

The Senate Ethics Committee, Georgia State SenateSenator Max Burns, 23rd, Chairman

Hearing Scheduled on February 18, 2021, 7:00 AM, Room 307 CLOB

Joint Testimony in Opposition to Senate Bill 67

Good morning. My name is Pichaya Poy Winichakul, and I am a Staff Attorney for the Voting Rights Litigation Practice Group of the SPLC Action Fund. I provide this testimony, along with a written copy, on behalf of SPLC and the NAACP Legal Defense and Educational Fund, Inc. (“LDF”).

SPLC and LDF oppose in the strongest terms possible Senate Bill (“S.B.”) 67. We agree that our elections must be safe and secure. But S.B. 67 does nothing to enhance elections security. Instead, S.B. 67 is a calculated attempt to minimize the participation of voters of color and other voters in the political process following the historical turnout in recent elections. Its enactment would create unnecessary burdens and disproportionately impact the voting rights of people of color, the elderly, people with disabilities, low-income people, rural residents, and students.

Vote-by-mail is a safe, secure, reliable, and accessible method of voting that has been used by members of our military since the Civil War.¹ Five states currently conduct elections entirely by mail, and at least 21 other states allow certain smaller elections to be held entirely by mail.² Forty-seven states hold elections with vote-by-mail procedures that do not include a photo identification requirement. Since 2000, more than 250 million votes have been cast via mailed-out ballots in all 50 states.³ Contrary to false assertions that voting by mail is not safe or susceptible to fraud, fraud rates are infinitesimally small.⁴ The same is true in

¹ Alex Seitz-Wald, *How Do You Know Voting by Mail Works? The U.S. military’s Done it Since the Civil War*, NBC News (Apr. 19, 2020), <https://www.nbcnews.com/politics/2020-election/how-do-you-know-voting-mail-works-u-s-military-n1186926>.

² Wendy R. Weiser and Harold Ekeh, *The False Narrative of Vote-by-Mail Fraud*, Brennan Center for Justice (Apr. 10, 2020) <https://www.brennancenter.org/our-work/analysisopinion/false-narrative-vote-mail-fraud>.

³ *Id.*

⁴ *Colorado, Hawaii, Oregon, Washington and Utah Conduct Elections Entirely by Mail*. AllMail Elections (aka Vote-By-Mail), National Conference of State Legislatures (Mar. 24, 2020) <https://www.ncsl.org/research/elections-and-campaigns/all-mail-elections.aspx>; *Preparing Your State for an Election Under Pandemic Conditions*, Brennan Center for Justice (last updated Jun. 29, 2020) <https://www.brennancenter.org/our-work/research-reports/preparingyour-state-election-under-pandemic-conditions#t3>.

Georgia. According to multiple statements by Governor Kemp,⁵ Lieutenant Governor Duncan,⁶ Secretary of State Raffensperger,⁷ and Georgia Voting Systems Manager Gabriel Sterling,⁸ there was no evidence of widespread vote-by-mail fraud in Georgia, nor has there ever been.⁹ These statements and findings underscore why Georgia's vote-by-mail laws and procedures remain safe, secure, and reliable.

Nevertheless, S.B. 67 purportedly seeks to address a “problem” with election security. But S.B. 67's proponents have failed to identify or offer concrete facts and data to corroborate vague claims that vote-by-mail procedures in Georgia are not secure. Georgia has relied on vote-by-mail procedures for decades. Tellingly, a purported problem only appeared after Georgia voters, generally, and voters of color, specifically, increased their reliance on vote-by-mail for the November 2020 general election and January 2021 runoff elections.

In its current form, S.B. 67 would require voters to provide a Georgia driver's license or state ID card number, or a photocopy of another acceptable form of photo ID when applying for an absentee ballot. The bill therefore requires all absentee ballot voters who do not have a driver's license or state ID to provide a photocopy of a photo ID to obtain and cast a vote-by-mail ballot. First-time voters who mailed in their voter registration without a copy of their ID must also submit a photocopy of ID with their absentee ballot request. This means that, even with a driver's license or state ID, a first-time, vote-by-mail voter must provide a photocopy of their ID at least once—either with their mail-in registration or with their vote-by-mail ballot application.

S.B. 67's photo identification requirement would impose restrictions on ballot access that would be burdensome to many voters without advancing any legitimate state interest. But these restrictions would not be borne equally among voters. Instead, enactment of S.B. 67 unduly burdens the fundamental right to vote of people of color, the elderly, people with disabilities, low-income people, rural residents, and students—all populations who disproportionately face challenges

⁵ Katherine Fung, *Gov. Kemp Says Ga. Fraud Claims 'Have Left the Barn,' After Trump Calls for His Resignation*, Newsweek (Dec. 30, 2020), <https://www.newsweek.com/gov-kemp-says-ga-fraud-claims-have-left-barn-after-trump-calls-his-resignation-1558140>.

⁶ Greg Bluestein, *Duncan Pushes Back on False Voter Fraud Claims: 'We're Better Than This,' Atlanta Journal-Constitution* (Dec. 1, 2020), <https://www.ajc.com/politics/politics-blog/duncan-pushes-back-on-false-voter-fraud-claims-were-better-than-this/GSNRMYELPBADHZ5RQ7LDTVHCE/>.

⁷ Quinn Scannlan, *'We've Never Found Systemic Voter Fraud, Not Enough to Overturn the Election.'* Georgia Secretary of State Raffensperger Says, ABC News (Dec. 6, 2020), <https://abcnews.go.com/Politics/weve-found-systemic-fraud-overturn-election-georgia-secretary/story?id=74560956>.

⁸ Miles Parks, *Georgia Election Official: Don't Let Misinformation 'Suppress Your Own Vote,' NPR* (Jan. 4, 2020), <https://www.npr.org/2021/01/04/953321408/georgia-election-official-dont-let-misinformation-suppress-your-own-vote>.

⁹ *3rd Strike Against Voter Fraud Claims Means They're Out After Signature Audit Finds No Fraud*, Secretary of State (Dec. 29, 2020), https://sos.ga.gov/index.php/elections/3rd_strike_against_voter_fraud_claims_means_theyre_out_after_signature_audit_finds_no_fraud.

accessing DMV offices, a photocopier and the ability to pay for photocopies, or a polling place to vote in-person. For instance, 16.6% of Georgia’s voting-age citizens who lack access to a vehicle live more than 10 miles from a state-ID issuing office.¹⁰ Almost all of these citizens live in rural areas where public transportation is unavailable.¹¹ These areas also house high concentrations of people of color and people living in poverty.¹² The same groups of people would face similar challenges in accessing a photocopier to copy their ID, which S.B. 67 would require of voters without a driver’s license or state ID. For the elderly, people with disabilities, students and others who cannot physically cast a ballot in-person and therefore rely on vote-by-mail, the burden of S.B. 67’s ID requirements on the right to vote is particularly acute. Such exacerbating factors and their impact on people of color and other historically disenfranchised groups have led stringent ID requirements adopted by other states to be invalidated as violating the United States Constitution or the Voting Rights Act of 1965.¹³

S.B. 67 also comes in the wake of a historic election in which 30.3% of Black Georgians voted by mail, and a total of 36.7% Georgians of color voted by mail; where more than 17% of young Georgians voted by mail.¹⁴ Because Black and Latinx voters have been found to experience longer wait times compared to white voters for in-person voting options,¹⁵ vote-by-mail options will continue to be a critical option moving forward to avoid long lines and wait times. These options were equally critical to voters with disabilities who otherwise could be forced to wait in very long lines and may face other accessibility challenges with in-person voting. Moreover, Georgia had a 66% increase in total turnout for the 2020 general election, and that included a 523% increase in mail-in ballots, and a 22% increase in early in-person voting.¹⁶ Knowing these participation rates, the disparate impact of photo ID laws on historically disenfranchised groups, and the lack of a legitimate basis for enacting this law, this S.B. 67 seeks to and will unduly burden and suppress the right to vote of people of color, the elderly, people with disabilities, low-income people, rural residents, and students.

¹⁰ Keesha Gaskins & Sundeep Iyer, *The Challenge of Obtaining Voter Identification*, Brennan Center for Justice (2012), at 4, https://www.brennancenter.org/sites/default/files/2019-08/Report_Challenge_of_Obtaining_Voter_ID.pdf.

¹¹ *Id.* at 5.

¹² *Id.* at 1, 5.

¹³ *See, e.g., North Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 222 (4th Cir. 2016) (finding North Carolina voter ID law was motivated by discriminatory racial intent, and noting “legislatures cannot restrict access to the franchise based on the desire to benefit a certain political party” (internal citations omitted)); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (finding Texas voter ID law was racially discriminatory under the Voting Rights Act); *Veasey v. Abbott*, 249 F. Supp. 3d 868 (S.D. Tex. 2017) (finding Texas voter ID law was enacted with racially discriminatory intent and purpose).

¹⁴ U.S. Elections Project, *Georgia Early Voting Statistics*, <https://electproject.github.io/Early-Vote-2020G/GA.html> (last updated Nov. 5, 2020).

¹⁵ Hannah Klain, Kevin Morris, and Rebecca Ayala, *Waiting to Vote*, Brennan Center (June 3, 2020), <https://www.brennancenter.org/our-work/research-reports/waiting-vote>.

¹⁶ Georgia Votes, <https://www.georgiavotes.com/2020-general/> (last updated Jan. 5, 2021).

Finally, the legislative environment in which S.B. 67 has been offered calls for the rejection of this bill as it is neither open nor transparent. This Committee's Subcommittee limited public testimony during its hearing to only in-person oral testimony yesterday.¹⁷ That Subcommittee did not provide options for community members to submit critical written testimony or opportunities to provide oral testimony through remote means, including through a call-in or videoconference option. This restriction excluded community members who, for example, may not be able to attend in-person hearings because they do not live in or near Atlanta, are concerned about contracting COVID-19, and/or have family or work obligations that prevent them from attending a 7:00 a.m. hearing, from participating in this vital legislative process. This Committee, however, must not make the same mistake. Instead, it is imperative that you hear from and listen to *all* community members who desire to provide public testimony—either oral or written—during your Committee hearing.

For the reasons described above, we urge this Committee to reject S.B. 67. The facts recited above, including the sequence of events, procedural departures from ordinary legislative process, the lack of any neutral justification for the proposals, the timing of the effort to impose this restriction on absentee voting, and the disparate impact on Black voters and voters of color, suggest the proposals embodied in this bill may violate the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

Thank you, and I look forward to answering any questions the Committee may have.

¹⁷ Nor did the Subcommittee provide an agenda or sufficient notice of the time change after the hearing, previously for February 16, 2021, was moved to February 17, 2021.