

TRUMP ON VOTING RIGHTS

Threatening Representational Equality, Restricting Voting Access, and Undermining the Integrity of Elections

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A second Trump administration will renew efforts to erode constitutional foundations of our democracy, make it harder for Americans to vote — particularly voters of color, voters with limited English proficiency, voters with disabilities, older voters, and other marginalized voters — and spread false, debunked theories designed to undermine confidence in the integrity of our voting system. Trump is already casting doubt on the 2024 election, saying he will not accept its outcome if he doesn't win and insinuating that violence would follow his defeat.¹ His ongoing lies about the election process² endanger the public's trust in the country's ability to carry out free and fair elections, and embolden and enable allies in state and local government to pursue similar tactics.

Here, we focus on three areas that pose significant threats to democracy and voting rights should Trump be elected to a second term. First, if re-elected, Trump is likely to renew efforts to add a citizenship question to the 2030 Census — a move that would catastrophically reduce response rates among immigrant communities and exclude noncitizens from population counts. Census population counts impact apportionment of representatives, funding, and other resource allocation. Adding a citizenship question and excluding noncitizens from the count is not only unconstitutional; it would also result in significantly undercounting historically vulnerable or underrepresented populations, specifically Latine and Asian communities and those living in urban areas, and would have reverberating negative impacts on district maps and allocation of funding.³ We defeated the previous Trump administration's attempt to do this and will use every tool at our disposal to stop it again.

Second, if reelected, Trump is likely to abuse executive power in service of his relentless attacks on our election

system. With an aim toward disenfranchising, criminalizing, and intimidating voters and election administrators, he would set the groundwork for questioning election outcomes that are adverse to him and his allies. This abuse of power may take several forms:

- ***Sham commissions or executive actions to fuel the false voter fraud narrative:*** Last time around, Trump convened a sham commission on so-called “election integrity,” an endeavor designed, in part, to spread a false narrative of widespread voter fraud and legitimize suppressive voting measures that disproportionately harm voters of color.⁴ Trump established this commission insisting on the falsehood that he won the nationwide popular vote and the state of New Hampshire in 2016.⁵ The commission was disbanded months later in response to the lawsuits following its creation,⁶ including one brought by the ACLU.⁷ Trump's claims that he actually won the 2020 election, which he still clings to four years later, and his and his allies' obsession⁸ with the nonexistent problem of widespread noncitizen voting,⁹ leave little doubt that he would again use the office of the president to generate grist for false narratives of illegal voting.
- ***Mass voter roll purges:*** Trump's nonstop, baseless claims about illegal voting are likely to be used to justify attempts to aggressively purge voters from the voter rolls. As we have seen too many times before, unreliable data and faulty procedures are often used to target eligible voters for removal from the rolls.¹⁰ In addition to encouraging and empowering allies at the state and local level to act, Trump will likely deploy the Department of Justice (DOJ) and other federal agencies to force aggressive voter purges directly.

- **Spurious criminal investigations and prosecutions:**

Trump is likely to use false, drummed-up allegations of voter fraud to deploy the DOJ and federal agencies to launch bad-faith investigations and prosecutions of voters and elections officials, and encourage state and local allies to follow suit — a go-to tactic for those intent on criminalizing the ballot box.¹¹ Indeed, Trump and his allies have promised to investigate and prosecute election administrators who have worked to expand access to the ballot on the false grounds that these administrators “rigged” the 2020 election.¹² Efforts from a second Trump administration would fuel additional voter suppression measures at the state level and have the practical effect of intimidating and disenfranchising voters, targeting communities of color who typically bear the brunt of such actions. As in the past, we will sue to ensure compliance with federal law, stop voter purges, rise to defend people wrongly prosecuted, and sue government officials who attempt to illegally restrict voters’ ability to cast their votes and have those votes counted.

- **Federal law enforcement intimidation at the polls:**

If re-elected, Trump may make good on earlier promises to send law enforcement officers to voting locations. This move would only intimidate voters and chill participation. In addition to his prior calls to send “sheriffs” and “law enforcement” to the polls,¹³ Trump’s use of federal law enforcement to stifle civil unrest during the 2020 racial justice

protests suggests a willingness to deploy federal police power in other contexts, including elections.¹⁴ Trump is likely to make these deployments — or encourage and support state and local government allies to do so with the National Guard or state and local law enforcement — in service of his false “voter fraud” narrative. He is likely to invoke false “national security” concerns to justify deploying federal officers in this way. Drawing on our expertise on both voting rights and national security, we will challenge any efforts to intimidate voters with an abusive show of military and police power at polling places.

Finally, a second Trump administration would mean a reversal of nonpartisan federal efforts to promote and expand access to voting, particularly for marginalized communities. As recent attacks by Trump surrogates and allies in Congress underscore, if re-elected, Trump would almost certainly rescind President Biden’s Executive Order 14019 on Promoting Access to Voting.¹⁵ This Executive Order includes measures aimed at increasing language access, mitigating barriers for individuals with disabilities, and increasing voter education and registration opportunities under the National Voter Registration Act (NVRA).¹⁶ Moreover, the DOJ under a Trump administration may also join in such reversals. Nevertheless, we will double down on holding violators of federal voting laws accountable in court and increase the pressure on Congress and states to enact more robust voting protections that strengthen our democracy.

OVERALL RESPONSE

Courts

Many of Trump’s anticipated anti-voter policies would violate the Constitution and federal law. As always, litigation would be a key tool in the ACLU’s response. The ACLU has extensive experience challenging restrictive and discriminatory voting laws in court. Since 2013, we have filed or intervened in more than 100 cases to defend voting rights,¹⁷ including leading successful litigation against the first Trump administration’s attempt to rig and weaponize the 2020 Census — twice defending its integrity at the Supreme Court.¹⁸ Should a second Trump administration take office, we are ready to go to court to block efforts to undermine the census and representational equality. We would also work to shut down Trump’s expected efforts to use the office of the president to fuel the false voter fraud narrative that would justify and embolden others to engage in voter suppression, voter and election worker intimidation, and baseless attacks on election outcomes.

Litigation on behalf of marginalized communities has always been challenging. Many Americans are understandably concerned about the impact of Trump’s judicial appointments on civil rights and civil liberties litigation. But we have nonetheless succeeded, even before conservative courts, in proving that restrictions on ballot access, which have proliferated since the Supreme Court’s *Shelby County v. Holder*¹⁹ decision in 2013, unlawfully discriminate against voters from historically marginalized communities and interfere with their ability to participate in the political process. In fact, since 2016, we have secured important results in favor of voting rights — even from Trump-appointed judges in the lower courts.²⁰ And we achieved a landmark ruling at the Supreme Court in *Allen v. Milligan*, 599 U.S. 1 (2023), which held that Alabama’s 2021 congressional map likely violated Section 2 of the Voting Rights Act of 1965 (VRA) and affirmed the framework and constitutionality of that provision — a ruling joined in substantial part by a Trump appointee, Justice Brett Kavanaugh.

Litigation remains a tool with deep and meaningful impact. And even when we don't win, litigation serves an important role: It publicly calls out unlawful policies and builds the kind of political and grassroots support that results in more just policies over time. A second Trump administration will no doubt renew its assaults on democracy; and we will answer in turn by bringing litigation where feasible.

Congress

The grave threats that a second Trump presidency pose to American democracy demand robust defensive and proactive responses from Congress. First, we will utilize our political power on Capitol Hill to push Congress to serve as a firewall against any of Trump's attempts to erode democracy or voting rights. We will work with lawmakers to advance legislation essential to protect our democracy, including the John Lewis Voting Rights Advancement Act,²¹ which restores and strengthens the VRA to prevent racial discrimination in voting, as well as core provisions of the Freedom to Vote Act,²² which increases access to the ballot. While these measures are unlikely to become law under a Trump presidency, congressional action, including regular committee and subcommittee hearings, is essential to maintain the saliency, immediacy, and relevance of the threats to democracy that these bills address. Historically, civil rights victories have often required years of advocacy

with nonlinear progress; we will remain determined, even under a Trump presidency, to lobby and organize until these bills become law. We will hold Congress accountable to use every constitutional authority and legislative avenue available to stop Trump's authoritarian, anti-democracy policies and practices, including its investigative and oversight authority and the power of the purse.

State & Municipalities

To fight back against expected federal attacks on voting rights under Trump, we will use our political power and presence in all 50 states to demand that state and local officials protect and strengthen the franchise through laws and policies that increase access to the ballot for every eligible voter. Funding for local elections is a shared responsibility, and we will fight to ensure that states provide local election officials with ample and consistent funding every appropriations cycle for updated equipment, election worker training, messaging campaigns to counter mis/disinformation, and measures to ensure election worker security. Finally, we will advocate for states to enact policies barring state and local law enforcement agencies from cooperating with federal law enforcement in any Trump-directed effort to intimidate voters through their presence at or near polling or ballot return locations.

SPECIFIC THREATS & POSSIBLE RESPONSES

Citizenship Question & Census Manipulation

The results of each decennial census are used to apportion seats in Congress among the states, draw congressional and state legislative district lines within each state, and distribute billions in federal funding for essential services. As a result, ensuring a fair and accurate count was a crucial part of the ACLU's work in the run-up to the 2020 Census, and we successfully halted two attempts by the Trump administration to rig the count. Going into the next census cycle, Trump's allies have made clear that carving noncitizens out of the 2030 Census count would be a key priority for a second Trump administration. The ACLU would fight any attempts to do so.

Project 2025 — an influential conservative “Presidential Transition Project,” which former senior Trump officials helped write — has put forth several radical ideas to remake the census and disrupt a fair count. In addition

to other proposals that a second Trump administration should take to reshape the Census Bureau “to execute a conservative agenda”²³—measures that have alarmed former high-level officials, including some who served in the Trump administration²⁴ — Project 2025 proposes adding a citizenship question.²⁵ As we know from the 2020 Census litigation, adding such a question would have catastrophically reduced 2020 response rates among immigrant communities.²⁶ In turn, it would have caused diverse communities in places like California, Illinois, and New York to lose representation²⁷ and cut their share of federal dollars — including public funding “used for hospitals, roads, schools, housing, supporting veterans, feeding children and families, economic development, and so much more.”²⁸

Meanwhile, Trump's allies in Congress have proposed legislation to dramatically remake the census and the resulting apportionment and allocation of funding. In May 2024, the Republican-led House passed a bill that would add a citizenship question to the census and

exclude *all* noncitizens — *regardless* of lawful status — from the number used to divide House seats among the states.²⁹ At this time, these laws have no chance of passing the Senate — and would be met with an executive veto if they did — but a second Trump administration would no doubt quickly push the same legislation or unilaterally implement similar policies, even without a supportive Congress. Senator Bill Hagerty, a Trump ally who has sponsored a Senate version of the House bill, said of the foundational process of counting noncitizens for apportionment purposes: “Why would we count people who are here illegally?”³⁰ The short answer to Senator Hagerty’s question is that the Constitution demands it, because “population is the true basis of representation.”³¹ But the question ignores that the bill also indiscriminately targets millions of *lawfully* admitted noncitizens.

The consequences of not counting noncitizens would be dire. According to a Pew Research Center study, removing just undocumented immigrants from the apportionment count would result in California, Florida, and Texas each losing a House seat.³² As noted earlier, experts anticipated massive effects on political representation and funding for important social services if a citizenship question was added to the 2020 Census. The Census Bureau predicted this would result in 9 million fewer people not responding — effectively the same as if the census skipped a state as populous as New Jersey. Meanwhile, the Census Bureau estimates that there are more than 46 million noncitizens in the United States³³ — meaning eliminating noncitizens from the apportionment process altogether would likely have exponentially worse consequences than even adding a citizenship question.

Courts

Trump’s mission to remove noncitizens from the census count is not just un-American; it is unlawful. As we successfully did twice before, we would meet Trump in the courts. Efforts to exclude noncitizens from the census would be vulnerable to legal challenges for infringing on the fundamental rights of immigrant communities and communities of color, violating numerous laws and regulations, and abusing executive power.

Between 2018 and 2020, the ACLU successfully fought off two attempts from the Trump administration to rig the 2020 Census count. In 2019, the Supreme Court ruled in favor of ACLU-represented plaintiffs, blocking the first Trump administration’s attempt to add a citizenship question to the census.³⁴

Before leaving office, the Trump administration again tried to rig the census by announcing it would exclude undocumented immigrants from the figures used to

apportion seats in Congress. We sued again, but in *Trump v. New York*, 592 U.S. 125 (2020), the Supreme Court ruled that our case was premature. Our lawsuit, however, contributed to delaying the actions of Trump’s political appointees at the Census Bureau so this proposal was not implemented, and, on January 20, 2021, the day he took office, President Biden rescinded the policy.³⁵

Fighting unilateral executive action to rig the census would be harder this time around. In 2019, the Supreme Court did not say that a citizenship question was itself out-of-bounds. It only concluded that the Trump administration gave a “contrived” reason for its action³⁶ — that is, it lied. At the time, the administration claimed that adding a citizenship question to the census was needed to better enforce the VRA.³⁷ But the record showed that adding the question would not serve that purpose; it would only hurt the census count and data.³⁸ Given a do-over, Trump would likely lie better — or not at all. Recent proposals to carve noncitizen populations from the census count have not masked their true purpose, but they can still be challenged from many angles.

The Fourteenth Amendment provides that representatives in Congress are apportioned based on the “whole number of persons in each State.”³⁹ That language is clear: Noncitizens are “persons” and must be part of the apportionment count.⁴⁰ It is also foundational: Even at the founding, when voters were almost exclusively adult, white men, it was understood that Congress represented all persons, including children, women, and (most offensively) three-fifths of a state’s enslaved population.⁴¹ Any attempt by Trump to bypass the requirement that *all* persons be included in the count by purposefully depressing response rates with a citizenship question, or by wholly removing noncitizens from the tabulation, would be unconstitutional.

The Census Act also instructs the Commerce Secretary to conduct the census every 10 years, and for the president to report to Congress “the whole number of persons in each state.”⁴² It requires “the whole number of persons” — not citizens — whose “usual residence” is in the United States to be counted where they live.⁴³ Trump’s previous attempt to exclude noncitizens from being counted clearly violated these principles by excising noncitizens and aiming to submit something other than “the whole number of persons.” If Trump or his Commerce Secretary again pushed to exclude noncitizens — whether with lawful status or not — from the count, they would squarely violate their statutory duties.

Separately, the Fifth Amendment’s Due Process Clause bans the federal government from denying any person the equal protection of the laws.⁴⁴ This guarantee is not limited by a person’s immigration or citizenship status,

and applies to “all persons” in the United States.⁴⁵ Any attempt by the Trump administration to exclude noncitizens from apportionment figures would violate the Due Process and Equal Protection Clauses by discriminating against noncitizens on the basis of national origin and citizenship. That is true whether Trump tries to exclude noncitizens by executive action or through legislation passed by Congress. Either way, it would be an unambiguous attempt to harm noncitizens by denying their personhood, limiting their access to political power, and draining resources from the communities they live in.

Adding a citizenship question to the census would similarly violate the Fifth and Fourteenth Amendments by purposefully dissuading immigrants or those who live with them from responding to the census. Since many major cities have sizeable immigrant communities, a citizenship question would lead to an inaccurate census that would ultimately result in the harmful effect of diminished representation for the urban areas where most Americans live as well as reduced federal funding for programs in those communities.

Congress

In a Trump presidency, we will work diligently to thwart attempts to make good on the promise to manipulate the census. Knowing this is a top priority of Trump and his congressional allies, we are prepared to push Congress to reject any effort to move legislation that weakens the Census Act’s requirement that “the whole number of persons” be counted in each decennial census or any attempt to mandate a citizenship question. Our expert lobbyists will brief members of Congress on the detrimental impact that an inaccurate census count would have on their home state and constituents, including decreases in federal funding and congressional representation. In addition, we will push Congress to exercise constitutional oversight over the Department of Commerce and Census Bureau to expose attempts to incorporate a citizenship question or otherwise politicize the census count. Lastly, the Senate should ensure that any nominee to the role of Census Bureau director is questioned carefully about their support for a citizenship question and whether they would exclude noncitizens from the count.

State & Local

We will leverage our affiliate presence in all 50 states to enlist state-level elected officials and influential voices from the places most likely to be negatively impacted by excluding noncitizens from the census count. Because elected officials from across the political spectrum are from states poised to lose funding and congressional representation if noncitizens are removed from census apportionment, we will forge bipartisan alliances to vocalize opposition to any census manipulation. Our

organizing arm is prepared to enlist our supporters in states across the country to raise awareness of any attempt to manipulate the census and demand that Congress stop any bill that would not count all persons. Trump’s previous census manipulation attempts caused public confusion as to who should complete the census. That confusion is certain to return if Trump makes similar attempts in a second term. We will again use our nationwide reach to educate the public on the importance of all people completing the census.⁴⁶

Abuse of Executive Power to Suppress Voting and Interfere with Elections

The office of the president comes with the largest bully pulpit as well as a swath of substantive powers. A second Trump presidency is likely to make use of this wide array of powers to target voters and election workers. Such abuse of executive powers might take a variety of forms. If past is prologue, a second Trump presidency likely will institute sham commissions aimed at bolstering the false narrative of stolen elections and justifying voter suppression laws and unjustified mass purges of voters from the rolls that sweep in and cancel the registrations of eligible voters. A second Trump administration may abuse federal police and prosecutorial powers to launch sham investigations, attack voters and election officials, and encourage vigilantism.

Using Federal Power to Criminalize Voting, Purge Voters, and Restrict Access to the Ballot

The Big Lie and Trump’s false claim that he actually won the 2020 election are well known.⁴⁷ But Trump makes claims attacking electoral results not only in elections he lost, but also those he won.⁴⁸ Even before his 2017 inauguration, Trump publicly argued that “illegal” votes led him to lose New Hampshire and the nationwide popular vote.⁴⁹ With this animating concern in the background,⁵⁰ Trump used the office of the presidency to fuel his lies about illegal voting, with the apparent aim of targeting disfavored voters and making it more difficult to vote.

In May 2017, Trump established a presidential commission to “study the registration and voting processes used in Federal elections,”⁵¹ the so-called “Pence-Kobach Commission.” Rather than appointing known experts on election process and security, Trump tapped former Kansas Secretary of State Kris Kobach, known for his anti-immigrant and voter-suppressive efforts,⁵² as Commission co-chair.⁵³ Four of the six Commission appointees were well known for making baseless claims about voter fraud or had implemented or supported

policies that unlawfully disenfranchised voters.⁵⁴ From the start, the Pence-Kobach Commission sought to further the illegal voting narrative and undermine election outcomes.⁵⁵

The Commission was quickly hampered by lawsuits — including one brought by the ACLU — because it failed to follow federal laws.⁵⁶ Still, Commission co-chair Kobach sought to collect the voter rolls from all 50 states and the District of Columbia,⁵⁷ in an effort to take failed voter-purge policies he had tried to implement in Kansas nationwide.⁵⁸ Specifically, the Trump administration sought to compare state voter rolls against data housed in various federal databases to identify supposedly ineligible registrants.⁵⁹ But the Commission's requests for voting roll data were met with broad and bipartisan criticism. Experts stressed that this kind of “checking” would result in rampant false positives because of small differences in spacing or spelling on voter rolls, inconsistencies in data collection and formatting, and the reality of common names and birthdays.⁶⁰ Cybersecurity experts also decried the Commission's plans to aggregate voter data as a hacker “gold mine.”⁶¹ Ultimately, the Pence-Kobach Commission's attempt to gather all states' voter rolls was so concerning that 48 states partially or fully refused to comply.⁶² By January 2018, less than seven months after the Commission was convened, Trump disbanded it, citing states' refusal to hand over their voters' data and the legal battles the Commission faced.⁶³ While other actors have rightfully undertaken serious efforts to ensure election security,⁶⁴ the Pence-Kobach Commission was a classic example of the wrong people with the wrong goals and wrong skills taking on an important and sensitive enterprise.

A second Trump administration would likely again lead to the politicization of election security, with true concern for protecting our electoral system and voters being wholly subordinated to political ends. Policy details from Project 2025 indicate that a second Trump administration would try to force states to allow the administration to gather their voter rolls by making federal funding contingent on such access.⁶⁵

Sowing doubt about state voter list maintenance practices is an increasingly common tactic in the playbook to undermine voter confidence in elections. Under Section 8 of the NVRA, state election officials must conduct list maintenance of the voter rolls to ensure their accuracy by conducting “a general program that makes a reasonable effort to remove names of ineligible voters.”⁶⁶ Most officials take their duties seriously and work in earnest to keep voter lists up to date. Still, numerous lawsuits have been brought to challenge officials' voter list maintenance practices as inadequate under the NVRA.⁶⁷ While everyone agrees that list maintenance — when done responsibly — is proper and needed, attempts to

use Section 8 to force states and localities to take more aggressive action too often leverage unreliable data and faulty processes and procedures that would erroneously cancel the registrations of properly registered voters.⁶⁸ A Trump DOJ is likely to bring similar overreaching lawsuits — a tactic employed during the second Bush administration⁶⁹ — and use the DOJ's power to play into an election denial narrative and risk disenfranchising eligible voters through aggressive voter purges.

With its marching orders from influential Trump allies, a Trump DOJ could go even further, criminalizing voters and election workers. In addition to efforts to gather statewide rolls to force purges of voters, a second Trump administration may also use such information to target voters for sham investigations and aggressive criminal prosecution, a known goal of Trump and his allies.⁷⁰ And Project 2025 has called for the DOJ to reassign responsibility to prosecute violations of 18 U.S.C. § 241 for alleged “voter registration fraud” and “unlawful ballot correction” from the Civil Rights Division to the Criminal Division — essentially, to criminalize the voting process.⁷¹ The proposed change sets up the DOJ to use the threat of criminal prosecution to intimidate state and local election workers. 18 U.S.C. § 241 is a Reconstruction-era provision meant to prevent bad actors like the Ku Klux Klan from intimidating voters that makes it “unlawful... to injury, threaten or intimidate” a person in the exercise of their constitutional rights. Trump allies would have the DOJ pervert this criminal statute aimed at protecting voters to instead threaten election administrators who take actions that protect access to the ballot with criminal prosecution, criminalizing what are functionally election administration disputes.⁷²

Courts

As before, if a second Trump administration uses the president's authority to establish a body staffed with known vote suppressors aimed at fueling the false narrative of illegal voting or gathering information that can be weaponized against voters, the courts offer a path to stop or check its actions. Federal commissions must comply with federal law, including the Federal Advisory Committee Act (FACA)⁷³ and the Administrative Procedure Act (APA).⁷⁴ FACA requires commissions to be transparent about their work and give the public notice of their activities.⁷⁵ It also instructs that the president must “require the membership of [an] advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed” and “contain appropriate provisions to assure that [its] advice and recommendations...will not be inappropriately influenced...”⁷⁶ This law provides pathways to challenge inappropriately constituted presidential or executive commissions.⁷⁷ Likewise, the APA provides a mechanism for judicial review. Advisory commissions commonly do their work through federal agencies. For instance, the General

Services Administration was tasked with providing funds, staffing, and other support to the Pence-Kobach Commission.⁷⁸ Agencies, in turn, must comply with federal law. When they do not, the APA provides a cause of action, including to enforce compliance with FACA.⁷⁹

Actions to enforce privacy protections may also halt reckless attempts to gather and weaponize voter's sensitive information, as the Pence-Kobach Commission threatened to do. State court litigation to enforce existing state law protections is one path to stymie actions like those of the Pence-Kobach Commission. For example, litigation brought in Texas state court resulted in an injunction preventing the state from transmitting large portions of voter roll data to the Pence-Kobach Commission.⁸⁰ These actions can also be stymied by federal suits seeking to ensure compliance with federal laws that lay out specific processes to follow before gathering sensitive data.⁸¹

The ACLU also stands ready to block efforts by a Trump DOJ or other emboldened allies to use manufactured voter fraud narratives as pretext to force aggressive voter purges. Efforts by the DOJ or Trump-aligned groups to compel jurisdictions to overzealously purge voter rolls by claiming that the NVRA requires aggressive list maintenance would, in fact, distort federal law. Courts have already rejected or dismissed these kinds of aggressive suits when states' or local election officials' maintenance efforts have been reasonable.⁸² We have successfully defended against such overreach before⁸³ and are ready to do so again, representing impacted voters or community organizations and intervening in cases against elections officials to ensure that voter roll maintenance does not improperly remove eligible voters. Moreover, if state and local government Trump allies are emboldened to pursue more aggressive purge practices, we have substantial experience successfully challenging those actions in court⁸⁴ and will continue to meet those threats.

Congress

Congress can serve as an essential check to any Trump-convened commission or executive action. We will urge Congress to embrace its oversight authority to impede potential abuses of power. For one, depending on the scope of any such commission or other executive action, additional federal appropriations may be required to carry out its goal. We will insist that Congress reject appropriations for a Pence-Kobach-style commission or other similar executive activity aimed at spreading conspiracy theories to justify voter suppression and ensure that other federal dollars are not misappropriated to support it. We will also push congressional oversight committees to conduct investigations into any commission or executive action. Such oversight will provide the American people with a transparent view of the commission's activities and communications, exposing any political motivations driving the commission or its attacks on the right to vote. As we

fight back in the halls of Congress, we will also organize a robust outside game with our members across the country who will not stand idly by if a sham commission proceeds, but will rather activate to raise awareness of the true intent of the commission, apply pressure to their congressional delegation, and work to combat false narratives aimed at justifying suppressive voting measures and undercutting faith and participation in our elections.

State & Local

State and local elected officials must also serve as a firewall against any potential commission or executive action. As we saw last time, election officials from both parties refused to turn over at least some portions of the Pence-Kobach Commission's requested information, stymieing its ability to undertake its planned scheme: To match voter rolls against federal databases to target voters for purges and prosecution, and provide fodder to justify discriminatory anti-voter measures. The success of any future attempts to conduct similar database matching or implement voter purges relies on state cooperation since each state maintains its own statewide voter database.⁸⁵ This is not information the federal government holds, and state election officials must deny any commission requests to share voter information.⁸⁶ Because public pressure will play a critical role in preventing compliance with any possible commission's data requests, we will activate our members and volunteers nationwide to pressure their state and local elected officials to protect their state's voter rolls and data.

Further, if Trump uses his federal office and megaphone to encourage suppressive policies that will impact marginalized communities, states can and must erect a strong defense. Immediately enacting state VRAs that are modeled after and supplement the federal VRA will provide a protective shield from Trump's agenda for traditionally marginalized voters. Generally, state VRAs prohibit election officials from implementing discriminatory voting policies and practices. We have already been working with our affiliates and allies in states across the country to pass these vital state-level protections,⁸⁷ and we will proactively double down on these pro-voter measures during a Trump presidency. Finally, we will hold election deniers accountable. Our voter education work in 2022 demonstrates that voters will choose Secretaries of State and election officials who believe in free and fair elections, not those who will use the office to spread the Big Lie.⁸⁸ We will continue to ensure voters know candidates' positions and what is at stake in elections for election officials.

Using Federal Police Powers to Intimidate Voters and Election Workers

Past efforts to boost the false narrative of illegal voting, justify voter suppression, and undermine faith in our

elections can also be used to level threats and false accusations against voters and election workers alike. Trump allies are specifically focused on using the mantle of the DOJ to endorse and spread false claims of widespread voter fraud in order to fuel these efforts.⁸⁹ Indeed, Jeffrey Clark, whom Trump considered installing as acting Attorney General in the waning days of his first term, has drafted an analysis charting a path for direct presidential control of federal law enforcement⁹⁰ — control that would enable Trump to actualize his threats to bring federal law enforcement to the polls and bring unwarranted investigations and prosecutions of voters, election workers, and others to advance his political agenda. In the past, Trump has maligned election workers in key states to sow doubt in our electoral system and attempt to overturn results. Coupled with Trump’s willingness to deploy federal law enforcement resources, these smears strongly suggest that he would use the same tactics to interfere in our elections and intimidate voters and election workers. Unfortunately, Trump has used federal law enforcement improperly before. Under the guise of protecting federal property and fighting crime, Trump deployed FBI, Drug Enforcement Administration, U.S. Marshals Service, and Department of Homeland Security agents to American cities during the 2020 racial justice protests.⁹¹ Soon after, Trump’s deployment of federal agents became a key campaign theme to convey his purported commitment to law and order: In a July 2020 interview, he said he was ready to dispatch 75,000 federal agents into American cities.⁹²

Trump’s focus on false “law and order” narratives,⁹³ interfering with election integrity⁹⁴ and threatening rhetoric has not waned. Indeed, Trump has suggested that whether there will be violence in the upcoming election depends on whether he wins and “on the fairness of the election” — phrasing he has invoked to mean the same thing.⁹⁵ Moreover, Trump contests elections both when he wins and when he loses.⁹⁶ In a second Trump administration, election workers and voters are vulnerable targets in any effort to bend electoral outcomes to Trump’s will.

Trump’s false accusations against two Fulton County election workers during the 2020 election underscore what’s at stake. After Trump’s campaign lawyer Rudy Giuliani falsely stated that Wandrea Moss and Ruby Freeman cheated Trump by adding fake ballots at a ballot-counting center, the two women received hundreds of threatening emails, text messages, and phone calls from Trump allies.⁹⁷ In a leaked January 2, 2021 phone call to Georgia Secretary of State Brad Raffensperger, Trump repeated these lies.⁹⁸ These election workers eventually won a defamation lawsuit against Giuliani, proving that their lives were recklessly upended by flat lies.⁹⁹ The damage wrought extended far beyond Moss and Freeman; faced with constant threats and harassment, other election workers for Fulton County quit altogether.¹⁰⁰

Countless election workers have faced ongoing harassment and physical threats since the 2020 election. The latest edition of the Brennan Center’s annual survey of election officials found that 38 percent of local election officials experienced threats, harassment, or abuse for doing their jobs and more than half were concerned about the safety of their colleagues and staff.¹⁰¹ This abuse has fueled a mass exodus: More than one-third of local election officials know at least one person who resigned at least in part due to safety concerns; the Brennan Center estimates that about one in four will be administering their first presidential election this year.¹⁰² And according to a Bipartisan Policy Center report, turnover among top election workers — people in charge of administering voting — has grown from 28 percent in 2004 to 39 percent in 2022.¹⁰³ When viewed in the aggregate, the widespread abuse of election workers — driven by lies about election fraud — threatens the stability and functioning of our democracy.

Nowhere is this threat greater than in states with close elections.¹⁰⁴ According to the DOJ’s Election Threats Task Force, 58 percent of the over 1,000 threats reviewed were in states that underwent 2020 post-election lawsuits, recounts, and audits, including Arizona, Colorado, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.¹⁰⁵ To date, 20 people have been charged with crimes relating to threatening election officials¹⁰⁶ and election officials anticipate that these threats will only increase.¹⁰⁷

Voters are also at risk for intimidation driven by Trump’s fixation on his 2020 loss. In the run up to the 2024 election, Trump has continued to advance his claim that the 2020 election was stolen, describing those who do not support him as “vermin” who “lie and steal and cheat on elections.”¹⁰⁸ Beyond the intimidating rhetoric that characterizes the Trump campaign — including dehumanizing voters and opponents and calling for law enforcement at the polls — Trump and his allies have indicated they intend to increase criminal prosecutions related to voting.¹⁰⁹ Lies surrounding the 2020 election have also led certain states to create new investigatory arms aimed at voters.¹¹⁰ These threats of criminal prosecution create an atmosphere of intimidation for voters seeking to exercise their constitutional right.

A second Trump administration would also have broad resources to turn this heated rhetoric into enforceable policy. Trump’s use of federal law enforcement and the National Guard in response to the 2020 racial justice protests suggests he would be willing to similarly deploy agents to interfere in elections.¹¹¹ To respond to protests at or near polling locations or to purportedly protect the right to vote under the guise of false election fraud allegations, Trump might improperly deploy federal law enforcement agents to monitor the administration of

elections in majority-minority communities,¹¹² stop the counting of mail-in ballots, or to create a hostile environment for voters or election workers. These actions would have a major suppressive effect on voting, especially in communities of color.

Courts

Should a second Trump administration deploy federal law enforcement officers, the National Guard, or other military personnel to intimidate voters or election workers, the ACLU has legal tools and can meet the effort in the courts. Several laws, including federal criminal law, make it unlawful for armed forces or other federal agents to interfere in any way with voting.¹¹³ 18 U.S.C. § 592 bars deploying troops or federal civil agents to voting sites.¹¹⁴ 18 U.S.C. § 593 prohibits the armed forces from interfering with voting or with election workers conducting their duties.¹¹⁵ And 18 U.S.C. § 594 criminalizes actual or attempted voter intimidation.¹¹⁶ Should a Trump administration attempt to justify such use of federal armed forces or law enforcement agents under the narrow statutory exception that such forces can be deployed to “repel armed enemies of the United States,”¹¹⁷ grave legal concerns remain.

The notion that standing armed forces cannot be used for domestic security reflects a firmly rooted “resistance of Americans to any military intrusion into civilian affairs.”¹¹⁸ By itself, military involvement in civil affairs undermines our democracy and threatens civil liberties.¹¹⁹ In addition to certain constitutional principles,¹²⁰ the Posse Comitatus Act generally forbids the use of federal military personnel for civilian law enforcement unless authorized by Congress.¹²¹ Congress strengthened the Act in 2022 and 2023 in response to the Trump administration’s use of active-duty military to respond to protests against police violence. A more fulsome discussion of the ACLU’s response to Trump’s use of federal law enforcement or military forces domestically is in our forthcoming memo, “Trump on Surveillance, Protest, and Free Speech.”

Deploying federal agents to intervene in elections violates numerous federal statutes, including 18 U.S.C. § 594, the Ku Klux Klan (KKK) Act,¹²² and Section 11(b) of the VRA.¹²³ Section 594 criminalizes both actual and attempted intimidation, threats, or coercion related to the exercise of someone’s vote. Two provisions of the KKK Act protect against election interference.¹²⁴ First, the KKK Act’s “support or advocacy clause” protects voters’ “right to support candidates in federal elections” and prohibits “force, intimidation, or threat[s]” aimed at preventing the exercise of that right.¹²⁵ Second, the Act provides protection against the deprivation of “equal protection of the laws.”¹²⁶ Both clauses forbid the kind of intimidation of voters and election workers at issue. And Section 11(b) of the VRA explicitly proscribes voter intimidation by

anyone, “whether acting under color of law or otherwise,”¹²⁷ providing another pathway for court intervention. The Supreme Court has “long held” that injunctive relief can be granted against federal officers “who are violating, or planning to violate, federal law.”¹²⁸ In addition to these statutes, a host of other federal and state laws prohibit interference with voting or other forms of voter coercion or intimidation.¹²⁹

Defamation actions, which come with substantial monetary damages, also have the potential to serve as deterrents to bad actors spreading lies about election workers. After lies were spread about them following the 2020 election, Fulton County election workers Freeman and Moss brought defamation actions against the One America News Network (OAN) and Giuliani, resulting in settlement with OAN¹³⁰ and more than \$145 million in damages against Giuliani.¹³¹ Substantial damages awards can be a key tool to prevent similar bad actors in the future.¹³²

Congress

If Trump attempts to weaponize federal law enforcement to intimidate voters and election officials, we will activate our members and supporters to push Congress to fight back. This includes demanding that Congress leverages the appropriations process to hamstring this destructive and anti-democratic use of federal law enforcement or military resources. We will also demand that Congress use its oversight powers to expose any agency plans to violate federal law at Trump’s direction to intimidate voters and interfere with election administration.

State & Local

State and local elected officials must also serve as a bulwark against the intimidation of election workers and voters. Election administration takes place at the local level, and the ACLU will continue advocating for states to provide local election officials with ample and consistent funding every appropriations cycle for election worker training, resources to counter Trump’s election lies, and ensuring the safety of election officials. Additionally, we will activate our supporters and work in broad coalition to push states to implement policies prohibiting state and local law enforcement agencies from assisting or cooperating with attempts to send federal law enforcement anywhere near voting locations to intimidate voters and election workers. We will also leverage our organizing resources to make sure states implement trainings and policies for local law enforcement on how to engage with polling locations to ensure they will not have a suppressive impact.

Rolling Back Federal Progress on Increasing Access to Voter Registration and Voting

In March 2021, the Biden administration issued Executive Order 14019 on Promoting Access to Voting.¹³³ The Executive Order encourages federal agencies to promote nonpartisan voter registration opportunities for all eligible citizens pursuant to longstanding federal law — namely, the bipartisan NVRA.¹³⁴ The Executive Order directs the federal government to live up to the NVRA's declaration that government at every level, including the federal government, has a duty to increase opportunities for all eligible Americans to register and vote. Since 2021, some agencies have taken steps toward offering voter registration services under the NVRA to the millions of eligible citizens that receive services directly from the federal government. This progress includes adding voter registration opportunities in Indian Health Service clinics and Veterans Affairs medical centers that will increase access for tribal communities and veterans.¹³⁵ However, as indicated by the relentless attacks of Trump's allies in Congress and elsewhere seeking to block implementation of this Executive Order,¹³⁶ Trump would likely rescind the Executive Order and direct agencies to reverse the progress that has been made to date.¹³⁷

Such rollbacks on progress may also extend to rescinding invaluable, long-standing guidance issued by the DOJ through past administrations — a tactic employed by the first Trump administration.¹³⁸ DOJ guidance has helped to further proper implementation of federal civil rights statutes, ensuring access to registration and voting for eligible citizens who often face undue burdens while trying to vote, including persons with disabilities or in need of language assistance. For example, as part of the Executive Order 14019, the DOJ issued new guidance to the Federal Bureau of Prisons, a part of the DOJ, on ways to ensure that all eligible individuals in federal custody have access to voter registration.¹³⁹ This guidance will help ensure that eligible voters in federal custody are not disenfranchised and serve as a model for state election officials. Besides nullifying any progress made under the Executive Order, Trump will also attempt to push restrictive voting legislation through Congress and in the states. Already, Trump and his allies are promoting policies that make it harder to register to vote, like the Safeguard American Voter Eligibility (SAVE) Act.¹⁴⁰ The SAVE Act is proposed federal legislation that would require potential voters to produce documentary proof of citizenship. Given that all individuals must already swear under penalty of law to their citizenship when registering to vote, this burdensome step erects unnecessary — and in too many cases, insurmountable — additional barriers to voting. Indeed, a recent study found that a documentary proof of citizenship requirement to register to vote would exclude millions of Americans from the political process.¹⁴¹ And when the ACLU challenged a similar requirement

championed by Kobach in Kansas, it was struck down as an unconstitutional burden on the fundamental right to vote.¹⁴²

Courts

We will meet any reversals on federal progress on voting access by shoring up existing voter registration opportunities and continuing and intensifying our challenges to suppressive voting rules and policies. The ACLU is one of the few organizations that maintains a full and active docket on enforcing compliance with states' mandatory obligations under the NVRA to provide voter registration opportunities through state motor vehicles agencies and certain other state and local agencies, including public assistance and disability offices.¹⁴³ If a second Trump administration and allies endeavor to rollback federal progress on voter registration or encourage states to shirk their NVRA-mandated responsibilities, we will ramp up our enforcement efforts, and challenge in court attempts to circumvent these requirements. In addition to our litigation to stop voter suppression, we will also amplify our work to protect civic organizations and individuals who work on the ground to help voters navigate and overcome the many barriers to access, using all tools at our disposal, including federal protections like the First and Fourteenth Amendments, the Americans with Disabilities Act of 1990,¹⁴⁴ and VRA provisions that protect voter assistance and language assistance.¹⁴⁵ We will also continue to build on our state court practice, challenging barriers to voter registration and ballot access under state constitutions and state laws that may provide independent voting rights protections.¹⁴⁶

Congress

Although Trump will seek to undo federal progress on voting access via executive action, we will utilize our lobbying and organizing resources to push Congress to use the power of the purse to stop or delay these rollbacks. We will demand that, through each appropriations cycle, pro-voter members of Congress fight to secure policies that prohibit or discourage federal agencies from reversing major initiatives already in effect under the Executive Order, including defunding these reversals. Additionally, we will insist that legislators stand firm against any federal bills that erect new barriers to registration and voting, including any documentary proof of citizenship requirements. Furthermore, we will push congressional oversight committees to use their investigation and oversight authority to expose and slow down agency efforts to reverse actions implemented under the Executive Order.

State & Local

The ACLU will activate our members and supporters around the country to push states and localities to mitigate the harm of any reversals of federal progress under the Executive Order or other attacks on voter registration

access. Because voter registration and voting rules are primarily within states and local election officials' authority, we will utilize our lobbying and organizing resources to ensure that states and localities do everything they can to increase registration opportunities and voter education across state and local government. For one, we will advocate for state legislation or executive orders that expand the state and local agencies that offer

voter registration opportunities and voter education in interactions with the residents they serve. We also have a long history of spearheading successful campaigns¹⁴⁷ to secure impactful policies that expand voting access — like same-day registration, automatic voter registration, voting rights restoration, and no-excuse and permanent absentee voting¹⁴⁸ — and we will continue to push state legislation and ballot measures to increase voter access.

CONCLUSION

Since Trump's first successful election and presidency, American democracy has experienced sustained assaults that continue to test the strength of its foundations. And in the years since, Trump and his allies have continued to push the limits of our democratic institutions and values. But despite Trump's sustained efforts, democracy-supporting Americans and residents from every walk of life continue to fight tirelessly to counter Trump's election lies and preserve and strengthen our democratic

institutions and our right to vote. The ACLU stands stronger and more prepared than ever to counter Trump's authoritarianism, abuses of power, and anti-voter policies. We will not stop fighting in the courts, in Congress and statehouses, and alongside the most marginalized communities to strengthen our democracy for generations to come and secure equal, unimpeded access to the ballot for every voter.

ENDNOTES

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- 40 *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term...”).
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- 67 Several such lawsuits have been filed since 2021, including a suit filed by right-wing group, Public Interest Legal Foundation (PILF) against the Michigan Secretary of State, see Compl., *Pub. Int. Legal Found. v. Benson*, No. 21-cv-929 (W.D. Mich. Nov. 3, 2021), and a suit filed against the Arizona Secretary of State by the Arizona Republican Party, see Compl., *Mussi v. Fontes*, No. 24-cv-1310 (June 3, 2024 D. Ariz.); see also Emily Holshouser, *Republicans sue to purge at least 500,000 people from Arizona’s voter rolls*, *Ariz. Mirror* (June 10, 2024), <https://azmirror.com/briefs/republicans-sue-to-purge-at-least-500000-people-from-arizonas-voter-rolls/>; Compl., *Md. Election Integrity, LLC v. Md. State Bd. of Elections*, No. 24-cv-672 (Mar. 6, 2024); Compl., *Republican Nat’l Comm. v. Aguilar*, No. 24-cv-518 (D. Nev. Mar. 18, 2024); Compl., *Judicial Watch v. Weber*, No. 24-cv-3750 (C.D. Cal. May 6, 2024).
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- 71 Hamilton, Project 2025, *supra* n.12 at 562-64.
- 72 *Id.* For example, Project 2025 points to guidance from the Pennsylvania Secretary of State on the use of provisional ballots to supposedly illustrate the need to reassign responsibility for Section 241 from the Civil Rights Division to the Criminal Division. *Id.* at 563-64. But Project 2025's issue with the provisional-ballot guidance boils down to a disagreement with Pennsylvania's Secretary of State over how to interpret the Help America Vote Act and the state laws that the Secretary is tasked with enforcing. That is, this is a dispute over election administration, nothing that should give rise to criminal action.
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- 74 5 U.S.C. § 706.
- 75 5 U.S.C. app. 2 §§ 10(a)-(d), 11(a); 41 C.F.R. §§ 102-3.140, -3.150(a).
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- 77 *See Ctr. for Law & Educ. v. U.S. Dep't of Educ.*, 209 F. Supp. 2d 102, 113 (D.D.C. 2002), *aff'd* 396 F.3d 1152 (D.C. Cir. 2005) (principal purpose of FACA is to enhance public accountability of federal advisory committees); *see also Food Chem. News, Inc. v. Davis*, 378 F. Supp. 1048, 1051 (D.D.C. 1974) (purpose of FACA is "to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals").
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- 83 *Judicial Watch, Inc. v. Commonwealth of Pa.*, No. 20-cv-00708, 2021 WL 858865 (M.D. Pa. Mar. 8, 2021) (dismissing case because lawsuit was based on outdated data and high registration rates alone do not lead to inference of list maintenance problem). Courts have also rejected or dismissed in many other instances. *See, e.g., Pub. Int. Legal Found. v. Benson*, --- F. Supp. 3d. ---, 2024 WL 1128565 (W.D. Mich. Mar. 1, 2024) (granting summary judgment holding that state conducted reasonable list maintenance efforts); *Md. Election Integrity, LLC v. Md. State Bd. of Elections*, No. 24-cv-672, 2024 WL 2053773 (D. Md. May 8, 2024) (dismissing lawsuit attempting to force further purges in Maryland).
- 84 *See, e.g., League of Women Voters of Indiana, Inc. v. Sullivan*, 5 F.4th 714 (7th Cir. 2021) (granting summary judgment preventing Indiana purge law from removing voters); *League of Women Voters of Missouri v. Ashcroft*, 336 F. Supp. 3d 998, 1001 (W.D. Mo. 2018) (granting preliminary injunction addressing state's failure to offer voter registration services); *MOVE Texas Civic Action Fund v. Whitley*, No. 19-cv-41 (S.D. Tex 2019) (Texas implemented a purge program supposedly aimed at noncitizens, but instead targeted hundreds of thousands eligible Texas voters; the case ended in settlement after the court called the state's efforts "ham-handed and threatening" and that the effort was "a solution in search of a problem").
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- 147 See, e.g., Promote the Vote, ACLU of Michigan, <https://www.aclumich.org/en/cases/promote-vote>; Press Release, ACLU of Nevada, ACLU of Nevada and All Voting Is Local Nevada Run Ad Campaign to Expand Voting Access During Pandemic (July 7, 2020), <https://www.aclu.org/press-releases/aclu-nevada-and-all-voting-local-nevada-run-ad-campaign-expand-voting-access-during>; Support Automatic Voter Registration, ACLU of Nevada, <https://www.aclunv.org/en/question-5-automatic-voter-registration>; Jess Zaccagnino, *Vote “Yes” for Early Voting*, ACLU of Connecticut (Sept. 19, 2022), <https://www.acluct.org/en/news/vote-yes-early-voting>; Bobby Hoffman, *Voters Choose to Defend Democracy by Approving Voting Rights Measures*, ACLU (Nov. 6, 2018), <https://www.aclu.org/news/civil-liberties/voters-choose-defend-democracy-approving-voting-rights-measures>.
- 148 Danielle Root & Liz Kennedy, *Increasing Voter Participation in America: Policies to Drive Participation and Make Voting More Convenient*, Center for American Progress (July 18, 2018), <https://www.americanprogress.org/article/increasing-voter-participation-america>.

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