



February 24, 2022

Senate Committee on Appropriations
Florida Senate
Senator Kelli Stargel, Chair

Dear Chair Stargel and Members of the Senate Appropriations Committee:

Fair Elections Center¹ writes to express its strong opposition to the strike-all amendment to SB 524. This omnibus bill will make Florida's elections less accessible and less efficient. The Center respectfully requests that this letter be entered into the record as written testimony.

While this testimony focuses on a select group of measures, we want to emphasize our opposition to the entirety of this bill. SB 524 would:

- Further restrict voters who require assistance in returning their mail in ballots, and leave open the question of adding complex requirements to the vote-by-mail process;
- Add several requirements to voter registration list maintenance activities; and
- Significantly increase the limit on aggregate fines for third-party voter registration organizations.

SB 524 will make it more challenging for Floridians, especially Floridians with disabilities, to exercise their right to vote by mail. Additionally, the bill's extreme penalties for violating ballot collection restrictions will further impede Floridians' ability to participate in democracy, especially Floridians with felony convictions for violent offenses who have served their time.

SB 524 will further restrict voters who require assistance in returning their mail in ballots with two draconian changes. In the first, the bill makes it a felony for anyone to return completed ballots on behalf of more than two voters who are not immediate family members. This provision takes SB 90's amendment—which made such assistance a misdemeanor²—one misstep further.

¹ Fair Elections Center is a national, nonpartisan voting rights and election reform 501(c)(3) non-profit organization based in Washington, D.C. Its mission is to use litigation, education, and advocacy to remove barriers to registration and voting, particularly those disenfranchising underrepresented and marginalized communities, and to improve election administration.

² Fla. Stat. § 104.0616(2).

SB 524 is just the latest affront to voters with disabilities. Over 13 percent of Floridians have a disability, which is slightly more than the national average.³ Many of these Floridians rely on the assistance from others collecting their ballots in order for their vote to be counted. Federal law entitles these voters who require assistance “by reason of blindness, disability, or inability to read or write” to receive help in voting from a “person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”⁴ Courts have held that state laws that put stricter limits on who the voter can choose to assist them in voting violate Section 208 of the Voting Rights Act. *See, e.g., OCA-Greater Houston v. Texas*, 867 F.3d 604, (5th Cir. 2017); *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 235 (M.D. N.C. 2020), *reconsideration denied*, No. 1:20CV457, 2020 WL 6591396 (M.D. N.C. Sept. 30, 2020).

In the second severe proposal, the bill will subject violators of Florida’s current ballot collection restrictions to the habitual offender sentencing rules under Section 775.084. Under current law, violators are subject to either the general penalties set forth in Section 775.082 or the fines listed in Section 775.083.⁵ SB 524’s third option for punishment under the habitual offender sentencing rules could deter individuals with felony convictions for violent offenses from assisting voters in their communities—further restricting their ability to fully participate in democracy upon completing their underlying sentences.

Yesterday’s amendment importantly strikes a variety of harmful requirements to the vote-by-mail process—including a requirement for voters to provide additional personal information with their completed ballots. However, the bill still directs the Department of State to “provide a plan to prescribe the use of a Florida driver license number, a Florida identification card number, social security number, or any part thereof to confirm the identity of each elector returning a vote-by-mail ballot.” The results of this plan are due to the Legislature by January 1, 2023.

Senator Hutson suggested yesterday that this plan is necessary to “better protect vote-by-mail balloting to ensure election integrity while protecting voters from identity theft.”⁶ This repeated call for “election integrity” is in stark contrast to the rhetoric immediately following Florida’s 2020 general election, where more than 4.85 million Floridians voted by mail.⁷ Indeed, Governor Ron

³ *Disability Characteristics* tbl. S1810, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=S1810&g=0100000US_0400000US12&tid=ACSST1Y2019.S1810 (last visited Feb. 3, 2022).

⁴ 52 U.S.C. § 10508.

⁵ Fla. Stat. § 104.0616(2).

⁶ *The Florida Senate has revamped its election proposal, especially on mail-in ballots*, WFSU (Feb. 23, 2022, 8:21 AM), <https://news.wfsu.org/state-news/2022-02-23/the-florida-senate-has-revamped-its-elections-proposal-especially-on-mail-in-ballots>.

⁷ *See Daniel A. Smith, Casting, Rejecting, and Curing Vote-by-Mail Ballots in Florida’s 2020 General Election*, ALL VOTING IS LOCAL 3 (Feb. 16, 2021), https://225egw40g2k99t0ud3pbf2ct-wpengine.netdna-ssl.com/wp-content/uploads/2021/03/031121_FL_VBM-Report_final.pdf; *see also Archived Early Voting and Vote-by-Mail Statistics: 2020 General Election – PDF*, FLA. DIV. OF ELECTIONS, <https://fldoswebumbracoprod.blob.core.windows.net/media/703948/gen-2020.pdf> (last visited Feb. 3, 2022).

DeSantis stated that Florida’s election “inspire[d] confidence,”⁸ and should be a “model for the nation.”⁹

Rather than praising the historic number of Floridians who voted by mail in 2020, SB 524 mandates a plan for the Legislature to consider options that would ensure fewer Floridians will vote-by-mail in future elections. Informational and systemic barriers already make it challenging for some voters to cast vote-by-mail ballots after SB 90—particularly voters of color, voters from low-income communities, and voters with disabilities; any additional, unnecessary barriers will exacerbate this issue by making it harder for Floridians to submit their vote-by-mail ballots.

By amending the frequency and breadth of voter registration list maintenance, SB 524 will likely result in the state purging otherwise eligible voters. Additionally, the bill will burden the supervisors’ work.

SB 524 will require supervisors to update the voter registration list each year, as opposed to every other year as required in current law.¹⁰ This amendment will thus burden the supervisors’ work on a now annual basis. Leon County Supervisor of Elections Mark Earley cautioned the Senate Ethics & Elections Committee on the CS’ changes to list maintenance as it was then-currently written.

Moreover, the bill will add sweeping and concerning changes to the current laws addressing voter registration list maintenance. For example, the Department of Highway Safety and Motor Vehicles will be required to send election officials information provided by applicants who attest they are non-citizens. The Department of Highway Safety and Motor Vehicles will be added as a third agency that can provide information concerning deceased voters. Circuit court clerks will also be required to send the terms of individuals’ felony sentences, including any outstanding legal financial obligations, to election officials. Each of these changes has the potential to improperly remove otherwise eligible voters, particularly if poor matching criteria and outdated information are used.

SB 524 will further chill and burden third-party voter registration organizations.

First, the bill increases the limit on aggregate fines for any violations in a calendar year from \$1,000 to \$50,000. This drastic increase runs the grave risk of draining these organizations’ finances. With depleted budgets, these organizations—which have turned in over two million voter registration applications on behalf of Floridians to vote since 2009¹¹—may be forced to permanently terminate their registration efforts.

⁸ See Jillian Olsen, ‘*Why can’t these states be more like Florida?*’: Gov. DeSantis praises his battleground states’ election response, 10 TAMPA BAY (Nov. 4, 2020, 6:49 PM), <https://www.wtsp.com/article/news/politics/elections/florida-governor-ron-desantis-praises-states-2020-election-reporting/67-902a9417-3834-48bc-abfd-2e606b491d1b>.

⁹ @GovRonDeSantis, TWITTER (Jan. 2, 2021, 2:31 PM), <https://twitter.com/govrondesantis/status/1345452642303176706>.

¹⁰ Fla. Stat. § 98.065(2)(a)-(c).

¹¹ *Third Party Voter Registration Organizations*, FLA. DEP’T OF STATE, <https://tpvr.elections.myflorida.com/Applications.aspx> (last visited February 2, 2022).

It is with these concerns in mind that a federal court struck down provisions of a prior version of Section 97.0575.¹² In *League of Women Voters of Fla. v. Cobb*, the district court noted that third-party voter registration organizations were forced to shut down their registration activities because of the law’s “heavy, strict, and joint and several liability penalties.” 447 F. Supp. 2d 1314, 1333 (S.D. Fla. 2006). The district court concluded that “the Law’s demonstrated impact is to limit the means of voter registration in Florida, contradict the longstanding tradition of not discriminating against non-political parties with respect to voter registration, and burden the Plaintiffs’ protected speech and associational rights.” *Id.* at 1339.

On the heels of the district court’s decision and injunction, the 2007 legislature amended Section 97.0575 to include a provision limiting the total fines to be assessed against third-party voter registration organizations to \$1,000.¹³ Without care for the *Cobb* court’s decision and injunction, SB 524 will drastically increase the current limit fifty times over, once again violating third-party voter registration organizations’ First Amendment rights and leaving Floridians without a vital, reliable option when deciding how to register to vote.

Second, SB 524 will fine third-party voter registration organizations \$1,000 for each application unlawfully altered by a canvasser convicted for that offense—regardless of whether the organization was aware of the issue. As the amendment recognizes, any changes made to a voter registration application of another person, without their knowledge and consent, is a criminal offense and can be prosecuted as a felony.¹⁴ Criminal investigations and penalties are a sufficient solution for such actions; any additional civil penalties imposed on the organization without any requirement that they had knowledge of the violation will only further chill these organizations. Moreover, it remains unclear whether the aggregate fine cap, discussed *supra*, applies to this amendment. This loophole can thus similarly run the risk of clearing organizations’ finances while also contravening *Cobb*.

* * *

At the Senate Ethics & Elections Committee hearing earlier this month, Senator Hutson suggested that SB 524 is necessary to ensure that Florida has the “most secure elections in the entire nation.” This same explanation was given just one year ago before SB 90 was signed into law.¹⁵ While the ink is still drying on last year’s bill, this committee is presented with the latest attack on the fundamental right to vote. SB 524 will chill third-party voter registration organizations, burden supervisors of elections, and disenfranchise otherwise-eligible voters in Florida.

¹² Fla. Stat. § 97.0575 (2005). During the 2005 legislative session, the legislature enacted Section 97.0575 to regulate third-party voter registration organizations. That law imposed fines upon these organizations, except political parties, if the completed voter registration applications they collected were not delivered to the applicable supervisor of elections within ten days, before the registration books closed, or at all. *Id.* § 97.0575(3)(a)-(c).

¹³ *Id.* § 97.0575 (2008).

¹⁴ *Id.* § 104.012(4).

¹⁵ See, e.g., Dara Kam, *Florida Legislature: Senate Republicans pass bill making it harder to cast ballots by mail*, THE DAYTONA BEACH NEWS-JOURNAL (Apr. 27, 2021, 11:47 AM), <https://www.news-journalonline.com/story/news/state/2021/04/27/florida-senate-republicans-ok-bill-making-harder-cast-mail-ballots-politics-elections/4854723001/>.

Thank you for the opportunity to express these concerns. If you have further questions, please contact me at the email address below.

Sincerely,

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