

The United States of America's Compliance with the  
Convention on the Elimination of All Forms of Racial Discrimination

Submitted by the Southern Poverty Law Center

107<sup>th</sup> Session of the Committee on the Elimination of Racial  
Discrimination  
8-30 August 2022

Submitted 15 July 2022

**The Southern Poverty Law Center** was founded in 1971 with the purpose of ensuring that the goals of the US civil rights movement would be realized for everyone. SPLC seeks to achieve its purpose through litigation, policy advocacy, education and community organizing, and is a catalyst for racial justice in the Southern US and beyond. SPLC also operates an internationally known Intelligence Project that tracks and exposes the activities of hate groups and other domestic extremists.



Fighting Hate  
Teaching Tolerance  
Seeking Justice

Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, AL 36104  
334.956.8200  
[www.splcenter.org](http://www.splcenter.org)

This report provides information regarding US implementation of and compliance with the Convention in several areas and is organized according to the Committee’s List of Themes.

## **I. The Convention in domestic law and the institutional and policy framework for its implementation (arts. 1, 2 and 6).**

The US maintains that human rights treaties are not self-executing and do not create individually enforceable rights under US domestic law,<sup>1</sup> but has not taken steps to legislatively incorporate the Convention into its domestic law, nor effective measures to incorporate it in policies and practices regarding the prohibition, prevention, or redress of racial discrimination. US domestic courts do not address violations of the Convention, nor do agencies charged with enforcement of domestic laws and regulations related to racial equity and discrimination undertake to monitor, implement, or even consider, US obligations under the Convention.

The US asserts that it “has in place sufficient multiple and complementary protections and mechanisms to reinforce its ability to guarantee respect for human rights,”<sup>2</sup> but there is in fact no mechanism charged with doing so with regard to compliance with the Convention. The State party report refers to paragraphs 104-146 of the Common Core document as providing information about these protections and mechanisms, but they contain only a litany of domestic statutes and a list of a patchwork of federal agencies that address domestic laws.<sup>3</sup> This constitutes neither a national action plan to combat structural racial discrimination, nor a permanent and effective coordinating mechanism to ensure full implementation of the Convention, as the Committee recommended.<sup>4</sup> The US has not established a national human rights institution or any other mechanism with the responsibility to implement or monitor compliance with the Convention or other international human rights treaties, nor does it appear to have any plans to even consider doing so.

The US has long routinely failed to adequately consult with civil society regarding its implementation of or compliance with international human rights treaties, including the Convention. During 2022, the Biden administration provided a series of virtual meetings for the purpose of consulting with civil society in preparation for the Committee’s review. Representatives of several relevant federal agencies participated in the four consultation sessions. While a welcome development, these brief consultations were deficient in substance and effect. Civil society organizations were afforded the opportunity to express concerns and submit questions but received very little of substance in response. Such interactions must not only continue but be expanded upon following the review if they are to be meaningful.

---

<sup>1</sup> US reservations, declarations, and understandings, International Convention on the Elimination of All Forms of Racial Discrimination, 140 Cong. Rec. S7634-02 (24 June 1994).

<sup>2</sup> Combined tenth to twelfth reports submitted by the United States of America under article 9 of the Convention, due in 2017, CERD/C/USA/10-12, at para. 12.

<sup>3</sup> Combined tenth to twelfth reports, CERD/C/USA/10-12, at para. 135.

<sup>4</sup> Concluding observations on the combined seventh to ninth periodic reports of the United States of America, CERD/C/USA/CO/7-9.

In January 2021, President Biden issued Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.<sup>5</sup> The order set forth a policy of pursuing “a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” The order called for sweeping reviews of programs, policies, and regulations across all federal agencies to identify and address inequities and “barriers to full and equal participation by all eligible individuals,” and set goals for equitable distribution of resources and delivery of benefits and opportunities. While laudable, it is consistent with the general failure of the US to incorporate obligations under the Convention into the domestic legal order that the directive did not call for any consideration of the Convention. The racial equity plans issued by federal agencies earlier this year<sup>6</sup> also contain no mention of US obligations under the Convention. Even the plan issued by the State Department, which staffs the US mission to the UN and oversees interactions with UN human rights functions, makes no mention of the Convention or other human rights treaties.<sup>7</sup> The State department meticulously monitors implementation of and compliance with human rights obligations by other states,<sup>8</sup> but not that of the US itself.

#### Suggested Recommendations:

- Create a permanent and effective coordinating mechanism, such as a national human rights institution established in accordance with the Paris Principles (General Assembly resolution 48/134, annex) to ensure full implementation of the Convention, monitor compliance of domestic laws and policies with provisions of the Convention and systematically carry out anti-discrimination training and awareness-raising activities at federal, state and local levels.
- Undertake a one-year plan of action, in close consultation with civil society organizations, to implement the Committee’s key recommendations, and continue substantive consultation and collaboration with civil society organizations on an ongoing basis thereafter for full implementation and monitoring of obligations under the Convention.
- Require federal agencies to incorporate compliance with the Convention in policies and procedures and provide information, training and technical assistance sufficient to enable federal, state and local governmental entities to understand and implement the Convention.

## **II. Racist hate speech and hate crimes (arts. 2 and 4).**

Every year since 1990, SPLC has published its *Year in Hate and Extremism* report<sup>9</sup> providing analysis of the nature and magnitude of extremist threats in the US and forward-looking policy recommendations designed to confront violent extremism and protect democratic institutions.<sup>10</sup>

---

<sup>5</sup> [Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#), 20 January 2021.

<sup>6</sup> E.g., [USDA Equity Action Plan](#), US Department of Agriculture, 10 February 2022; [Advancing Equity and Racial Justice Through the Federal Government](#), The White House (providing summaries of the racial equity plans produced by the largest federal agencies).

<sup>7</sup> [Equity Action Plan](#), US Department of State.

<sup>8</sup> [2021 Country Reports on Human Rights Practices, US Department of State](#), 12 April 2022.

<sup>9</sup> [Year in Hate and Extremism, 2021](#), Southern Poverty Law Center, 09 March 2022.

<sup>10</sup> [Safeguard Democracy: Meaningful Actions for Countering Extremism](#), Southern Poverty Law Center, 09 March 2022.

For 2021, which began with the deadly January 6 insurrection at the US Capitol, SPLC's report documented a disturbing mainstreaming of hate and an empowered hard-right movement working feverishly to undermine democracy. Followers and supporters of this movement converged around a willingness to engage in political violence and deny legally established rights, including voter suppression targeting people of color and attacks on inclusive education and LGBTQ+ people.

SPLC tracked 1,221 active hate and antigovernment extremist groups in 2021 – 733 hate groups (13% decline from 2020) and 488 antigovernment extremist groups (14% decline from 2020). Though this is the third straight year of declining numbers, it does not indicate a decline in the power of the far right. To the contrary, what the declining numbers represent is that extremist ideas are operating more openly in the mainstream, reducing the need to join an organized group. Partially as a result of the COVID-19 pandemic, organizing frequently takes place in online spaces.

The insurrection at the US Capitol on 6 January 2021 was, in many ways, a culmination of years, even decades, of organizing and mobilization by these groups. The vast majority of those who took part were not associated with specific hate or antigovernment extremist groups. They came from all over the US – a testament to how deeply hate and antigovernment narratives have penetrated the right. However, among almost 900 individuals arrested so far are dozens of members of organized extremist groups SPLC tracks, including many Proud Boys<sup>11</sup> and Oath Keepers.<sup>12</sup>

Also among those arrested were dozens of veterans of the US military, along with several active-duty servicemen. In a welcome move, US Secretary of Defense Lloyd J. Austin, III ordered a stand-down to address extremism in the ranks<sup>13</sup> and then created a Pentagon working group to make recommendations on how the Department of Defense could address extremist activity.<sup>14</sup> SPLC welcomed the working group's report, while recommending other necessary actions for both the Department of Defense and the Department of Veterans Affairs.<sup>15</sup>

SPLC knows well the harm of racist and antisemitic speech that is broadly shielded by the First Amendment but strongly supports these protections, which also safeguard the ability to criticize the government and speak out against actions of bigots and organizations that promote hatred. Yet more must be done to address hate online. It is frighteningly simple for racists and extremists to disseminate propaganda, recruit followers, generate profits, and spread intimidation or disinformation on major social media platforms. Social media companies often legitimize extremist voices, enable funding or amplifying of white supremacist ideas, and provide a safe haven for extremists.

The Hate Crime Statistics Act (HCSA),<sup>16</sup> enacted in 1990, requires the FBI to compile hate crime data from the approximately 18,000 federal, state, university, city, and tribal law enforcement authorities and publish an annual report. The most recent HCSA report, published

---

<sup>11</sup> [Extremist Files: Proud Boys](#), Southern Poverty Law Center.

<sup>12</sup> [Extremist Files: Oath Keepers](#), Southern Poverty Law Center.

<sup>13</sup> [Memorandum for Senior Pentagon Leadership](#), Department of Defense, 05 February 2021.

<sup>14</sup> [Report on Countering Extremist Activity Within the Department of Defense](#), Department of Defense, December 2021.

<sup>15</sup> [SPLC Welcomes Department of Defense Countering Extremism Report](#), Southern Poverty Law Center, 20 December 2021.

<sup>16</sup> [Public Law 101-275](#), 23 April 1990.

in August 2021, documents hate crimes in 2020.<sup>17</sup> Unlike data collection in many other countries, the HCSA report provides data on the full range of hate crimes – race/ethnicity, religion, sexual orientation, disability, gender, and gender identity – aggregated by states, cities, counties, and colleges and universities. It includes data from all police agencies that either report one or more hate crimes or affirmatively report zero hate crimes.

Hate crime reporting is voluntary for state, local, and tribal law enforcement agencies, and many agencies do not provide information.<sup>18</sup> Underreporting is a persistent issue, obscuring the scale and scope of hate crimes in the US. For the third year in a row, participation in the data collection program declined in 2020.<sup>19</sup> Only 2,389 of the 15,138 agencies that participated in the FBI data collection effort – less than 16% – reported one or more hate crimes. Every other agency, including almost 70 cities with populations over 100,000, either affirmatively reported zero hate crimes or did not report any data.<sup>20</sup> Though clearly incomplete, these annual reports remain the most comprehensive snapshot available of hate violence in the US. Some highlights of the 2020 report:

- The FBI reported 8,263 hate crime incidents, compared to 7,314 reported in 2019, a 13% increase and the highest numbers reported since 2001.
- As in every year since 1991, race-based hate crimes were most numerous, making up 5,227 of 8,263 total hate crimes reported in 2020 (63%) – the highest number of race-based hate crimes since 2004, and a deeply-disturbing 32% increase over 2019.
- As in every year since 1991, the clear majority of the race-based crimes were directed at Black people – 2,871 of the 5,227 (55%), a dramatic 49% increase over 2019.
- Crimes directed against individuals and property in Asian American/Pacific Islander communities increased 56%, from 179 reported crimes in 2019 to 279 in 2020.
- Anti-Hispanic hate crimes decreased slightly, after four straight years of increase – from 527 to 517 – still, the second-highest figure recorded since 2010.
- Religion-based crimes were second most numerous, with 1,244 reported religion-based crimes – a very significant 18% decline from the 1,521 reported in 2019. Crimes directed against Jews and Jewish institutions were the most numerous among religion-based hate crimes (683, about 55%) but a significant 28% decline from 953 reported in 2019.
- 1,110 hate crimes were directed against people or institutions on the basis of sexual orientation, down 7% from 1,195 in 2019. But 266 hate crimes were directed against people or property on the basis of gender identity, a 34% increase (after an 18% increase in 2019), by far the most reported since the FBI began collecting this data in 2013.

To improve training of officers on investigating and reporting hate crimes, the FBI updated its Hate Crime Data Collection Guidelines and Training Manual in March 2022.<sup>21</sup> SPLC and a number of other national civil rights groups provided significant input for this excellent guide.

---

<sup>17</sup> [2020 Hate Crime Statistics Act Report](#), Federal Bureau of Investigation, 25 October 2021.

<sup>18</sup> See, for example, the [ADL chart](#) listing almost 70 cities in the United States with populations over 100,000 that either did not report any data to the FBI in 2020, or affirmatively reported zero (0) hate crimes.

<sup>19</sup> [2020 FBI Hate Crime Statistics](#), Department of Justice, 05 May 2022.

<sup>20</sup> Anti-Defamation League, <https://www.adl.org/media/16764/download>

<sup>21</sup> [Hate Crime Data Collection Guidelines and Training Manual](#), Federal Bureau of Investigation, 01 March 2022.

Enactment of the COVID-19 Hate Crimes Act in May 2021 is an important step forward.<sup>22</sup> Sparked in part by thousands of incidents of violence, harassment, and intimidation against Asian American and Pacific Islander community members, the law authorizes grants to stimulate improved local and state hate crime training, prevention, best practices, and data collection initiatives. It also authorizes grants for state hate crime reporting hotlines to direct individuals to local law enforcement and support services. A critical component of the Act required the administration to issue guidance for law enforcement agencies on accessible online reporting of hate crimes and for raising public awareness. On the first anniversary of its enactment, the Department of Justice announced a series of new initiatives to address hate violence,<sup>23</sup> including especially well-crafted guidance prepared jointly by DOJ and the Department of Health and Human Services to raise awareness and describe resources to address hate violence in AAPI communities.<sup>24</sup> DOJ also added information to its hate crime website,<sup>25</sup> which now includes information in 24 languages, including 18 of the most frequently spoken AAPI languages in the US.

SPLC's anti-bias education program, Learning for Justice, offers free educational resources to address racism and bigotry in all forms and to foster shared learning and reflection for educators, young people, caregivers and community members. In recent years, several states, particularly in the South, enacted laws restricting teaching about racism and other painful truths about US history. SPLC believes concealing the truth about US history makes youth more susceptible to misinformation and fails to equip them with critical thinking skills and education to navigate a new age where disinformation and manipulation are spread on the internet.

Hate crimes and the harms they cause to victims and their communities cannot be solved by law enforcement alone. Simply put, we cannot legislate, regulate, tabulate, or prosecute racism, hatred, or extremism out of existence.<sup>26</sup> More must be done to support victims, survivors, and their communities. On 8 March, 2022, the SPLC Action Fund submitted to the Senate Judiciary Committee a comprehensive statement detailing the rise in US hate crimes and outlining critical steps the US must take, including more comprehensive and complete hate crime data collection and reporting, vigorous implementation of the COVID-19 Hate Crime Act, more funding and support for victim assistance and building community resistance, and expanding rather than curtailing anti-racism education and prevention initiatives.<sup>27</sup>

#### Suggested Recommendations:

- Adopt measures to incentive law enforcement agencies to fully participate in hate crime reporting and undertake prevention initiatives; making these actions a condition precedent to receiving federal funds.
- Fully fund and support programs designed to address root causes of hate and extremism, address radicalization, promote digital literacy critical thinking skills for young people, and to build democracy and civic engagement.

---

<sup>22</sup> Public Law 117-13, 20 May 2021 <https://www.congress.gov/117/plaws/publ13/PLAW-117publ13.pdf>

<sup>23</sup> *Justice Department Announces New Initiatives to Address and Prevent Hate Crimes and Hate Incidents*, Department of Justice, 20 May 2022.

<sup>24</sup> *Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic*, Department of Justice, 20 May 2022.

<sup>25</sup> *Hate Crimes*, Department of Justice.

<sup>26</sup> Michael Lieberman, *Hate Crimes, Explained*, Southern Poverty Law Center, 27 October 2021.

<sup>27</sup> *Letter to Senators Durbin and Grassley*, Southern Poverty Law Center Action Fund, 08 March 2022.

- Address extremism in military and law enforcement agencies at every stage: recruitment, expanding and clarifying prohibitions against advocating for, or involvement in, supremacist or extremist activity for active-duty personnel, and more extensive efforts to help veterans transition into civilian life, including counseling, mental health and social welfare services.
- Incentivize tech companies to create and enforce policies and terms of service to ensure that social media networks, payment service providers, and other internet-based services do not provide platforms where hateful activities and extremism can grow. Consistent with the First Amendment and privacy considerations, implement rules and regulations to ensure that tech companies comply with civil rights laws prohibiting discrimination.

### **III. Situation of people of African descent, Hispanic/Latino and other ethnic minorities (arts. 2-5).**

A. *Health Care.* The provision of health care is one of the most racially disparate aspects of US society. In particular, women and children of color, especially those who are Black, have far less access to adequate health care services at all income levels. The disparities are even greater for people of color who live near or below the poverty line. Medicaid and related Children’s Health Insurance Program (CHIP) health care programs for low income Americans are largely administered by state governments, which set their own eligibility rules based on income and other criteria.<sup>28</sup> More than half of children of color in the US – including Native American, Latinx, and multi-racial as well as Black children – rely on Medicaid or CHIP for access to health care.<sup>29</sup>

Under the Affordable Care Act, passed during the Obama administration, states were given the ability to expand coverage under the Medicaid program to include incomes up to 138% of the federal poverty level (currently \$17,609 per year for an individual or \$29,974 for a family of three). This expansion was accompanied by a large increase in federal matching funds. 39 US states opted to expand Medicaid,<sup>30</sup> but five states in SPLC’s core region of the Deep South – among the poorest states in the nation, and with the highest concentrations of Black people in their populations – have not done so.<sup>31</sup> In the 12 states across the nation that have refused to expand Medicaid, about 4 million people lack access to adequate health care.<sup>32</sup> Between 2016 and 2019, the childhood uninsured rate in these states grew at nearly three times that of states with Medicaid expansion.

In states that failed to expand Medicaid, families with incomes that are above their state’s Medicaid eligibility level but still below poverty level continue to lack access to health care.<sup>33</sup> Alabama maintains among the most restrictive limitations. There, a pregnant woman or child in a family of three qualifies for coverage with an annual income of up to \$33,624, but a parent or other adult in a family of three only qualifies up to \$4,152.<sup>34</sup> This means that a child in a very poor family may continue to qualify for coverage while the child’s parents or other caretakers do not. Studies show that when parents have health care coverage, they are more likely to take the necessary steps to

---

<sup>28</sup> [International Health Care System Profiles: United States](#), The Commonwealth Fund, 5 June 2020.

<sup>29</sup> [The State of America’s Children 2021 – Child Health](#), Children’s Defense Fund.

<sup>30</sup> [Children’s Uninsured Rate Rises by Largest Annual Jump in More Than a Decade](#), Georgetown University Health Policy Institute, 8 October 2020.

<sup>31</sup> [Status of State Medicaid Expansion Decisions](#), Kaiser Family Foundation, 26 April 2022.

<sup>32</sup> [Medicaid Expansion is Urgently Needed in 12 States to Support Millions of Our Community Members](#), Fair Fight.

<sup>33</sup> [Children Are Left Behind When States Fail to Expand Medicaid](#), Georgetown University Health Policy Institute, February 2021, at 6.

<sup>34</sup> [Medicaid Income Limits for 2022](#), Alabama Medicaid Agency.

ensure that children have coverage too. When coverage was expanded to include parents, coverage of children also rose, even though the children might have previously been eligible.<sup>35</sup>

When the entire family is covered, children are also more likely to actually be taken to doctor visits.<sup>36</sup> In Louisiana – the only Deep South state that has expanded Medicaid – the share of poor children who had at least one annual well-child checkup increased, while the number of those receiving preventative health care in Mississippi and Texas declined. Medicaid expansion states saw lower high school dropout rates, and Medicaid expansion also significantly decreased child neglect cases.<sup>37</sup> Overall, states with expanded Medicaid reported 422 fewer cases of neglect per 100,000 children younger than age 6.<sup>38</sup> While children living in extreme poverty are themselves often covered by Medicaid, a lack of health care coverage for adult family members can also have a devastating impact in other respects. Meager resources that might have paid for essential living expenses, including rent, food, transportation, and childcare, wind up being spent on medical care. More often, people who cannot afford to pay for needed medical care forgo it, resulting in avoidable serious illness or death.

Even some states that opted for Medicaid expansion took steps to limit coverage eligibility for some of the poorest families, disproportionately impacting Black families.<sup>39</sup> For example, soon after the Trump administration took office, his administration announced it would grant “waivers” allowing states to condition Medicaid eligibility on an unprecedented requirement: a monthly work quota. Kentucky’s waiver allowed it require recipients to work at least 80 hours per month and to pay more in premiums. SPLC filed a lawsuit on behalf of 15 Kentucky residents, including employed and retired people, many of whom had significant medical issues requiring care, to challenge the new obstacles to coverage.<sup>40</sup> In June 2018 (and again in March 2019), a federal court blocked the waiver from taking effect.<sup>41</sup> In 2019, the newly elected Governor rescinded the new rules.<sup>42</sup> SPLC also successfully challenged Arkansas’s work requirements.<sup>43</sup> During an appeal, the Biden administration withdrew approval for work requirements and the Supreme Court dismissed the case. While the requirements were in effect, more than 18,000 people in Arkansas – nearly 1 in 4 of those subjected to the requirements – lost coverage over a seven month period.<sup>44</sup>

Other states, including some that failed to expand Medicaid, obtained similar waivers to impose onerous eligibility rules. Georgia, with among the most uninsured children in the nation, received a waiver to condition Medicaid expansion on harsh work requirements that provided no exemption

---

<sup>35</sup> [Expanding Medicaid for Parents Improves Coverage and Health for Both Parents and Children](#), Center for Budget and Policy Priorities, 14 June 2021.

<sup>36</sup> *Children Are Left Behind*, *supra*, at 2.

<sup>37</sup> *Children Are Left Behind*, *supra*, at 4.

<sup>38</sup> [Poverty and Neglect Are Not The Same – It’s Time to Realign Our Response](#), American Public Human Services Association, 21 May 2021.

<sup>39</sup> [Racial Health Inequities and Medicaid Work Requirements](#), Georgetown University Health Policy Institute, 2 June 2020.

<sup>40</sup> [Ronnie Maurice Stewart v. Alex M. Azar II](#), Southern Poverty Law Center.

<sup>41</sup> [Memorandum Opinion](#), *Stewart v. Azar*, 29 June 2018.

<sup>42</sup> *Status of State Medicaid Expansion Decisions*, *supra*.

<sup>43</sup> [Gresham v. Azar](#), Southern Poverty Law Center.

<sup>44</sup> [States’ Experiences Confirm Harmful Effects of Medicaid Work Requirements](#), Center for Budget and Policy Priorities, 18 November 2020.



for those who are unable to meet them due to child care obligations, even for very young children.<sup>45</sup> Georgia’s population is 32.6% Black, and 14% of its overall population lives below the federal poverty line.<sup>46</sup> When the Biden administration canceled approval of Georgia’s work requirement waiver, Georgia sued the federal government and said it would not expand Medicaid unless the requirements remained intact.<sup>47</sup> Universal expansion of Medicaid would bring many health and other related benefits to children, disproportionately Black or of another non-white race, living in low income families in states that have not currently opted for expansion.

On 24 June 2022, the US Supreme Court exponentially exacerbated the racial divide in health care and nearly every other challenge faced by people who live in poverty. In *Dobbs v. Jackson Women’s Health Organization*,<sup>48</sup> the Court overruled 50 years of precedent that substantially protected the rights of pregnant people to make their own reproductive health decisions, holding that the right to access abortion care is not protected by the US constitution and is to be controlled by states. Many states, especially the very same states in the Southeastern US that have the worst health care and highest rates of poverty, had already begun to pass legislation to either severely restrict or ban access to abortion. The laws set to take effect in SPLC’s five-state region following the *Dobbs* decision are as follows:

State	Abortion Law	Rape/Incest Exception	Maternal life or health exception	Exception for fetal anomaly
Alabama	Banned (Ala. Code 26-23H-4)	No	Yes*	No
Florida	Banned after 15 weeks (FL HB 5)	No	Yes*	Yes (if defect is fatal)
Georgia	Banned after 6 weeks***	Yes**	Yes*	Yes (if defect is fatal)
Louisiana	Banned (LA SB 342)	No	Yes*	Yes
Mississippi	Banned (MS Code 41-41-45)	Rape only**	Yes (maternal life only)	No

\* *Significant restrictions imposed on determination of risk. Risk must be serious and irreversible physical injury. No exceptions for psychological injury.*

\*\* *Only if the rape or incest is reported to law enforcement.*

\*\*\* *Ban takes effect upon detectable “fetal cardiac activity,” typically at about 6 weeks gestation.*

Politicians in states that have banned or severely restricted abortion are already planning additional legislation to attempt to criminalize traveling or assisting someone to travel to obtain an abortion in another state where the procedure is legal.<sup>49</sup>

Even with safe, legal abortion access, racial disparities in maternal mortality are stark, especially in the Southeastern US. Overall, the rate is 41.4 deaths per 100,000 live births for Black people,

<sup>45</sup> [Georgia’s Medicaid Waiver is Fiscally Foolish and Anti-Family](#), Georgetown University Health Policy Institute, 28 October 2020.

<sup>46</sup> [Georgia Quick Facts](#), U.S. Census Bureau.

<sup>47</sup> [Planned Medicaid Work Rules’ Impact at Heart of Georgia Lawsuit](#), Bloomberg Law, 11 February 2022.

<sup>48</sup> [Dobbs v. Jackson Women’s Health Organization](#), No. 19-1392 (U.S. Supreme Court, 24 June 2022).

<sup>49</sup> [Antiabortion lawmakers want to block patients from crossing state lines](#), Washington Post, 30 June 2022.

compared with 13.7 for non-Hispanic whites.<sup>50</sup> Mississippi, a poor state in SPLC’s region that has a relatively high Black population (38%),<sup>51</sup> has the country’s highest maternal mortality rate – an overall rate of 33.2 deaths per 100,00 live births, but 51.9 deaths for Black people alone.<sup>52</sup> In Louisiana, another poor Southern state with a higher than average Black population, Black people are four times more likely than whites to suffer a pregnancy-related death. Black people make up 39% of those who give birth, but 68% of those who die due to pregnancy-related causes.<sup>53</sup>

Since abortion was legalized in most US states, even before *Roe v. Wade* made abortion legal in every state, access to safe, legal abortion had its greatest impact on maternal mortality among Black women. A recently released study from Georgia State University found that the advent of legal abortion reduced non-white abortion mortality by 30-60% and non-white maternal mortality by as much as 30-40%, with relatively little impact on maternal mortality for white people, and “substantially improved maternal health for disadvantaged groups.”<sup>54</sup> These disparities were likely due to greater ability of white women to obtain a safe “therapeutic” abortion before abortion was legalized. Another recent study estimates pregnancy-related deaths not caused by abortion would increase by 7% overall, and 33% for Black women, during the first year of a total abortion ban.<sup>55</sup>

Already, doctors and hospitals are delaying care in emergency situations to seek legal security for themselves, putting lives at risk. “Doctors reported that they have postponed abortion care until a patient’s health or pregnancy complication has deteriorated to the point that their life was in danger, including multiple cases where patients were sent home, only to return once they were in sepsis.”<sup>56</sup> One doctor reported OB/GYN colleagues in Missouri “are now observing patients with ectopic pregnancy ... until they have documented falling hemoglobin or unstable vital signs.”<sup>57</sup> In other words, doctors are waiting for signs that a patient will *imminently* die without intervention. About 1 in every 50 pregnancies is ectopic, meaning that the embryo has attached somewhere outside the uterus (most often in a fallopian tube).<sup>58</sup> Ectopic pregnancies are never viable.

It is not just pregnant people who need an abortion whose medical care is adversely impacted by the *Dobbs* decision. An estimated 1 million people in the US each year experience early miscarriage. Up to 30% of pregnancies end in miscarriage. An incomplete miscarriage can lead to fatal consequences from blood loss or infection if the patient does not receive prompt treatment. But people must now fear that they will be suspected of self-managing an abortion if they seek treatment, and doctors must now fear being suspected of performing an abortion. These situations will cause additional maternal deaths.<sup>59</sup> Clinics that provide abortion care often also provide other types of gynecologic and obstetric care in rural communities. Many are being forced to close.<sup>60</sup>

---

<sup>50</sup> [Pregnancy-Related Deaths by Race/Ethnicity](#), Centers for Disease Control.

<sup>51</sup> [Quick Facts: Mississippi](#), US Census Bureau.

<sup>52</sup> [Mississippi Maternal Mortality Report](#), Mississippi Department of Health, April 2019.

<sup>53</sup> [Maternal Health in Louisiana](#), Center for Reproductive Rights, 2021.

<sup>54</sup> Farin, *et al.*, [The Impact of Legal Abortion on Maternal Health: Looking to the Past to Inform the Present](#), April 2022 (preprint, available online).

<sup>55</sup> Stevenson, A., [The Pregnancy-Related Mortality Impact of a Total Abortion Ban in the United States: A Research Note on Increased Deaths Due to Remaining Pregnant](#), December 2021 (Demography 58 (6), Duke University Press).

<sup>56</sup> [Doctors report compromising care out of fear of Texas abortion law](#), Texas Tribune, 23 June 2022.

<sup>57</sup> Jane van Dis, MD, Rochester NY, [on Twitter](#).

<sup>58</sup> [Ectopic Pregnancy](#), March of Dimes.

<sup>59</sup> [Penalizing Abortion Providers Will Have Ripple Effects Across Pregnancy Care](#), Health Affairs, 3 May 2022.

<sup>60</sup> *Id.*

On 8 July 2022, President Biden issued an Executive Order Protecting Access to Reproductive Health Care Services.<sup>61</sup> The Order requires federal agencies to take several steps, including protecting access to contraception and to federally approved medication that is prescribed to terminate pregnancy and ensuring access to abortions and other necessary care in emergency situations as required under existing federal statute. The order also calls for additional measures to protect the privacy of data that could be used against a person seeking an abortion, and for additional safety and security measures at clinics. The order establishes an interagency task force to coordinate federal response. In an unprecedented step, the White House and DOJ will also convene private attorneys, bar associations and civil society organizations to coordinate representation of patients, providers, and third parties who provide assistance in seeking an abortion. While these measures are welcomed, they will not restore safe and legal abortion access to people who live in any of the many states where bans have been or will be adopted.

Banning or severely restricting access to abortion care will worsen challenges faced by low income people and communities in many other ways, including access to adequate food, housing, education, and employment.<sup>62</sup> People forced to remain pregnant and give birth against their will are much more likely to be unable to maintain employment or continue attending school. Children who are born after denial of an abortion are more likely to live in poverty.<sup>63</sup> The addition of children to a household already struggling to maintain housing and obtain adequate food will exacerbate hunger and drive families into homelessness. Children will lose parents to avoidable deaths from unsafe abortions or other pregnancy-related complications, increasing the burden on already dysfunctional child welfare systems. A person turned away when seeking an abortion is also more likely to continue a relationship or remain in contact with an abusive partner.<sup>64</sup> This will lead to increased domestic violence causing mental and physical injuries and deaths.

Any new form of criminalization in the US is destined to fall disproportionately on Black people and other people of color, and criminalization of pregnancy always has.<sup>65</sup> Criminalization is expected to increase in the wake of abortion bans, and not only for people who have or assist in obtaining an abortion. Some states have for years been prosecuting people with substance abuse problems for harming or risking harm to a fetus,<sup>66</sup> a practice that is likely to increase with the advent of new and expanded personhood laws. Incarcerated women, a large majority of whom are Black or Latinx, will no longer have any access to abortion in states that ban the procedure, since they have no ability to travel to another state. Those on probation or parole will likely encounter similar obstacles, since they need the permission of their supervising officer to travel.<sup>67</sup>

---

<sup>61</sup> [Fact Sheet: President Biden to Sign Executive Order Protecting Access to Reproductive Health Care Services](#), The White House, 8 July 2022.

<sup>62</sup> [The Turnaway Study](#), Advancing New Standards in Reproductive Health, University of California at San Francisco.

<sup>63</sup> Foster DG, et al., [Comparison of health, development, maternal bonding, and poverty among children born after denial of abortion vs after pregnancies subsequent to an abortion](#), September 2018, *JAMA Pediatrics*, 172(11):1053-1060.

<sup>64</sup> Roberts SCM, et al., [Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion](#), September 2014, *BMC Medicine*, 12:144.

<sup>65</sup> See, e.g., Roberts, D., [Unshackling Black Motherhood](#), *Michigan L. Rev.* 95:938 (February 1997).

<sup>66</sup> [Many States Prosecute Pregnant Women for Drug Use. New Research Says That's a Bad Idea](#), *Route Fifty*, 5 December 2019.

<sup>67</sup> [End of Roe makes bad situation worse for incarcerated women](#), *The Hill*, 9 July 2022.

Suggested recommendations:

- Adopt federal legislation and/or a constitutional amendment protecting the right to safe and legal abortion and related care in every US state and territory.
- Adopt all available measures to safeguard the right to interstate travel for purposes that are legal in the state to which a person is traveling.
- Increase funding to programs that provide or facilitate access to birth control, abortion and related services.
- Revoke Medicaid waivers permitting states to impose unreasonable eligibility restrictions.
- Provide adequate universal health care coverage for lower income people who cannot otherwise access reliable health insurance.

*B. Public Education Funding.* School funding disparities in the US are stark, both between states and between school districts within a state. States with a higher level of poor students spend less per student on education, widening the gap between income levels.<sup>68</sup> In many US states, including some with higher poverty levels, school funding is based in large part on property taxes and other local funding, creating huge gaps in funding between wealthier districts that serve mostly white students and poorer districts where the student population is mostly Black or Brown.<sup>69</sup> There currently is a “\$23 billion gap between white and nonwhite school districts, even though they serve the same number of children.”<sup>70</sup> Southern states are particularly egregious examples. Compare, for example, two high schools in Alabama: the wealthy and nearly all-white Vestavia Hills school district spent a total of \$10,675 per student, while the high-poverty, majority Black high school in Perry County spent just \$8549.<sup>71</sup> Increased state funding for higher poverty districts is not sufficient to make up for disparities in local funding. Similar disparities can be found in Florida and Texas.<sup>72</sup> Nationally, “white school districts average revenue receipts of almost \$14,000 per student, but non-white districts receive only \$11,682. That’s a divide of over \$2,200, on average, per student.”<sup>73</sup> Meanwhile, the districts that serve predominantly non-white children have far less political power. “[T]here are more than six times as many predominantly white [school] districts as those that serve primarily non-white populations.”<sup>74</sup>

Adjacent to funding disparities within public education systems is another insidious reality that enables white flight and poses a growing threat to equitable funding for the education of Black and Brown children. Following the *Brown v. Board of Education* and *Brown II* decisions, by 1969, more than 200 private segregation academies were set up in states across the South. Seven of those states—Virginia, North Carolina, South Carolina, Georgia, Alabama, Mississippi, and

---

<sup>68</sup> [The other school funding divide: States with more poor students tend to spend less, creating hard-to-fix disparities](#), Chalkbeat, 31 July 2019.

<sup>69</sup> [Inequality in Public School Funding: Key Issues & Solutions for Closing the Gap](#), American University School of Education, 10 September 2020.

<sup>70</sup> [\\$23 Billion](#), EdBuild, February 2019, at 2.

<sup>71</sup> [Per Pupil Expenditures: Alabama](#), US Department of Education (local and state expenditures reported on downloadable spreadsheet). The US Census Bureau reports that the [City of Vestavia Hills](#) is 85.8% white with 4.3% living in poverty, while [Perry County](#) is 67.9% Black with more than 30% below the federal poverty line.

<sup>72</sup> [Not Making The Grade: School funding policies in eight Southern states fail students of color and those living in poverty, new report says](#), Southern Poverty Law Center, 25 October 2021.

<sup>73</sup> [\\$23 Billion](#), *supra*.

<sup>74</sup> *Id.*

Louisiana—maintained tuition grant programs that gave vouchers to incentivize white students to leave desegregated public schools. The legacy of segregation academies is strong and growing.

Private schools are much more likely to serve white students than students of color, and current tuition voucher programs exacerbate school segregation. A UCLA Civil Rights Project report showed white students were “substantially overrepresented” in private schools, while Hispanic and Black students were underrepresented.<sup>75</sup> In five Southern states (Alabama, Florida, Georgia, Louisiana and Mississippi), one in five students live below the poverty line, more than half are considered low income and one in three is Black.<sup>76</sup> Private school voucher programs funnel public funding to this racially disparate and inequitable system. In 2020, SPLC filed a still-pending lawsuit challenging a new voucher program in Tennessee that would take \$375 million in its first five years away from funding for public schools in the state’s largest cities of Nashville and Memphis and transfer it to private schools.<sup>77</sup>

Private schools in the South have the largest overrepresentation of white students. In Mississippi, 83% of students attending private schools are white, but white students only make up 47% of the state’s student population, a difference of 35%. A Century Foundation study analyzing the Louisiana voucher program confirmed “that black students typically used vouchers to leave public schools where their race was overrepresented, but white students tended to leave public schools where their race was underrepresented.”<sup>78</sup> The study concluded that, “[o]n balance, voucher programs are more likely to increase school segregation than to promote integration or maintain the status quo.” Even where the disproportion seems less pronounced, such as in Florida, the segregative effect of private schools is stark. The increase in Black and Latinx students attending private schools in Florida appears in many cases to be those students moving from segregated public schools to segregated private schools – with almost 1000 new private schools over eight years and the number of private schools serving 75% or more Black and Latinx population more than doubling. Florida, which leads the nation in private school voucher programs, now siphons away around \$1 Billion of public funds each year from public schools for these segregation schemes. Considering that Florida increased its spending for voucher programs by 310% from FY 2008 to FY 2018 and, during the same period, decreased per-pupil funding for public education by 13.4% (and now spends more than \$4000 less per pupil each year than the national average),<sup>79</sup> the growing trend towards privatization is particularly alarming.

A disturbing new development took place just over two weeks before the submission of this report: the state legislature in Arkansas passed a law that will provide parents who opt out of public schools a \$7000 debit card that can be used for private or religious school tuition, home schooling

---

<sup>75</sup> Jongyeon Ee, et al., *Private Schools in American Education: A Small Sector Still Lagging in Diversity*, UCLA Civil Rights Project, Working Paper, 2018.

<sup>76</sup> *Inequity in School Funding* (Southern Poverty Law Center and Education Law Center, Report, 2021), [https://www.splcenter.org/sites/default/files/leg\\_cr\\_school\\_funding\\_inequities\\_report\\_2021\\_final.pdf](https://www.splcenter.org/sites/default/files/leg_cr_school_funding_inequities_report_2021_final.pdf).

<sup>77</sup> *McEwen v. Lee*, Southern Poverty Law Center.

<sup>78</sup> *Do Private School Vouchers Pose a Threat to Integration?*, Halley Potter, Century Found., 12 March 2017, <https://tcf.org/content/report/private-school-vouchers-pose-threat-integration>.

<sup>79</sup> *Inequity in School Funding*, n.2.

expenses, online schooling, and other non-public educational options.<sup>80</sup> Right-wing national advocates of privatizing education are praising the law and urging other states to follow suit.<sup>81</sup>

In October 2021, President Biden issued an Executive Order 14050 establishing a White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans.<sup>82</sup> The order recognizes the continued existence of “persistent racial and systemic injustices,” with the result that “Black students remain more likely to attend high-poverty and racially segregated schools” and “are inequitably disciplined and suspended from school at disproportionately higher rates.” It also acknowledges the funding gaps discussed above. The order announces some admirable policy goals, including increasing understanding of systemic causes of educational disparities, increasing access to high quality educational programs, excellent teachers, and equal educational resources for Black families, improving data collection regarding educational disparities, and promoting an engaged and positive school environment for Black students and families, but contains little in the way of details on its implementation. The order supports the implementation of White House Initiatives on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans and for Hispanic Americans. However, as of early July 2022, the initiative aimed at improving the provision of high quality education for Black people lacked a director and had only one staff member.<sup>83</sup>

#### Suggested recommendations:

- Provide funding to upgrade substandard schools that serve disadvantaged student populations
- Take steps to incentivize states to evaluate and rectify funding disparities that are disproportional by race, include by taking such disparities into account in grantmaking to state educational institutions at all levels
- Adequately fund and full staff the White House Initiatives on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans and for Hispanic Americans
- Vigorously enforce laws prohibiting segregative practices in education

*C. Suppression of Voting Rights.* People of color in the US, and in particular Black, Latinx, and Native American residents, have faced and continue to face barriers to participation in representative democracy on an equal basis with their white counterparts. Barriers to the right to vote are now rapidly increasing and threaten to irreparably undermine US democracy. Following his most recent visit to the United States, the United Nations Special Rapporteur on minority issues found that “effective protection of this fundamental human right is weak in the United States.”<sup>84</sup>

#### *i. Laws Restricting Access to Voting.*

---

<sup>80</sup> [Arizona school voucher law passes despite no accountability measures](#), 12News Phoenix, 27 June 2022.

<sup>81</sup> [School’s out forever: Arizona moves “to kill public education” with new universal voucher law](#), Salon, 1 July 2022.

<sup>82</sup> [Executive Order on White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans](#), 19 October 2021.

<sup>83</sup> [White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans](#), US Department of Education, accessed 8 July 2022.

<sup>84</sup> [Report of the Special Rapporteur on minority issues, Fernand de Varennes, on his visit to the United States of America](#), 14 March 2022, at 6.

While the US constitution has many provisions related to the right to vote, and Congress passed the Voting Rights Act in 1965 expressly to prohibit discrimination against Black citizens, states have been steadily weakening the meaning and enjoyment of those protections for Black and Brown citizens for over a decade. Since the 2013 US Supreme Court decision in *Shelby County, Alabama v. Holder*, which gutted a key provision of the Voting Rights Act of 1965 requiring jurisdictions with a history of racial voting discrimination to obtain federal clearance to change voting laws, states have implemented dozens of new laws restricting or impeding voting access.

The pace of the adoption of such laws accelerated following the 2020 election.<sup>85</sup> As of early May 2022, more than 140 new election interference laws had been introduced in state legislatures.<sup>86</sup> States are also passing laws that undermine election processes and allow for election subversion in direct response to the events of the 6 January 2021 insurrection at the US Capitol. Although the *Shelby County* decision left room for Congress to restore the preclearance requirement, which would have prevented many of these laws from going into effect, Congress has failed to act. Earlier this year, bills<sup>87</sup> that would have restored federal oversight in locations with a history of racial discrimination in voting, expanded opportunities to exercise the right to vote, provided protections from voter suppression, and enhanced election security were blocked from even receiving a vote in the Senate.<sup>88</sup> Since then, even a very narrow bill intended to prevent a repetition of the January 6 efforts to interfere with certification of a presidential election, has been stalled in negotiations.<sup>89</sup>

Recently adopted laws make it more difficult to register to vote or to receive an absentee or mail-in ballot, restrict voting times or locations, and even ban and criminalize providing food or water to people waiting in long lines to vote. Typical of these state voter suppression laws is Florida's Senate Bill 90.<sup>90</sup> Restrictions on voting methods such as early and mail-in voting are direct attacks on voting access for people of color. Record turnout by Black and Latinx voters in 2020 was supported by their greater likelihood to use early and mail-in voting methods.<sup>91</sup> Black voters used early in-person voting at a higher rate than did white voters,<sup>92</sup> while Latinx voters made more use of voting by mail.<sup>93</sup> SB 90 also creates an election crime office – an “election police force” – specifically to investigate and prosecute allegations of election law violations and fraud, even though actual cases of election fraud are extremely rare.<sup>94</sup> Among the election-related activities that have been criminalized is so-called “ballot harvesting,” which will prevent volunteers from churches and community groups from collecting ballots from voters and delivering them to election offices or placing them in drop boxes.<sup>95</sup> This is a process that has been heavily relied upon in Black communities, and especially by voters whose age or physical disability makes it difficult

---

<sup>85</sup> [Voting Laws Roundup: February 2022](#), Brennan Center for Justice, 12 January 2022.

<sup>86</sup> [Voting Laws Roundup: May 2022](#), Brennan Center for Justice, 26 May 2022.

<sup>87</sup> [Freedom to Vote Act, John Lewis Voting Rights Advancement Act](#).

<sup>88</sup> [After a day of debate, the voting rights bill is blocked in the Senate](#), New York Times, 19 January 2022.

<sup>89</sup> [Bipartisan senators reach a general agreement on updating Electoral Count Act](#), CBS News, 10 June 2022.

<sup>90</sup> [SB 90: Elections](#), Florida Senate.

<sup>91</sup> [What Methods Did People Use to Vote in the 2020 Election?](#), US Census Bureau, 29 April 2021.

<sup>92</sup> [Black voters most likely to say November election was run very well](#), Pew Research Center., 12 January 2021.

<sup>93</sup> [Voting trends analysis](#) prepared for SPLC, 2 November 2020.

<sup>94</sup> [Florida Senate Passes Voting Bill to Create Election Crimes Agency](#), New York Times, 4 March 2022.

<sup>95</sup> [Florida lawmakers approve an elections police force, the first of its kind in the U.S.](#), Washington Post, March 9, 2022.

for them to deliver their own ballots.<sup>96</sup> Threats of criminalization serve no legitimate purpose but are intended to intimidate voters and suppress their willingness to exercise their right to vote.

On 31 March 2022, a federal district court in Florida issued a sweeping injunction prohibiting Florida from implementing many of the new measures contained in SB 90,<sup>97</sup> finding they were adopted “with the intent to discriminate against Black voters.”<sup>98</sup> It found the violations so egregious that it placed Florida under federal preclearance requirements for ten years and prohibited it from passing any law relating to drop boxes, line warming activities, or third party voter registration organizations without the court’s permission.<sup>99</sup> The district court recognized that “the right to vote, and the VRA particularly, are under siege” in the nation’s courts as well as in its state legislatures. Proving its point, the district court’s order was blocked on appeal, and most of the challenged provisions were reinstated.<sup>100</sup>

In March 2022, Arizona enacted a law requiring voters to provide documentary proof of citizenship to vote in presidential elections despite the Supreme Court’s 2013 holding that requiring voters who only vote in federal elections to provide such proof is unconstitutional.<sup>101</sup> The bill also requires proof of address, which is especially difficult for Native American voters who live on reservations without traditional mailing addresses. This bill is expected, and likely intended, to have devastating effects on Latinx and Native American voters. Arizona’s passing of a bill directly violating Supreme Court precedent as recent as 2013 is representative of many state governments’ belief that the Court is now hostile to the voting rights of Black, Latinx, and Native American voters and less willing to protect them from discrimination. In Florida, Arizona, and Texas, new laws make it difficult or impossible for voting rights organizations to provide assistance in casting ballots. In Texas, monthly citizenship checks have purged eligible voters from rolls in error.<sup>102</sup> Another provision of Texas law adding multiple layers of identification requirements for mail-in ballots resulted in tens of thousands of ballots being rejected.<sup>103</sup> The ballots of Black voters appear to have been rejected at a disproportionate rate.<sup>104</sup> Bans on 24-hour and drive through voting, which were used more heavily by people of color, are anticipated to suppress the Latinx vote.<sup>105</sup>

New threats to free and fair elections also increasingly come from far-right activists gaining or seeking to gain control of state and local election authorities.<sup>106</sup> Overall, as of 14 June, at least 100 candidates who backed false election fraud claims had won Republican primary elections.<sup>107</sup>

---

<sup>96</sup> Voters with Disabilities Face New Ballot Restrictions Ahead of Midterms, Pew Stateline, 12 April 2022.

<sup>97</sup> [Final Order Following Bench Trial](#), [League of Women Voters v. Lee](#), United States District Court for the Northern District of Florida, 31 March 2022.

<sup>98</sup> *Final Order*, *passim*.

<sup>99</sup> The court invoked a lesser known preclearance provision of the VRA – section 3(c) – known as “bail in.”

<sup>100</sup> [Order of the Court](#), [League of Women Voters v. Florida Secretary of State](#), US Court of Appeals for the Eleventh Circuit, 6 May 2022.

<sup>101</sup> *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013).

<sup>102</sup> Texas’ renewed voter citizenship review is still flagging citizens as “possible non-US citizens,” Texas Tribune, 17 December 2021.

<sup>103</sup> Almost 25% of mail-in ballots were rejected in Texas for its March 1 primary election, NPR, 6 April 2022.

<sup>104</sup> Mail Ballot Rejections Surge in Texas, With Signs of a Racial Gap, New York Times, 18 March 2022.

<sup>105</sup> [Latino Communities on the Front Lines of Voter Suppression](#), Brennan Center, 14 January 2022.

<sup>106</sup> [‘Slow-motion insurrection’: How GOP seizes election power](#), Associated Press, 30 December 2021.

<sup>107</sup> [More than 100 GOP primary winners back Trump’s false fraud claims](#), Washington Post, 14 June 2022.



Another 15 election deniers won Republican primaries on 28 June.<sup>108</sup> Most of those candidates are likely to win in the general elections in their right-leaning states in November, and many of those were running for offices that will exercise control over future elections, including governor or lieutenant governor, attorney general, or secretary of state.<sup>109</sup> The person already installed by far-right conservatives in Florida has expressed doubts about the 2020 election results.<sup>110</sup> In Georgia, a new law abolished existing county election boards and handed control over to newly appointed commissions. One Georgia county's new elections board attempted to close seven polling places and require all of the voters living there to drive 15 miles or more in order to vote at a single polling place— and no public transportation exists in the area.<sup>111</sup> County election boards across Georgia closed 214 polling places between 2012 and 2018.<sup>112</sup>

ii. *Redistricting.*

The US is reaching the end of a redistricting cycle that is consolidating power in one overwhelmingly white political party in Southern states, where a significant majority of people of color live. Redistricting has been among the most effective and consistent tactics used to disenfranchise voters of color in the South. The current cycle is being manipulated to dilute the voting power of Black and other racial minority groups, who represent a majority of US population growth since the last redistricting cycle. As of July 2022, 72 lawsuits had been filed in 26 US states challenging new district maps as either racially discriminatory or as partisan gerrymandering,<sup>113</sup> which often has a racially disparate impact even if not intentionally based on racial motivations.

Black Alabama voters challenged new district maps that use both “packing” and “cracking” to dilute their vote – many Black voters are packed into a single district, and the remainder cracked among multiple districts to prevent them from swaying elections in all but a single district. In a forceful opinion,<sup>114</sup> a three-judge panel held that plaintiffs were substantially likely to win on their claims that the new maps were racially discriminatory, ordering Alabama to draw new maps to correct this inequity, but the US Supreme Court put the order on hold,<sup>115</sup> and the discriminatory district maps will be in place for this year's elections. Although Alabama is 27% Black, Black voters are a majority in only one of the state's seven districts, or just 14%.<sup>116</sup> Though the three-judge panel ordered Alabama to draw maps that created two Black opportunity districts to ensure the state's Black voters had equal representation, the US Supreme Court put that decision on hold and will not decide the case until after the 2022 election, leaving the discriminatory maps in place.

In Texas, Black, Latinx and Asian voters, along with civil rights organizations and the Department of Justice, are challenging cracking and packing that resulted in increased white voting power despite most of the population growth being non-white. White people are the majority of eligible

---

<sup>108</sup> [What Went Down During The June 28 Primary Elections](#), FiveThirtyEight, 28 June 2022.

<sup>109</sup> [How Trump-backed secretary of state candidates would change elections in the United States](#), Washington Post, 1 December 2021.

<sup>110</sup> [Democratic alarms sound over DeSantis's new elections overseer](#), Washington Post, 6 July 2022.

<sup>111</sup> [Poll closure plan defeated in rural Georgia's Lincoln County](#), Atlanta Journal-Constitution, 30 December 2021.

<sup>112</sup> *Id.*

<sup>113</sup> [Redistricting Litigation Roundup](#), Brennan Center for Justice, updated 1 July 2022.

<sup>114</sup> [Milligan v. Merrill](#), United States District Court for the Northern District of Alabama, 24 January 2022.

<sup>115</sup> [Merrill v. Milligan](#), 595 U.S. \_\_\_\_ (2022).

<sup>116</sup> [Alabama Redistricting Ruling Sparks Hope for Democrats](#), New York Times, 25 January 2022.

voters in 60% of newly drawn districts but accounted for less than 40% of population growth, and two new Congressional seats Texas gained after the recent census were gerrymandered to create white majority districts, despite the fact that the percentage of white voters in Texas decreased. Half of the population growth in Texas was Latinx.<sup>117</sup>

The sharp right turn of the US Supreme Court now threatens to deal another blow to equal representation and voting rights during the Court’s next term. One of the last orders<sup>118</sup> the Court issued during its current term accepted a North Carolina case, *Moore v. Harper*, which will be argued in the Fall. In *Moore*, the Republican-controlled state legislature gerrymandered the state’s congressional district maps in a manner to give themselves control of 11 of 14 congressional districts, but the North Carolina Supreme Court ruled the maps violated the state constitution by illegally favoring Republicans. In their appeal to the US Supreme Court, the Republican legislators ask the Court to adopt an “independent state legislature” theory<sup>119</sup> and hold that *no matter how* a state legislature manipulates elections, state courts cannot intervene.

*iii. Disenfranchisement of Voters with Felony Convictions.*

In many US states, people convicted of many felony offenses are automatically deprived of the right to vote, with no consideration of individual circumstances. The UN Human Rights Committee has observed that the right to vote “lies at the heart of democratic government based on the consent of the people,” and restrictions must be “objective and reasonable,” and not based on discrimination.<sup>120</sup> Data estimates by The Sentencing Project as of 2020<sup>121</sup> illustrate the racially disparate impact of these laws, which have the most disproportionate impact in southern states:

Total Disenfranchised Due to Felony Convictions

State	Total Disenfranchised	Voting Age Population	Percent Disenfranchised
Alabama	328,198	3,671,110	8.94%
Florida	1,132,493	14,724,113	7.69%
Georgia	275,089	7,254,693	3.79%
Louisiana	76,924	3,452,767	2.23
Mississippi	235,152	2,228,659	10.55%
Tennessee	451,227	4,964,909	9.09%
Texas	500,474	17,859,496	2.80%

<sup>117</sup> [It’s Time to Stop Gerrymandering Latinos Out of Political Power](#), Brennan Center, 4 November 2021; [Black and Latino voters have been shortchanged in redistricting](#), advocates and some judges say, Washington Post, 25 January 2022.

<sup>118</sup> US Supreme Court [Order List](#), 597 U.S. \_\_\_\_ (30 June 2022).

<sup>119</sup> [The Danger of the Independent State Legislature Theory](#), FairVote, 1 July 2022.

<sup>120</sup> General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the ICCPR, CCPR/C/21/Rev.1/Add.7, August 27, 1996, Annex V (1).

<sup>121</sup> [Locked Out 2020: Estimates of People Denied Voting Rights Due to a Felony Conviction](#), The Sentencing Project, 30 October 2020.

## Black Voting Age Population Disenfranchised Due to Felony Convictions

<b>State</b>	<b>Total Disenfranchised</b>	<b>Voting Age Population</b>	<b>Percent Disenfranchised</b>
Alabama	149,716	962,519	15.55%
Florida	338,433	2,194,488	15.42%
Georgia	145,601	2,322,275	6.27%
Louisiana	47,951	1,087,270	4.41%
Mississippi	130,501	817,493	15.96%
Tennessee	174,997	814,576	21.48%
Texas	138,926	2,372,001	5.86%

Such disparities are potentially outcome determinative in elections. In the 2018 election for governor in Georgia, white Republican Brian Kemp defeated Black Democrat Stacey Abrams by a margin of only about 1.4%.<sup>122</sup> In the 2020 Presidential election, official counts showed former-President Trump won Florida by about 3%; President Biden won Georgia by only 0.23%.<sup>123</sup>

Many US jurisdictions extend the denial of voting rights for persons convicted of felony offenses long past sentences imposed by a court – sometimes effectively for life.<sup>124</sup> More than five million US citizens who are no longer incarcerated are nevertheless denied the right to vote due to a criminal conviction, and almost half of that population resides in the South. The scope of disenfranchisement varies depending on the laws passed by the relevant state.

Even where bars based on felony conviction have been eased, far-right politicians find ways to prevent people from voting. Voters in Florida approved a law to automatically restore voting rights to about 1.4 million disenfranchised voters in 2018. In 2019, the Florida legislature passed a new law prohibiting the newly re-enfranchised (disproportionately people of color) from voting until they paid all court-related debt,<sup>125</sup> which can amount to many thousands of dollars and act as a lifetime bar. In a lawsuit challenging the Florida law, plaintiffs (including two Black women represented by SPLC) argued the law was an unconstitutional poll tax. Although a district court struck down the law as unconstitutional, a federal appeals court first stayed and then overturned the ruling and reinstated the law.<sup>126</sup> The US Supreme Court refused to step in.<sup>127</sup>

### Suggested recommendations:

- Adopt measures to secure non-discriminatory access, free of unreasonable restrictions, for all adults of voting age, including passage of legislation such as the Freedom to Vote Act and the John Lewis Voting Rights Advancement Act.
- Adopt legislation, such as the Electoral Count Act, to ensure that certification and implementation of results of future elections cannot be improperly impeded.

---

<sup>122</sup> [Georgia Governor Election Results](#), The New York Times, 28 January 2019.

<sup>123</sup> [Presidential Election Results: Biden Wins](#) (interactive map), The New York Times.

<sup>124</sup> [Felony Disenfranchisement Map](#), ACLU, 2022.

<sup>125</sup> [Voting Rights Restoration Efforts in Florida](#), Brennan Center for Justice, 11 September 2020.

<sup>126</sup> *Jones v. Governor of Florida*, 975 F.3d 1016 (11th Cir. 2020).

<sup>127</sup> [Supreme Court Deals Major Blow To Felons' Right To Vote In Florida](#), NPR, 17 July 2020

- Increase funding and other resources for federal agencies to engage in activities designed to increase voter registration and protect access to voting rights.
- Invite nonpartisan international election observers to monitor upcoming elections and provide full access necessary to facilitate their activities and the preparation of comprehensive reports.

#### **IV. Education to combat prejudices and promote understanding (arts. 1, 2 and 6).**

In its 2014 Concluding Observations, the Committee recommended that the US “adopt a national action plan to combat structural racism, and to ensure that school curricula, textbooks and teaching materials are informed by and address human rights themes and seek to promote understanding among racial and ethnic minority groups.”<sup>128</sup> The Working Group of Experts on People of African Descent concluded after a 2016 country visit that the “school curriculum in each state should reflect appropriately the history of the transatlantic trade in Africans, enslavement and segregation.”<sup>129</sup> The US has turned sharply away from these recommendations.

Most US adults agree racism is a systemic issue that continues to harm members of racial minority groups, and at least a plurality believe students should be exposed to the issue of systemic racism in schools.<sup>130</sup> However, conservative groups characterize such education as unpatriotic, and claim it serves to make white students feel ashamed or guilty about their racial identity. Conservative politicians at all levels of government oppose teaching about the existence and effects of racism and, under the guise of opposition to so-called “critical race theory,” are taking steps to prohibit teaching of accurate historical accounts of the role of race and of Black Americans in US history, some even going so far as to ban books touching on matters of race.<sup>131</sup>

Since January 2021, far-right legislators in 40 states have introduced almost 200 bills that purport to prohibit the teaching of “critical race theory” in schools, but actually attack inclusive education.<sup>132</sup> New state laws and regulations prohibit instruction about unconscious bias, discrimination, privilege, and oppression. A recent Florida rule prohibits teaching “that racism is embedded in American society and its legal systems,” and provides that “instruction may not . . . define American history as something other than the creation of a new nation based largely on universal principles stated in the Declaration of Independence.”<sup>133</sup> The rule also expressly prohibits use of any materials from the “1619 Project,” which seeks to place the African slave trade and its consequences accurately into the framework of US history. A host of other states controlled by conservative governors and legislatures have adopted or are moving to adopt measures prohibiting instruction about racism, with at least thirteen states having already done so.

---

<sup>128</sup> Concluding Observations at para. 25.

<sup>129</sup> *Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*, 18 August 2016, A/HRC/33/61/Add.2, para. 118.

<sup>130</sup> [Poll: The real reason Republicans are so riled up about “critical race theory.”](#) Yahoo! News, 1 July 2021.

<sup>131</sup> [Index of Banned Books](#), PEN America; *See also In Texas, a Battle Over What Can Be Taught, and What Books Can Be Read*, New York Times, 10 December 2021; [Calls to Ban Books by Black Authors Are Increasing Amid Critical Race Theory Debates](#), Education Week, 30 September 2021.

<sup>132</sup> [Index of Educational Gag Orders](#), PEN America.

<sup>133</sup> Florida Board of Education, Rule 6A-1.094124, Required Instruction Planning and Reporting.

Far-right politicians in the US House of Representatives introduced legislation<sup>134</sup> to prohibit the Department of Education from funding proposed US history and civics education programs that reflect student diversity and create inclusive learning environments by, for example, “tak[ing] into account systemic marginalization, biases, inequities, and discriminatory policy and practice in American history.”<sup>135</sup> A co-sponsor claimed such a program would “teach our next generation to hate America ...”<sup>136</sup> These concerted attacks on instruction about racism and discrimination, wrongly but successfully labeled “critical race theory,” have increasingly led to intimidation, harassment, threats, and even violence against students, teachers and school board members.<sup>137</sup> Combined with disputes related to COVID precautions, threats to people associated with schools have become so extreme that the National School Boards Association asked the Department of Justice to intervene. The Association’s letter, since removed from its website after aggressive backlash, “detailed more than twenty examples of violence, harassment and intimidation.”<sup>138</sup> As a result, the Federal Bureau of Investigation is now tracking threats against educators.<sup>139</sup>

Educators across the country have been intimidated,<sup>140</sup> disciplined, and fired for discussing race.<sup>141</sup> A Texas school principal, the first Black principal at his mostly white school, resigned after being put on administrative leave over accusations that he was teaching “critical race theory.” The accusations arose after the principal wrote a letter to the community expressing grief over the police shootings of George Floyd, Breonna Taylor and Ahmaud Arbery.<sup>142</sup> Intimidation of educators is not limited to K-12 schools. A University of Florida professor filed a grievance after university officials told faculty not to use words like “critical” or “race” in course materials.<sup>143</sup>

#### Suggested recommendations:

- Vigorously enforce laws protecting the civil rights of educators
- Provide funding, training, and resources to public and private educational institutions and civil society organizations to ensure broad availability of inclusive education that accurately portrays history, addresses human rights themes, and seeks to promote understanding among racial and ethnic minority groups
- Facilitate public dialogue regarding the importance of accurate and inclusive education, including in the promotion public safety and welfare and in the long-term prevention of domestic hate and extremism.

---

<sup>134</sup> [Protect Equality and Civics Education Act](#), S. 2682.

<sup>135</sup> [Proposed Priorities – American History and Civics Education](#), 86 Fed. Reg. 20348 (19 April 2021).

<sup>136</sup> [Press Release: Cawthorn Introduces Bill to Prevent Biden Administration Funding of Critical Race Theory](#), Republican Committee on Education & Labor, 12 May 2021.

<sup>137</sup> [White Parents Rallied to Chase a Black Educator Out of Town. Then, They Followed Her to the Next One](#), Pro Publica, 16 June 2022.

<sup>138</sup> [National School Board Association Letter to President Biden](#), 29 September 2021; [First look: Thousands of school board members urge Biden to protect them](#), Axios, 30 September 2021.

<sup>139</sup> [FBI tracking threats against educators after complaints from school boards, leaked email shows](#), District Administration, 17 November 2021; [Memo from US Attorney General Merrick Garland](#), October 4, 2021.

<sup>140</sup> [Anti-Critical Race Theory Laws Are Working. Teachers Are Thinking Twice About How They Talk About Race](#), Time, 30 June 2022.

<sup>141</sup> [How Anti-Critical Race Theory Bills Are Taking Aim At Teachers](#), FiveThirtyEight, 9 May 2022.

<sup>142</sup> [North Texas principal resigns to end fight over whether he was teaching “critical race theory.”](#) Texas Tribune, 10 November 2021.

<sup>143</sup> [Critical race theory becomes flashpoint for GOP, UF heading into legislative session](#), Miami Herald, 01 December 2022.