

April 23, 2021

*Sent via email*

Florida House of Representatives  
513 The Capitol  
402 South Monroe Street  
Tallahassee, FL 32399-1300

**Re: Opposition to H.B. 7041**

Dear Speaker Sprowls, Speaker Pro Tempore Avila, Majority Leader Grant, Minority Leader DuBose, and members of the Florida House of Representatives:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and the NAACP Florida State Conference (“FSC”) write to express in the strongest possible terms our opposition to H.B. 7041.<sup>1</sup> We are deeply concerned that the enactment of H.B. 7041 will impose unnecessary barriers and burdens that will disproportionately impact the rights of Black voters and other voters of color, voters with disabilities, the elderly, and low-income voters—and may violate federal laws, including the First, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, the Voting Rights Act of 1965, and the Americans with Disabilities Act. For these reasons, we urge you to vote no on H.B. 7041.

As nonprofit, nonpartisan civil rights organizations, our aim is to ensure that all voters, particularly Black voters and other voters of color, have full, meaningful, and unburdened access to the one fundamental right that is preservative of all other rights: the right of citizens to access the ballot box, participate in the electoral process on an equal basis, and elect candidates of their choice. Equitable voting opportunities are critical to ensuring that Florida voters can safely, securely, and freely participate in our democracy. Increasing voting access builds a healthier, more inclusive democracy. Accordingly, the Florida House of Representatives should be considering measures to preserve and *expand* voting rights and voting access—not measures that would erode these fundamental guarantees.

Yet H.B. 7041 is written to undermine significant progress to expand voting rights and ballot access in Florida, especially for Black voters and other voters of color. Although we have concerns about many of the provisions in H.B. 7041, in this letter we draw your attention primarily to the severe new restrictions that H.B. 7041 would impose on Vote-by-Mail (“VBM”) ballots.

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<sup>1</sup> See H.B. 7041, Florida House of Representatives, Version c2 (posted April 20, 2021, 2:30 P.M.) (“H.B. 7041”).

**I. H.B. 7041 Imposes Severe Restrictions on VBM Ballots, Which Will Likely Result in Disproportionate Barriers and Burdens on Black Voters and Other Voters of Color, Voters With Disabilities, Elderly Voters, and Low-Income Voters.**

H.B. 7041 imposes a range of new restrictions that will make it more difficult for voters to cast VBM ballots at every stage in the process, and will disproportionately affect Black and other voters of color, elderly voters, and voters with disabilities. These provisions are harmful and unnecessary. Their likely combined effects raise still greater concerns. By imposing a myriad of new restrictions on VBM ballots, H.B. 7041 will exclude many voters from voting by VBM, and likely prevent other voters from voting altogether.

*First*, H.B. 7041 will make it more difficult for voters to request VBM ballots by imposing an unnecessary identification requirement on the VBM request form. *Second*, even when voters are able to successfully request ballots, H.B. 7041 will force them to renew their request every year, eliminating current laws that allow voters to place requests for two years at once. *Third*, H.B. 7041 will make it more difficult for voters to return their VBM ballots by imposing new restrictions that will likely reduce the availability of drop boxes. *Fourth*, H.B. 7041 will restrict who can return completed VBM ballots on behalf of others, subject third parties who return VBM ballots to staffed drop boxes to uniquely onerous ID requirements, and, in some circumstances, make it a crime merely to possess another voter's ballot, regardless of intent. These restrictions will likely force more voters to attempt to vote in person, leading to longer lines and wait times for all voters, and outright disenfranchisement for some.

H.B. 7041's assault on voting by mail is especially concerning because it comes immediately after an election in which Florida's Black voters cast VBM ballots at unprecedented levels. In the 2020 general election, 522,038 Black voters cast VBM ballots,<sup>2</sup> more than double the number of VBM ballots cast by Black voters in previous years.<sup>3</sup> Moreover, the proportion of VBM ballots that were cast by Black voters has increased by over 28% since the 2016 election.<sup>4</sup>

The November 2020 general election was conducted under the extraordinarily challenging circumstances of a global pandemic. Yet, according

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<sup>2</sup> See Daniel A. Smith, *Casting, Rejecting, and Curing Vote-by-Mail Ballots in Florida's 2020 General Election, Report for All Voting is Local* (Feb. 16, 2021), <https://bit.ly/3tDdzZ3>.

<sup>3</sup> In the 2016 general election 244,348 Black voters cast VBM ballots and in the 2018 general election 238,200 Black voters cast VBM ballots in 2018. See Anna Baringer, Michael C. Heron, and Daniel A. Smith, *Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus*, *Election Law Journal: Rules, Politics, and Policy*, Vol. 19, No. 3 (Sept. 17, 2020), <https://bit.ly/3uRtVgw>.

<sup>4</sup> In 2016, 89 out of every 1,000 VBM ballots were cast by Black voters. In 2020, 114 out of every 1,000 VBM ballots were cast by Black voters. See *supra* note 2. This represents an increase in the proportion of VBM ballots cast by Black voters of over 28% in four years.

to Governor Ron DeSantis, “Florida’s 2020 election season was a resounding success and model for the nation.”<sup>5</sup> Moreover, Secretary of State Laurel Lee explained, “Under the most trying of circumstances, Florida ensured a safe and efficient voting process [for] all Florida voters.”<sup>6</sup> Based on the November 2020 election, Secretary Lee added, Florida voters “should be confident in the integrity of our election system and the security of their vote.”<sup>7</sup> Indeed, during H.B. 7041’s committee hearing on April 19, 2021 hearing, Rep. Blaise Ingoglia, H.B. 7041’s sponsor, stated: “Last election cycle, Florida administered one of the smoothest elections in the nation and [was] praised as a model for how elections should be run.”<sup>8</sup> Moreover, there has been no evidence of fraud in VBM balloting in this election or prior Florida elections that could provide any justification for these provisions of H.B. 7041. In light of this record of successful and secure election administration in Florida, no legitimate state interest would be furthered by imposing the severe and needless restrictions on voting access set forth in H.B. 7041.

**a. Identification Requirement for VBM Ballot Requests (Section 21)**

H.B. 7041 requires registered voters making a “written or telephonic request” for a VBM ballot to provide a Florida driver license number, Florida identification card number, or the last four digits of their social security number—whichever may be verified in the supervisor’s records.<sup>9</sup> This is an unnecessary burden on VBM requesters that will prevent some voters, including recently naturalized citizens, from being able to request VBM ballots.

Florida is already required, under federal law, to permit eligible voters who lack a driver license, state identification card, or SSN to register to vote.<sup>10</sup> As both Florida law and the federal Help America Vote Act (HAVA) recognize, some qualified voters have neither a driver license, a state identification card, nor a Social Security Number (SSN).<sup>11</sup> These voters may include newly

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<sup>5</sup> Ron DeSantis (@GovRonDeSantis), Twitter (Jan. 2, 2021, 2:31 PM), <https://twitter.com/GovRonDeSantis/status/1345452642303176706>.

<sup>6</sup> Jason Delgado, *Florida’s electoral college casts votes for Donald Trump, Mike Pence*, Florida Politics, (Dec. 14, 2020), <https://floridapolitics.com/archives/388818-floridas-electoral-college-casts-votes-for-donald-trump-mike-pence/>.

<sup>7</sup> *Id.*

<sup>8</sup> *4/19/21 House State Affairs Committee* at 1:50:52–1:51:06, The Florida Channel, <https://thefloridachannel.org/videos/4-19-21-house-state-affairs-committee/>.

<sup>9</sup> See H.B. 7041, Section 16, amendments to Fla. Stat. § 101.62(1)(b).

<sup>10</sup> 52 U.S.C. § 21083(a)(5)(A)(ii).

<sup>11</sup> 52 U.S.C. § 21083(a)(5)(A)(ii) (HAVA providing that, if a voter-registration applicant “has not been issued a current and valid driver’s license or a social security number,” states must “assign the applicant a number which will serve to identify the applicant for voter registration purposes”); Fla. Stat. § 97.053(5)(a) (providing that voter-registration applicants who “ha[ve] not been issued a current and valid Florida driver license, Florida identification card, or social security number” may confirm their identify by “affirm[ing] this fact in the manner

naturalized citizens, who are predominantly people of color.<sup>12</sup> Yet H.B. 7041’s language appears calibrated to exclude such voters from requesting VBM ballots. This provision of H.B. 7041 serves no legitimate purpose and will bar some voters—who are likely disproportionately voters of color—from the VBM process.

### **b. Limitation on Standing VBM Applications (Section 21)**

H.B. 7041 would also burden all Florida voters, including elderly voters who disproportionately rely on VBM, by making them re-apply for VBM ballots twice as frequently as current law requires.<sup>13</sup> The bill’s curtailment of the duration of valid VBM requests serves no legitimate purpose and will discriminatorily harm older Florida voters, voters with disabilities, and other voters who rely on VBM ballots to access the franchise.

Currently, Florida law provides that a single VBM application enables a voter to cast a VBM ballot for all elections until the end of the next calendar year. Under H.B. 7041, however, voters will be forced to renew their request every year, eliminating the current law that allow voters to place requests for two years at once. In fact, any voter who applies for a VBM ballot after July 1, 2021, will be forced to reapply for any election held after December 31, 2021—only six months later.

To the extent that this onerous requirement is intended to prevent live ballots from being sent to addresses that are no longer valid, procedures under existing state law for updating and verifying voter registration addresses are already adequate to ensure that SOEs have updated address information for registered voters in their county, and that VBM ballots reach only the voters who have requested them.<sup>14</sup>

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prescribed in the uniform statewide voter registration application”); *see also Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1156 & n.1 (11th Cir. 2008) (discussing these procedures); Florida Voter Registration Application, Fla. Dep’t of State, <https://files.floridados.gov/media/701770/1s-2040-ds-de-39-eng.pdf> (including a check box allowing voters to indicate they “have NONE of these numbers”).

<sup>12</sup> *See* Abby Budiman, Luis Noe-Bustamante & Mark Hugo Lopez, *Naturalized Citizens Make Up Record One-in-Ten U.S. Eligible Voters in 2020* 7, Pew Research Center (Feb. 26, 2020), [https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2020/02/GMD\\_2020.02.26\\_Immigrant-Eligible-Voters.pdf](https://www.pewresearch.org/hispanic/wp-content/uploads/sites/5/2020/02/GMD_2020.02.26_Immigrant-Eligible-Voters.pdf).

<sup>13</sup> H.B. 7041, Section 21.

<sup>14</sup> *See, e.g.*, Fla. Stat. § 101.62(1)(a) (providing that a request to receive VBM ballots “may be considered canceled when any first-class mail sent by the supervisor to the elector is returned as undeliverable”); Fla. Stat. § 97.1031(1) (requiring voters to notify the appropriate supervisor of elections if they change their residence address); Fla. Stat. § 98.0655 (setting out voter registration list maintenance procedures to identify voters who may have moved without notifying their supervisor of elections); Fla. Stat. § 98.045(2)(b) (providing that notice from “a voter registration official from an election official in another state indicating that a registered voter in this state has registered to vote in that other state shall be

In light of these facts, the severe burdens caused by H.B. 7041’s shortening of the validity period of VBM ballot for older voters and voters with disabilities further no legitimate state interest.

### **c. Limitations on Drop Box Availability (Section 24)**

H.B. 7041 would impose two concerning requirements on drop boxes: it would impose a new identification requirement for drop box return and it would require most drop boxes to be staffed in person by a SOE employee.

*First*, S.B. 90 will require voters to provide a Florida driver license or Florida identification card—only two of the 12 forms of ID allowed under Florida’s voter ID law for in-person voting<sup>15</sup>—to an election worker when returning their ballot to a drop box, or to complete a signed “attestation” stating that they did not have one of these two forms of identification on their person when returning their VBM ballot.”<sup>16</sup> This identification requirement is more likely to burden Black voters and other voters of color, who are less likely to have one of the two forms of identification permitted under this law.<sup>17</sup>

Further, this requirement is likely to lead to lines at drop boxes, which makes drop boxes less useful to voters seeking a fast and efficient way to deliver their ballot. Indeed, in the last election cycle there were reports of lines forming for voters seeking to use drop boxes even without an identification requirement.<sup>18</sup> These lines would become especially onerous if large numbers of voters lack one of the two forms of identification and are required to review and sign an attestation form in order to drop off their ballot.

This requirement serves no legitimate purpose. Not only is there no evidence of fraud in Florida concerning drop boxes, but it is unclear why the bill permits only two forms of identification, while excluding the other 10 other

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considered as a written request from the voter to have the voter's name removed from the statewide voter registration system”); Fla. Stat. § 98.015(3) (making SOEs responsible for updating voter registration information, including addresses); Fla. Stat. § 97.057 (requiring the Department of Highway Safety and Motor Vehicles to provide voters an opportunity to update their voter registration information, and requiring the Department to notify voters that change-of-address information can be automatically transferred to a voter registration application).

<sup>15</sup> See Fla. Stat. § 101.043(1)(a).

<sup>16</sup> See H.B. 7041, Section 24.

<sup>17</sup> See, e.g., Matt A. Barreto, Stephen Nuño, Gabriel R. Sanchez, Hannah L. Walker, *The Racial Implications of Voter Identification Laws in America*, American Politics Research (Mar. 2019).

<sup>18</sup> See Dara Kam, *Polls 'Quiet' During Florida's Primary Elections After Heavy Mail-In Voting*, News Service of Florida (Aug. 18, 2020), available at <https://wusfnews.wusf.usf.edu/politics/2020-08-18/polls-quiet-during-floridas-primary-elections-after-heavy-mail-in-voting>.

forms of identification that are currently used under Florida law to satisfy the identification requirement for in-person voting.<sup>19</sup>

Moreover, the bill itself acknowledges that identification for drop boxes is unnecessary. In particular, the bill provides that voters may use drop boxes in the evening or during other hours when their SOE office is closed *without providing any form of identification*, so long as the drop box is under video surveillance. If video surveillance is sufficient for the purpose of drop box security, it is not clear what purpose the additional identification requirement serves, especially when it would disproportionately burden Black voters and other voters of color.

*Second*, H.B. 7041 requires that all drop boxes must be staffed in person, with only a limited exception for drop boxes located at SOE offices that are made available during hours when the office is not open.

In recent elections, many counties placed drop boxes at early voting sites and at a variety of other locations. Many of these drop boxes were placed outdoors and some were made available to voters 24 hours per day (and secured with video surveillance). The flexibility of SOEs to provide outside drop boxes under current law has helped reduce lines and crowding inside early voting locations and also facilitated creative options like “drive through” drop boxes that voters could utilize without leaving their cars. It has also provided an important option to voters who need to return their VBM ballot during evening, weekend, or other hours when early voting was not available.

By requiring most drop boxes to be staffed—and by threatening SOEs with a \$25,000 fine if a drop box is left unstaffed for any period of time during business hours, however brief—H.B. 7041 would eliminate the option for SOEs to offer 24-hour drop boxes outside of their main office. It would also force SOEs to move most drop boxes inside where staff are located or assign additional staff specifically to monitor drop boxes.

H.B. 7041’s new restrictions on drop boxes—including both the identification requirement and the staffing requirement—would make drop boxes less accessible to voters. Drop boxes have become a frequently-used best practice nationwide—the United States Department of Homeland Security has endorsed drop boxes as a “secure and convenient means for voters to return their mail ballot” and recommends that states provide one drop box for every 15,000 to

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<sup>19</sup> Those additional forms of acceptable identification are a U.S. passport, debit or credit card, military identification, student identification, retirement center identification, neighborhood association identification, public assistance identification, veteran health identification card, a license to carry a concealed weapon, or a government-issued employment identification card. *See Fla. Stat. § 101.043(1)(a)*.

20,000 voters.<sup>20</sup> Florida voters—especially racial minority, low-income, elderly, and disabled voters—have come to rely on drop boxes as a safe and an important option for casting their VBM ballot. For many voters—especially voters with personal or professional commitments that limit their availability during normal voting hours, elderly voters, and voters with disabilities or other medical conditions—casting an in-person ballot during advance voting or on Election Day may be an untenable option, and broadly available drop boxes provide an essential option. In addition, based on the widely reported issues with the United States Postal Service, which will likely persist,<sup>21</sup> some voters are not confident about returning their VBM ballot by mail.

The reductions in drop-box availability that would result from H.B. 7041’s provisions are especially troubling because they are likely to burden historically marginalized groups. For example, Black voters are less likely to be able to take time off work<sup>22</sup> and are therefore more likely to return their VBM ballot to a drop box in the evening, early morning, or weekend—options that would likely be less widely available under H.B. 7041. Elderly voters and voters with disabilities who have limited mobility are also more likely to rely on drop boxes that are placed outdoors and are easily accessible—an option that would likely be less readily available under H.B. 7041. Enacting restrictions that would likely limit the availability of this important option for vulnerable voters serves no legitimate purpose but will impose a severe burden on the right to vote.

#### **d. Limitations on Third-Party VBM Ballot Return (Section 29)**

H.B. 7041 would impose new barriers on VBM voting by making it a crime for anyone to return completed VBM ballots on behalf of more than two voters who are not immediate family members.<sup>23</sup> Indeed, in certain circumstances, the bill would impose misdemeanor liability merely to “possess[] a vote-by-mail ballot of another person,” potentially increasing the risk of police interaction or jail time for friends, neighbors, or volunteers who attempt to assist another voter without fully understanding H.B. 7041’s requirements.<sup>24</sup> This is an extreme and

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<sup>20</sup> See *Ballot Drop Box*, Cybersecurity and Infrastructure Security Agency, <https://bit.ly/2OQGxoz>.

<sup>21</sup> Quinn Klinefelter, “‘There’s No End in Sight’: Mail Delivery Delays Continue Across the Country,” NPR (Jan. 22, 2021), <https://www.npr.org/2021/01/22/959273022/theres-no-end-in-sight-maildelivery-delays-continue-across-the-country>.

<sup>22</sup> Florida’s Black households have an average income of \$55,883, far less than Florida’s white households (\$84,545), making it more difficult for Black Floridians to take time off work to vote. See *A14009, Average Household Income by Race*, 2019 American Community Survey 5-Year Estimates, United States Census. See also *Operation PUSH v. Allain*, 674 F. Supp.1245, 1256 (N.D. Miss. 1987), *aff’d sub. nom. Operation PUSH v. Mabus*, 932 F.2d 400 (5th Cir. 1991) explaining that lower-income workers “are likely to be working for an hourly wage and are less likely to be able to take off from work” to vote at appointed times than workers in higher-paying, salaried jobs).

<sup>23</sup> H.B. 7041, Section 29.

<sup>24</sup> *Id.*

unnecessary restriction that would make it a crime for civic organizations, churches and other religious organizations, and any community organization to return completed VBM ballots on behalf of voters. In fact, under H.B. 7041, it would become a misdemeanor in the first degree if a Floridian brought three VBM ballots to a drop box as a courtesy for their neighbor.

As explained above, H.B. 7041 also requires any voter returning a VBM ballot to a staffed drop box to present their Florida driver license or identification card.<sup>25</sup> This provision repeats the unnecessary and potentially discriminatory burden caused by H.B. 7041's ID requirement for voters returning their own ballot. Moreover, while H.B. 7041 permits a voter returning their own ballot to sign an attestation if they do not have one of these two forms of ID on their person, the bill makes no such accommodation for third parties returning another voter's VBM ballot.<sup>26</sup> Thus, H.B. 7041 will apparently prevent anyone who lacks a Florida driver license or a Florida identification card from serving as a voter's designee and returning their VBM ballot to a staffed drop box.

These strict limitations serve no purpose. Florida *already* imposes restrictions on who can return completed VBM ballots on behalf of others by barring anyone from returning more than two VBM completed VBM ballots in exchange for payment.<sup>27</sup> Further restrictions are unnecessary, as evidenced by the fact that the majority of other states do not limit the number of completed VBM or absentee ballots that someone can return on behalf of others.<sup>28</sup>

Third-party ballot return is especially important for Black voters and other voters of color, who are less likely to have access to a vehicle,<sup>29</sup> and may have more difficulty returning VBM ballots without assistance from their church or local community organizations. Third-party VBM ballot collection is also particularly important for voters who have limited mobility, including elderly or disabled voters. These voters are more likely to rely on trusted third parties, such as home health aides or nonprofit organizations, to help them return their VBM ballot.

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<sup>25</sup> *Id.* at Section 24.

<sup>26</sup> *Id.*

<sup>27</sup> See Fla. Stat. § 104.0616(2) (making it “a misdemeanor of the first degree” for any person to provide or accept “a pecuniary or other benefit for distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two vote-by-mail ballots per election” that do not belong to the person or the person’s immediate family member).

<sup>28</sup> See National Conference of State Legislatures, *Who Can Collect and Return an Absentee Ballot Other Than the Voter*, <https://bit.ly/3cvVHrt>.

<sup>29</sup> Black Floridians are nearly four times as likely than white Floridians to commute to work using public transportation. See U.S. Census Bureau, 2019 5-Year American Community Survey, Tables B08105A and B08105B. Moreover, 22.0% of Black residents in Florida live below the poverty level, in contrast to just 12.1% of white residents, and are therefore less able to afford a car or other means of transportation. *Id.*, Tables A13001A and A13001B.

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The November 2020 general election was conducted under the extraordinarily challenging circumstances of a global pandemic. Yet, according to Governor Ron DeSantis, “Florida’s 2020 election season was a resounding success and model for the nation.”<sup>30</sup> Moreover, Secretary of State Laurel Lee explained, “Under the most trying of circumstances, Florida ensured a safe and efficient voting process [for] all Florida voters.”<sup>31</sup> Based on the November 2020 election, Secretary Lee added, Florida voters “should be confident in the integrity of our election system and the security of their vote.”<sup>32</sup> Indeed, during H.B. 7041’s committee hearing on April 19, 2021 hearing, Rep. Blaise Ingoglia, H.B. 7041’s sponsor, stated: “Last election cycle, Florida administered one of the smoothest elections in the nation and [was] praised as a model for how elections should be run.”<sup>33</sup> In light of this record of successful and secure election administration in Florida, no legitimate state interest would be furthered by imposing the severe and needless restrictions on voting access set forth in H.B. 7041.

## **II. The Legislative Process to Advance H.B. 7041 Is Neither Open, Transparent, Nor Inclusive.**

H.B. 7041 would profoundly change the election system in Florida. The far-reaching consequences of such a significant exercise of the legislative power calls for open, transparent, and measured deliberation. Yet H.B. 7041’s consideration has been marked by a series of procedural deviations and irregularities that have made it difficult or impossible for the public to participate in the legislative process.

*First*, H.B. 7041’s consideration in the House Committee on State Affairs was needlessly rushed and abbreviated. During the bill’s hearing on April 19, 2021, after the Committee spent nearly two hours debating and hearing public testimony on other bills, Chair Ralph Massullo opened consideration of H.B. 7041 by stating: “Members, we’re going to be limiting questions, debate, and we have a lot of people who want to testify, and we may be limiting those times as well.”<sup>34</sup> Chair Massullo proceeded to restrict the number of questions each committee member could ask of the sponsor, at times cutting off other committee

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<sup>30</sup> Ron DeSantis (@GovRonDeSantis), Twitter (Jan. 2, 2021, 2:31 PM), <https://twitter.com/Gov-RonDeSantis/status/1345452642303176706>.

<sup>31</sup> Jason Delgado, *Florida’s electoral college casts votes for Donald Trump, Mike Pence*, Florida Politics, (Dec. 14, 2020), <https://floridapolitics.com/archives/388818-floridas-electoral-college-casts-votes-for-donald-trump-mike-pence/>.

<sup>32</sup> *Id.*

<sup>33</sup> *4/19/21 House State Affairs Committee* at 1:50:52–1:51:06, The Florida Channel, <https://thefloridachannel.org/videos/4-19-21-house-state-affairs-committee/>.

<sup>34</sup> *Id.* at 1:50:52–1:51:06.

members mid-sentence.<sup>35</sup> At one point, Chair Massullo abruptly closed questioning on a proposed amendment as a committee member posed her first question on the amendment, and before Rep. Ingoglia, the amendment’s sponsor, could answer it.<sup>36</sup>

Members of the State Affairs Committee remarked at various times during the April 19, 2021 hearing that it was inappropriate to be “so rushed for time for such an important bill,” which prevented the Committee from being able to “properly vet these amendments.”<sup>37</sup> Yet, after the Committee considered 11 amendments to H.B. 7041 through this rushed process, Chair Massullo limited debate on the amended bill to 30 seconds for each committee member.<sup>38</sup>

Chair Massullo attempted to justify his actions by claiming that the Committee’s abbreviated debate and questioning on H.B. 7041 was necessary because of “a time crunch.”<sup>39</sup> But none of the other nine bills considered during the April 19, 2021 hearing was subjected to the same treatment.<sup>40</sup> Moreover, during consideration of H.B. 7041, Chair Massullo twice reported motions to extend the hearing’s duration by 15 minutes, and both motions were adopted without objection, suggesting that time was potentially available for more measured consideration of the bill’s provisions and proposed amendments.<sup>41</sup> In addition, when a committee member told the chair that the appropriate response if the Committee was indeed “running out of time” was to temporarily postpone H.B. 7041’s consideration “so that we have time to properly vet a bill that has 11 amendments,” Chair Massullo refused to do so.<sup>42</sup>

*Second*, Chair Massullo refused to allow testimony from any member of the public, even though at least 15 people had traveled to the capitol to provide

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<sup>35</sup> See, e.g., *id.* at 2:04:54–2:04:58 (“One more question, Rep. Hardy, and then we have to move on.”); *id.* at 2:11:33–2:11:40 (“Rep. Bartleman, we’re moving on.”); *id.* at 2:16:12–2:16:15 (“One more question.”); *id.* at 2:16:20–2:16:29 (“I’ll let you do one. I’m sorry. For time. We’re going to have to do one.”); *id.* at 2:18:27–2:18:30 (“Only because you’re the ranking member, I’ll give you one more.”); *id.* at 2:20:07 (“One question each.”); *id.* at 2:31:17 (“One more.”); *id.* at 2:41:13 (“I’ll give you one more and that’s it.”); *id.* at 2:43:22 (“You only get one more.”); *id.* at 3:02:28–3:02:33 (“We’re going to have to move on now. It’s not that I don’t want to hear your questions; it’s just, we don’t have the time.”); *id.* at 3:02:28–3:02:33 (“Okay, no more questions.”).

<sup>36</sup> *Id.* at 3:04:48–3:05:13. The committee-member, Rep. Dotie Joseph, objected and reminded the chair that she had not “even finished asking the question.” Chair Massullo responded: “I’m sorry, I am moving on. I am moving on. Thank you.” *Id.*

<sup>37</sup> *Id.* at 2:50:13–2:50:20; see also 2:54:19–2:59:42.

<sup>38</sup> *Id.* at 3:18:45–3:18:49.

<sup>39</sup> *Id.* at 2:53:44–2:54:12 (“Members, I’m sorry to be moving so fast, but we are in a time crunch”).

<sup>40</sup> See *id.* at 0:00:00–1:1:50:45.

<sup>41</sup> E.g., 3:12:15–3:12:25.

<sup>42</sup> *Id.* at 3:22:32–3:23:00.

their views on H.B. 7041 in person.<sup>43</sup> In contrast, earlier during the same hearing, Chair Massullo permitted members of the public to testify on at least five other bills.<sup>44</sup> Committee member Rep. Dotie Joseph objected to H.B. 7041’s rushed hearing and the chair’s decision to refuse to hear public testimony, stating: “People come to these public meetings for an opportunity to be heard. . . . I object to this process. I object to how some of these things have been limited so that we don’t get a chance to fully vet the bills.”<sup>45</sup>

*Third*, during the April 19, 2021 hearing, H.B. 7041’s sponsor proposed, and the Committee adopted, an amendment providing that the bill would take effect immediately upon becoming a law.<sup>46</sup> This departs from the usual legislative process set forth in the Florida Constitution, under which laws passed by the legislature generally “take effect on the sixtieth day” following the end of the legislative session.<sup>47</sup> During the Committee’s consideration of this amendment, one member asked the sponsor, “Why couldn’t we just follow the normal process? Why is there a rush to make it happen right away?”<sup>48</sup> The sponsor, Rep. Ingoglia, responded only that it was “a policy decision.”<sup>49</sup>

The Committee’s strict curtailment of public testimony and debate on a bill of such importance is a departure from ordinary procedures for public testimony at a legislative hearing, which raises additional concerns that H.B. 7041 may be unconstitutional if enacted. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977) (when evaluating whether legislation was enacted with a racially discriminatory purpose, courts should consider the historical background of the legislation, including any departures from the normal legislative process).

### III. H.B. 7041 Likely Violates Federal Law.

H.B. 7041 likely violates multiple federal laws. The facts recited above, including the procedural departures from the ordinary legislative process, the lack of any neutral or legitimate justification for the proposals, and the foreseeable disparate impact on Black voters and other voters of color, voters with

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<sup>43</sup> *Id.* at 3:17:00–3:17:14 (“Now we’re going to go to public testimony on the bill as amended. And, for the sake of time, and I apologize to the individuals that have made the trip here, but we’re just going to read into the record your position on the bill.”).

<sup>44</sup> *Id.* at 8:52–9:44 (Chair Massullo allowing live public testimony on H.B. 639); *id.* at 41:11–55:23 (Chair Massullo allowing live public testimony on H.B. 53); *id.* at 1:07:30–1:08:45 (Chair Massullo allowing live public testimony on H.B. 573); *id.* at 1:17:25–1:18:09 (Chair Massullo allowing live public testimony on H.B. 1069); *id.* at 1:25:25–1:36:48 (Chair Massullo allowing live public testimony on H.B. 1635).

<sup>45</sup> *Id.* at 3:18:50–3:19:22.

<sup>46</sup> Am. 556781 to H.B. 7041 (adopted Apr. 19, 2021).

<sup>47</sup> See Fla. Const. art. III, § 9.

<sup>48</sup> *4/19/21 House State Affairs Committee* at 3:03:50–3:04:05, The Florida Channel, <https://thefloridachannel.org/videos/4-19-21-house-state-affairs-committee/>.

<sup>49</sup> *Id.*

disabilities, elderly voters, and low-income voters, suggest that H.B. 7041's provisions individually and collectively raise serious concerns under the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Section 2 of the Voting Rights Act. U.S. Const. amends. XIV, XV; *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); 52 U.S.C. 10301. These same provisions burden the right to vote without any legitimate state interest, which may also violate the First and Fourteenth Amendment to the U.S. Constitution.<sup>50</sup> Moreover, this Committee has not offered reasonable modifications necessary to ensure voters with disabilities will not be precluded from fully and equally participating in elections, which may violate Title II of the Americans with Disabilities Act. 42 U.S.C. § 12131.

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For the foregoing reasons, we respectfully urge the Senate to vote no on H.B. 7041. Please note that we are prepared to take decisive action to prevent the disenfranchisement of eligible voters in Florida if the bill is passed.

Please feel free to contact Michael Pernick at (917) 790-3597 or by email at [mpernick@naacpldf.org](mailto:mpernick@naacpldf.org) with any questions or to discuss these concerns in more detail.

Sincerely,

*/s/ Michael Pernick*

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<sup>50</sup> See *Burdick v. Takushi*, 504 U.S. 428 (1992) (“A court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiffs seeks to vindicate’ against ‘the precise interest put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

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NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that increase access to the electoral process and prohibit voter discrimination, intimidation, and suppression. LDF has been fully separate from the National Association for the Advancement of Colored People (“NAACP”) since 1957, though LDF was originally founded by the NAACP and shares its commitment to equal rights.

NAACP Florida State Conference

Founded in 1909, the NAACP is the nation’s oldest and largest nonpartisan civil rights organization. Its members throughout the United States and the world are the premier advocates for civil rights in their communities. In 1941, the NAACP Florida State Conference was formed as the first State Conference in the nation.