

February 3, 2022

**Submitted electronically**

Public Integrity & Elections Committee  
Florida House of Representatives  
317 The Capitol  
402 South Monroe Street  
Tallahassee, FL 32399-1300

**Re: Opposition to PCB PIE 22-03**

Dear Chair Perez, Ranking Member Thompson, and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes in opposition to Proposed Committee Bill (“PCB”) PIE 22-03.<sup>1</sup> As a nonprofit, nonpartisan civil rights organization, our objective 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 eligible voters to register to vote, access the ballot, and enjoy an equal, unburdened opportunity to participate in the electoral process and elect candidates of their choice.<sup>2</sup> Because several of PCB PIE 22-03’s measures would likely diminish this right for voters of color, we urge you to oppose it.

PCB PIE 22-03 would make several harmful changes to Florida’s election laws. First, Section 1 of the bill would create an unnecessary and potentially dangerous “Office of Election Crimes and Security” housed within the Department of State (“DOS”); Section 21 would supplement the ranks of this investigative unit with an increased number of sworn special agents from the personnel of the Department of Law Enforcement (“DLE”), who would become “special officers to investigate alleged violations of the Florida Election Code” with the authority “to see that violators of the Florida Election Code are apprehended and punished.”<sup>3</sup> Especially in light of Florida’s extensive history of law enforcement serving directly or indirectly as a tool of voter intimidation and the absence of any evidence of widespread wrongdoing by voters in Florida’s elections, these proposals should be rejected.

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<sup>1</sup> Proposed Committee Bill PIE No. 22-03 (Fla. 2022) (hereinafter “PCB PIE 22-03”).

<sup>2</sup> See *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (describing the right to vote as “a fundamental political right, because preservative of all rights”).

<sup>3</sup> PCB PIE 22-03 §§ 1, 21 (creating Fla. Stat. § 97.022, amending Fla. Stat. § 102.091(2)).

Second, Section 4 of PCB PIE 22-03 would drastically increase the aggregate cap on fines that can be levied against a third-party voter-registration organization for errors or other violations with respect to voter-registration applications within a calendar year.<sup>4</sup> This change would potentially expose such groups—who provide a critical service to Florida voters, and especially for voters of color—to exorbitant fines, chilling their engagement in constitutionally protected activities.<sup>5</sup> Third, Section 11 would ban the use of ranked-choice voting in any local, state, or federal election.<sup>6</sup> This provision appears to have no justification in evidence before the Legislature—ranked-choice voting is not currently in use anywhere in Florida.<sup>7</sup> However, research shows that this voting method can increase both voter turnout and electoral representation for Black voters and other voters of color. Finally, PCB PIE 22-03 also needlessly heightens restrictions on absentee voting, increases the frequency and scope of voter purge activities, and solicits sensitive personal identifying information from voters by mail, which could lead to the wrongful removal of qualified voters from registration lists based on unreliable or unsuitable sources of information, as well as the exposure and exploitation of voters’ information.<sup>8</sup>

**I. This Committee Should Reject in the Strongest Terms PCB PIE 22-03’s Creation of an “Election Crimes” Law Enforcement Office and its Expansion of “Special Officers” for Election-Related Investigations.**

Section 1 of PCB PIE 22-03 would create an “Office of Election Crimes and Security” within DOS, implementing, in part, a budget proposal from Governor Ron DeSantis.<sup>9</sup> The office would employ non-sworn investigators who would receive and review reports of election law violations, initiate and conduct “preliminary investigations” and “independent inquiries” under their own authority, and oversee the DOS “voter fraud hotline.”<sup>10</sup> In addition, PCB PIE 22-03 leaves open the possibility that the office’s “positions and resources” could be expanded in the future through the legislative appropriations process—suggesting that the office could swell to Gov. DeSantis’s requested \$5.7 million budget

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<sup>4</sup> *Id.* § 4 (amending Fla. Stat. § 97.0575).

<sup>5</sup> *See League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1164 (N.D. Fla. 2012) (describing third-party voter-registration drives as “legitimate, indeed constitutionally protected, activities”).

<sup>6</sup> PCB PIE 22-03 § 10 (creating Fla. Stat. § 101.019).

<sup>7</sup> Mitch Perry, *NYC is using ranked choice voting in their mayoral contest – Florida advocates ask: why not here?*, Bay News 9 (May 13, 2021), <https://www.baynews9.com/fl/tampa/politics/2021/05/13/florida-advocates-ask--why-no-ranked-choice-voting->

<sup>8</sup> *See, e.g.*, PCB PIE 22-03 §§ 5, 8, 13, 14, 23.

<sup>9</sup> NSF staff, *10 things DeSantis wants in Florida’s 2022 legislative session* (Dec. 28, 2021), <https://www.fox13news.com/news/10-things-desantis-wants-in-2022-session>.

<sup>10</sup> *See* PCB PIE 22-03 § 1 (creating Fla. Stat. § 97.022).

and 52-person staff.<sup>11</sup> Further, Section 21 of the bill expands the governor’s existing authority to designate sworn special agents from the personnel of DLE, who would thus become “special officers to investigate alleged violations of the Florida Election Code.”<sup>12</sup> Under current Florida law, the governor has discretionary authority to appoint such officers when “necessary.”<sup>13</sup> However, under PCB PIE 22-03, at least one of these special elections officers would be required to be appointed in each of the DLE’s operational regions, and instructed “to see that violators of the Florida Election Code are apprehended and punished.”<sup>14</sup>

This radical expansion of the criminal legal system’s role in voting is especially concerning because there is no evidence of significant electoral wrongdoing justifying such a measure. The November 2020 election was conducted under extraordinarily challenging circumstances, including a global pandemic and a mail delivery slow-down.<sup>15</sup> Yet, according to Gov. DeSantis, “Florida’s 2020 election season was a resounding success and model for the nation.”<sup>16</sup> Moreover, as 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>17</sup> Florida voters, Secretary Lee added, “should be confident in the integrity of our election system and the security of their vote.”<sup>18</sup> In view of these statements touting successful and secure election administration in Florida, it is difficult to understand a push to advance provisions that will likely result in increased voter intimidation, excessive criminalization, and needless law enforcement involvement in the voting process, as PCB PIE 22-03 threatens to do.

Further, Florida’s shameful history of intimidation of Black voters and other voters of color by law enforcement officers and those acting under the color of law—or with the tacit approval of state authorities—counsels strongly against increasing the presence of law enforcement agents and investigators in

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<sup>11</sup> Off. of Gov. Ron DeSantis, *Freedom First Budget: Statewide Overview and Taxes* 18 (Dec 9, 2021), <http://www.freedomfirstbudget.com/content/Current/Reports/BudgetHighlights.pdf>. (noting that the governor’s budget proposal requests “\$5.7 million to create and staff an Office of Election Crimes and Security that will investigate election crimes and fraud” and specifying that “[t]he office will contain 52 staff members, including 20 sworn law enforcement officers and 25 non-sworn investigators.”).

<sup>12</sup> PCB PIE 22-03 § 21 (amending Fla. Stat. § 102.091).

<sup>13</sup> Fla. Stat. § 102.091.

<sup>14</sup> See PCB PIE 22-03 § 21.

<sup>15</sup> *Postal System Slows Down Before Election Day*, NBC 6 South Florida (Oct. 27, 2020), <https://www.nbcmiami.com/investigations/postal-system-slows-down-before-election-day/2312796/>.

<sup>16</sup> Ron DeSantis (@GovRonDeSantis), Twitter (Jan. 2, 2021, 2:31 PM), <https://twitter.com/GovRonDeSantis/status/1345452642303176706>.

<sup>17</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>18</sup> *Id.*

the voting process.<sup>19</sup> For example, following the 2000 presidential election, Black Floridians recounted their experiences being intimidated by police presence near several polling locations, being questioned about criminal records by police officers on their way to polling locations, and being subjected to a disruptive checkpoint set up by Florida Highway Patrol troopers on a road leading from predominantly Black suburbs to a polling location.<sup>20</sup> Twenty years later, Black Floridians continued to face the unwarranted and intimidating presence of armed law enforcement at their polling locations.<sup>21</sup> For example, in November 2020, LDF received reports of concerning police presence at several polling places in Florida.<sup>22</sup> In one of these instances, a law enforcement officer was stationed outside the polling place located at Aquilina Howell Community Center in Leon County, in a predominantly Black community, throughout the day on Election Day, and two other officers also came and went in marked vehicles, without any indication of an issue requiring law enforcement presence at that location.<sup>23</sup>

PCB PIE 22-03’s creation of an “Office of Election Crimes and Security” recalls these and other historical instances of intimidation by armed law enforcement and others claiming the power of law in the voting process.<sup>24</sup> Further, the prospect of a new law enforcement entity, housed in the Executive Branch and empowered to initiate and conduct “independent inquiries” and investigations—with no explicit restraints on the scope of those inquiries or investigations—will likely have an intimidating or chilling effect on voters’ participation in the democratic process. For example, nothing in the bill precludes this new office’s investigators from showing up at voters’ homes to interrogate them about their voting practices or facts underlying their voting eligibility, which could have a threatening, intimidating, or chilling effect on their future participation.

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<sup>19</sup> See, e.g., Desiree Stennett, *Voter suppression was spark that ignited Ocoee Massacre. A century later, Florida’s Black voters are still facing obstacles*, Orlando Sentinel (Oct. 22, 2020), <https://www.orlandosentinel.com/news/ocoe-massacre/os-ne-black-voter-suppression-ocoe-20201022-z6kwn5xuafdevlhkvy6g6effui-htmlstory.html>.

<sup>20</sup> U.S. Comm’n on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election: Chapter 2, First-Hand Accounts of Voter Disenfranchisement* (June 2001), <https://www.usccr.gov/files/pubs/vote2000/report/ch2.htm>; Julian Borger, US inquiry into claims black voters were stripped of rights, *The Guardian* (Dec. 4, 2000), <https://www.theguardian.com/world/2000/dec/04/uselections2000.usa1>.

<sup>21</sup> See, e.g., Joel Shannon, *Called out for 'voter intimidation,' Florida officer faces discipline for wearing 'Trump 2020' mask at polling place*, USA Today (Oct. 20, 2020), <https://www.usatoday.com/story/news/politics/elections/2020/10/20/miami-police-officer-trump-2020-mask-poll-discipline/6001128002/>; Janelle Irwin Taylor, *Civil, voting rights groups caution police presence at Pinellas County polling place*, Florida Politics (Oct. 23, 2020), <https://floridapolitics.com/archives/376849-civil-voting-rights-groups-caution-police-presence-at-pinellas-county-polling-places/>.

<sup>22</sup> NAACP Legal Def. and Educ. Fund, Inc., *Democracy Defended 75-76* (Sept. 2, 2021), [https://www.naacpldf.org/wp-content/uploads/LDF\\_2020\\_DemocracyDefended-1-3.pdf](https://www.naacpldf.org/wp-content/uploads/LDF_2020_DemocracyDefended-1-3.pdf).

<sup>23</sup> *Id.* at 76.

<sup>24</sup> See sources cited *supra*, notes 19-22.

As the U.S. Department of Justice has explained, “[i]n certain contexts, suggesting to individuals that they will face adverse social or legal consequences from voting can constitute an impermissible threat,” violating federal protections against voter intimidation.<sup>25</sup> This effort to increase the presence of law enforcement in the voting process, and its likely impact of intimidating voters or chilling voter participation, is similar to another attempt by the State of Florida to chill political participation through a law criminalizing protest—that law was recently enjoined by a federal court, citing its “potential, and actual, chilling effect” on Floridians’ exercise of their First Amendment rights.<sup>26</sup>

## **II. This Committee Should Reject PCB PIE 22-03’s Provisions Enabling Exorbitant Fines on Third-Party Registration Organizations.**

Section 4 of PCB PIE 22-03 would increase by fifty times the annual aggregate maximum in fines—from \$1,000 to \$50,000 per calendar year—that can be levied against a third-party voter registration organization for mistakes such as failing to return a voter-registration application within a designated number of days or returning an application to a county other than the county where the voter resides.<sup>27</sup> According to information published by the Florida Department of State, many third-party voter registration organizations handle hundreds of applications per year, and some handle thousands or tens of thousands.<sup>28</sup> If a group or individual serving as a third-party registration organization made a harmless error in completing these forms, and repeated that harmless error on a significant scale, the potential financial consequences could be catastrophic. Thus, PCB PIE 22-03’s changes could potentially expose organizations to hundreds of fines in a single year, each of which could range from \$50 to \$1,000.<sup>29</sup> Mistakes or inaccurate information provided by voters could also lead to significant penalties—for example, if one or more voters misidentified their home addresses, an organization might incur \$500 penalties for inadvertently submitting those voters’ applications to a county other than “the county in which the applicant resides.”<sup>30</sup> There is no indication in the public record that subjecting third-party voter registration organizations to these onerous fines is an appropriate response to any legitimate problem. Nor is there evidence that increasing the potential cost of such fines fifty-fold would in any way benefit Florida voters.

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<sup>25</sup> U.S. Dep’t of Justice, *Federal Law Constraints on Post-Election “Audits”* (July 28, 2021), <https://www.justice.gov/opa/press-release/file/1417796/download>.

<sup>26</sup> See Preliminary Injunction at 42, 86, *Dream Defenders v. DeSantis*, No. 4:21-cv-191-MW/MAF (N.D. Fla. Sept. 9, 2021), Doc. No. 137.

<sup>27</sup> PCB PIE 22-03 § 4 (amending Fla. Stat. § 97.0575(3)(a)).

<sup>28</sup> See Fla. Dep’t of State, Division of Elections, *Third Party Voter Registration Organizations (3PVROs): Voter Registration Applications Received and/or Provided*, <https://tpvr.elections.myflorida.com/Applications.aspx> (last visited Feb. 3, 2022).

<sup>29</sup> Fla. Stat. § 97.0575(3)(a).

<sup>30</sup> PCB PIE 22-03 § 4 (amending Fla. Stat. § 97.0575(3)(a)).

Instead, PCB PIE 22-03’s threat of exorbitant financial penalties would likely have a chilling effect on third-party registration organizations’ activities, and these essential activities are protected by the First Amendment.<sup>31</sup> As a federal court in Florida has explained, third-party registration organizations’ activities, including registration drives in which the organizations collect registration applications, implicate protections for speech and association under the First Amendment, as well as protections for the right to vote under the Fourteenth and Fifteenth Amendments.<sup>32</sup> Thus, PCB PIE 22-03’s likely chilling effects on voter-registration drives raise grave constitutional concerns.

These provisions’ likely discriminatory impacts raise additional concerns under Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments, which prohibit racial discrimination in voting.<sup>33</sup> Black and Latino voters are “nearly twice as likely to register through a [third-party registration] drive as white[]” voters.<sup>34</sup> By chilling third-party registration organizations’ activities, and thereby likely reducing the availability of voter-registration drives, PCB PIE 22-03 will likely diminish access to the franchise for Black and Latino voters in Florida.

### **III. The Committee Should Reject PCB PIE 22-03’s Unjustified Ban on Ranked-Choice Voting.**

Section 11 of PCB PIE 22-03 would ban ranked-choice voting for local, state, and federal elections, including primaries.<sup>35</sup> Ranked-choice voting has not been widely used in Florida elections—only one city, Sarasota, has passed a charter amendment calling for ranked-choice voting, and the amendment has yet to be put into effect.<sup>36</sup> However, academic research shows that ranked-choice voting can increase both voter turnout and representation for voters of color, especially in elections for multi-member bodies, such as city councils, courts, or

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<sup>31</sup> *League of Women Voters of Fla.*, 863 F. Supp. 2d at 1158-59, 1164; *see also Charles H. Wesley Education Foundation, Inc. v. Cox*, 408 F.3d 1349, 1353-54 (11th Cir.2005) (explaining that voter-registration drives are also federally protected activities under the National Voter Registration Act of 1993 (“NVRA”), because the NVRA gives organizations a “legally protected interest” in returning registration applications collected through those drives and having those applications processed).

<sup>32</sup> *League of Women Voters of Fla.*, 863 F. Supp. 2d at 1159.

<sup>33</sup> U.S. Const. amends. XIV, XV; 52 U.S.C. § 10301.

<sup>34</sup> Diana Kasdan, *State Restrictions on Voter Registration Drives* 9, Brennan Center for Justice at NYU School of Law (2012), <https://www.brennancenter.org/sites/default/files/legacy/publications/State%20Restrictions%20on%20Voter%20Registration%20Drives.pdf>.

<sup>35</sup> PCB PIE 22-03 § 11 (creating Fla. Sta. § 101.019(1), which would provide that “[a] ranked-choice voting method . . . may not be used in determining the election or the nomination of any candidate to any local, state, or federal elective office in this state”).

<sup>36</sup> Jacob Ogles, *Lawmakers explore ranked-choice voting possibilities in Florida*, Florida Politics (Jan. 11, 2022), <https://floridapolitics.com/archives/484728-ranked-choice-voting-could-be-eliminated-before-the-first-ballots-get-cast-in-florida/>.

school boards.<sup>37</sup> There is also evidence that ranked-choice voting can increase the diversity of the candidate pool<sup>38</sup> and that, when implemented as a means of selecting candidates for party nomination, it can provide a more equal voice for minority voters in these determinations.<sup>39</sup> In addition, ranked-choice voting in city elections, where implemented, has had positive effects historically on the representation of women in elected office in the United States.<sup>40</sup>

For these reasons, PCB PIE 22-03's ban on ranked-choice voting is unjustified and potentially harmful. By prohibiting ranked-choice voting, the bill would foreclose a long-overdue opportunity for Florida's voters of color to attain more equitable representation.

#### **IV. The Committee Should Reject PCB PIE 22-03's Restrictions on the Absentee-Voting Process, Including Heightened Criminalization, Potentially Confusing Identification Requirements, and Insufficient Privacy Protections.**

Section 23 of PCB PIE 22-03 unnecessarily increases the penalty for any person who distributes, collects, requests, delivers, or possesses more than two vote-by-mail ballots in addition to theirs or that of an immediate family member. With no evidence that this is a problem requiring legislative correction or warranting criminalization, the bill would increase the penalty for this generally harmless action from a first-degree misdemeanor to a third-degree felony.

Additionally, Section 13 of the bill imposes an additional, confusing, and seemingly pointless step for voters returning their absentee ballots. Currently, a Florida voter who requests a mail ballot is sent two envelopes: a "secrecy envelope" and a "return mailing envelope."<sup>41</sup> A voter is required to mark their ballot, place it in the secrecy envelope, sign the return mailing envelope, and return the marked ballot to the supervisor of elections no later than 7:00 p.m.

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<sup>37</sup> Gerdus Benade, Ruth Buck, Moon Duchin, Dara Gold & Thomas Weighill, *Ranked Choice Voting and Minority Representation* (Feb. 2, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3778021](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3778021).

<sup>38</sup> Sarah John, Haley Smith & Elizabeth Zack, *The alternative vote: Do changes in single-member voting systems affect descriptive representation of women and minorities?*, 54 *Electoral Studies* 90 (Aug. 2018), <https://www.sciencedirect.com/science/article/abs/pii/S0261379417304006>.

<sup>39</sup> Baodong Liu, Nadia Mahallati & Charles M. Turner, *Ranked-Choice Voting Delivers Representation and Consensus in Presidential Primaries*, *New America* (Apr. 27, 2021), <https://www.newamerica.org/political-reform/reports/ranked-choice-voting-delivers-representation-and-consensus-in-presidential-primaries/>.

<sup>40</sup> Cynthia Richie Terrell, Courtney Lamendola & Maura Reilly, *Election Reform and Women's Representation: Ranked Choice Voting in the U.S.*, 9 *Politics & Governance* 332 (June 2021), <https://www.cogitatiopress.com/politicsandgovernance/article/view/3924>; see also John, et al., *supra* note 38.

<sup>41</sup> See Fla. Stat. § 101.6103.

on Election Day. But PCB PIE 22-03, without explanation, adds a requirement that voters seal their secrecy envelope within a third envelope—a “certificate envelope”—or risk having their ballot rejected.<sup>42</sup>

Thus, under PCB PIE 22-03, a voter would now be required to place their marked ballot into the secrecy envelope, place the secrecy envelope into the certificate envelope, sign a voter’s certificate, and place the certificate envelope into the return mailing envelope.<sup>43</sup> Missing any one of these steps could result in rejection. Adding additional layers of complexity to the absentee-voting process serves no reasonable purpose and does nothing to increase security. Instead, this provision, in concert with PCB PIE 22-03’s identification requirements,<sup>44</sup> creates the potential for large-scale absentee ballot rejections similar to those seen in Texas following the passage of Senate Bill 1, which new imposed identification requirements for absentee voting that are similar to those in PCB PIE 22-03.<sup>45</sup> Indeed, PCB PIE 22-03 also requires that voters submit additional documentation revealing private information including social security numbers and makes no provision for the safekeeping of these documents. Further, the bill makes no mention of requiring training for the handling the sensitive data that it would require voters to provide. Each of these deficiencies raises serious concerns.

PCB PIE 22-03’s assault on voting by mail is especially concerning because it comes after the 2020 presidential election, an election in which Florida’s Black voters cast absentee ballots at unprecedented levels. In the November 2020 general election, 522,038 Black voters in Florida cast absentee ballots,<sup>46</sup> more than double the number of absentee ballots cast by Black voters in Florida in previous years.<sup>47</sup> Moreover, the proportion of Florida’s total number of absentee ballots that were cast by Black voters increased by over 28% from 2016 to

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<sup>42</sup> PCB PIE 22-03 § 13 (amending Fla. Stat. § 101.6103) (providing that a voter’s “ballot shall be counted only if . . . [i]t is returned in the certificate envelope and return mailing envelope”).

<sup>43</sup> *Id.* (amending Fla. Stat. § 101.6103(2)).

<sup>44</sup> *See Id.* §§ 13, 14.

<sup>45</sup> *See* Alexa Ura, *Vote-by-mail rejections are testing integrity of Texas Republicans’ voting law*, Texas Tribune (Jan. 24, 2022), <https://www.texastribune.org/2022/01/24/texas-vote-by-mail-rejections/>.

<sup>46</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://225egw40g2k99t0ud3pbf2ct-wpengine.netdna-ssl.com/wp-content/uploads/2021/03/031121\\_FL\\_VBM-Report\\_final.pdf](https://225egw40g2k99t0ud3pbf2ct-wpengine.netdna-ssl.com/wp-content/uploads/2021/03/031121_FL_VBM-Report_final.pdf).

<sup>47</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. Herron & Daniel A. Smith, *Voting by Mail and Ballot Rejection: Lessons from Florida for Elections in the Age of the Coronavirus*, Election L. J.: Rules, Politics, and Policy, Vol. 19, No. 3 (Sept. 17, 2020), <https://www.liebertpub.com/doi/10.1089/elj.2020.0658>.

2020.<sup>48</sup> Imposing additional restrictions on absentee voting now—at a time when Black voters have begun voting absentee at unprecedented levels—raises significant questions as to the Legislature’s intent. This Committee should remember the Supreme Court’s warning that taking away a voting opportunity because voters of color are beginning to use it “bears the mark of intentional discrimination that could give rise to an equal protection violation.”<sup>49</sup>

**V. The Committee Should Oppose PCB PIE 22-03’s Increased Voter Purges and its Reliance on Potentially Unreliable Sources of Information on Voters’ Citizenship Status.**

Finally, several provisions in PCB PIE 22-03 increase the frequency and scope of list-maintenance activities, which may create the risk of wrongful purges of qualified voters, including naturalized-citizen voters, based on potentially unreliable sources of data. For example, Section 5 of PCB PIE 22-03 would require counties to conduct voter purge activities “at least annually,” rather than once every odd-numbered year, as in current law.<sup>50</sup> In addition, Section 8 of the bill would require the Department of Highway Safety and Motor Vehicles (“DMV”) to provide citizenship information regarding licensed Florida drivers as a purported means of identifying Floridians who may not be U.S. citizens for removal from the voter rolls.<sup>51</sup> This provision threatens to lead to the disproportionate and inappropriate cancellation of naturalized citizens’ voter registrations. Florida and other states that have attempted similar purge actions using driver’s license records in the past have repeatedly illustrated the danger of basing purges on insufficiently reliable evidence, including driver’s license records—which are not intended for voter-roll maintenance and are unsuited for the purpose.<sup>52</sup> Florida should not make a similar mistake again.

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<sup>48</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.

<sup>49</sup> *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006).

<sup>50</sup> PCB PIE 22-03 § 5 (amending Fla. Sta. § 98.065(2)).

<sup>51</sup> *Id.* § 8 (amending Fla. Stat. § 98.093).

<sup>52</sup> *See, e.g., Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1348 (11th Cir. 2014) (holding that the Florida Secretary of State’s actions in flagging naturalized-citizen voters for removal based on motor-vehicle agency data “were in violation of the 90 Day Provision of the NVRA”); *United States v. Florida*, 870 F. Supp. 2d 1346, 1350–51 (N.D. Fla. 2012) (observing that the initial version of the Secretary’s program likely also violated Section 8(b) of the NVRA); *Texas LULAC v. Whitley*, No. CV SA-19-CA-074-FB, 2019 WL 7938511, at \*1–\*2 (W.D. Tex. Feb. 27, 2019) (discussing Texas’s unlawful attempt to purge nearly 100,000 naturalized-citizen voters from the rolls based on outdated driver’s license data); *see also Georgia Coal. for People’s Agenda*, 347 F. at 1260 (enjoining Georgia’s “Exact Match” program, which reported erroneous results based on its incorporation of outdated driver’s license identification records).

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For the foregoing reasons, we urge you to oppose PCB PIE 22-03 in its entirety. Please feel free to contact Steven Lance at (347) 947-0522 or by email at [slance@naacpldf.org](mailto:slance@naacpldf.org) with any questions or to discuss these matters further.

Sincerely,

*/s/ Steven Lance*

Steven Lance, Policy Counsel  
NAACP Legal Defense & Educational Fund, Inc.  
40 Rector Street, 5th Fl.  
New York, NY 10006

Lisa Cylar Barrett, Director of Policy  
NAACP Legal Defense & Educational Fund, Inc.  
700 14th Street N.W., Ste. 600  
Washington, DC 20005

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.