

February 23, 2022

Submitted electronically

Committee on Appropriations
Florida Senate
Knott Building, Room 412
601-631 S Duval Street
Tallahassee, FL 32399

Re: Opposition to S.B. 524

Dear Chair Stargel, Vice Chair Bean, and Committee Members:

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) writes in opposition to Senate Bill (“S.B.”) 524.¹ 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.² Because several of S.B. 524’s measures would likely diminish this right for voters of color, we urge you to oppose it.

S.B. 524 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 20 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 election laws” with the authority “to see that violators of the laws are apprehended and punished.”³ 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, discussed below, these proposals should be rejected.

Second, Section 4 of S.B. 524 would drastically increase the aggregate cap on fines that can be levied against a third-party voter-registration organization

¹ C.S./S.B. 524, Committee Substitute 1 (Fla. Senate 2022) (hereinafter “S.B. 524”).

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. 524 §§ 1 (creating Fla. Stat. § 97.022), 20 (amending Fla. Stat. § 102.091(2)).

for errors or other violations with respect to voter-registration applications within a calendar year.⁴ 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.⁵ Third, Section 10 would ban the use of ranked-choice voting in any local, state, or federal election.⁶ This provision appears to have no justification in evidence before the Legislature—ranked-choice voting is not currently in use anywhere in Florida.⁷ However, research shows that this voting method can increase both voter turnout and electoral representation for Black voters and other voters of color. Finally, S.B. 524 also needlessly heightens restrictions on voting by mail, 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.⁸

I. This Committee Should Reject in the Strongest Terms S.B. 524’s Creation of an “Election Crimes” Law Enforcement Office and its Expansion of “Special Officers” for Election-Related Investigations.

Section 1 of S.B. 524 would create an “Office of Election Crimes and Security” within DOS, implementing, in part, a budget proposal from Governor Ron DeSantis.⁹ 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.”¹⁰ In addition, S.B. 524 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 match Gov. DeSantis’s requested \$5.7 million budget and 52-person staff.¹¹ Further, Section 20 of the bill expands the governor’s existing

⁴ *Id.* § 4 (amending Fla. Stat. § 97.0575).

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”).

⁶ S.B. 524 § 10 (creating Fla. Stat. § 101.019).

⁷ 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->

⁸ *See, e.g.*, S.B. 524 §§ 5, 8, 12, 13, 15, 16, 17, 24.

⁹ 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>.

¹⁰ *See* S.B. 524 § 1 (creating Fla. Stat. § 97.022).

¹¹ *Id.*; *see* 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

authority to designate sworn special agents from the personnel of DLE, who would thus become “special officers to investigate alleged violations of the election laws.”¹² Under current Florida law, the governor has discretionary authority to appoint such officers when “necessary.”¹³ However, under S.B. 524, at least one of these special elections officers would be required to be appointed in each of the DLE’s operational regions, and would be instructed “to see that violators of the election laws are apprehended and punished.”¹⁴

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.¹⁵ Yet, according to Gov. DeSantis, “Florida’s 2020 election season was a resounding success and model for the nation.”¹⁶ 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.”¹⁷ Florida voters, Secretary Lee added, “should be confident in the integrity of our election system and the security of their vote.”¹⁸ 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 S.B. 524 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 the voting process.¹⁹ For example, following the 2000 presidential election,

specifying that “[t]he office will contain 52 staff members, including 20 sworn law enforcement officers and 25 non-sworn investigators.”)

¹² S.B. 524 § 21 (amending Fla. Stat. § 102.091).

¹³ Fla. Stat. § 102.091.

¹⁴ See S.B. 524 § 20.

¹⁵ *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/>.

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

¹⁷ 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/>.

¹⁸ *Id.*

¹⁹ 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>.

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.²⁰ Twenty years later, Black Floridians continued to face the unwarranted and intimidating presence of armed law enforcement at their polling locations.²¹ For example, in November 2020, LDF received reports of concerning police presence at several polling places in Florida.²² 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.²³

S.B. 524’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.²⁴ 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. 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

²⁰ 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>.

²¹ 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/>.

²² 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.

²³ *Id.* at 76.

²⁴ See sources cited *supra*, notes 19-22.

voter intimidation.²⁵ S.B. 524’s 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.²⁶

II. This Committee Should Reject S.B. 524’s Provisions Enabling Exorbitant Fines on Third-Party Registration Organizations.

Section 4 of S.B. 524 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.²⁷ 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.²⁸ 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, S.B. 524’s changes could potentially expose organizations to hundreds of fines in a single year, each of which could range from \$50 to \$1,000.²⁹ 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.”³⁰ 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.

Instead, S.B. 524’s threat of exorbitant financial penalties would likely have a chilling effect on third-party registration organizations’ activities, and

²⁵ 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>.

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

²⁷ S.B. 524 § 4 (amending Fla. Stat. § 97.0575(3)(a)).

²⁸ 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).

²⁹ Fla. Stat. § 97.0575(3)(a).

³⁰ S.B. 524 § 4 (amending Fla. Stat. § 97.0575(3)(a)).

these essential activities are protected by the First Amendment.³¹ 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 First and Fourteenth and Amendments.³² Thus, S.B. 524’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.³³ Black and Latino voters are “nearly twice as likely to register through a [third-party registration] drive as white[]” voters.³⁴ By chilling third-party registration organizations’ activities, and thereby likely reducing the availability of voter-registration drives, S.B. 524 will likely diminish access to the franchise for Black and Latino voters in Florida.

III. The Committee Should Reject S.B. 524’s Unjustified Ban on Ranked-Choice Voting.

Section 10 of S.B. 524 would ban ranked-choice voting for local, state, and federal elections, including primaries.³⁵ 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.³⁶ 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 school

³¹ *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).

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

³³ U.S. Const. amends. XIV, XV; 52 U.S.C. § 10301.

³⁴ 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>.

³⁵ S.B. 524 § 10 (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”).

³⁶ 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/>.

boards.³⁷ There is also evidence that ranked-choice voting can increase the diversity of the candidate pool³⁸ 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.³⁹ 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.⁴⁰

For these reasons, S.B. 524'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 S.B. 524's Restrictions on the Vote By Mail Process, Including Heightened Criminalization, Burdensome Identification Requirements Unnecessary Complications, and Insufficient Privacy Protections.

Section 22 of S.B. 524 unnecessarily increases the penalty for any person who distributes, collects, requests, delivers, or possesses more than two vote-by-mail ballots in addition to their own ballot 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, Sections 12 and 14 of the bill impose an additional, confusing, and seemingly pointless step for voters returning their Vote By Mail ("VBM") ballots. Currently, a Florida voter who requests a mail ballot is sent two envelopes: a "secrecy envelope" and a "return mailing envelope."⁴¹ 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

³⁷ 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.

³⁸ 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>.

³⁹ 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/>.

⁴⁰ 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.

⁴¹ See Fla. Stat. § 101.6103.

later than 7:00 p.m. on Election Day. But S.B. 524, without explanation, adds a requirement that voters seal their secrecy envelope within a third envelope—a “certificate envelope”—or risk having their ballot rejected.⁴²

Thus, under S.B. 524, 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.⁴³ Missing any one of these steps could result in rejection. Adding new layers of complexity to the VBM-voting process serves no reasonable purpose and does nothing to increase security. Instead, this requirement, in concert with S.B. 524’s identification requirements, discussed below, creates the potential for large-scale VBM ballot rejections similar to those seen in Texas following the passage of Senate Bill 1, which newly imposed identification requirements for VBM voting that are similar to those in S.B. 524.⁴⁴

S.B. 524 also requires VBM voters to provide a Florida driver license number, Florida identification card number, or the last four digits of their social security number (“SSN”), providing that “[a] vote-by-mail ballot will be considered illegal and not be counted if the number provided does not match a number in the supervisor’s records.”⁴⁵ First, this requirement is needlessly redundant as S.B. 90, which passed the Florida Legislature less than a year ago, already requires a voter applying for a VBM ballot to provide the same information.⁴⁶ Therefore, the fact that a voter received a VBM ballot evinces that the voter provided at least one of the required numbers at the application stage. Additionally, like S.B. 90, the bill provides no accommodation for voters who do not have any of those three numbers, and instead, wholly deprives them of access to a VBM ballot. This requirement is unnecessarily burdensome and will prevent some voters, including recently naturalized citizens, from being able to request and cast 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.⁴⁷ 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,

⁴² S.B. 524 § 12 (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”).

⁴³ *Id.* (amending Fla. Stat. § 101.6103(2)).

⁴⁴ 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/>.

⁴⁵ S.B. 524 § 15 (amending Fla. Sta. § 101.64).

⁴⁶ FL LEGIS 2021-11, 2021 Fla. Sess. Law Serv. Ch. 2021-11 (C.S./C.S./C.S./S.B. 90) § 24 (West 2021) (amending Fla. Stat. § 101.62(1)(b)).

⁴⁷ 52 U.S.C. § 21083(a)(5)(A)(ii).

nor a SSN.⁴⁸ These voters may include newly naturalized citizens, who are predominantly people of color.⁴⁹ Yet the bill’s language appears calibrated to exclude such voters from requesting VBM ballots. This provision of S.B. 524 serves no legitimate purpose and will bar some voters—who are likely disproportionately voters of color—from the VBM process.

S.B. 524 also fails to make any provision for the safekeeping of these identifying numbers.⁵⁰ Nor does the bill provide training for handling the sensitive data it would require voters to provide by mail. Each of these deficiencies raises additional concerns.

S.B. 524’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 VBM ballots at unprecedented levels. In the November 2020 general election, 522,038 Black voters in Florida cast VBM ballots,⁵¹ more than double the number of VBM ballots cast by Black voters in Florida in previous years.⁵² Moreover, the proportion of Florida’s total number of VBM ballots that were cast by Black voters increased by over 28% from 2016 to 2020.⁵³ Imposing additional restrictions on VBM voting now—at a time when Black voters have begun voting VBM 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

⁴⁸ See *id.* (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 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”).

⁴⁹ 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.

⁵⁰ See S.B. 524 § 14 (amending Fla. Sta. § 101.64)

⁵¹ 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.

⁵² 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>.

⁵³ 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.

use it “bears the mark of intentional discrimination that could give rise to an equal protection violation.”⁵⁴

V. The Committee Should Oppose S.B. 524’s Increased Voter Purges and its Reliance on Potentially Unreliable Sources of Information on Voters’ Citizenship Status.

Finally, several provisions in S.B. 524 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 S.B. 524 would require counties to conduct voter purge activities “at a minimum once in each year,” rather than once every odd-numbered year, as in current law.⁵⁵ 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.⁵⁶ 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.⁵⁷ Florida should not make a similar mistake again.

VI. The Proposed Committee Amendment Fails to Address Several of S.B. 524’s Most Harmful Provisions.

On February 22, this Committee proposed an amendment to S.B. 524 that would mitigate some—but far from all—of the bill’s harmful provisions.⁵⁸ Notably, the proposed amendment would no longer require VBM ballots to be returned within a “certificate envelope,” in addition to the two envelopes already required under Florida law, and it would no longer require VBM voters to provide a Florida driver license number, Florida identification card number, or

⁵⁴ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440 (2006).

⁵⁵ S.B. 524 § 5 (amending Fla. Sta. § 98.065(2)).

⁵⁶ *Id.* § 8 (amending Fla. Stat. § 98.093).

⁵⁷ *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).

⁵⁸ Comm. Amend. No. 824268 to C.S./S.B. 524 (Appropriations/Hutson) (Feb. 22, 2022).

the last four digits of their SSN when returning their VBM ballots. These changes are a small step in the right direction. However, the proposed amendment leaves several harmful and unnecessary provisions of S.B. 524 intact. For example, the bill would still threaten grass-roots organizations engaging in constitutionally protected activities with exorbitant fines.⁵⁹ It would still ban ranked-choice voting, a method of election that has the potential to improve the equality of representation for Floridians of color.⁶⁰ And, most concerningly, the amended bill would still create an “Office of Election Crimes and Security” with expansive powers to intimidate or chill voters—and without protections against the politicization or weaponization of this new and entirely unnecessary law enforcement entity.⁶¹ Thus, even if the proposed committee amendment is adopted, this Committee should oppose S.B. 524’s unjustified and harmful changes to the Florida Election Code.

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For the foregoing reasons, we urge you to oppose S.B. 524. Please feel free to contact Steven Lance at (347) 947-0522 or by email at slance@naacpldf.org with any questions or to discuss these matters further.

Sincerely,

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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

⁵⁹ *Id.* § 6 (amending Fla. Stat. § 97.0575).

⁶⁰ *Id.* § 13 (creating Fla. Stat. § 101.019).

⁶¹ *Id.* § 3 (creating Fla. Stat. § 97.022).

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.