

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738
T. (212) 965 2200 F. (212) 226 7592
www.naacpldf.org



Washington, D.C. Office
700 14th Street, 8th Floor
Washington, DC 20005
T 202.682.1300
F 202.682.1312

P.O. Box 77208, Atlanta, GA 30357
770.303.8111|syoung@acluga.org



August 22, 2018

By Email & Certified Mail

Baker County Board of Elections and Registrations
167 Baker
Newton, GA 39870
Bd.elect@bakercountyga.com

Re: Polling Place Changes in Georgia

Dear Members of the Baker County Board of Elections and Registration:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) and the American Civil Liberties Union of Georgia (ACLU of Georgia) write to notify you that we are closely watching for any polling place changes (e.g., closures, consolidations, etc.) that are made in Georgia counties, including before the upcoming midterm elections.¹ Among other considerations, we are monitoring how any such changes may harm the political participation of low-income, racial minority, elderly, and disabled voters, and, thereby, potentially run afoul of federal and other legal protections. As you continue to prepare for this election season, we: (a) share our general concerns about polling place changes, particularly those made on the eve of elections; (b) make several recommendations for how to involve community members in the deliberative and decision-making process; and (c) welcome opportunities to speak with you further if you are considering polling place changes. Together we can work to ensure that all eligible voters have an equal and reasonable opportunity to access their right to vote.

Changing polling locations has long been a tactic to suppress the political participation of communities of color and other voters.² Legal scrutiny, particularly the federal preclearance process that Georgia and its subdivisions faced for five decades between 1965 and 2013,

¹ An appendix to this letter includes brief descriptions about the work of LDF and the ACLU of Georgia, particularly related to their efforts to ensure robust and equal opportunities for political participation in Georgia.

² See, e.g., *Common Potentially Discriminatory Voting Changes*, LDF, <http://www.naacpldf.org/document/common-potentially-discriminatory-voting-changes>; see also *Democracy Diminished: State and Local Threats to Voting Post-Shelby County*, Alabama v. Holder (as of Aug. 14, 2018) (hereinafter *Democracy Diminished*), http://www.naacpldf.org/files/case_issue/States%27s%20responses%20post%20Shelby%2008.14.18.pdf; *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND (Nov. 2016), <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

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significantly helped to prevent various forms of racially discriminatory voting changes. This process required Georgia and the localities within it to demonstrate to the federal government that a voting change, like a polling place change, would not worsen the ability of racial minority voters to participate in the political process.³ However, since the U.S. Supreme Court's decision in *Shelby County, Alabama v. Holder* rendered inoperable that preclearance process in June 2013, we have witnessed jurisdictions in Georgia (and elsewhere) implement polling place changes (and many other restrictive voting changes) to the detriment of communities of color and other voters in the state.⁴

In Georgia, polling place changes either have or would have made it harder, if not impossible, for voters of color to access the ballot box and exercise their fundamental right to vote. For example, as you likely are aware, within four months of the *Shelby County* decision, in the fall of 2013, this Baker County Board of Elections and Registration proposed to close four of five polling places in this Georgia county where the Black population is near-majority, a substantial number (nearly 36%) of its residents live below the poverty line, and there is little to no public transportation, among other challenges.⁵ Moreover, in 2015, the Macon-Bibb County Board of Elections proposed closing more than half of its 40 or so polling places, the overwhelming majority of which were located in predominately-Black neighborhoods, in a county where 20% of its residents lack vehicles.⁶ In 2017, Irwin County proposed, among other changes, closing the number of polling places by 75% (from 8 to 2) in a predominately-Black city (Ocilla), where the residents have lower incomes and are far less likely to own vehicles as compared to the city's white residents, who would have had the benefit of living near the only two polling places that would have remained open.⁷ Most recently, in August 2018, Randolph County has proposed the

³ *The Shelby County Decision*, U.S. DOJ (Aug. 6, 2015), <https://www.justice.gov/crt/shelby-county-decision>.

⁴ See generally *Democracy Diminished*, *supra* note 2; see also *The Great Poll Closure*, *supra* note 2.

⁵ Letter from Ryan P. Haygood, Director, and Leah Aden, Assistant Counsel, LDF, to Karin Tabb, Chairperson, Baker County Board of Elections & Registration (Oct. 4, 2013) (on file with LDF).

⁶ *Democracy Diminished*, *supra* note 2, at p. 25.

⁷ Letter from Sean J. Young, Legal Director, ACLU of Georgia, to Irwin County Board of Elections & Registration (Apr. 21, 2017) (on file with ACLU of Georgia).

Similarly, in 2017, after ACLU of Georgia sued Fulton County's Board of Registration and Elections, officials reversed a decision that would have changed polling locations in several majority-Black precincts, impacting more than 5,500 voters, ahead of the 2017 municipal elections and without giving adequate public notice. Kristina Torres, *Fulton County reverses controversial changes to polling sites*, ATLANTA JOURNAL-CONSTITUTION (Aug. 14, 2017), <https://politics.myajc.com/news/state--regional-govt--politics/fulton-county-reverses-controversial-changes-polling-sites/nhkAPa2MpmxGeEI3yC45iI/>

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elimination of seven of the nine polling locations in this rural county, where Black residents compromise more than 60% of the population and public transportation options are lacking.⁸ There are many other examples of polling place changes that have been considered or implemented in the past several years and through to the present in Georgia, which have been met by public outcry because of their expected negative impact on eligible voters in the state, particularly voters from low-income and communities of color.⁹

These polling-place changes are exacerbated by the transportation burdens that disproportionately impact the ability of eligible voters from these communities to vote in person on election days. As reflected above, racial minorities in Georgia are more likely to live in poverty and are less likely to own cars when compared to the rest of Georgia residents.¹⁰ Limited access to public transportation, which disproportionately impacts racial minorities in the state, compounds these barriers. Without access to transportation, especially in rural areas, longer distance to the polls could discourage or completely prevent low-income and voters of color from participation on election days.

Based on these well-documented barriers, any polling change that disproportionately makes it harder for Black voters by design or result to cast a ballot may violate a remaining provision of the Voting Rights Act, Section 2, as well as the U.S. Constitution, and other laws. Section 2 of the Voting Rights Act prohibits voting standards, practices, or procedures that were either enacted with a racially discriminatory intent, or that have racially discriminatory results.¹¹ One of the chief purposes of Section 2 is to prohibit practices that directly deny the exercise of the right to vote, as may be the case with racially discriminatory polling place changes. In addition, the Fourteenth and Fifteenth Amendments of the U.S. Constitution provide for the fundamental right to vote and prohibit voting practices adopted with a discriminatory purpose.¹² Moreover,

⁸ Letter from Sean J. Young, Legal Director, ACLU of Georgia, to Randolph County Board of Elections and Registration (Aug. 14, 2018) (on file with ACLU of Georgia); *see also* Greg Bluestein, *Ga. County Under Pressure to Reject 'Ugly' Plan to Close Precincts*, ATLANTA JOURNAL-CONSTITUTION (Aug. 16, 2018), <https://www.ajc.com/blog/politics/county-under-pressure-reverse-ugly-plan-close-precincts/5c2DSiLQO9fVUdxIOOcwEN/>.

⁹ *Democracy Diminished*, *supra* note 2, at 25-26.

¹⁰ *Poverty Status in the Past 12 Months of Families*, U.S. CENSUS BUREAU (2018), <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>.

¹¹ *See* 52 U.S.C. § 10301.

¹² U.S. Const. amends. XIV & XV.

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Georgia’s Constitution explicitly grants the right to vote.¹³ And, our understanding is that under Georgia law, a jurisdiction may not change the boundaries of a polling precinct within 60 days of a general primary or an election or 30 days of any special primary or election.¹⁴ And with election season upon us, Boards should provide residents with adequate *notice* of any polling place change beyond the two-week minimum required under Georgia’s laws.¹⁵ Individually and collectively then, Georgians have at their hand several legal protections of their fundamental right to vote—even after the loss of Section 5 of the Voting Rights Act.

Therefore, to potentially avoid costly and time-consuming legal exposure, at a minimum, county Elections Boards should consider the following recommendations as they consider polling place changes.¹⁶

First, Elections Boards should establish a formal mechanism that allows members to provide meaningful input about any proposed polling changes, as well as ensures that community members are involved in the decision-making process—from start to finish. Relatedly, notice and information about proposals related to voting changes should be disclosed in an effective and efficient manner, which would allow residents to review and analyze proposals well in advance of any final determinations. These steps are necessary to increase accountability and transparency.

Second, the Elections Board must study, analyze, and publicly identify the negative impact of any polling place changes, especially when racial minority, low-income, elderly, and student voters are likely to bear the brunt of the burdens of any changes. Alternative proposals should be considered, evaluated, and debated during this review. Indeed, this focus could easily be incorporated with the “full investigation of the facts” that an Elections Board is required to perform *before* any precinct changes occur under state law.¹⁷ Beyond analyzing and sharing these community demographic findings, an Elections Board should also consider any likely harms as a critical factor in any decision-making framework.

¹³ Ga. Const. art. II, § 1, ¶ II (“shall be entitled to vote.”).

¹⁴ O.C.G.A. § 21-2-261(c).

¹⁵ O.C.G.A. § 21-2-265(a).

¹⁶ The proposed recommendations are an initial starting point and do not reflect an exhaustive list of considerations and concerns that Elections Boards should consider.

¹⁷ O.C.G.A. § 21-2-262(a).

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Third, proposals that make it harder for racial minority voters to cast a ballot usually cannot be defended, for example, as a necessary cost-saving measure or as an end-run-around making polling place changes accessible for community members who are disabled. Justifying the likely denial or abridgment of a minority citizens' right to vote based on economic considerations can run afoul of federal legal protections. Closing a polling place rather than failing to make a polling site accessible for people with a disability or providing an alternative accessible site—when doing so causes harm to racial minority voters—also can run afoul of federal legal protections. Moreover, the mere availability of alternative voting means, like absentee voting-by-mail or advanced voting, also may not justify a harmful polling place change that prevents racial minority voters from exercising their desired means of voting in person.

Fourth, to be clear, using taxpayer dollars to hire a consultant, who recommends polling place changes without having conducted a thorough analysis of racial impact or considered alternatives only exacerbates your legal exposure.¹⁸

Certainly, reasonable and unencumbered access to the ballot box is necessary to cast in-person votes on election days. For the reasons outlined above, proposals that disproportionately impact voters of color in Georgia this close to the 2018 elections will engender greater scrutiny from advocates like LDF and the ACLU of Georgia. And evidence that voters of color are disenfranchised or unreasonably burdened by polling places changes expose jurisdictions to the likelihood of litigation.

In addition, as experienced election officials, Elections Board members are aware that sudden changes to polling locations midstream during an election season is going to cause voter confusion, especially for those who voted earlier this year. Since the 2018 midterm election is likely to generate increased voter turnout as compared to primary or run-off elections, the elimination of even one polling place could dramatically increase the amount of voter confusion and congestion on election days, and, in turn, decrease political participation. Such voting confusion and congestion also can increase the frustration of hard working election officials,

¹⁸ Mark J. Stern, *Brian Kemp's Bid for Governor Depends on Erasing the Black Vote in Georgia*, Slate (Aug. 17, 2018), <https://slate.com/news-and-politics/2018/08/georgia-voter-suppression-brian-kemps-bid-for-governor-depends-on-erasing-the-black-vote-its-working.html> (reporting that Mike Malone, an associate of Secretary of State Brian Kemp, has recommended closing polling places in ten Georgia counties that have large Black populations).

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leading to more chaos, and ultimately, greater administrative burden than otherwise would exist had accessible polling sites been kept open.

To conclude, these initial thoughts and concerns illuminate priorities that community members have identified and documented related to polling places throughout Georgia. There are likely others that we have not identified and require outreach to community members to discern. In the meantime, if you are considering a polling place change, we request that you consider the information that we are sharing and please do reach out to us to discuss further. We are willing to work with you to ensure that all eligible voters in Georgia have equal and reasonable access to the fundamental right to vote on every election day.

Sincerely,

Sherrilyn Ifill, *President & Director Counsel*
Samuel Spital, Director of Litigation
Leah C. Aden, Deputy Director of Litigation
John S. Cusick, Equal Justice Works Fellow
NAACP LEGAL DEFENSE
& EDUCATIONAL FUND, INC.
40 RECTOR ST., 5TH FL.
NEW YORK, NY 10006
212.965.7715
laden@naacpldf.org

Sean J. Young, Legal Director
ACLU OF GEORGIA
P.O. BOX 77208
ATLANTA, GA 30357
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Appendix

Since its founding in 1940, **LDF** has been a pioneer in the struggle to secure and protect the voting rights of Black people. LDF has been involved in much of the precedent-setting litigation related to securing voting rights for people of color. *See, e.g., Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013) (LDF defending Section 5 of the Voting Rights Act before the U.S. Supreme Court); *Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (LDF successfully challenging the at-large electoral method to the county board of commissioners and board of education in Fayette County). LDF uses legal, legislative, public education, and advocacy strategies to promote the full, equal, and active participation of Black people in America's democracy. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

In past years, LDF has successfully advocated against proposals that restrict access to the ballot box for Georgia's voters. In 2013, LDF advocated against a proposal that would have closed all but one polling place in Baker County. Ultimately, the Elections Board decided against implementing the proposal after it recognized that it needed to conduct additional research about the impact of those proposed closures on eligible votes.¹⁹ Similarly, in 2014 and 2015, LDF, along with other organizations like the ACLU of Georgia, challenged statewide legislative bills that would have reduced the number of early voting days across Georgia's counties.²⁰ Most recently, in 2018, LDF, along with the ACLU of Georgia and other organizations, successfully opposed the enactment of a legislative bill that would have shortened voting hours on Election Day in Atlanta and would have effectively eliminated early voting on the Sunday before Election Day throughout Georgia.²¹ These expansive voting opportunities continue to serve as a means to both improve

¹⁹ Ltr. from Ryan P. Haygood, Director, and Leah Aden, Assistant Counsel, LDF, to the Baker County Board of Elections and Registration (Oct. 4, 2013) (on file with authors); Letter from Karin S. Tabb, Chairperson, Baker County Board of Elections and Registration, to Ryan P. Haygood, Director, and Leah Aden, Assistant Counsel, LDF (Oct. 7, 2013) (on file with authors).

²⁰ Zachary Roth, *In Voting Rights Win, Bill to Cut Georgia Early Voting is Dead*, MSNBC (Apr. 6, 2015), <http://www.msnbc.com/msnbc/voting-rights-win-bill-cut-georgia-early-voting-dead>; *PPG's Advocacy Halts Efforts to Reduce Early Voting in Georgia*, NAACP LDF (Mar. 24, 2014), <http://www.naacpldf.org/press-release/ppgsadvocacy-halts-efforts-reduce-early-voting-georgia>.

²¹ Ltr. from Leah Aden, Senior Counsel, LDF, to Members of the Georgia General Assembly (Mar. 26, 2018), <http://www.naacpldf.org/files/about-us/Ltr.%20Georgia%20General%20Assembly%20re%20S.B.%20363%203.26.18%20%28final%29.pdf>.

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voters' experience and promote confidence in the election system. Equally important, they contribute to increased voter participation by Black voters and other voters of color.

The **ACLU of Georgia** is dedicated to preserving the civil liberties enshrined in the U.S. Constitution and Bill of Rights. Through litigation, lobbying, and communications, the ACLU of Georgia works to preserve and enhance the rights of all citizens of Georgia without political partisanship. Foremost among these rights are freedom of speech and religion, the right to equal treatment under law, and the right to privacy.

As described above, the ACLU of Georgia has worked to ensure that Georgia officials do not implement polling place changes that harm eligible voters and that officials provide adequate public notice before approving polling place changes. For example, following a lawsuit that the ACLU of Georgia filed in July 2017, one month later, Fulton County officials reversed a decision ahead of the 2017 municipal elections that would have changed polling locations in several majority-Black precincts, impacting more than 5,500 voters.²² Further, in 2018, the ACLU of Georgia protected the sacred, constitutional right to vote for nearly 160,000 Georgians. On the eve of a final court date, Secretary of State Brian Kemp finally agreed to comply with state and federal laws that require him as Secretary of State to update automatically the addresses of Georgia voters who move within the same county.²³

²² *Board of Elections Failed to Provide Adequate Public Notice Before Approving Polling Place Changes and Closures*, ACLU OF GA (July 18, 2017), <https://www.aclu.org/news/aclu-georgia-sues-fulton-county-over-vote-close-polling-places>; Kristina Torres, *Fulton County Reverses Controversial Changes to Polling Sites*, ATLANTA JOURNAL-CONSTITUTION (Aug. 14, 2017), <https://politics.myajc.com/news/state--regional-govt--politics/fulton-county-reverses-controversial-changes-polling-sites/nhkAPa2MpmxGeEI3yC45iI/>.

²³ *ACLU of Georgia Announces Settlement with Secretary of State Brian Kemp Protecting the Sacred, Constitutional Right to Vote for Nearly 160,000 Georgia Voters*, ACLU OF GEORGIA (Feb. 2, 2018), <https://www.aclu.org/news/aclu-georgia-announces-settlement-secretary-state-brian-kemp-protecting-sacred-constitutional>.