



# **Lawyers' Committee for Civil Rights Under Law Policy Platform**



**LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS  
U N D E R L A W**

August | 2020

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# Acknowledgements

The Lawyers' Committee policy platform document was prepared by the Public Policy team, including **Lisa Bornstein**, Vice President for Policy & Strategy, **Demelza Baer**, Director of Public Policy, and **Erinn Martin**, Policy Counsel; and **Kristen Clarke**, President & Executive Director; **Damon Hewitt**, Executive Vice President; **Isabella Kres-Nash**, Executive Assistant, with contributions from **Arthur Ago**, **Ernest Bihm**, **David Brody**, **Marcia Johnson-Blanco**, **Diane Glauber**, **Arusha Gordon**, **Phylcia Hill**, **David Hinojosa**, **Paul Joffe**, **Dariely Rodriguez**, **Ezra Rosenberg**, **Thomas Silverstein**, and **Dorian Spence**. We gratefully acknowledge the terrific work of our colleague **Stanley Augustin** for creating a compelling visual design and layout, and working closely with us on several rounds of edits. We are grateful to our Legal Interns **Veronica Faison** and **Suzy Park** for their excellent assistance with editing, Bluebooking, and cite-checking.

We gratefully acknowledge the Lawyers' Committee Board Transition Committee members for their leadership, vision, and stewardship in the development of this document: **Julissa Reynoso**, Chair; **Daniel Barr**; **Edward Correia**; **Ira Feinberg**; **Charles Kerr**; **Loren Kieve**; **John Libby**; **Paul Saunders**; **Jane Sherburne**; and **Sandra Thompson**.





# About the Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee has been a leader in the battle for equal rights since it was created in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination. Simply put, our mission is to secure equal justice under the rule of law. For more than 50 years, the Lawyers' Committee has worked across the nation to protect and defend the civil rights of African Americans and other people of color in the areas of voting rights, economic justice, education, criminal justice, and fair housing.



## SUMMARY OF POLICY PRIORITIES

**Protect Voting Rights:** Enact the John Lewis Voting Rights Advancement Act (VRAA), which would restore the Section 5 preclearance process that was struck down in the U.S. Supreme Court's 2013 *Shelby County v. Holder* decision, ensuring that discriminatory laws and policies are blocked from taking effect.

**Modernize Election Administration:** Make the process of registering to vote and casting a ballot in person or by mail equally accessible to all voters. Ensure that election systems are modernized and secure to protect the integrity of election outcomes.

**Select and Appoint Judicial Nominees who are Fair, Impartial, and Reflective of the Racial and Ethnic Diversity of the Nation:** Select and appoint fair and impartial nominees to the federal courts who reflect the rich racial and ethnic diversity of the United States.

**End the Criminalization of Poverty:** Support legislation that requires state and local justice systems to stop using criminal justice fines and fees to fund their budgets, as a condition of continuing to receive federal criminal justice grants.



**Promote Fair and Integrated Housing:** Fully enforce the Fair Housing Act by both affirmatively furthering fair housing and protecting people from housing discrimination. Ensure that disparate impact claims are preserved as a critical and necessary litigation avenue for people who experience discrimination in housing and lending.

**Promote Diversity in Higher Education and Ensure Meaningful, Equitable Educational Opportunity for All Students:** Ensure all pre-K-16 students, particularly underserved students of color, have access to the educational resources they need to succeed and expand access and affordability to higher education institutions. During the COVID-19 pandemic, substantial federal funding, targeted at high-need students and communities, must be authorized for the states to bridge the digital divide. Additionally, access to higher education and college affordability must be expanded through legislation like the College Affordability Act (H.R. 4674), restoring the Department of Education's guidance on the "Voluntary Use of Race to Achieve Diversity in Postsecondary Education," conducting rigorous oversight of predatory, for-profit institutions and increasing regulation through the PROTECT Students Act (S. 867), and improving student loan repayment and forgiveness programs.

**Ensure Racial Health Equity:** Preserve and strengthen anti-discrimination provisions under the Affordable Care Act and relevant civil rights laws to ensure protections for people of color who experience discrimination in healthcare. The COVID-19 pandemic has exacerbated existing inequities within our health care system with respect to access, treatment, and care for people of color. Mandate the collection and release of health data based on race and ethnicity by the state and federal agencies, and increase funding for hospitals and care centers providing COVID-19 treatment to communities of color to address the grave racial disparities in testing, treatment, and case outcomes.

**Enact Comprehensive Privacy Legislation and Protect Online Public Accommodations:** Enact comprehensive privacy legislation modeled on the Lawyers' Committee for Civil Rights Under Law and Free Press's "Online Civil Rights and Privacy Act," that prioritizes civil rights protections and addresses discriminatory uses of personal data in housing, employment, lending, education, online public accommodations, and voting. To protect communities of color during the COVID-19 pandemic from heightened surveillance and loss of personal privacy, enact the Public Health Emergency Privacy Act.

*"Every accomplishment starts with the decision to try."*

**-President John F. Kennedy**



# INTRODUCTION

Decades after the last civil rights movement in the 1960s, progress has stalled on racial justice in employment, housing, education, voting rights, and health care, and the criminal justice system operates to reinforce a racial caste system that did not end with the dismantling of Jim Crow. Across the United States, and the world, civil rights are under attack. As we face alarming and imminent challenges to our democracy, we must confront the deep systemic racism and structural inequality that distort our nation.

This entrenched inequality and discrimination is causing deep unrest. People have taken to the streets in cities from coast-to-coast to protest the killings of George Floyd, Breonna Taylor, and Ahmaud Arbery, the most recent victims of racial violence, police brutality and white supremacy to garner nationwide attention—but we know there are many more whose names the broader public will never know. These protests are unfolding during the global COVID-19 pandemic, while African Americans and other people of color are disproportionately contracting and dying from the coronavirus, driven by the fact that people of color are more likely to be frontline and essential workers and that discrimination and structural inequality plague our health care system. Black people and other people of color are also experiencing significantly higher unemployment rates than white people during the worst recession and unemployment crisis since the Great Depression a century ago.

*“As we face alarming and imminent challenges to our democracy, we must confront the deep systemic racism and structural inequality that distort our nation.”*

Systemic racism, structural inequality, and white supremacy underlie all these disparities by design. As in 1968, following the assassination of Dr. Martin Luther King, Jr., when the nation experienced widespread unrest due to racial injustice, Black people still have twice the unemployment rate and double the poverty rate of white people. The nation's public schools remain separate and unequal for students of color, particularly those from low-income families. The racial wealth gap has skyrocketed, and the Black homeownership rate has barely changed in over 50 years. Absent change, it would now take the average Black family 228 years to accumulate the wealth of the average white family today. Our country shamefully has the largest prison system in the world, where African-American men are six times more likely to be incarcerated than white men. The discrimination in the criminal justice system is then imported into voting, resulting in the disfranchisement of millions of Black people and other people of color through state laws that deny the



right to vote to people in prison and on probation and parole. These laws are part of a system of voter suppression, implemented by states and local jurisdictions, that makes it harder for people of color and other marginalized communities to register and vote. We must now consciously break these barriers and create new systems of racial justice and equality to ensure that all Americans have equal access to educational opportunities, employment, housing, and the ballot.

The Lawyers' Committee for Civil Rights Under Law recommends these policy changes to continue the work of dismantling systemic racism and advancing equality. Each of these issues reflects our core mission as a racial justice organization, our ongoing work, our deep commitment to achieving change through litigation, policy advocacy, public engagement and education. This document is not meant to encompass all civil rights issues, but we believe that these issues are some of the most urgent and vital challenges to tackle in our effort to advance equality.



# Policy Priorities

## Protect Voting Rights

**Recommendation:** Enact the John Lewis Voting Rights Advancement Act (VRAA), which would restore the Section 5 preclearance process that was struck down in the United States Supreme Court's 2013 *Shelby County v. Holder* decision, ensuring that discriminatory laws and policies are blocked from taking effect.

**Background:**

Protecting the fundamental right to vote is vital to our democracy because it is the right that is “preservative of all rights,”<sup>1</sup> since it empowers people to elect candidates of their choice, who will then govern and legislate to advance other rights. Because the right to vote is so closely related to citizenship and representation, there have been several civil rights movements throughout U.S. history to press for an expansion of the franchise. It was not until the Civil Rights Movement of the 1950s and 1960s, which led to the enactment of the Voting Rights Act of 1965, that Black people and other people of color truly gained access to the right to vote.<sup>2</sup>

Before the Voting Rights Act became law, covered states and local jurisdictions would continually enact new barriers to the ballot, like poll taxes or literacy tests, keeping the registration and turnout of Black voters at exceedingly low levels—at least 50 percentage points behind the registration of white voters.<sup>3</sup> Litigation challenging this discrimination against Black voters proved ineffective because it was extremely expensive and often took years to reach a resolution. This enabled officials to delay or defy court orders by devising new discriminatory tactics that were variations of those covered by the federal decrees.<sup>4</sup> With the passage of the Voting Rights Act in 1965, Section 5 required covered jurisdictions—those with a defined and demonstrated history of racial discrimination in voting—to show federal authorities that any proposed voting change did not have a discriminatory purpose or the discriminatory effect of diminishing the ability of voters of color to vote or to elect their preferred candidates of choice.<sup>5</sup> The Section 5 preclearance requirement enabled the U.S. Department of Justice to block discriminatory laws before they went into effect, protecting African Americans and other people of color from laws that would discriminate and potentially affect the outcome of elections. In addition, Section 5 required jurisdictions to provide notice to the federal government of potential voting law changes, which also meant notice to the public, greatly reducing the burden on the public and non-profit organizations seeking to monitor and protect the right to vote.<sup>6</sup>





In 2013, this vital protection of Section 5 was struck down by the U.S. Supreme Court in *Shelby County v. Holder* on the basis that “things have changed dramatically” since passage of the Voting Rights Act in 1965, necessitating the creation of a new formula for which states and jurisdiction would be subject to preclearance.<sup>7</sup> But, Congress has not yet enacted a new coverage formula, so the protections of Section 5 do not currently exist.<sup>8</sup> Since the *Shelby County* decision, the precious right to vote has been threatened—and denied—for millions of Americans due to discriminatory laws that have gone into effect in jurisdictions with a sordid history of voting discrimination.<sup>9</sup> During the COVID-19 pandemic, voters of color have been disproportionately harmed by changes to state and local election administration,<sup>10</sup> which would have been subject to Section 5 preclearance for previously covered states and jurisdictions. The John Lewis Voting Rights Advancement Act would modernize the current Voting Rights Act and restore the vital preclearance process for states and localities with recent records of discrimination in voting. The U.S. House of Representatives originally passed H.R. 4, now the John Lewis Voting Rights Advancement Act in 2019, but the U.S. Senate has not yet acted on it.<sup>11</sup>



## **Modernize Election Administration**

**Recommendation:** Make the process of registering to vote and casting a ballot in person or by mail equally accessible to all voters and ensure that election systems are modernized and secure to protect the integrity of election outcomes.

### **Background:**

Voters across the country continue to face administrative hurdles in registering to vote, updating their voter registration when they move, and verifying that their ballot was properly cast for the candidates of their choice. Due to the COVID-19 pandemic, new barriers to the vote have arisen, including polling place closures close to Election Day, unsafe and under-staffed polling locations that make social distancing nearly impossible, and the disfranchisement of people who requested—but never received—absentee ballots.<sup>12</sup> The cumulative effect of these barriers reduces voter turnout and participation—especially among people of color.<sup>13</sup>

In order to preserve the ability of all people to exercise their fundamental right to vote, while protecting their health during a pandemic, it is necessary to (1) ensure that the election administrative infrastructure is modernized to include automatic and same-day voter registration; (2) that the voting equipment and polling places are safe and regularly sanitized according to Centers for Disease Control and Prevention guidelines, and that they are accessible to people with limited English proficiency and people with disabilities; (3) that the voting equipment is secure from both tampering and hacking, but still enables people to receive a paper record to verify that their votes were properly cast, while protecting their anonymity in the process; and (4) that people are able to vote on days other than Election Day, including through early voting and no excuse absentee voting. These reforms would expand participation in our democracy by making the administrative process of registering and voting easier, and they would ultimately save time and scarce government resources in the administration of elections.<sup>14</sup>

Most importantly, these suggested reforms would eliminate the efficacy of voter suppression tactics that disproportionately harm people of color, such as purges of eligible voters from the electoral rolls (which would be rendered useless if voters could simply re-register at the poll on Election Day),<sup>15</sup> restrictions on voter registration and groups that register people to vote (since people could simply register themselves right before voting),<sup>16</sup> and ineffective assistance for limited English proficiency voters (because they would be able to vote in their language of strongest fluency).<sup>17</sup> During the COVID-19 pandemic, it is particularly critical to expand both options for in person voting and vote by mail, including no excuse absentee voting.<sup>18</sup>



## Select and Appoint Judicial Nominees who are Fair, Impartial, and Reflective of the Racial and Ethnic Diversity of the Nation

**Recommendation:** Select and appoint fair and impartial nominees to the federal courts who reflect the rich racial and ethnic diversity of the United States.

### **Background:**

The federal courts play a vital role in ensuring equal justice under law for all within the United States of America, particularly for African Americans and other people of color. Preserving the independence and impartiality of the federal judiciary is essential to the foundation of our democracy as enshrined in the Constitution and its system of checks and balances. The Supreme Court's 1954 seminal decision in *Brown v. Board of Education* that guaranteed African Americans equal protection of the law and ended "separate but equal" in public schools, was a transformational step in our nation's history for society as a whole and the role of the federal courts in ensuring equal justice.<sup>19</sup> With the *Brown* decision and others, the American public and parties before the court came to expect federal judges who would be neutral arbiters of the law to ensure their claims are fairly heard.

As American society has made strides in racial integration in the years following *Brown*, there has been slow progress in achieving racial and ethnic diversity on the federal bench. The current federal judiciary does not reflect the racial or ethnic diversity of the country, as 80 percent of federal judges are white, and only 10 percent are African American, 6.6 percent are Hispanic and 2.6 percent are Asian.<sup>20</sup> These percentages do not mirror the respective populations as 60 percent of the country is white, 12.5 percent are Black, 18.3 percent are Hispanic and 5.7 percent are Asian.<sup>21</sup> It is important that judges reflect and represent the different backgrounds, communities and experiences of the American public as it builds greater trust in the federal judiciary and can reduce perceptions of bias often associated with the courts by people of color.<sup>22</sup>

*"Preserving the independence and impartiality of the federal judiciary is essential to the foundation of our democracy as enshrined in the Constitution and its system of checks and balances."*



## **End the Criminalization of Poverty**

**Recommendation:** Support legislation that requires state and local justice systems to stop using criminal justice fines and fees to fund their budgets, as a condition of continuing to receive federal criminal justice grants.

### **Background:**

Many state and local justice systems—including courts, prosecutors, court-appointed counsel, police, and jails—are partially funded by the collection of fines, fees, and costs associated with the prosecution and jailing of people convicted in traffic or criminal court. In 43 states and the District of Columbia, criminal defendants can be charged for the services of a public defender. In 41 states, people can be charged for the cost of their incarceration. In 44 states, people can be charged for probation or parole supervision costs.<sup>23</sup>

These fines, fees, and costs can add up to hundreds or thousands of dollars, which is more than most people can afford to pay.<sup>24</sup> Since payment of these fines, fees, and costs is often part of an individual's sentence, the inability to pay these sums can trap people—who are disproportionately people of color and low-income people—in a cycle of involvement in the criminal justice system.<sup>25</sup> This can have dire consequences for an individual's right to vote, as some states disfranchise people during periods of incarceration or when they are on probation or parole.<sup>26</sup> Now, during the COVID-19 pandemic, many jurisdictions continue to arrest and detain people for failing to pay fines, fees, and costs despite their inability to do so.<sup>27</sup> The result is that there are thousands of people across the country in jail because of their inability to pay for bail or to pay past due criminal justice fines and fees. This, then, subjects them to a heightened risk of contracting the virus and of death, particularly because social distancing is not feasible in prisons and jails, leading to an explosion of COVID outbreaks.<sup>28</sup>

Debtors prisons were banned by federal law in 1833,<sup>29</sup> and the U.S. Supreme Court held in *Bearden v. Georgia* that a court cannot revoke probation or sentence a person to imprisonment solely because she or he cannot pay a fine, “without determining that [they] had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist.”<sup>30</sup> Despite these rulings, courts do not always determine an individual's ability to pay a fine, and people are still jailed for warrants that are issued due to their failure to complete terms of a conviction, including payment of fines and fees.<sup>31</sup>

Eliminating the connection between the collection of fines, fees, and costs levied against indigent defendants and funding of the criminal justice system would also eliminate the incentive to impose these monetary penalties, thus significantly reducing the unnecessary incarceration of poor people and people of color. In fact, discriminatory policing practices can be linked with the collection of revenue, as the U.S. Department of Justice found in its investigation of the Ferguson Police Department after the killing of Michael Brown, an unarmed Black teenager.<sup>32</sup> The





report found that “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs . . . contributing to a pattern of unconstitutional policing [and] . . . rais[ing] due process concerns” about the operation of its municipal court.<sup>33</sup>

In Ferguson, the city’s reliance on criminal justice fines, fee, and cost revenue to fund its budget created a perverse incentive where local law enforcement was encouraged to increase its issuance of tickets and collection of fines and fees to compensate for budget shortfalls.<sup>34</sup> Across the country, Black communities and other communities of color are disproportionately impacted by fines and fees because the local police and court systems rely on those fines and fees to function at their current staffing levels. Thus, severing the link between state and local budgets and the collection of fines, fees, and costs is critical to reducing over-policing and over-incarceration, and its disproportionate harm to people of color and low-income people—particularly during a global pandemic.



## Promote Fair and Integrated Housing

**Recommendation:** Fully enforce the Fair Housing Act by both affirmatively furthering fair housing and protecting people from housing discrimination, and ensure that disparate impact claims are preserved as a critical and necessary litigation avenue for people who experience discrimination in housing and lending.

### **Background:**

Fair housing is a critical civil and human right, because having shelter and a home is one of our most basic needs as people. Housing is also directly connected to the realization of other rights, like access to a good education, proximity to necessary health care, and the ability to access safe drinking water and to breathe clean air. During the COVID-19 pandemic, the importance of housing—and its fragility for many people—is evident, as millions of people cannot afford to pay their rent or mortgage while needing to stay home for their health and safety.<sup>35</sup> Under the Fair Housing Act, the federal government is both obligated to enforce its anti-discrimination laws in housing and lending, and to affirmatively further fair housing.<sup>36</sup>

The obligation to affirmatively further fair housing (AFFH) is primarily under the jurisdiction of the Department of Housing & Urban Development (HUD), and it entails both dismantling residential housing segregation and ensuring that segregated communities of color receive the same government investments—in education, public transit, parks and recreation, economic development, and access to health care—that other communities receive.<sup>37</sup> Thus, it is essential that HUD rescind its termination of the 2015 Affirmatively Furthering Fair Housing rule,<sup>38</sup> which guts the regulation governing how the Department exercises oversight over its public sector grantees' compliance with AFFH.<sup>39</sup> This would essentially end jurisdictions' fair housing planning and community engagement efforts.<sup>40</sup> States should also be encouraged to follow California's lead and pass state legislation that requires its jurisdictions to conduct a rigorous fair housing planning process.<sup>41</sup>

Prior to the COVID-19 pandemic, the U.S. was experiencing a severe shortage of affordable housing, especially in high opportunity areas with access to resources like good schools and health care.<sup>42</sup> As the pandemic continues to deepen the economic recession and trigger unemployment levels not seen since the Great Depression, millions of Americans are facing housing insecurity because they can no longer afford their rent or mortgage.<sup>43</sup> Now, it is more important than ever that state and local jurisdictions implement affirmatively furthering fair housing plans to ensure that resources, like additional affordable housing units, are distributed equitably to communities and that those resources dismantle housing segregation and promote integration.

In addition, HUD should withdraw the Notice of Proposed Rulemaking published in August 2019 that would gut a 2013 regulation setting a standard for deciding disparate impact claims under the Fair Housing Act.<sup>44</sup> This proposal—if finalized—would make it virtually impossible for a victim of discrimination to ever bring a successful



disparate impact claim because they will have a drastically higher legal burden and be obligated to preemptively anticipate and debunk potential defenses.<sup>45</sup> Further, the proposed rule would disincentivize businesses from collecting important data that could reveal discrimination, concealing it from victims and the public.<sup>46</sup>

Finally, HUD must take steps to aggressively enforce the Fair Housing Act—including through disparate impact claims—and to affirmatively further fair housing by promoting housing mobility and making deep government investments in segregated communities of color.

## Promote Diversity in Higher Education and Ensure Meaningful, Equitable Educational Opportunity for All Students

**Recommendation:** Ensure all pre-k-16 students, particularly underserved students of color, have access to the educational resources they need to succeed and expanded access and affordability to higher education institutions. During the COVID-19 pandemic, substantial federal funding must be authorized for the states and targeted at high-need students and communities bridging the digital divide. Additionally, access to higher education and college affordability must be expanded through legislation like the College Affordability Act (H.R. 4674), restoring Department of Education guidance on the “Voluntary Use of Race to Achieve Diversity in Postsecondary Education,” conducting rigorous oversight of predatory, for-profit institutions and increasing regulation through the PROTECT Students Act (S. 867), and improving student loan repayment and forgiveness programs.

### **Background:**

Over the past fifty years, although students of color have continued to attain greater high school graduation rates, jobs increasingly require some training or education beyond high school. Now, only 36 percent of jobs accept a high school diploma alone, with nearly one-in-three jobs requiring some advanced education/ Associates Degree, and 35 percent requiring a college degree or other advanced education.<sup>47</sup> Higher education is critical to achieving economic security and social mobility, but systemic barriers to college enrollment and completion persist for African Americans and other people of color and are compounded with the lack of access to educational resources afforded to underserved students of color in their formative pre-k-12 years.

Congress previously acted to protect access to educational opportunity for pre-K students of color and low-income students through the reauthorization of the Elementary and Secondary Education Act of 1965 (“ESEA”) and providing funding, albeit inadequate funding. The COVID-19 pandemic has exacerbated the existing inequities between schools and communities.<sup>48</sup> In 2015, higher percentages of



white children (66 percent) had home internet access than did Black (53 percent), Hispanic (52 percent), and American Indian/Alaska Native children (49 percent).<sup>49</sup> As schools have shifted to remote learning, the disparate access to online learning (including broadband, WiFi, software, hardware and technology support) is likely increasing the “homework” gap.<sup>50</sup> With expected, substantial revenue shortfalls in the states this year, Congress must step in with funding to bridge the digital divide. Congress must also ensure every student has access to accelerated learning opportunities in the home and in school, including access to summer school and compensatory services (like tutoring) to ensure any loss of learning resulting from COVID-19 is meaningfully addressed.

Beyond the barriers to educational resources in pre-k-12, access to and affordability of higher education is not equitable. People of color have to borrow substantially more money to finance their education, and this debt burden increases their likelihood of not completing their degree or defaulting on their loans.<sup>51</sup> Only one-in-five Black students graduate from their first four-year college within four years, compared to nearly one-in-two white students.<sup>52</sup> Yet access to more selective institutions, where Black student completion rates are much higher but enrollment is lower,<sup>53</sup> is under attack with three lawsuits challenging racial diversity as a compelling interest for college admissions.<sup>54</sup>

The issues of college access and affordability have come to the forefront during the pandemic, as college campuses closed, and students moved to remote learning. Many students—particularly students of color and lower-income students—relied on resources supplied by their colleges, including housing, meal plans, and high-speed internet access, and now they must meet their academic obligations without these supports. Further, as the recession deepens, it is likely that a substantial number of low-income students and students of color will be unable to afford to continue their education in the fall.

It is vital that the Department of Education help colleges and universities preserve and expand diversity among students and faculty, including by restoring guidance on the “Voluntary Use of Race to Achieve Diversity in Postsecondary Education,” and improving student loan repayment and forgiveness programs. Congress must also make a college education more affordable, by enacting legislation like the College Affordability Act (H.R. 4674), and expand oversight and regulation of for-profit colleges that often leave students deep in debt without a degree or education to advance their career.





## **Ensure Racial Health Equity**

**Recommendation:** Preserve and strengthen anti-discrimination provisions under the Affordable Care Act and relevant civil rights laws to ensure protections for people of color who experience discrimination in healthcare. The COVID-19 pandemic has exacerbated existing inequities within our health care system with respect to access, treatment, and care for people of color. Mandate the collection and release of health data based on race and ethnicity by the state and federal government agencies, and increase funding for hospitals and care centers providing COVID-19 treatment to communities of color to address the grave racial disparities in testing, treatment, and case outcomes.

### **Background:**

Due to deep-rooted, systemic racial discrimination, Black communities disproportionately bear the brunt of poverty in this country and face significant barriers in accessing health equitably. Black communities and other communities of color have historically suffered from systemic discrimination and bias in our economy and the healthcare system, resulting in lower rates of insurance coverage, insufficient care, and poorer health outcomes.<sup>55</sup> Coverage gains under the Affordable Care Act (ACA) have played an important role in combatting these structural barriers, particularly through a number of provisions such as Section 1557, which was designed to explicitly address and remedy race-based discrimination and disparities in health care.

Despite the progress made under the ACA over the past decade, there is still a need to expand efforts to increase access to affordable and comprehensive health care for low-income people of color. Barriers in the form of Medicaid work requirements, limited or no access to contraception and reproductive health care services, high maternal and infant mortality rates, and lack of paid family and medical leave all disproportionately impact Black Americans and other people of color. COVID-19 has laid bare these longstanding racial health disparities. There is ample evidence that Black people are being infected with and dying from COVID-19 at higher rates than their white counterparts.<sup>56</sup> Black Americans are overrepresented in low-wage critical infrastructure jobs that increase their exposure to COVID-19 and do not provide paid medical leave. This increased exposure is further compounded by the fact that Black Americans are more likely to suffer from underlying health conditions—including diabetes, heart conditions, and asthma—that increase the risk of complications from COVID-19.<sup>57</sup>

The Centers for Disease Control and Prevention (CDC) has failed to provide complete COVID-19 data that includes race and ethnicity. Without clear data, officials and lawmakers are ill-equipped and unable to develop targeted public health responses and strategies to address the unique needs of communities of color.

Congress must ensure that the Department of Health and Human Services (HHS) has the resources to provide concrete protocols and guidance to aid state



public health officials with consistently collecting and reporting race and ethnic demographic data for all tests, cases, and outcomes.<sup>58</sup> Congress must also require the HHS—including its relevant sub-agencies, the CDC and the Centers for Medicare and Medicaid Services (CMS)—to collaboratively collect and immediately release comprehensive and accurate racial and ethnic demographic data related to COVID-19 testing, disease burden, and patient outcomes.<sup>59</sup> Congress should also mandate that the CDC and related agencies promptly release all existing data, disaggregated by race and ethnicity, related to COVID-19 tests, cases, and deaths for all states.<sup>60</sup> Complete and accurate national race and ethnic demographic data is critical to the development of robust health interventions that are responsive to the needs of communities of color, and to stem the ongoing community spread of this unprecedented and dangerous virus and future viruses.

Further, while states and localities must continue to receive emergency aid to address needs like medical equipment and hospital staff support, the federal government must ensure that aid is equitably distributed to marginalized communities, many of which lack access to hospitals. For example, in Washington, D.C. there are 16 hospitals, only one of which is located on the east side of the Anacostia River.<sup>61</sup> This area is comprised of predominantly African American neighborhoods, where the poverty rate is three times higher than the rest of the city.<sup>62</sup> It is critical to increase access to testing for communities of color, particularly those in heavily impacted states and rural counties, where hospitals and medical care facilities have been under-resourced. Lastly, funding must be allocated to hospitals for training programs that increase access to culturally competent medical care for people of color and for improving positive health outcomes in maternal and infant care, as Black women and other women of color face significantly higher rates of maternal and infant mortality.<sup>63</sup>



## Enact Comprehensive Privacy Legislation and Protect Online Public Accommodations

**Recommendation:** Enact comprehensive privacy legislation modeled on the Lawyers' Committee for Civil Rights Under Law and Free Press's "Online Civil Rights and Privacy Act,"<sup>64</sup> that prioritizes civil rights protections and addresses discriminatory uses of personal data in housing, employment, lending, education, online public accommodations, and voting. To protect communities of color during the COVID-19 pandemic from heightened surveillance and loss of personal privacy, enact the Public Health Emergency Privacy Act.<sup>65</sup>

### **Background:**

As the Internet has evolved into our public square, marketplace, employment agency, bank, library, and theater, it is imperative that discrimination be outlawed in the data economy just as discrimination was outlawed in the brick-and-mortar economy.<sup>66</sup> Privacy rights are civil rights.<sup>67</sup> Long before the landmark 1958 Supreme Court decision in *NAACP v. Alabama*, the ability to control the privacy and autonomy of one's personal life has always been vital to advancing racial justice.<sup>68</sup> Internet businesses that serve the general public are public accommodations and must be protected as such.<sup>69</sup>

Invasive and predatory commercial data practices have disparate impacts on Black and Hispanic Americans, and low-income people. Biased algorithms,<sup>70</sup> unscrupulous actors,<sup>71</sup> and poorly designed technologies<sup>72</sup> can misuse, intentionally or unintentionally, individuals' personal data in numerous ways, including deceptive voter suppression and disinformation campaigns;<sup>73</sup> digital redlining and predatory marketing in employment,<sup>74</sup> housing,<sup>75</sup> lending,<sup>76</sup> education,<sup>77</sup> and insurance;<sup>78</sup> discriminatory government surveillance<sup>79</sup> and policing;<sup>80</sup> denial and degradation of service in online public accommodations;<sup>81</sup> and amplification of white supremacy.<sup>82</sup>

*"Long before the landmark 1958 Supreme Court decision in NAACP v. Alabama, the ability to control the privacy and autonomy of one's personal life has always been vital to advancing racial justice."*

Congress must enact comprehensive privacy legislation that (1) prohibits discriminatory uses of personal data in housing, employment, education, credit, and insurance; (2) addresses algorithmic bias; (3) prohibits deceptive voter suppression; (4) requires transparency and accountability from monopolistic tech companies; and (5) provides a private right of action so individuals can assert their rights if they are violated.<sup>83</sup>



The COVID-19 pandemic has presented unique challenges as companies and local governments develop surveillance technologies to track the virus's spread.<sup>84</sup> It is imperative that Black Americans and other people of color, who have been disproportionately impacted by the virus and its accompanying economic hardship, do not have their privacy rights violated through the use of the technologies.<sup>85</sup> Congress must enact legislation regulating such technology by requiring that all COVID-19 tracking technologies: (1) shall be voluntary; (2) shall be tested for efficacy and safety before being deployed; (3) do not unfairly discriminate; and (4) do not allow private health data to be used for secondary purposes or shared with law enforcement.<sup>86</sup>





## Endnotes

<sup>1</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

<sup>2</sup> Within four years after the VRA was enacted, one million Black voters were registered, including half of the Black voting age population in southern states. In Alabama, only 11 percent of voting age Black Americans were registered prior to the VRA in 1956. One year after enactment in 1966, 51 percent of voting age Black Americans were registered. KEVIN J. COLEMAN, CONG. RES. SERV., R43626, THE VOTING RIGHTS ACT OF 1965: BACKGROUND AND OVERVIEW, 12-13 (2015), <https://fas.org/sgp/crs/misc/R43626.pdf>; KLAHILA BROWN-DEAN ET AL., JOINT CTR. FOR POL. & ECON. STUD., 50 YEARS OF THE VOTING RIGHTS ACT: THE STATE OF RACE IN POLITICS 5 (2015), <https://jointcenter.org/wp-content/uploads/2019/11/VRA-report-3.5.15-1130-amupdated.pdf>. (“Since the 1870s, white elected officials in many parts of the South had used violence, literacy tests, interpretation tests, poll taxes, and other devices to exclude African Americans.”)

<sup>3</sup> *South Carolina v. Katzenbach*, 383 U.S. 301, 313 (1966).

<sup>4</sup> *Id.* at 314.

<sup>5</sup> Voting Rights Act, Pub. L. No. 89-110 § 5, 79 Stat. 437, 439 (1965) (codified as amended at 52 U.S.C. § 10304)

<sup>6</sup> LAWS’ COMM. FOR C.R. UNDER L., STATEMENT OF KRISTEN CLARKE PRESIDENT AND EXECUTIVE DIRECTOR, LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW TO THE U.S. HOUSE COMMITTEE ON ADMINISTRATION SUBCOMMITTEE ON ELECTIONS AT HEARING ON “VOTING RIGHTS AND ELECTIONS ADMINISTRATION IN AMERICA” 3 (2019), [https://lawyerscommittee.org/wp-content/uploads/2019/10/KC-Testimony-for-House-Admin-10.17.19-hearing\\_FINAL-with-appendices.pdf](https://lawyerscommittee.org/wp-content/uploads/2019/10/KC-Testimony-for-House-Admin-10.17.19-hearing_FINAL-with-appendices.pdf).

<sup>7</sup> *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 531 (2013).

<sup>8</sup> *Id.* at 532. (“Congress... must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions.”)

<sup>9</sup> LAWS’ COMM. FOR C.R. UNDER L., VOTING DISCRIMINATION AGAINST RACIAL AND ETHNIC MINORITIES 1994–2019 at 3-6 (2019), [https://lawyerscommittee.org/wp-content/uploads/2019/11/LC\\_VOTER\\_DISCRIM\\_RPT\\_H.pdf](https://lawyerscommittee.org/wp-content/uploads/2019/11/LC_VOTER_DISCRIM_RPT_H.pdf).

<sup>10</sup> Shruti Banerjee & Megan Gall, *COVID-19 Silenced Voters of Color in Wisconsin*, DEMOS (May 14, 2020), <https://www.demos.org/blog/covid-19-silenced-voters-color-wisconsin>.

<sup>11</sup> Voting Rights Advancement Act of 2019, H.R. 4, 116th Cong. § 4 (2019).

<sup>12</sup> Elaine Godfrey, *A Primary? In a Pandemic?*, ATLANTIC (Mar. 17, 2020), <https://www.theatlantic.com/politics/archive/2020/03/primary-florida-arizona-illinois-coronavirus/607996/>; Rebecca Ayala, *With Mail Ballots More Important During Covid-19, Improper Voter Purges Can Do Even More Damage*, BRENNAN CTR. (May 8, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/mail-ballots-more-important-during-covid-19-improper-voter-purges-can-do>.

<sup>13</sup> LAWS’ COMM. FOR C.R. UNDER L., *supra* note 9.

<sup>14</sup> Danielle Root & Liz Kennedy, *Increasing Voter Participation in America*, CTR. FOR AM. PROGRESS (July 11, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/07/11/453319/increasing-voter-participation-america/>.

<sup>15</sup> Consent Decree & Judgment, *Common Cause N.Y. v. Bd. of Elections in N.Y.*, No. 1:16-cv-06122-NGG-RML (E.D.N.Y. Oct. 31, 2017).

<sup>16</sup> Compl., *Tenn. State Conf. of the NAACP v. Hargett*, No. 3:19-cv-00365 (M.D. Tenn. filed May 2, 2019).

<sup>17</sup> *Ga. Assn’ of Latino Elected Officials, Inc. v. Gwinnett Cnty. Bd. of Registration & Elections*, No. 1:20-cv-1587-WMR, 2020 2505535 (N.D. Ga. May 8, 2020).

<sup>18</sup> Paul Joffe, *Defending Democracy: Ensuring Access to the Ballot Box in the Era of COVID-19*, ELECTION PROT. HOTLINE, <https://866ourvote.org/defending-democracy-april-2020/> (last visited May 28, 2020).

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<sup>20</sup> Danielle Root et al, *Building a More Inclusive Federal Judiciary*, CTR. FOR AM. PROGRESS (Oct. 3, 2019), <https://www.americanprogress.org/issues/courts/reports/2019/10/03/475359/building-inclusive-federal-judiciary/>.



<sup>21</sup> *Id.*

<sup>22</sup> Joseph Shapiro, *As Court Fees Rise, The Poor Are Paying The Price*, NAT'L PUB. RADIO (May 19, 2014), <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>.

<sup>23</sup> Joseph Shapiro, *Guilty And Charged: State-By-State Court Fees*, NAT'L PUB. RADIO (May 19, 2014), <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> (survey was assisted by the Brennan Center for Justice and the National Center for State Courts).

<sup>24</sup> BD. OF GOVERNORS OF THE FED. RESRV. SYS., REPORT ON THE ECONOMIC WELL-BEING OF U.S. HOUSEHOLDS IN 2019, FEATURING SUPPLEMENTAL DATA FROM APRIL 2020 at 9 (2019), <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>.

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<sup>26</sup> *Felon Voting Rights*, NAT'L CONF. STATE LEGISLATURES (Oct. 14, 2019), <https://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx>.

<sup>27</sup> Weihua Li, *Police Arrested Fewer People During Coronavirus Shutdowns—Even Fewer Were White*, MARSHALL PROJ. (June 2, 2020), <https://www.themarshallproject.org/2020/06/02/police-arrested-fewer-people-during-coronavirus-shutdowns-even-fewer-were-white>.

<sup>28</sup> See, e.g. Bill Hutchinson, *One of the largest single-site jails in the U.S grapples with 141 coronavirus cases*, ABC NEWS (Mar. 31, 2020), <https://abcnews.go.com/Health/largest-single-site-jails-us-grapples-134-coronavirus/story?id=69871778>; Rosemary Westwood, *Third Federal Inmate Dies from COVID-19*, NAT'L PUB. RADIO (Apr. 1, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/01/825448006/second-federal-inmate-dies-from-covid-19>; Jason Pohl, *California jails, prisons on alert for coronavirus. Fear it will 'spread like wildfire'*, SACRAMENTO BEE (Mar. 9, 2020), <https://www.sacbee.com/news/california/article240962761.html>.

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<sup>31</sup> See *Mahoney v. Derrick*, No. 73CV-18-874 (Ark. White Cnty. Cir. Ct. filed Nov. 14, 2018); *Feenstra v. Sigler*, No. 19-CV-00234-GKF-FHM (N.D. Okla. Nov. 13, 2019).

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<sup>33</sup> U.S. DEP'T. OF JUST. C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2 (2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

<sup>34</sup> *Id.*

<sup>35</sup> See, e.g. *COVID-19 Housing Policy Scorecard*, EVICTION LAB (last visited July 23, 2020, <https://evictionlab.org/covid-policy-scorecard/#scorecard-resources> (with assistance from Diane Glauber and Thomas Silverstein of the Lawyers' Committee for Civil Rights Under Law).

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<sup>37</sup> Justin Steil & Nicholas Kelly, *The Fairest of Them All: Analyzing Affirmatively Furthering Fair Housing Compliance*, 29 J. HOUSING POLICY DEBATE (2019), <https://www.tandfonline.com/doi/full/10.1080/10511482.2018.1469527> (with assistance from Diane Glauber and Thomas Silverstein of the Lawyers' Committee for Civil Rights Under Law).

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<sup>41</sup> CAL. GOV'T CODE § 8899.50 (2018).



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- <sup>66</sup> See Brief of Laws' Comm. for C.R. Under L. & Wash. Laws' Comm. for C.R. & Urb. Aff. as Amici Curiae in Support of Neither Party, *Freedom Watch, Inc. v. Google, Inc.*, No. 19-7030, 2020 WL 3096365 (D.C. Cir. filed Oct. 16, 2019); Clarke & Brody, *supra* note 64.
- <sup>67</sup> Gaurav Laroia & David Brody, *Privacy Rights Are Civil Rights. We Need to Protect Them.*, FREE PRESS (March 14, 2019), <https://www.freepress.net/our-response/expert-analysis/insights-opinions/privacy-rights-are-civil-rights-we-need-protect-them>.
- <sup>68</sup> Alabama required foreign corporations in the state to file with the Secretary before doing business; the Secretary asserted that the NAACP violated the statute by not releasing its membership list. The Supreme Court held that Alabama could not compel membership information because the freedom to associate is protected under the Due Process Clause in the Fourteenth Amendment. *NAACP v. Alabama, ex rel. Patterson*, 357 U.S. 449, 452 (1958) (holding that requiring an association to disclose the names of its members violates members' rights).
- <sup>69</sup> See DAVID BRODY & SEAN BICKFORD, LAWS' COMM. FOR C.R. UNDER L., DISCRIMINATORY DENIAL OF SERVICE: APPLYING STATE PUBLIC ACCOMMODATIONS LAWS TO ONLINE COMMERCE (2020), <https://lawyerscommittee.org/wp-content/uploads/2019/12/Online-Public-Accommodations-Report.pdf>.
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