



April 2, 2019

Secretary of the Senate  
State Capitol  
Nashville, TN 37243

Chief Clerk of the House  
State Capitol, 2nd Floor  
Nashville, TN 37243

***Via email and U.S. mail***

Members of the Tennessee General Assembly:

Campaign Legal Center (“CLC”) writes to urge the Tennessee General Assembly to reject amended Senate Bill 971 (2019) and House Bill 1079 (2019) (collectively, “the Bill”) which would impose draconian civil and criminal penalties on organizations that, through no fault of their own, submit deficient voter registration forms. By penalizing civic participation groups for unintentional inaccuracies in their constituents’ completion of registration forms, the Bill tramples on cherished First Amendment rights and would undeniably result in less voter registration activity in Tennessee, a state that already has some of the lowest voter registration rates in the country.

Voter registration drives are a time-honored tradition in our democratic system. They signify a celebration of civic engagement and a critical exercise of First Amendment expression. Like petition circulation, voter registration drives are “core political speech” which involves “interactive communication concerning political change.” *Meyer v. Grant*, 486 U.S. 414, 422 (1988). Indeed, “[t]he interactive nature of

voter registration drives is obvious: they convey the message that participation in the political process through voting is important to a democratic society.” *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006); *see also Am. Ass’n of People with Disabilities v. Herrera*, 690 F. Supp. 2d 1183, 1215–16 (D.N.M. 2010), on reconsideration in part, No. CIV 08-0702 JB/WDS, 2010 WL 3834049 (D.N.M. July 28, 2010). Voter registration drives, which develop relationships between organizations and potential voters, also implicate the “freedom to engage in association for the advancement of beliefs and ideas.” *NAACP v. Alabama ex rel. Patterson*, 357 US 449, 460 (1958).

Voter registration drives also facilitate access to the right to vote in many historically disenfranchised communities. Voter registration drives meet potential voters—many of whom may not know that they are eligible to vote, may not understand the process for registering, or may be unable to visit local election offices during business hours—where they are. Indeed, federal courts have recognized that charitable and educational organizations have a legally protected interest under the First Amendment and the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20501, *et seq.*, to encourage participation in the political process through increasing voter registration rolls. *See Project Vote*, 455 F.Supp.2d at 700–05 (citing *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)); *see also Charles H. Wesley Educ. Foundation, Inc. v. Cox*, 408 F.3d 1349 (11th Cir. 2005).

As with any registration process, voter registration drives can produce errors. Most states, including Tennessee, already criminalize the intentional falsification of voter registration forms. *See* TENN. CODE ANN. § 2-19-109 (2006) (“A person who knowingly makes or consents to any false entry on any permanent registration, poll list, election tally sheet or any other official registration or election document commits a Class D felony.”). Other states have implemented additional safeguards to ensure the accuracy of registration forms. For example, to reduce inadvertent errors, North Carolina and California ask third parties to flag deficient or incomplete forms but nonetheless require the forms to be submitted for review by election officials who can then determine their accuracy. *See* Cal. Elec. Code §§ 2150; 2159; 2159.5; N.C. Stat. §§ 163A-863; 163A-865.<sup>1</sup>

Rather than taking a common sense approach to reducing registration form errors, however, the Bill would severely burden voter registration activity and expose civic participation groups to undue risk of criminal and civil penalties. Of particular concern, the Bill would:

- Require those conducting voter registration drives to report their activities—including their locations—to the coordinator of elections.
- Require all participants in voter registration drives—paid or volunteer—to complete a training course conducted by the coordinator of elections. The bill does not specify how often the training will be offered, what mediums it will be offered in, where it will be conducted, or any other details that would

---

<sup>1</sup> *See also Guide to Voter Registration Drives*, CALIFORNIA SECRETARY OF STATE, <https://www.sos.ca.gov/elections/publications-and-resources/guide-vr-drives/> (last visited Apr. 1, 2019); *Conducting Voter Registration Drives in North Carolina*, NORTH CAROLINA STATE BOARD OF ELECTIONS, <https://www.ncsbe.gov/Voter-Information/VR-Drives> (last visited Apr. 1, 2019).

determine the feasibility of this training for many citizens.

- Impose a criminal penalty on individuals who do not complete the training prior to participation in a voter registration drive and impose criminal responsibility on those organizing the voter registration drive as well.
- Impose a criminal penalty for failure to submit—with a mail tracking number—a collected registration forms within ten days.
- Impose financial sanctions on citizens or civic participation groups that submit 100 or more “deficient” or incomplete voter registration forms. Those conducting voter registration drives cannot be held responsible if some of their constituents do not accurately complete their voter registration forms. Indeed, those conducting voter registration drives have a responsibility to turn in all voter registration forms. They cannot and should not be the arbiters of what voter registration forms are “deficient.”
- Impose an absolute prohibition on quotas or minimum numbers of registration forms to be collected by individuals participating in voter registration drives, which would prevent organizations from conducting meaningful performance reviews and limiting their ability to maintain an effective workforce.

These extreme restrictions and penalties pose myriad First Amendment concerns by severely burdening the expressive and associational rights of those conducting voter registration drives as well as access to the right to vote for Tennesseans.

The Bill’s constitutional deficiencies are heightened given its troublingly vague language. For example, the Bill fails to identify what procedures an organization must follow to contact a registrant if it discovers an error after the fact, especially when the organization could not retain the registrant’s contact information because of the Bill’s prohibition of such retention absent a registrant’s permission. It is equally unclear whether the organization would nonetheless be required to submit the registration form within 10 days under these circumstances, thus potentially forcing it to commit a violation. Thus, the combination of the 10-day mail-in requirement and the civil sanctions for submitting deficient forms would put civic participation groups in the impossible position of either failing to submit voter registration forms completed by Tennessee citizens (and risking criminal sanction) or submitting potentially deficient forms (and facing financial penalty).

The Bill places intolerable burdens on core First Amendment activity. *See, e.g., Meyer*, 486 U.S. at 428 (“The Colorado statute prohibiting the payment of petition circulators imposes a burden on political expression that the State has failed to justify.”). Indeed, a similarly restrictive Florida law was invalidated by a federal court due in part to the complicated requirements and harsh penalties it imposed on organizations engaged in voter registration. *See League of Women Voters of Fla. v. Browning*, 863 F.Supp.2d 1155 (N.D. Fla. 2012) (granting preliminary injunction); *League of Women Voters of Fla. v. Detzner*, No. 4:11-cv-628, 2012 WL 12810507 (N.D. Fla. Aug. 30, 2012) (granting permanent injunction). The Bill contains many of the same deficiencies as that Florida law.

The Bill would chill voter registration activities in the state, as civic engagement organizations struggle to invest the time and resources necessary to comply with the training requirements and find volunteers willing to assume the risk of liability. In many cases, those organizations, especially those with limited resources, may forego registration drives altogether to avoid the threat of civil fines or prosecution. Without this direct outreach, fewer citizens will be added to the voter rolls.

While errors will always occur, civic participation groups perform a vital community service by conducting voter registration drives. Rather than imposing threats of criminal and civil sanctions on organizations providing a public service, the Legislature should encourage constructive coordination that can improve the quality of voter registration activities in the state, which would benefit election officials, voter registration organizations, and Tennessee voters. For the foregoing reasons, we encourage you to vote no on SB 971 and HB 1079.

Respectfully submitted,

/s/Danielle Lang

Danielle Lang

Co-Director, Voting Rights and Redistricting

Tel: 202-856-7911

Email: [dlang@campaignlegal.org](mailto:dlang@campaignlegal.org)

Jonathan Diaz

Legal Counsel, Voting Rights

Email: [jdiaz@campaignlegal.org](mailto:jdiaz@campaignlegal.org)

Blair Bowie

Skadden Foundation Fellow/Law Clerk

Email: [bbowie@campaignlegal.org](mailto:bbowie@campaignlegal.org)

Campaign Legal Center

1101 14th St. N.W., Suite 400

Washington, D.C. 20005