LEAGUE OF WOMEN VOTERS® OF FLORIDA

# **"Voting In America:**
# Access To The Ballot In Florida"

United States House of Representatives
Committee on House Administration
*Subcommittee on Elections*

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Written Testimony Submitted by:

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Introduction

It is a great honor to testify before this body, the Subcommittee on Elections for the U.S. House of Representatives. My name is Cecile Scoon and for my testimony this morning, I draw heavily from my work as President of the League of Women Voters of Florida and appear on behalf of that organization. Outside of my role with the League, I am a practicing civil rights attorney and lead a law firm in Panama City, Florida with my husband.

As many of you may know, the League of Women Voters is a century-old, nonpartisan political organization encouraging informed and active participation in government, working to increase understanding of major policy issues, and advocating for legislative changes and policies for the public good.

I have been asked to inform this subcommittee on voting and access to the ballot in Florida. It pains me to say that our organization, many of our partners, a federal judge and myself have observed severe forms of voter suppression and disenfranchisement in Florida over the past few decades.

Restricting ballot access in Florida over the last twenty years has taken place via five legislative actions: the passage of House Bill 1355 (2011), Senate Bill 7066, (2019), Senate Bill 90 (2021), Senate Bill 524 (2022), and the unprecedented passage of a gerrymandered congressional map willfully drawn by our Governor and approved by our state legislature (2022) . The first four laws severely limited voter access to the ballot and were discussed at length by U.S. District Judge Mark E. Walker in a federal Court order, League of Women voters of Florida et al vs Desantis Case No. 4-21-00186 CV (2022). Excerpts from that opinion are presented throughout this written submission.

In the recent Case No. 42-CV-00186, Judge Walker reviewed four statutes to see if there was a pattern of racial discrimination against African Americans and found that this pattern of intentional discrimination was well established.

House Bill 1355 (2011)

The entire summation of House Bill 1355 is taken from Judge Walker's order in case No. 42-CV-00186.

> "In 2010, the Black "usage rate" for early voting "still exceeded the white rate by a factor of about one-third." at 323. The Legislature was quick to

act. In 2011, then-Representative Dennis Baxley introduced HB 1355, which decreased the number of early in-person voting days. As a federal court later explained, the Legislature enacted HB 1355 "without clearly identifying why the law needed to be changed, without creating much of a legislative record to document its reasons for the change, and against the advice of the Florida State Association of Supervisors of Elections." Brown v. Detzner, 895 F. Supp. 2d 1236, 1239 (M.D. Fla. 2012). Before HB 1355, early voting in Florida began on "the 15th day before an election" and ended "on the 2nd day before the election." Florida, 885 F. Supp. 2d at 308 (quoting § 101.657(d), Fla. Stat. (2010)). HB 1355 altered that scheme by mandating that the early voting period begin "on the 10th day before an election and end on the 3rd day before an election." at 309 (quoting § 101.657(d), Fla. Stat. (2011)) (alteration deleted). By changing the end of the early voting period from the second day before an election to the third day before an election, HB 1355 effectively banned early voting on the Sunday before election day. Previously, Black churches had widely encouraged their congregants to vote on the Sunday before election day in so-called "Souls to the Polls" events. Tr. at 1730; see also Florida, 885 F. Supp. 2d at 335 ("[M]any African-American churches organize 'souls to the polls' drives to transport their congregants to early voting sites on that Sunday."). But even setting the Sunday before the election aside, Black voters "disproportionately used the first five days of the benchmark early voting period." Florida, 885 F. Supp. 2d at 323. Indeed, Black voters "used the repealed days of early voting at rates nearly double those of White voters in 2008." at 324. In other words, HB 1355 surgically removed only those early voting days used disproportionately by Black voters. Ultimately, a three-judge panel in the District Court for the District of Columbia declined to preclear HB 1355's changes to the early voting period under section 5 of the VRA because Florida did not meet "its burden" to establish "that its statewide early voting changes will have a nonretrogressive effect" on minority voter participation. at 337. Because Florida could not show that its changes would have a nonretrogressive effect, the court did not reach whether the Legislature enacted HB 1355's early voting provisions with the intent to discriminate based on race. At 351. A month later, the Middle District of Florida ruled on a similar issue and found that HB 1355 did not violate the Constitution or the VRA. Brown, F. Supp. 2d at 1239.

First, the court in Brown found that the Legislature did not enact HB 1355 with the intent to discriminate based on race. In doing so, the

court acknowledged that HB 1355's amendments to early voting would "have a disproportionate effect on minority voters." at 1246. It also acknowledged testimony that the Legislature made amendments to HB 1355 in an "unusual" manner, that the Legislature limited public testimony to three minutes, and that legislators used a "strike-all" amendment to alter the law the day before the Senate Rules Committee considered it. at 1247. Next, the court noted that a senator had made racially charged statements on the senate floor that "could be considered evidence of discriminatory purpose." (quoting Florida, 885 F. Supp. 2d at 354). And the court conceded that the former chairman of the Florida Republican Party had, in an unrelated case, testified to participating in meetings "in which 'not letting blacks vote' and 'suppressing black voters in Florida' was discussed." at 1248. Even so, the court determined that the plaintiffs were unlikely to succeed on their intentional discrimination claim. Finally, the court also rejected the plaintiffs' discriminatory results claim, concluding that HB 1355 would not "result in a denial or abridgement of the right to vote on account of race." at 1255. Besides changing Florida's early voting rules, HB 1355 also altered Florida's scheme regulating 3PVROs—which, as explained below, overwhelmingly serve minority communities. Before HB 1355, "Florida law required an organization, upon receipt of a voter-registration application, to 'promptly' deliver it to a voter registration office." League of Women Voters of Fla. v. Browning, 863 F. Supp. 2d1155, 1159 (N.D. Fla. 2012). HB 1355 changed that by requiring "voter-registrationorganization[s] to deliver a voter-registration application to the Division of Elections or the local supervisor of elections 'within 48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period.' " at 1160 (quoting § 97.0575(3)(a), Fla. Stat. (2011)). HB 1355 also required 3PVROs to disclose to the Division of Elections the name of every volunteer who helps the organization register voters. at 1163. It also required the 3PVRO to report any change in this information within 10 days. Even more, the law required "registration agents"—anyone who helped register voters—to file a sworn statement that the agent "will obey all state laws and rules regarding the registration of voters." at 1164 (quoting § 97.0575(1)(d), Fla. Stat. (2011)). And "[t]he statement 'must be on a form containing notice of applicable penalties for false registration.' " (quoting § 97.0575(1)(d), Fla. Stat. (2011)).Plus, as this Court noted,

> the Secretary of State had promulgated a form that falsely suggested "that a registration agent commits a felony and could be imprisoned for five years for sending in a voter-registration application that includes false information, even if the registration agent does not know or have reason to believe the information is false." HB 1355 also imposed various other onerous restrictions on 3PVROs that, for the sake of brevity, this Court will not discuss here. Unsurprisingly, this Court enjoined much of HB 1355's restrictions on 3PVROs as violative of the First Amendment and the NVRA. at 1168. Accordingly, when other courts ruled on HB 1355's racial effects, they did not address its 3PVRO restrictions. See Florida, 885 F. Supp. 2d at 307. In the next election cycle, HB 1355 had a predictable effect on Florida elections: "voters stood in line for as long as six to eight hours for [early in-person voting] or election day voting in Florida during the 2012 election." Tr. at 1739. These "long lines helped to reduce [early in-person] voting by 225,000" and "election day voting by 250,000 between 2008 and 2012." at 1740. After a public uproar, the Legislature restored the pre-2011 early voting hours. [1]

Senate Bill 7066 (2019)

Judge Walker went on to analyze another statute limiting voter access, Senate Bill 7066, which limited the ability of persons with felony convictions to have their voting rights restored. The court stated:

> Finally, a more recent piece of Florida legislation also merits discussion. In 2018, Florida voters overwhelmingly approved "Amendment 4, which restored voting rights to former felons who had served their time." at 899. In response to Amendment 4, the Legislature passed SB 7066, which required felons to pay all fees they owed to the state before their voting rights could be restored. As Dr. Austin testified, SB 7066 "had more of an impact on African-Americans," while 6% of the non-Black population was disenfranchised by Florida's prior regime, 15% of the Black voting-age population was affected. In Jones v. DeSantis, 462 F. Supp. 3d 1196 (2020), this Court considered whether the Legislature enacted SB 7066 with the intent to discriminate based on race. Summarizing the plaintiffs' evidence, this Court explained that "the plaintiffs' race claim draws substantial support from the inference—in line with the testimony

[1] Case No. 42-CV-00186 p 58-63

> of the State's own expert—that a motive was to support Republicans over Democrats, coupled with the legislators' knowledge that SB7066 would have a disparate impact on African Americans, who vote for Democrats more often than for Republicans." at 1238. But given "other explanations for these SB7066 provisions, as well as evidence inconsistent with the inference of racial motivation" this Court found that, "[o]n balance, . . . SB7066 was not motivated by race.". Still, this Court noted that "the issue is close and could reasonably be decided either way." at 1235.[2]

Senate Bill 90 (2021)

In 2021, Governor Ron DeSantis signed into law Senate Bill 90 which created barriers for eligible Floridians to exercise their freedom to vote by making mail ballots less accessible and more difficult to cast, severely limiting voter assistance, and making it more difficult for community voter registration drives to do their critical outreach.

It is the League's belief that Senate Bill 90, by design, seeks to silence voters' voices based on what they look like or where they come from. This belief has been proven true by a recent ruling from a ruling from a district court.

Senate Bill 90's harm can be exemplified in the simplest of ways in the following matter: Statistically, Black and brown voters work longer hours and live in larger households, cutting out 24-hour drop boxes and limiting help with ballot delivery, which this law does,places a disproportionately greater barrier to Balck and brown voters.. Black and brown voters and young voters also disproportionately rely on community voter registration drives to access the ballot, making the restrictions imposed especially unfair.

In the aforementioned lawsuit the League of Women Voters of Florida, Black Voters Matters Fund, Florida Alliance for Retired Americans, Equal Ground Fund, and individual voters sued the secretary of State and all 67 Florida counties challenged Senate Bill 90. We claimed that:

- Senate Bill 90's drop box restrictions changed the 24/7 availability at numerous sites to 9:00 a.m. -6:00 p.m. availability limited to early voting only and requiring a paid individual to observe the drop box while it was open to the public.

[2] Case No 42-CV-00186 p 62-63

- Mail-in ballot repeat request requirement which requires voters to request their vote by mail (VBM) ballot every two years instead of every four years and requires that voters submit their drivers license, their state ID, or provide the last four of their social security number and requires that the form of ID used in the request for the VBM ballot match the type of ID that the SOE has in the record.[3]

- Volunteer assistance ban which prevents any assistance within the 150 foot radius of the precinct or voting place. This includes comfort assistance like water or a cookie

- Deceptive registration warning which required the League to make statements such as the League may not deliver your voting registration on time, which would scare would-be registrants from registering and would deter them from working with the league, violated the First and 14th Amendments.

Of note, the Republican National Committee (RNC) and National Republican Senatorial Committee (NRSC) intervened in the case. Four cases challenging S.B. 90 were consolidated for discovery and trial, with this case named as the "parent case."

A two-week trial began on Monday, January 31, 2022. After the trial, the judge struck down multiple provisions of Senate Bill 90: the drop box restrictions, line-warming ban and warning requirements for third party voter registration organizations. Florida was also placed under preclearance for the next 10 years and ordered to obtain approval from the court before passing any new laws related to drop boxes, line-warming and voter registration organization activities.

In his final order dated 31 March 2022, following the bench trial, Chief U.S. District Judge Mark Walker made powerful intentional discrimination findings of fact and holdings of law based on the testimony of division of election officials who admitted that the legislature asked for demographic information on how different groups like Blacks voted and that this information was provided and that whatever way that African Americans voted in a particular year, then that methodology we selected for voter suppression laws. The court also found:

- "This Court finds that the Legislature enacted some of SB 90's provisions with the intent to discriminate against Black voters…"[4]

[3] The Division of Elections estimated that this requirement will adversely impact about 400,000 citizens that do not have one of these numbers on record at the SOE office.
[4] Case No, 4-CV-00186 p. 107..

The court reasoned after analyzing three previous laws created by the Republican led legislature that : "Once is an accident, twice is a coincidence, three times is a pattern. Skilled and well-respected judges from multiple courts examined the provisions discussed above, and they all found that the Florida Legislature did not enact them with the intent to discriminate based on race. But in all cases, the court acknowledged that the law had discriminatory effects. This case is different because this Court now has 20 years of legislation before it. At some point, when the Florida Legislature passes law after law disproportionately burdening Black voters, this Court can no longer accept that the effect is incidental. Based on the indisputable pattern set out above, this Court finds that, in the past 20 years, Florida has repeatedly sought to make voting tougher for Black voters because of their propensity to favor Democratic candidates." [5]

- "At bottom, SB 90 does not eliminate drop boxes, and voters will continue to use them. But SB 90 will make drop boxes less accessible before early voting begins, on the day before election day, and on election day—days when many voters (possibly most voters) use drop boxes. SB 90 will also reduce the number of drop boxes available outside of regular business hours—another popular period for drop boxes. Another way to think about SB 90, then, is that it largely eliminates the features that made drop boxes more convenient than early-in-person or election-day voting. Thus, this Court concludes that SB 90 will burden voters who use drop boxes. And the evidence before this Court suggests that these voters are disproportionately likely to be Black."[6]

- "Without preclearance, Florida can pass unconstitutional restrictions like the registration disclaimer with impunity. Litigation takes time; here, it has taken a year. And so, before litigation can run its course, the Legislature can merely change the law—as it has done here. The result is that Floridians have been forced to live under a law that violates their rights on multiple fronts for over a year. Without preclearance, Florida could continue to enact such laws, replacing them every legislative session if courts view them with skepticism. Such a scheme makes a mockery of the rule of law.")[7]

The defendants appealed this decision to the 11th U.S. Circuit Court of Appeals, which stayed the decision of the district court while the appeal is pending..

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[5] Case No, 4-CV-00186 p. 64.
[6] Case No, 4-CV-00186 p. 97
[7] Case No, 4-CV-00186 p. 279

Senate Bill 524 (2022)

Governor Ron Desantis recently signed into law Senate Bill 524, The League believes this law is both anti-democratic and anti-voter. The law and its effects have potential to do widespread harm to Florida's elections. The law revised provisions governing election administration. The law entails a number of provisions including but not limited to the following:

- Creation of the "Office of Election Crimes and Security" made up with the Florida Department of State's direction
- Modification of the governor's authority to appoint special officers to investigate alleged violations of election laws
- Increases to $50,000 from $1,000 the annual cap on fines assessed against a third-party voter registration organization for late arrival of voter registration forms or other violations
- Increases criminal penalties for requesting, possessing,or delivering more than 2 ballots of non-family members ] per election from a misdemeanor to a felony
- Expands a criminal penalty for early disclosure of election results
- Increases the frequency with which list maintenance must be conducted by Supervisor of Elections
- Revises options Supervisors of Elections may use for identifying change-of-address information
- Specifies voter addresses that Supervisors of Elections must use in conducting list maintenance activities
- Requires a Supervisor of Elections to send an address confirmation final notice to a voter if certain conditions are met
- Requires an inactive voter to confirm his or her current address of legal residence before being restored to active status
- Expands a prohibition against the use of private donations for election-related expenses to apply to any kind of expense, including but not limited to the costs of related litigation.
- Revises the date by which supervised voting must be requested.
- Revises "drop box" terminology to "secure ballot intake station."

Proponents of Senate Bill 524 failed to produce any compelling evidence that warrants the costly creation of an Office of Election Crimes and Security. In fact, when asked, legislators and the governor admitted that there was almost no fraud in the Florida 2020 elections. Moreover, the message this office's creation sends – that voting in Florida elections is somehow criminally suspect – has the potential to intimidate voters and discourage them from participating in the political process. Taxpayer

dollars would be better spent improving access to the ballot and making the voting process more efficient.

Reporting requirements for the Office of Election Crimes and Security lack critical transparency by failing to include the number of unsubstantiated claims or the sources of such claims. A high number of reported claims – even if the vast majority are entirely frivolous and do not merit investigation – will fuel misinformation relating to the office's efficacy and the security of our elections.

Raising the cap on annual aggregate fines dramatically from $1,000 to $50,000 for third-party voter registration groups, like the League, has a chilling effect. These fines likely discourage smaller localized groups deeply rooted in their communities from running programs altogether. They will make it much harder for communities of color, seniors, and persons with disabilities that often depend on these groups to exercise their fundamental right to vote.

Additional list maintenance requirements with no safeguards will impose significant election administrative costs borne by the counties with no additional funding provided by the state. These processes are also duplicative of Florida's current list maintenance system via ERIC, which generally works well. In addition, the use of Department of Highway, Safety and Motor Vehicles (DHSMV) non-citizen data will likely create barriers for many voters. Attempts by Gov. Rick Scott to use DHSMV data for list maintenance in 2012 led to thousands of voters being wrongly identified for removal from the Florida Voter Registration System due to seriously flawed data and implementation. That effort was blocked by a federal appeals court due to it violating the NVRA.

The reclassification of election-related misdemeanors to felonies is excessive. For instance, assisting voters with vote-by-mail ballots will be further criminalized with harsher penalties as the penalty was raised from a misdemeanor (as established by SB 90) to a felonyA pastor or neighbor who helps a voter without an intent to violate the limitations currently in law should not face a felony and the loss of their civil rights. During the legislative debates around this law, sponsors refused to add language which would have required prosecutors to establish intent to violate the law so even persons who are not aware of the 2020 law change and the 2022 enhancement of the criminal penalty could be convicted of a felony and in turn lose their right to vote.

It is the League's belief that Senate Bill 524's proponents showed a disturbing lack of respect for the fundamental rights it threatens. While focusing on measures restricting their constituents' freedom to vote, the Legislature rejected many changes

that would have expanded access and made voting more accessible for all Floridians such as allowing voters to register up to Election Day, giving Supervisors of Elections more flexibility on early voting site locations, and modernizing registration to get eligible Floridians on the voter rolls automatically.

Redistricting

It is well known that historically politicians have manipulated the redistricting process to expand or protect their own power—often to the detriment of the minority political party, marginalized populations, and often, Black communities. Across our nation, the League of Women Voters continues to fight racial and partisan gerrymandering and advocate for a fair and transparent process that produces the most representative maps. The League of Women Voters of Florida has successfully fought to protect fair districts in this state and is continuing this fight today.

In 2010, 63% of Florida voters approved two amendments to our state constitution written by the League and partners within a group dubbed the "Fair Districts Coalition" to help ensure fair redistricting. In 2012, they were signed into law.

The Fair Districts provisions require that district lines:

- not be drawn to favor one political party over another
- not be drawn to diminish the voting power of racial or language minorities
- Be drawn so that racial or language minorities be given an equal opportunity to select representatives of their choice, and
- are contiguous.

In addition, if possible, and so long as it does not violate the requirements above, the districts should:

- be compact
- take into account jurisdictional lines of counties and cities
- take into account geographical boundaries
- Be equal in population

In 2012, the League and a coalition of voting rights groups filed lawsuits in response to gerrymandering by political party operatives in Florida. The State Legislature spent $11 million of taxpayer money unsuccessfully defending its illegally drawn district map. In 2015, the Florida Supreme Court approved new Congressional district boundaries drawn by the League and its partners. The fairly balanced districts directly contributed to the electoral wins of three non-white candidates in 2016.

Now in 2022, following the previous cycle of advocacy and litigation, the League and a coalition of voting rights groups partnered up once again to encourage Florida's state legislature to follow the voter-approved Fair District provisions. Florida's state legislature did make some attempt to follow provisions and put forth state legislative maps that substantially complied with Fair Districts. Unfortunately, Governor Ron DeSantis unprecedentedly inserted himself into our congressional redistricting process.

The Governor vetoed the legislature's proposals, drafted his own map and then placed pressure on the legislature to pass his congressional map. It is the League's belief that Governor DeSantis's congressional redistricting map violates the Fair Districts Amendment pertaining to congressional redistricting in the Florida Constitution.

The map Governor DeSantis put forth diminishes Black voters' ability to elect candidates of their choice in congressional districts that have previously elected Black representatives to Congress. Governor DeSantis himself has expressed that the map he has drawn does not comport with the present rulings of the highest court of our state, the Florida Supreme Court, as given in 2015. The League believes the Governor and state legislature's refusal to protect the Florida Supreme Court's previously created Black districts will directly harm Black voting power established by Florida Supreme Court and harms every citizen in the state, regardless of race. Breaking established law in the hopes that the court will change the law in the future destroys the rule of law.

Currently, a lawsuit filed on behalf of the League of Women Voters of Florida, Black Voters Matter, Equal Ground Education Fund ,Florida Rising Together and several individual voters challenging this new congressional map for violating the Florida Constitution is making its way through the judicial process. The League and other Plaintiffs in this suit allege that DeSantis' map violates multiple provisions of the Fair Districts Amendment of the Florida Constitution by diminishing the ability of Black Floridians to elect their candidates of choice, particularly in northern Florida and the 5th Congressional District, and intentionally favoring the Republican Party at the expense of the Democratic Party.

The lawsuit asks the court to block DeSantis' map and order the creation of a new map that complies with the Fair Districts Amendment. A preliminary injunction hearing was held May 11. During the hearing, the judge blocked the map after finding that it likely violates the Fair Districts Amendment "because it diminishes African Americans' ability to elect candidates of their choice" in northern Florida as the governor's map diminishes the African American access districts from four to two

thus diminishing the number of African American districts and violating a mandatory Fair Districts' provision prohibiting diminishment of minority districts.

The Florida Secretary of State immediately appealed this decision, which automatically stayed the trial court's order blocking the map. The trial court judge then vacated the stay during the appeal, meaning that DeSantis' map was re-blocked.

Then on May 20, the  appellate court reinstated the automatic stay of the trial court's order, thereby putting DeSantis' map back in place while the appeal is pending. . In summary, after some back and forth between the trial and appellate courts, DeSantis' map is currently in effect for future elections. This will cause irreparable harm to African American voters across the state.

Conclusion

In sum, during the last twenty years, restrictive election laws and policies in Florida, that touch all aspects of the process, from registration, to casting a ballot, to the weight of your vote in newly drawn districts, operate together to thwart the ability to vote for many Floridaians. As a result, the League of Women Voters of Florida is forced to turn to the courts and to federal legislation to ensure the most basic of voting and civil rights are upheld.

Thank you for your time. I'm happy to answer any questions of the Committee members.