February 15, 2021

Lieutenant Governor Delbert Hosemann and
Members of the Mississippi State Senate Elections Committee
400 High Street
Jackson, MS 39201

*Via Email*

Re:     Consideration of HB 586

Dear Lieutenant Governor Hosemann and Members of the Senate Elections Committee:

We write to urge you to oppose HB 586, a law designed to fail at identifying noncitizens on the voter rolls but sure to ensnare eligible naturalized citizens in bureaucratic red tape. As Lieutenant Governor (and former Secretary of State) Hosemann well knows, Mississippi is already facing a serious legal challenge for its policy holding naturalized U.S. citizens to a higher standard of proof for registration than U.S.-born citizens. *See Mississippi Immigrant Rights Alliance v. Hosemann*, No. 3-19-cv-831 (S.D. Miss. 2019). HB 586 would embroil Mississippi in further costly litigation that, based on past experience in states like Florida and Texas, is doomed to fail.

Rather than resolving the current litigation, HB 586 would merely replace one discriminatory system for naturalized citizen voters with another. Its ill-conceived design would not accomplish its goal of identifying ineligible voters on the rolls but instead would burden lawful voters and further expose Mississippi to resource-intensive and costly litigation that distracts from day-to-day election administration. The Mississippi Senate should pass HB 586's repeal of Section 23-15-15 of the Mississippi Code—which presently attempts to subject all naturalized citizens to a different voter registration standard—but reject HB 586's remaining provisions.

HB 586 proposes that the State compare its voter registration database, the Statewide Elections Management System, with Mississippi's state identification system to identify registered voters who may not be U.S. citizens and then require those registrants only to produce burdensome documentary proof of citizenship. However, such a matching system has proven repeatedly to be ill-suited for identifying non-citizens on the voter rolls but exceptionally well-suited to subjecting naturalized citizens on the voter rolls to discriminatory treatment. The reason is simple: citizenship status is not a static characteristic and the state identification system data on citizenship status is necessarily outdated. Mississippi state IDs are valid for four years. The database does not automatically update upon change in citizenship status and new citizens are not required to update that information on their identification prior to expiration. During any four-year period, thousands of Mississippi residents become naturalized citizens.[1]

Thus, there is nothing suspect about a newly registered voter who has previously presented herself as a non-citizen to the Department of Public Safety at the time she applied for her driver's license or identification card. In the likely event that she became a naturalized citizen before registering to vote, but after obtaining her driver's license or identification card, the state identification system would not reflect her updated status for up to four years. HB586 would simply subject newly naturalized citizens to additional burdens with no corresponding benefit to the state.

Mississippi need not wonder what the results of this system will be. Most recently, in 2019, Texas engaged in a nearly identical matching effort and announced prominently that it had identified 95,000 noncitizens registered to vote. It implemented a nearly identical process to HB 586 for those registrants, requiring them to come forward with proof of citizenship within 30 days. The fallout was a national embarrassment.[2] It was quickly demonstrated that nearly all the persons on the list were naturalized citizens and many of those individuals came forward and sued Texas along with voter rights' groups. A district court quickly ordered a stop to the program after a bruising evidentiary hearing and Texas shortly thereafter settled the case by abandoning the matching program, except for those who showed proof of non-citizenship *after* the date of voter registration.[3] Texas was forced to pay $450,000 in attorneys'

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[1] Dep't of Homeland Security, Table 22: Persons Naturalized by State or Territory of Residence: Fiscal Years 2017 to 2019, https://www.dhs.gov/immigration-statistics/yearbook/2019/table22.

[2] Alexa Ura, *"Someone did not do their due diligence": How an attempt to review Texas' voter rolls turned into a debacle*, Texas Tribune, Feb. 1, 2019, https://www.texastribune.org/2019/02/01/texas-citizenship-voter-roll-review-how-it-turned-boondoggle/.

[3] *Texas LULAC v. Whitley*, No. SA-19-CA-074-FB (Apr. 26, 2019), https://campaignlegal.org/cases-actions/texas-lulac-et-al-v-secretary-state-david-whitley.

fees for the failed effort and the debacle cost the Secretary of State his position.[4]

Similar efforts have failed in other states as well. In 2012, Florida's Secretary of State identified 185,000 registered voters who had previously indicated to the Department of Highway Safety and Motor Vehicles ("DHSMV") that they were non-citizens.[5] Again, it was quickly shown that nearly all of those individuals were naturalized citizens and lawful voters.[6] The program could not survive legal scrutiny and was eventually abandoned by the State.[7]

In sum, the system proposed by HB 586 will not achieve its goal of identifying unlawful voters on the rolls, will target new Americans with discriminatory proof of citizenship requirements not imposed on others,[8] and will further embroil Mississippi in costly litigation doomed to fail. The solution is clear. To resolve the ongoing litigation and eliminate national origin discrimination from Mississippi's voter laws, the legislature should repeal Section 23-15-15 of the Mississippi Code but reject the remainder of HB 586. Mississippi's election administration should focus on implementing best practices and modernization; not adopting practices proven repeatedly to fail.

Sincerely,

Danielle Lang
Co-Director, Voting Rights &Redistricting
Campaign Legal Center

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[4] *Id.* at ¶ 26; Alexa Ura, *Texas Secretary of State David Whitley departs as legislative session ends,* Texas Tribune, May 27, 2019, https://www.texastribune.org/2019/05/27/texas-secretary-state-david-whitley-forced-leave-office/.

[5] *Arcia v. Florida Secretary of State*, 772 F.3d 1335 (11th Cir. 2014).

[6] *Editor's Note on Nov. 12, 2018 to Story Published in May 2012*, https://www.nbcmiami.com/news/local/nearly-200000-florida-voters-may-not-be-citizens/2036938/ (explaining that Florida election documents show that initial list of 180,000 names was whittled to only 85 ineligible voters).

[7] *United States v. Florida*, 870 F. Supp. 2d 1346, 1350 (N.D. Fla. 2012); *see also Boustani v. Blackwell*, 460 F. Supp. 2d 822, 825 (N.D. Ohio 2006) ((holding that "since native born citizens are not required to show any proof of their citizenship under [the challenged statute], the statute creates an unequal application of voting requirements and lacks the justification of promoting a compelling governmental interest").

[8] *Id.* at 827 ("This Court has personally presided over numerous naturalization ceremonies and has witnessed firsthand the joy of these new Americans and their intense desire to participate in this nation's democratic process. There is no such thing as a second-class citizen or a second-class American. Frankly, without naturalized citizens, there would be no America. It is shameful to imagine that this statute is an example of how the State of Ohio says thank you to those who helped build this country.").

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_____/s/ Caren E. Short_____

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