

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

LEAGUE OF WOMEN VOTERS OF
FLORIDA, INC., et al.,

Plaintiffs,

v.

LAUREL M. LEE, in her official
capacity as Florida Secretary of State,
et al.,

Defendants,

and

REPUBLICAN NATIONAL
COMMITTEE, and NATIONAL
REPUBLICAN SENATORIAL
COMMITTEE,

Intervenor-
Defendants.

Cases Consolidated for Trial:

Nos.: 4:21-cv-186-MW/MAF
4:21-cv-187-MW/MAF
4:21-cv-201-MW/MAF
4:21-cv-242-MW/MAF

**PLAINTIFFS' JOINT BRIEF IN RESPONSE TO COURT'S ORDER
REQUESTING BRIEFING ON FLORIDA SENATE BILL 524'S IMPACT ON
THE CHALLENGED PROVISIONS**

Pursuant to the Court's March 21 Order for Expedited Supplemental Briefing, ECF No. 659, Plaintiffs in the above-captioned consolidated cases respond as follows:

On March 10, 2022, the Florida Legislature passed Senate Bill 524 ("SB 524"), another bill aimed, in part, at curtailing drop box access. If Governor DeSantis

signs it, SB 524 will impact the following Challenged Provisions of Senate Bill 90 (“SB 90”): (1) the Drop Box Provisions, (2) the Registration Delivery Provision, and (3) the Registration Disclaimer Provision.¹

A. SB 524 limits the use of drop boxes at permanent branch locations.

SB 524 aggravates the effect of SB 90’s Drop Box Provisions by sharply restricting what locations can qualify as a “permanent branch office of the Supervisor” at which a drop box (which SB 524 renames a “secure ballot intake station”) may be placed outside of early voting hours.

Specifically, SB 524 Section 22 requires that, for a drop box to be placed at a “permanent branch office of the supervisor,” that office must “meet the criteria set forth in s. 101.657(1)(a) for branch offices used for early voting and [be] open for at least the minimum amount of hours prescribed by s. 98.015(4).” S.B. 524 § 22 (2022) (amending Fla. Stat. § 101.69(2)(a) (2021)). Section 98.015(4), in turn, requires that the office be “open Monday through Friday, excluding legal holidays, for a period of not less than 8 hours per day, beginning no later than 9 a.m.” Fla. Stat. § 98.015(4). Thus, SB 524 allows drop boxes to be placed at branch offices only if those offices are open eight hours per day, every business day, all year round.

¹ As of the morning of March 23, 2022, SB 524 had not been presented to Governor DeSantis. *See* The Florida Senate, *CS/CS/SB 524: Election Administration – Bill History*, <https://www.flsenate.gov/Session/Bill/2022/524> (last visited March 23, 2022).

If the Court grants Plaintiffs the relief they seek in their challenge to the Drop Box Provisions of SB 90, the new change in SB 524 will have only a limited impact. Before SB 90, Supervisors could place drop boxes at eligible early voting locations, even outside of early voting days and hours. *See Fla. Stat. § 101.69(2) (2020); see also ECF No. 649 at 136-137.* Several Supervisors took advantage of that authority. *See Tr. Day 10, 2811:20-2812:17* (Director Matthews testifying that “some Supervisors did offer drop boxes other than at their offices outside of early voting days and hours during the 2020 election,” including “offering such drop boxes on the day before the election.”). They could do so again if the Court invalidates the Drop Box Provisions, even after SB 524, because SB 524 does not alter the rules for drop boxes at eligible early voting locations.

If the Court does not enjoin the enforcement of SB 90’s Drop Box Provisions, however, then SB 524 will make those provisions worse by eliminating one alternative method that Supervisors could still use to offer additional drop boxes outside of early voting hours. The combination of SB 524 and SB 90 would increase burdens on all voters, particularly voters of color and voters with disabilities.

In particular, Broward County Supervisor Joe Scott testified that his office has opened five additional permanent branch offices, and is in the process of opening a sixth, for the sole purpose of providing voters more options for delivering their vote-by-mail ballots on the Monday before Election Day and on Election Day. *Tr. Day 4,*

1251:6-10; *see also id.* at 1198:1-5 (Supervisor Scott testifying that in 2020 voters had only two places to deliver their vote-by-mail ballots on the Monday before Election Day and on Election Day). If SB 524 is signed into law, Supervisor Scott may no longer be able to do so. This is because he would be prohibited from placing drop boxes at permanent branch offices that are only open limited days or hours. Rather, he would be required to expend additional resources to staff each permanent branch office full time, all year round in order to offer drop boxes on just two key days during an election cycle. Other counties could be similarly affected.

Ultimately, if the Drop Box Provisions remain in force, the additional restriction imposed by SB 524 will make it even more costly to offer drop boxes outside of early voting hours because it will require supervisors to expend more resources to staff permanent branch offices. For Supervisor Scott, this may curtail his ability to offer drop boxes on the Monday before Election Day and on Election Day – a “crucial time when most people are tuned in and trying to cast their ballot.” Tr. Day 4, 1197:22-23. If that happens, voters in Broward County will have even fewer opportunities to deliver their ballots. *See id.* at 1205:12-16 (explaining that “the eight drop boxes that we have planned for this year’s elections are insufficient. I’d rather have – we need at least 40 drop boxes to really serve our community here[.]”). SB 524 would therefore further burden the right to vote.

If, however, the Court rules that the Drop Box Provisions are unconstitutional or otherwise unlawful, then the further change in SB 524 will be less significant, because Supervisors will be able to offer additional drop boxes at eligible early voting locations, even outside of early voting hours.

In this way, SB 524 increases the burdens imposed by SB 90's Drop Box Provisions, by eliminating one alternative means by which Supervisors could offer additional drop boxes outside of early voting hours.

B. SB 524 significantly increases the fine for SB 90's Registration Delivery Provision

SB 90 requires that a Third Party Voter Registration Organization must deliver a voter registration application to the Division of Elections or the Supervisor of Election *in the county in which the applicant resides* within 14 days after being completed by the applicant but not after book closing. Fla Stat. § 97.0575(3)a) (emphasis added). If signed into law, SB 524 increases the potential amount a Third Party Voter Registration Organization can be fined for violating the delivery provision in a particular year from \$1,000 to \$50,000. S.B. 524 § 7 (line 330) (2022) (amending Fla. Stat. § 101.69(2)(a) (2021)).

If the Court grants Plaintiffs the relief they seek in their challenge to the Registration Delivery Provision in SB 90, the new change in SB 524 will have only a limited impact, because Third Party Voter Registration Organizations previously

were allowed to comply with the law by delivering voter registration applications to any Supervisor of Elections and could continue to do so without threat of fines.

If the Court does not enjoin the enforcement of SB 90's Registration Delivery Provision, however, then SB 524 will make those provisions worse by allowing the imposition of a much more significant financial penalty on Third Party Voter Registration Organizations if they deliver a voter's application to the wrong county. As numerous witnesses testified, the Registration Delivery Provisions have imposed significant costs on Third Party Voter Registration Organizations, Tr. 207:24-211:13, 223:20-224:10, 769:18-770:9, 775:7-776:14, 800:6-16, 1424:13-1425:12, 1427:5-1428:1, 1438:19-1439:2, 1508:9-1509:17, 2040:16-2044:2, and, in combination with the Registration Disclaimer Provision, caused one Plaintiff to terminate its voter registration programs. Tr. 392:8-393:13.

For the reasons discussed in the *NAACP and Florida Rising Together Plaintiffs' Joint Post-Trial Brief*, the Registration Delivery Restriction substantially burdens Plaintiffs' registration activities in violation of the First Amendment. ECF 652 ¶¶ 1174-1185. Increasing the potential fine for delivery violations by 50-fold will substantially increase this burden.

C. SB 524 repeals SB 90's Registration Disclaimer Provision

The Registration Disclaimer Provision of SB 90 requires that Third Party Voter Registration Organizations inform each applicant at the time of registration

that they might not deliver the applicant's voter registration application on time and provide the applicant with information on the other ways the applicant can register to vote. Fla. Stat. § 97.0575 (3)(a). If presented to the Governor and signed into law, SB 524 will repeal this requirement and instead require that the uniform statewide voter registration application contain the disclaimer. S.B. 524 §§ 5, 7 (2022) (amending Fla. Stat. §§ 97.052(3)(g), 97.0575(3)(a) (2021)). As such, if and when SB 524 takes effect, Plaintiffs' challenges to the Registration Disclaimer Provision will become moot.

Respectfully submitted this 23rd day of March, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 23, 2022 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel in the Service List below.

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