppress the vote for people with criminal convictions has also taken deep root in Georgia. On April 27, 2022, Governor Kemp signed SB 441 into law, a bill that authorizes the Georgia Bureau of Investigation (GBI) to investigate election crimes.¹¹⁸ As of November 2022, the GBI has not initiated a single investigation, but the potential chilling effect it has created remains.¹¹⁹

The Criminalization of Voter Access

Not satisfied with disenfranchising those with criminal convictions, Southern state legislatures have also used the threat of the criminal legal system to target voter access. Rather than being tied to actual wrongdoing, this targeted criminalization effort’s goal is to suppress the vote for partisan gains: In the aftermath of the 2020 election’s historic voter turnout, 14 states enacted legislation criminalizing elections—including Alabama, Georgia and Florida.¹²⁰ This section outlines how state legislatures have imported the criminal legal system into the democratic process by targeting voter access.

States have engaged in an intentional effort to criminalize voting to manipulate election outcomes in the Deep South. Even though Governor DeSantis himself said that “Florida’s 2020 election season was a resounding success and model for the nation,”¹²¹ he subsequently pushed for the creation of the Office of Election Crimes and Security to root out alleged “voter fraud.” Within the same bill that created the office, SB 524, the Florida Legislature increased the penalty for ballot collection from a misdemeanor to a third-degree felony.¹²² Given the ongoing importance of “Souls to the Polls” efforts, and the history of churches collecting ballots of elderly congregants who might not otherwise be able to make it to the polls, this provision has marked some as particularly racially motivated. More broadly, given our nation’s history of negative law enforcement interactions with Black communities, using the threat of the criminal legal system against

voters in those communities, especially in the current landscape of confusing voter rules and a lack of public education about the same, has the potential to chill engagement in the democratic process.¹²³ Ballot collection, with limited exceptions, was also made a misdemeanor offense in Mississippi in 2023,¹²⁴ and Alabama advanced a bill through the legislature in 2023 that would make such conduct a felony.¹²⁵

Further, Deep South states have moved swiftly to enact criminal penalties for those who provide voter support—a move that has seemed particularly targeted to stymie the work of nonpartisan, Black-led organizations. For example, one of the most damning provisions of Georgia’s omnibus 2021 voter suppression bill SB 202 was its ban on food and drink distribution at the polls. Given the long voter lines in the state’s Black communities—already a result of other voter suppression efforts like polling location changes concentrated in these neighborhoods and shortened early voting periods—advocates have argued that this move was specifically targeted to suppress the Black vote. Indeed, for years, churches and civic organizations in these communities have viewed it as part of their civic duty to provide this type of support to voters at the polls. And this targeted effort has not been subtle. Black Voters Matter, a leading, Black-led voting rights group, was investigated for violating SB 202’s line-relief ban, even though the events at issue took place in 2020; the group was later cleared of any wrongdoing.¹²⁶ Recognizing the discriminatory nature of this law, the SPLC and other advocacy organizations, as part of a larger lawsuit over SB 202, filed a preliminary injunction motion to stop the line relief ban. A federal judge denied the motion as to the 2022 elections; in April 2023, plaintiffs again filed a preliminary injunction motion to stop the ban in future elections.¹²⁷ In addition to the line relief ban, SB 202 contains a number of other provisions—such as attaching criminal penalties to assisting a voter in returning their completed absentee ballot application and allowing people outside of a limited list to observe the marking of the voter’s absentee ballot—that appear aimed at criminalizing nonpartisan get-out-the-vote organizations that have historically assisted voters throughout the voting process.¹²⁸ In 2021, Florida also passed omnibus bill SB 90, which included a broad solicitation ban that many believed could be interpreted as a line relief ban.¹²⁹ SB 90 was swiftly litigated; in April 2023, the 11th Circuit upheld the bill but, in a rare moment of hope, struck a portion of the provision that had been relied on to potentially ban line relief as “unconstitutionally vague.”¹³⁰ ●

Given our nation’s history of negative law enforcement interactions with Black communities, using the threat of the criminal legal system against voters in those communities, especially in the current landscape of confusing voter rules and a lack of public education about the same, has the potential to chill engagement in the democratic process.

Underfunded and Under Attack

The Targeting of Election Administration Over the Last Decade

“As concerns about the protection of ... the integrity of our election systems become an increasingly prominent part of our national dialogue, we must consider some important questions. It is time to ask: What kind of nation—and what kind of people—do we want to be?”

Eric Holder
Former U.S. Attorney General

The assault on BIPOC voting rights in the Deep South has also included an attack on the administration of elections.

This onslaught has been pervasive: Between 2021 and 2022, 28 states—including Alabama, Mississippi, Georgia and Florida—passed legislation that interfered with the nonpartisan and fair administration of elections.¹⁵¹ These bills range from legislation that provides oversight authority for partisan actors to bills that expose election officials to criminal penalties and authorize standardless review of election numbers.¹⁵² The increasing assault on our election administration systems has also been coupled with the historic underfunding of election infrastructure in our nation. Over the past decade, election officials and workers have been expected to carry out an ever-expanding list of tasks—including voter support, tallying of votes and machine operation—with limited resources, and in the face of ever-changing voting laws. And, increasingly, they have been asked to do so in the face of ongoing threats of violence and harassment. What is more, instead of using innovative strategies to bring needed resources to local election administration, state legislatures have passed bills to eliminate critical funding opportunities, like third-party funding. This section explores the current attack on election administrators in the South and how these attacks have been accompanied by chronic underfunding.

Attacks on Election Administrators

Buoyed by 2020's rampant spread of misinformation and disinformation related to "stolen elections" and the "Big Lie," state legislatures across the nation—including in the Deep South—have relied on unsubstantiated threats of "voter fraud" and security concerns to attack the administration of elections. These attacks have included unprecedented threats against election officials, causing many to fear for their safety. According to a 2022 Brennan Center survey, 1 in 6 local election officials have experienced threats.¹⁵³ More broadly, this landscape of harassment has included political attacks. In Georgia, omnibus bill SB 202 authorized the State Election Board to take over county election boards through investigations that could lead to their suspension and replacement with a Board-selected appointment.¹⁵⁴ Republican lawmakers have used this provision to target counties with large Black populations in a blatant effort to manipulate

and suppress the vote in these communities. Fulton County, one of the state's most populous counties, which also has a large Black Democrat population,¹⁵⁵ became one of the early counties targeted under the new law's takeover provision. Thankfully, early in 2023, the state panel tasked with reviewing Fulton County's election board found that it should not be suspended or replaced under the new law.¹⁵⁶

Election workers have also been targets of the ongoing assault on our democracy. In 2018, election workers in Broward County, Florida, which has one of the largest Black populations in South Florida, were descended upon by Trump supporters shouting about attempts to "steal the vote" during that year's election at a local election office.¹⁵⁷ In the aftermath of Trump's 2020 loss in Georgia, Georgia election workers also reported receiving harassing messages, including threats to bomb polling locations.¹⁵⁸ Threats to safety have also come from within the election worker community: Miami-Dade County in Florida has had several individuals with ties to the Proud Boys, an SPLC-identified hate group, register as poll workers.¹⁵⁹

Overall, these increasing threats have led many of those who administer our elections to leave the profession: According to a 2023 Brennan Center survey, 12% of local election officials began to serve after the 2020 election cycle and a further 11% are very or somewhat likely to leave their jobs before the 2024 election.¹⁴⁰ This exodus has resulted in local jurisdictions across the nation scrambling to fill vacancies, leaving our election administration system vulnerable.¹⁴¹

Historic Underfunding of Elections & Stymieing of Third-Party Support

Local election officials across the nation are responsible for ensuring that elections are carried out safely and securely. The requirements of election administration are numerous and include management of voter registration; operating voting machines; handling of ballot disputes; voter education and outreach; and conducting local, state and federal elections while implementing election-related policies. On top of all of these responsibilities, election officials are also required to carry out elections with an aging election infrastructure, including outdated voting machines,¹⁴² vulnerable election websites,¹⁴³ and inaccessible polling places.¹⁴⁴

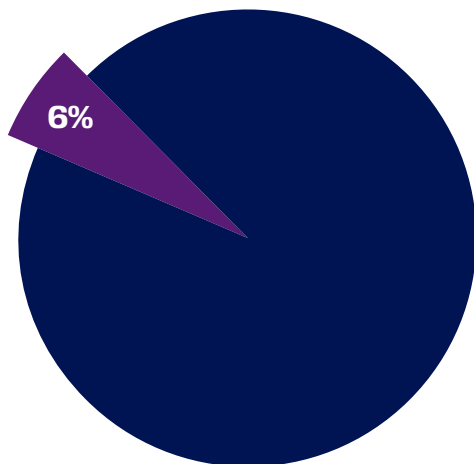
Despite these myriad responsibilities, however, the underfunding of election administration has been a recurring concern over the past decade.

Bills interfering in election administration range from legislation that provides oversight authority for partisan actors to bills that expose election officials to criminal penalties and authorize standardless review of election numbers.

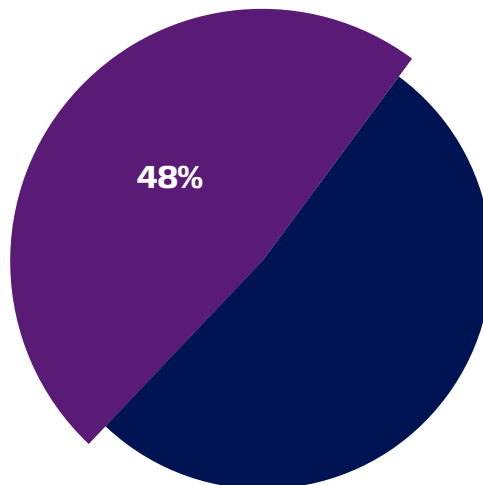
Inconsistent Use of State and Federal Funding to Support the Administering of Elections

● Unspent ● Spent

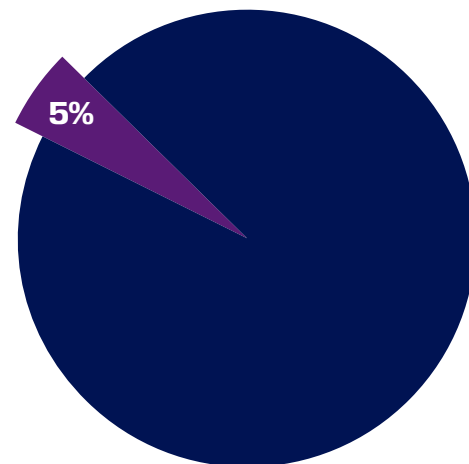
HAVA grant funds unspent as of 2020



Election Assistance Commission funds unspent as of 2021



CARES Act election-related funds unspent as of 2022



State and federal funding has been inconsistent. And while logic would dictate that states would welcome increased funding to administer their elections effectively, this has not been the case.

According to the Presidential Commission on Election Administration in its 2014 report, the “most universal complaint of election administrators in testimony before the Commission concerned a lack of resources,” and election administrators “have described themselves as the least powerful lobby in state legislatures and often the last constituency to receive scarce funds at the local level.”¹⁴⁵ Since that time, local election officials have struggled to carry out comprehensive elections with limited financing. While it has been difficult for experts to determine the actual cost to conduct elections, estimates range from \$4 billion to \$6 billion in a “normal year,” with the special circumstances of the 2020 election resulting in an estimated \$10 billion expenditure.¹⁴⁶ No matter the exact number, one thing is certain: Current funding levels are insufficient. According to the Election Infrastructure Initiative, it will cost the United States an estimated \$53 billion over 10 years to modernize the country’s election infrastructure;¹⁴⁷ out of this total, the Deep South will need over \$6 billion for modernization.¹⁴⁸

Despite this glaring deficit, state and federal funding has been inconsistent. Local governments are largely responsible for admin-

Source: MIT Election Data + Science Lab, et al.

istering elections; some states like Louisiana and Alabama pose a rare exception in that they receive some state funds when state candidates are up for election.¹⁴⁹ With this, federal support for election administration has been limited and reactive. For example, 94% of the money appropriated for election administration to support HAVA has been spent as of 2020; 48% of funds distributed in 2018 by the Election Assistance Commission to improve election security has also been spent as of 2021.¹⁵⁰ To respond to the evolving voting landscape during the COVID-19 pandemic, Congress also appropriated \$400 million in the CARES Act to support election expenses; as of 2022, 95% of these funds were spent.¹⁵¹ There have been recent efforts to increase federal funding for elections. In early 2023, Senate Democrats successfully advocated¹⁵² for the Department of Homeland Security, which has labeled election infrastructure as “a critical infrastructure subsector,”¹⁵³ to require recipients of its preparedness grants to spend at least 3% of the funding on election security.¹⁵⁴ That same year, Senate Democrats also reintroduced the Sustaining Our Democracy Act, which would provide \$20 billion over the next 10 years to states for election administration and infrastructure.¹⁵⁵

While logic would dictate that states would

In a healthy democracy, a public good as essential as election infrastructure should be publicly funded. However, in the absence of adequate public funding right now, localities should be able to access private funding from third parties to help shore up their crumbling infrastructure and our democracy.

welcome increased funding to administer their elections effectively, this has not been the case. Indeed, state legislatures across the Deep South have paradoxically eliminated opportunities for additional funding and then used the subsequent lack of funding to justify not expanding voting opportunities. For example, while former Alabama Secretary of State John Merrill cited associated costs as the reason the state does not have an early voting process,¹⁵⁶ in 2022 the state passed what has been referred to as the “Zuckerbucks” bill, which prohibits state and local election officials from accepting private donations to support election administration.¹⁵⁷ This type of political subterfuge is dangerous and deprives communities most in need of resources, which are largely BIPOC communities, from opportunities to fully engage in the democratic process.

In a healthy democracy, a public good as essential as election infrastructure should be publicly funded. However, in the absence of adequate public funding right now, localities should be able to access private funding from third parties to help shore up their crumbling infrastructure and our democracy. However, the ban on third-party funding for elections, critical funding to support cash-strapped jurisdictions, has not been limited to Alabama. During the 2020 elections, election officials across the country were in dire need of new funding to support election administration that was responsive to the pandemic’s impact. To respond to this need, third-party funders—including Facebook and others—stepped in,¹⁵⁸ infusing local jurisdictions with critical funding to support them in carrying out election administration. The demand for these funds was incredible: For example, one large private funder during the 2020 election distributed grants to nearly 2,500 election departments across 47 states.¹⁵⁹ According to local election officials, this “lifeline” funding¹⁶⁰ was critical to ensuring a successful election process in 2020. Yet, despite this effective outcome, Republican-controlled legislatures across the Deep South moved swiftly to end these critical funds after 2020.¹⁶¹ Since voting ended in 2020, 24 states have either prohibited, limited or regulated the use of private donations for elections—including Georgia, Florida,¹⁶² Mississippi¹⁶³ and Alabama; attempts by Louisiana to do the same have been repeatedly unsuccessful.¹⁶⁴ And this suppression tactic is intensifying. To complement its 2021 ban on these funds, Georgia passed SB 222 in 2023,¹⁶⁵ expanding those election officials covered by the ban and making violations of this law a felony.¹⁶⁶ ●

The Fight for Representation

Political Gamesmanship During the First Redistricting Cycle Since *Shelby County*

“Nobody’s free until everybody’s free. I am sick and tired of being sick and tired. If I fall, I’ll fall 5 feet, 4 inches forward in the fight for freedom.”

Fannie Lou Hamer
Voting and Women’s Rights Advocate

Redistricting is at the heart of American democracy. The redistricting process, wherein states redraw their voting districts every 10 years based on census data, is all about power—who has it, who does not, and who makes that decision.

Given that nearly every county in the U.S. has diversified in the last decade,¹⁶⁷ in an accurate redistricting process, state legislatures, responding to growing numbers of BIPOC communities in their states, would draw district lines in a way that allows these communities to elect a representative of their choice. Southern Republican-controlled state legislatures, however, recognizing this potential power loss, have used the redistricting process as a partisan weapon to suppress Democratic BIPOC political power through gerrymandering and other sophisticated tools. Historically, the VRA's preclearance requirement was able to stop this pernicious practice; the *Shelby County* decision ended this crucial federal oversight. As a result, the 2021 redistricting process was the first redistricting process without such protections, as was evident through state legislatures' brazen attempts to manipulate maps to diminish the voting strength of communities of color. And, while the 2023 *Allen v. Milligan* decision is a major win for preserving the power of the VRA in ensuring fair redistricting, the decision comes with the U.S. Supreme Court's caveat that its holding does not take up the continued "concern that [VRA] §2 may impermissibly elevate race in the allocation of political power within the States."¹⁶⁸

The VRA prohibits states from drawing district maps that have the effect of reducing or diluting minority voting strength.¹⁶⁹ This includes attempts to "pack" BIPOC voters into one district or "crack" them among several districts, effectively undermining their voting power.¹⁷⁰ Between 1965 and 2013, states subject to VRA preclearance submitted 11,603 redistricting changes for DOJ approval.¹⁷¹ And, of the 8,694 redistricting changes sent to DOJ between 1982 and 2005, DOJ made 388 outright objections, asked for more information in 1,234 instances, and sustained 246 objections after further review.¹⁷² Crucially, the erosion of preclearance

has meant that, rather than having an affirmative way to stop problematic proposed maps from advancing, challenges to redistricting maps can now only move forward after a map is in place.¹⁷³ This new process has led to a flurry of protracted litigation: Nationwide, two-thirds of all states have seen litigation over their redistricting maps.¹⁷⁴

This section explores the controversial 2021 redistricting process and the tactics the government has used to manipulate district lines.

Manipulation of the Redistricting Process

The redistricting process is critical to who controls political power. For example, due to partisan gerrymandering efforts during the 2021 redistricting cycle by Republican-controlled legislatures, the Republican Party was able to gain control of the U.S. House of Representatives.¹⁷⁵ A power struggle has thus emerged in the redistricting process, with BIPOC communities fighting courageously through the courts to achieve fair representation: During the 2021 redistricting cycle, there were a total of 46 lawsuits challenging congressional maps in 22 states.¹⁷⁶ Within this landscape, the Deep South had a particularly contentious redistricting experience, employing methods that both diluted BIPOC voting strength (in violation of the VRA) and prioritized using race as a predominant factor in the redistricting process without a compelling reason, also known as a "racial gerrymander" (in violation of the 14th Amendment). For example, in Florida, Governor DeSantis "hijacked" the redistricting process by vetoing the map passed by legislators, leading to the legislature forgoing its own ostensibly constitutional map to push through a map the governor prioritized.¹⁷⁷ Civil rights organizations quickly sued, alleging that the map diminished Black voter power in northern Florida and the 5th Congressional District—which has a significant Black population¹⁷⁸—and intentionally favored the Republican Party to the detriment of Democrats;¹⁷⁹ as of May 2023, litigation is ongoing, and the maps were used during the 2022 midterms.¹⁸⁰ In *Common Cause v. Raffensperger*, plaintiffs challenged Georgia's new congressional map, alleging that the Republican-controlled General Assembly used race as the predominant factor in drawing several congressional districts without a compelling reason, in violation of the Equal Protection Clause, or to comply with the VRA.¹⁸¹ The plaintiffs did not seek relief for the 2022

The VRA prohibits states from drawing district maps that have the effect of reducing or diluting minority voting strength.

This includes attempts to "pack" BIPOC voters into one district or "crack" them among several districts, effectively undermining their voting power.

midterms, and the litigation is pending as of May 2023.¹⁸²

In addition, the 2021 legislative redistricting process was also fervently litigated, with state legislatures attempting numerous strategies to dilute the BIPOC vote. During the 2021 redistricting cycle, 55 lawsuits challenged state legislative maps.¹⁸³ These suits included challenges to Georgia, Louisiana and Mississippi’s legislative maps. As with congressional maps, state legislative maps are key to determining how BIPOC communities are represented in state policy and resource allocation. Local redistricting, which occurs at the city and county level, has also been the subject of litigation. For example, civil rights groups and local activists, including the SPLC, challenged the city of Jacksonville, Florida’s city council map¹⁸⁴ and that of Cobb County, Georgia’s school board as racially gerrymandered.¹⁸⁵ The city of Miami is also involved in similar litigation over its city commission maps as of May 2023.¹⁸⁶

Use of Suppression Tactics to Maintain Power

The manipulation of the redistricting process has been bolstered by specific suppression tactics at the state and local levels. For example, at-large election schemes, wherein all voters cast their ballots for all candidates, have been a historic tool for the retention of power. At-large voting, as opposed to single-member voting districts, has been viewed as racially discriminatory because it does not allow BIPOC communities to elect a candidate of their choice in jurisdictions in which they are not the majority.¹⁸⁷ In 2022, the U.S. Supreme Court reinstated a federal trial court’s decision barring officials in Georgia from using at-large elections for the state’s Public Service Commission elections.¹⁸⁸ Plaintiffs in the case argued that the scheme diluted Black voting power in violation of the VRA; as a result of the ongoing litigation, the election was postponed.¹⁸⁹ Perplexingly, however, a new effort has emerged wherein unlikely interests have supported at-large voting districts to achieve their aims. In 2022, Alachua County voters in Florida considered a Republican-backed ballot measure that would return the county to single-member districts for their county commissioner elections. During the ongoing debate, mailers were sent out to county voters containing quotes and pictures from two Black commissioners and the local NAACP professing their support for the measure. These leaders, however, refuted any affiliation with the mailers, saying that because the Black community is dispersed within the county,

At-large voting, as opposed to single-member voting districts, has been viewed as racially discriminatory because it does not allow BIPOC communities to elect a candidate of their choice in jurisdictions in which they are not the majority.

55

lawsuits challenged state legislative maps during the 2021 redistricting cycle.

single-member districts, rather than at-large voting, would *harm* their ability to elect candidates of their choice.¹⁹⁰ This example may be an indication of innovative strategies to come to suppress BIPOC political participation as the country becomes more diverse.

Prison-based gerrymandering has also emerged as another path to retaining power for state legislatures. In prison-based gerrymandering, states and local governments count incarcerated people as residents of the area in which they are incarcerated, rather than their home communities, for redistricting purposes.¹⁹¹ This process improperly bolsters the political power of smaller jurisdictions that profit from the prison industrial system, while draining political power from communities that most need it. And since prisons are mostly located in rural, white communities far away from where incarcerated people live, this is an obvious attempt to suppress the BIPOC vote.¹⁹² Thus, even as people with criminal convictions, who are largely people of color, are denied the right to vote, their bodies are being used to shore up political influence for communities that do not represent their interests. And because the South has the highest prison incarceration rates in the country¹⁹³—with this population largely comprising Black and Latino individuals¹⁹⁴—prison-based gerrymandering poses a unique harm in this region. As of 2021, 12 states have passed reforms to count incarcerated people in their home jurisdictions—no Deep South state is included on this list.¹⁹⁵ Interestingly, although a Mississippi attorney general opinion directed counties not to engage in prison-based gerrymandering, it was unclear how many counties followed this guidance;¹⁹⁶ data shows

“Nobody got to look at the maps before the morning of the committee meeting, not even the Black legislators who should have been part of the process. The meeting was in the morning, and we didn’t see the maps until the morning of, so there was no chance for public input.”

Khadidah Stone

Chief Field and Campaign Strategist,
Alabama Forward

that Mississippi has engaged in prison-based gerrymandering as recently as 2021.¹⁹⁷

Lastly, jurisdictions have attempted to maintain control over redistricting outcomes by suppressing community input—a critical part of the redistricting process. Public hearings have been viewed as an important way for government officials to receive community feedback to inform the drawing of district lines. States often conduct listening tours across the jurisdiction that are designed to engage with and hear from impacted communities. During the 2021 redistricting cycle, however, states only put forth a performative effort to receive community input. For one, even though the redistricting process could not begin before states received the 2020 census data, some states proceeded with public hearings before this date in a blatant effort to ignore meaningful community input informed by the new data. Although data was not released in a user-friendly format until September 2021,¹⁹⁸ Georgia began holding meetings in June 2021,¹⁹⁹ while Mississippi²⁰⁰ and Alabama²⁰¹ hearings were scheduled in August 2021 and during the first two weeks of September, respectively.

Further, the timing of these hearings, which failed to provide for a variety of attendance options, posed potential barriers to community input on neighborhood lines and feedback on proposed maps. For example, most of Alabama’s 28 in-person hearings took place during working business hours.²⁰² By contrast, all of the hearings in Georgia²⁰³ and Mississippi²⁰⁴ took place in the evening; all but one did in Louisiana.²⁰⁵ According to Khadidah Stone, chief field and campaign strategist at Alabama Forward, the fact that Alabama had several morning meetings made it difficult for community members to attend. Once proposed maps were drawn, community members also did not have a meaningful chance to review them. According to Stone, “Nobody got to look at the maps before the morning of the committee meeting, not even the Black legislators who should have been part of the process. The meeting was in the morning, and we didn’t see the maps until the morning of, so there was no chance for public input.” And yet another area of concern was the limited number of public hearings conducted. In larger geographical states, the need for more hearings across the state is crucial for meaningful community input. Yet New Jersey, a state with an area of less than 9,000 square miles, had around the same number of hearings²⁰⁶ as Georgia, Louisiana and Mississippi—states that are considerably larger.²⁰⁷ ●

Policy Recommendations

The Path Forward for Protecting and Increasing the Political Participation and Representation of Black People and Other People of Color in the Deep South for the Next Decade—and Beyond

**“You see these record lines
in defiance of the law, not
because of the law. ... You
know, if you’re gonna make it
harder for us, we’re just going
to come out, and really that’s
what it gets down to.”**

Marvin Colbert ²⁰⁹

Pastor at Bethel African Methodist Episcopal Church in Georgia

The preceding scan of the current state of political power and representation for Black people and other people of color in the Deep South presents a sobering picture. Ahead of the 2024 general election, in which so many issues important to the BIPOC community are on the line, like reproductive rights, education and public safety, the time is now to develop dynamic approaches to cut through partisan efforts that manipulate access to the ballot and suppress the BIPOC vote.

To do so, we call for the policy proposals listed below to fortify and strengthen democracy in this country:

1. Congress must pass legislation to restore and strengthen the Voting Rights Act that includes a coverage formula responsive to the current voting rights landscape. In the interim, states should pass state voting rights acts to protect BIPOC voting participation and representation now.

This report highlights the ongoing, targeted assault on BIPOC voting rights that is a direct result of the *Shelby County* decision's elimination of federal preclearance. Over the past decade, communities of color across the South have seen their names improperly purged from voter rolls, been subject to suppressive photo ID laws, and tried to navigate confusing and ever-changing voting requirements intended to hinder their access to the ballot.

In the 10 years since *Shelby County*, there have been several attempts to update the VRA's coverage formula. The most recent attempt, the John Lewis Voting Rights Advancement Act, stalled in the Senate in 2022.²¹⁰ Additionally, the For the People Act, which was introduced in 2021 and would ensure easier access to the ballot box, require independent redistricting commissions for congressional redistricting, and help ensure protections for diverse communities from the onslaught of voter suppression tactics, also failed to pass.²¹¹ To ensure that future generations will not have to face the

same barriers experienced by BIPOC communities in the Deep South over the past decade, Congress should act swiftly to reintroduce and pass a strengthened Voting Rights Act that is responsive to the current voting landscape. Critically, this legislation must include a revised coverage formula that is in alignment with present-day circumstances.

To supplement this federal effort, states can also take action to protect BIPOC voting power in their individual states. States across the nation,²¹² including Virginia, which was formerly subject to Section 5 preclearance,²¹³ have passed state voting rights acts aimed to protect the fundamental right to vote for their residents in the face of ever-present barriers.

2. To respond to the growing demands placed on election administrators and increasing population growth in the South, the federal government should significantly increase election administration funding for state and local jurisdictions to allow them to both modernize their election infrastructure and carry out effective elections. This funding should be transparent, sustainable and predictable. Spending guidance must accompany the funding to ensure equitable distribution based on population and need.

Chronically underfunded and under attack, election administration in the South is in dire need of resources and support. In 2023, Senate Democrats reintroduced the Sustaining Our Democracy Act, which designates \$20 billion in federal funding over the next decade to strengthen election administration, including expanding polling places, making upgrades to voter registration systems, and increasing access to voting for underrepresented communities of racial and language minority groups.²¹⁴ And, as mentioned, DHS has made provision for election security funds within its grant funding process. While significant, this amount is only a start to filling in the estimated \$53 billion needed to modernize the country's election infrastructure over the next decade. Accordingly, we call on the federal government to increase its spending on election administration and urge states to eliminate bans on critically needed third-party funding, money that is essential to offset rising election costs and incorporate accountability and transparency into the funding process. Spending guidance should also accompany said funding to ensure that it is responsive to growing population numbers and resource needs.

3. The federal government should increase funding for Department of Justice investigations of discriminatory voting practices and enforcement of voting rights laws.

Without the “shield” of federal preclearance, DOJ has been forced to rely on Section 2 of the VRA to challenge problematic voting practices. This restriction places added pressure on the department given the volume and unceasing introduction of voter suppression bills in the Deep South. Indeed, DOJ has affirmed this position, noting in court filings that the “limited federal resources available for Voting Rights Act enforcement reinforce the need for a private cause of action.”²¹⁵ Congress should increase funding for DOJ investigations to ensure it is effectively able to carry out its enforcement responsibilities under Section 2 of the VRA.

4. States should restore the right to vote for people with criminal convictions without restrictions.

After decades of advocacy, Florida voters restored the right to vote to people with certain criminal convictions. This was a coordinated effort that shows advocacy does work and can have an impact that affects millions. The addition of the payment of outstanding fines, fees and other costs as a restoration condition, however, foreclosed this avenue for a number of largely BIPOC residents who would have otherwise had this precious right restored. The criminal legal system has no place in our democratic process and should not be used to disenfranchise people of color who are disproportionately subjected to it.

Accordingly, we support the advocacy community in urging states to restore the right to vote for as many people as possible with criminal convictions without any further monetary restrictions, like payment of fines and fees. We also urge states to simplify the process to make it easier for those with a criminal conviction to restore their right to vote quickly.

5. States should move toward eliminating partisanship in the redistricting process and meaningfully include community input in the process.

Voters should select their representatives and not the other way around. The partisanship of the redistricting process, however, is antithetical to voters doing so. State and local governments should move toward eliminating

partisanship in how they draw their district lines. One way to do so is through the establishment of independent commissions, such as bipartisan independent redistricting commissions, which include positions for the local community to serve and can involve screening applicants for conflict issues. Jurisdictions should also prioritize community input and feedback during the redistricting process, holding public hearings in a manner that maximizes community input and allows community members to meaningfully weigh in on how districts should be drawn. Further, state and local jurisdictions should eliminate the use of prison-based gerrymandering and consider what voting mechanisms can be used to allow BIPOC communities to have a true choice in who represents them.

6. Federal agencies should move swiftly and effectively to meet the goals of the Executive Order on Promoting Access to Voting (EO 14019), including integrating voter registration opportunities for their constituents they serve wherever possible.

In a healthy, inclusive democracy, the responsibility for ensuring all eligible people are registered should fall on the government, not on the individual. In March 2021, President Biden issued the Executive Order on Promoting Access to Voting (EO 14019), which calls on federal agencies to do what they can to connect the eligible people they serve with opportunities to register to vote and information and resources on voting.²¹⁶ This executive order is a tremendous step in the right direction for increasing political participation and engagement. However, any new policy is only as good as its implementation, and there is still a great deal for the agencies to do to meet the goals of this important proclamation. Agencies that serve significant numbers of people in the Deep South, including many BIPOC communities, where access to voting is often the most difficult, must particularly step up. This includes the Department of Health and Human Services, which could reach millions by integrating voter registration into HealthCare.gov; the Department of Education, which could share information about registering and voting with millions more during the FAFSA process; and several others, as detailed in *Strengthening Democracy: A Progress Report on Federal Agency Action to Promote Access to Voting*, a 2023 report from the Leadership Conference on Civil and Human Rights, the SPLC Action Fund and 50 other organizations.²¹⁷ ●

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