



Sent via email

April 19, 2023

Committee on Fiscal Policy
Florida Senate
The Capitol, Room 2000
404 South Monroe Street
Tallahassee, FL 32399

Re: Opposition to S.B. 7050

Dear Chair Hutson, Vice Chair Stewart, and Committee Members:

The Legal Defense Fund (“LDF”), writes in opposition to Senate Bill (“S.B.”) 7050.¹ As a nonprofit, nonpartisan civil rights organization, our goal is to ensure that all voters, particularly Black voters and other voters of color, have full and unburdened access to the one vital right that is preservative of all other rights: the right of eligible voters to register to vote, access the ballot, and enjoy an equal opportunity to participate in the electoral process and elect candidates of their choice.² Because several of S.B. 7050 measures would likely diminish this right for voters of color, we urge you to oppose it.

First, S.B. 7050 would exacerbate harmful changes to Florida’s election laws made in previous years. Section 5 of the bill would double the aggregate cap on fines that can be levied against community-based voter registration organizations for minor errors or other violations with respect to voter-registration applications within a calendar year.³ This change could expose such groups—who provide a critical service to Florida voters, and especially for voters of color⁴—to exorbitant fines, chilling their engagement in constitutionally protected activities.⁵ Second, Section 34 drastically rewrites an existing felony in the third degree by changing the statutory definition of “willfully” which

¹ S.B. 7050, (Fla. Senate 2023) (hereinafter “S.B. 7050”).

² 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”).

³ S.B. 7050 § 5 (amending Fla. Stat. § 97.0575).

⁴ Diana Kasdan, *State Restrictions on Voter Registration Drives*, Brennan Center for Justice at NYU School of Law (2012), <https://www.brennancenter.org/our-work/research-reports/state-restrictions-voter-registration-drives/>

⁵ 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”).

creates confusion over whether intent has been removed as an element of the crime.⁶ The vague nature of the language could be read as lowering the bar for convictions of double voting. This risks intimidating voters who may believe they could suffer severe penalties if they make an honest mistake about whether their vote was counted.

I. This Committee Should Reject S.B. 7050’s Provisions That Double the Already-Exorbitant Fines on Community-Based Voter Registration Organizations.

Last year, S.B. 524 increased the annual aggregate maximum fines that could be levied against community-based voter registration organizations, by fifty times, from \$1,000 to \$50,000 per calendar year.⁷ Now, S.B. 7050 doubles the already elevated fine from \$50,000 to \$100,000 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.⁸ According to information published by the Florida Department of State, many community-based voter registration organizations handle hundreds of applications per year.⁹ If a group or individual serving as a community-based 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, S.B. 7050’s changes might expose these organizations to hundreds of fines in a single year, each of which could range from \$50 to \$2,500, until they hit the proposed \$100,000 cap.¹⁰

The proposed language could impose exorbitant fines on voter registration organizations for mistakes or errors that were *not even their fault*. In particular, inaccurate information or errors on forms provided by voters could lead to significant penalties—for example, if one or more voters misidentified their home address, an organization might incur a \$500 penalty for each such error if, on the basis of incorrect information provided by the voter, they submit those voters’ applications to a county other than “the county in which the applicant resides.”¹¹

There is no rationale for increasing the already-onerous aggregate fine on community-based voter registration organizations to \$100,000. Especially since there is no indication in the public record that significant issues have arisen since the fines were changed from \$1,000 to \$50,000 last year. Indeed, even

⁶ S.B. 7050 §34 (amending Fla. Stat. § 104.18).

⁷ S.B. 524 § 4 (amending Fla. Stat. § 97.0575(3)(a)).

⁸ S.B. 7050 § 5 (amending Fla. Stat. § 97.0575(3)(a)).

⁹ 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 Apr. 18, 2023).

¹⁰ S.B. 7050 § 5 (amending Fla. Stat. § 97.0575(3)(a)).

¹¹ *Id.*

while the bill increases fines on community organizations, the bill will *exempt* registration organizations that are subsidiaries of political parties from all fines and requirements of the statute—thus *reducing* scrutiny on such partisan activities while unreasonably *increasing* scrutiny on the activities of community-based voter registration organizations. There is no evidence that partisan voter registration organizations are any less likely to make the same sort of harmless errors that S.B. 7050 punishes or that doubling the punishments for community-based voter registration organizations would in any way benefit Florida voters. The safe harbor for political organizations to engage in voter registration activities without risks of fines belies any legitimate public policy justification for the exorbitant fines on community-based organizations. Indeed, it appears that community-based organizations—which provide a critical service in communities of color—are being singled out and targeted by this bill.

As a result, S.B. 7050’s threat of exorbitant financial penalties would likely have a chilling effect on community-based voter registration organizations’ activities, and these essential activities are protected by the First Amendment.¹² As a federal court in Florida has explained, community-based voter 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 First and Fourteenth and Amendments.¹³ Thus, S.B. 7050’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.¹⁴ Black and Latino voters are “twice as likely” to register through a community-based registration drive as white voters.¹⁵ By chilling community-based voter registration organizations’ activities, and thereby likely reducing the availability of voter-registration drives, S.B. 7050 will likely further diminish access to the franchise for Black and Latino voters in Florida.

¹² *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).

¹³ *League of Women Voters of Fla.*, 863 F. Supp. 2d at 1159.

¹⁴ U.S. Const. amends. XIV, XV; 52 U.S.C. § 10301.

¹⁵ Diana Kasdan, *State Restrictions on Voter Registration Drives*, Brennan Center for Justice at NYU School of Law (2012), <https://www.brennancenter.org/our-work/research-reports/state-restrictions-voter-registration-drives/>

Finally, S.B. 7050 imposes these onerous restrictions while failing to permit community-based organizations to submit registration information online—a simple, common-sense improvement to existing law that would do far more to promote the bill’s purported objectives of increasing transparency and accountability for registration drives. There is no reason that community-based voter registration organizations should be unable to submit all registration information online. Presently, individual voters can use the state’s online platform to register to vote.¹⁶ Yet, current Florida law does not allow community-based voter registration organizations to use the online registration platform during their drives. Correcting this inconsistency and allowing these organizations to digitize their processes would more effectively safeguard against any potential errors that S.B. 7050 seeks to punish with six-figure fines. Allowing this process to be completed online would promote accuracy and transparency far more effectively than increased fines—and would do so without overly burdening community-based voter registration organizations.

II. The Committee Should Reject S.B. 7050’s Change to the Statutory Definition of “Willfully Votes More Than One Ballot at any Election.”

Section 34 of S.B. 7050 inappropriately redefines the phrase, “willfully votes more than one ballot at any election,” to list the three possible situations in which an individual may vote more than once in an election.¹⁷ This change creates unnecessary confusion in the statute that could cause a chilling effect. The new language can be read to alter the nature of the statute to punish individuals with a felony in the third degree, if they vote a second time under the mistaken belief that their first vote was not counted. The vagueness could lead voters to believe that people will end up in prison simply for attempting to do what they believed was their civic duty. Ensuring that intent remains an obvious and necessary element of a conviction under the statute is imperative to separate innocent from criminal behavior. For example, passing counterfeit money is a federal crime.¹⁸ But if someone unknowingly receives a fake bill in their change, and then spends it, thinking the bill is real, that person has not committed a crime.

It is unclear if S.B. 7050 seeks to change that requirement. It appears that under the bill’s current wording all that is required for felony liability is for a person to vote twice, regardless of the intent or knowledge behind the action. Individuals would not have to know that their vote was counted in a different jurisdiction. In addition, S.B. 7050 allows prosecutions to “proceed in any jurisdiction in which one of the ballots was willfully cast, and it is not necessary

¹⁶ <https://registertovoteflorida.gov/home>

¹⁷ S.B. 7050 §34 (amending Fla. Stat. § 104.18).

¹⁸ 18 U.S.C. 472.

to prove which of the ballots was cast first.”¹⁹ This raises concerns in such situations as when one member of a household returns ballots in one county or state, the family moves to a new county or state, and another family member votes. In that situation, S.B. 7050’s language can be read to punish individuals who were unaware and submitted a second ballot with *five years in prison* and fines up to \$5,000.²⁰

Further, this change to the statute again raises additional concerns under Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments, which prohibit racial discrimination in voting.²¹ Black voters in the state have been disproportionately arrested for election crimes.²² By causing confusion about whether the intent element is being removed from this crime, S.B. 7050 risks chilling participation by sowing fear among eligible voters that they will be prosecuted for making innocent mistakes while engaging in constitutionally protected activities. Thus S.B. 7050 threatens to further diminish access to the franchise for Black voters in Florida.

* * *

For these reasons, we urge you to oppose S.B. 7050. Please feel free to contact Godfre Blackman at (347) 852-0002 or by email at gblackman@naacpldf.org with any questions or to discuss these matters further.

Sincerely,

/s/ Godfre Blackman

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¹⁹ S.B. 7050 §34 (amending Fla. Stat. § 104.18).

²⁰ *Id.*

²¹ U.S. Const. amends. XIV, XV; 52 U.S.C. § 10301.

²² See Wayne Washington, *Voter intimidation? Black voters over-represented among those arrested so far for election crimes*, The Palm Beach Post (Oct. 22, 2022) <https://www.palm-beachpost.com/story/news/2022/10/10/black-voters-over-represented-among-those-arrested-election-crimes/10436294002/>.

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.