



VIA EMAIL

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

Members of the Tennessee Senate:

On behalf of the Memphis Chapter of the A. Philip Randolph Institute (APRI), the Southern Coalition for Social Justice is writing to urge the Tennessee Senate to reject amended Senate Bill 0971 (2019), which would impose unduly burdensome requirements as well as civil and criminal penalties on APRI's ability to carry out voter registration drives.

Founded in 1965, the A. Philip Randolph Institute (APRI) is nonprofit, non-partisan organization that advances the political, social, and economic rights of all working-class people. With 114 chapters in 36 states, APRI provides leadership to the "Black Labor Alliance", an initiative to build black community support for the trade union movement and to convey to Labor the needs and concerns of black Americans. As part of these efforts, the Memphis Chapter of APRI regularly conducts get out the vote (GOTV) activities in historically disenfranchised communities in Memphis, Tennessee. Our work is crucial to citizens who wish to exercise their constitutionally protected right to participate meaningfully in the democratic process.

APRI conducts door-to-door to canvassing, church forums, and community events to educate voters and assist them with the voter registration process. In 2018, APRI collected roughly 2,500 voter registration applications in Memphis, TN alone. Registration is the first touch point for voters and a primary opportunity to learn about the voting process and policies that affect the community. Courts have recognized the value of voter registrations drives, as they "convey the message that participation through voting is important to a democratic society." *See Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006). Indeed, "representative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views." *Id.* (quoting *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000)). SB 0971 would trample on this sacred process and impinge on APRI's "freedom to engage in association for the advancement of beliefs and ideas." *NAACP v. Alabama*, 357 U.S. 449, 460 (1958); *see also Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706 (N.D. Ohio 2006).

Lacking serious justification in evidence, SB 0971 is a thinly veiled attempt to suppress the political engagement of groups like APRI. Tennessee Secretary of State Tre Hargett alleges, without citing any example of intentional wrongdoing, that some organizations hold onto voter registration forms “for weeks and sometimes even months” before turning them over to election officials.¹ Mr. Hargett further simply alleges that “one activist group submitted roughly 24,000 applications, many with invalid mailing addresses, incorrect date of birth information or social security numbers matching another individual.”² Despite such a limited assertion, SB 0971 would place the heavy burden of verifying the accuracy of each voter’s input on the community groups who collect and submit these forms.

If the legislature has serious concerns about the allegations regarding intentionally false voter registration forms, a state law currently exists to punish the intentional falsification of election documents including voter registration forms. 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.”). There are other, less burdensome ways to improve voter registration activities in Tennessee to the benefit of election administrators, voter registration organizations, and Tennessee voters alike. To our knowledge, the legislature has not any taken any steps to hear from the dozens of advocates outside its doors who are seeking a chance to share their views. These citizens, many of whom register voters, can inform and advise the Senate about how to improve the accuracy of the voter registration process without placing crushing requirements on First Amendment protected activities.³ Any process that does not take the time to include these voices in the consideration of a bill like SB 0971 is an ill-considered one.

¹ *Tennessee must reform voter registration drive laws to preserve election integrity*, Tre Hargett, NASHVILLE TENNESSEAN, Opinion Column (March 22, 2019), available at <https://www.tennessean.com/story/opinion/2019/03/23/tennessee-must-reform-voter-registration-drive-laws/3225676002/>.

² *Id.*

³ *Amid protests, House passes bill that critics say criminalizes voter registration efforts*, Joel Ebert, NASHVILLE TENNESSEAN (April 15, 2019), available at <https://www.tennessean.com/story/news/politics/2019/04/15/tennessee-bill-critics-criminalize-incomplete-voter-registration-efforts-tre-hargett/3478903002/>.

Courts have routinely struck down similar attempts to impose restrictions on third-party voter registration in Florida, New Mexico, and Ohio. *See Am. Ass'n of Disabilities v. Herrera*, 690 F. Supp. 2d 1183 (D.N.M. 2010); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694 (N.D. Ohio 2006); *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155 (N.D. Fla. 2012) (granting preliminary injunction); *League of Women Voters v. Detzner*, No. 4:11-cv-628, 2012 WL 12810507 (N.D. Fla. Aug 30, 2012) (granting permanent injunction); *League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2007) (granting preliminary injunction). Third-party voter registration laws such as this go “beyond merely regulating the collection and submission of voter registration applications”, but impact civic organizations’ ability to “advocate in support of their issues and associate with their members and unregistered” citizens. *League of Women Voters v. Cobb*, 447 F. Supp. at 1332. SB 0971 takes the most troubling aspects of those bad bills and combines them into one package that, when taken together, would cripple voter registration drives across the state.

Courts have made it clear that, “the 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). Likewise in *League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314, 1332 (S.D. Fla. 2006), the court determined that a similar third-party voter registration law in Florida was analogous to the core political speech protected in *Meyer v. Grant*, because the law “reduced the total quantum of speech.” As part of voter registration drives, organizations “persuade others to vote, educate potential voters about upcoming political issues, communicate their political support for particular issues, and otherwise enlist like-minded citizens in promoting shared political, economic, and social positions.” *Id.*

SB 0971 specifically targets organizations conducting voter registration drives that attempt to register 100 or more people to vote. Federal courts recognize that organizations like APRI have a legally protected interest under the First Amendment and the National Voter Registration Act of 1993 (NVRA) to encourage participation in the political process through increasing voter registration rolls. 52 U.S.C. § 20501, *et seq*; *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). Moreover, the NVRA requires that “any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office...shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.” 42 U.S.C. §1973gg-6(b)(1); *see also Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 707 (N.D. Ohio 2006). This bill is neither uniform nor non-discriminatory, because it does not uniformly target all groups engaging in voter registration. It only applies to non-government sanctioned persons and organizations conducting voter registration drives and that seek to register 100 or more people.

SB 0971 would require all participants in voter registration drives to complete a training course conducted by the coordinator of elections. The bill does not provide any details on how this requirement would be carried out, such as how often election officials would be required to offer them, whether they would take place in person or online, or any other details necessary to ensure that this requirement is not carried out in an uneven and discriminatory fashion. Nor has there been an assessment of the availability of resources or feasibility for coordinators of elections to hold such trainings. Election Commissions, already lacking sufficient resources to conduct day to day operations, will find themselves faced with the additional task of training hundreds of volunteers. If trainings are insufficiently available, this requirement will create a significant and unjustified burden on groups to conduct voter registration drives. For APRI members, this is just another obstacle to exercising their First Amendment right to engage with voters.

Additionally, SB 0971 imposes a prohibition on copying, photographing, or in any way retaining the voter information and data collected on the voter registration application, unless the applicant consents. APRI collects the names and addresses of the voters it registers for future follow up with the voter to encourage electoral participation. If organizations like APRI are unable to retain at least some record of the voter registration forms they collect, they would be restricted in their ability to engage in voter education touchpoints and face significant challenges tracking the efficacy of their GOTV efforts. Courts have found that the “First Amendment protects that rights of organizations to select what they believe to be the most effective means of conducting voter registration drives to ensure their voices are heard in the political process.” *League of Women Voters v. Cobb*, 447 F. Supp. 2d at 1334 (citing *Meyer v. Grant*, 486 U.S. 414, 424 (1988)). Moreover, this provision would seriously limit APRI’s ability to identify and correct registration deficiencies, since the bill criminalizes these routine activities. Other states that prohibit keeping copies of voter registration forms have implemented accuracy safeguards without imposing criminal liability. For example, North Carolina asks third parties to flag deficient forms, which are then submitted for review by election officials who are better positioned to determine their accuracy. See N.C. Stat. §§ 163A-865; 163A-884; *Conducting Voter Registration Drives in North Carolina*, NORTH CAROLINA STATES BOARD OF ELECTIONS, <https://www.ncsbe.gov/Voter-Information/VR-Drives>.

SB 0971 also imposes an absolute prohibition on quotas or a minimum number of completed voter registration forms to be collected by those who work in voter registration drives. This provision is a direct violation of the First and Fourteenth Amendment. See *Meyers v. Grant*, 486 U.S. 414 (1988). In *Meyers v. Grant*, the Supreme Court held that a state law prohibiting the use of paid circulators unconstitutionally restricted core political speech. The refusal to permit organizations to pay circulators restricts political expression by limiting the number of voices that will convey messages and the hours during which they may speak, therefore limiting the size of the audience an organization can reach. *Id.* at 422-23. A voter registration drive, like petition circulation, is core political speech that involves “interactive communication concerning political change.” *Id.* at 422. When it has the financial resources to do so, APRI relies on the ability to compensate its voter registration drive canvassers. Even in years when it does not have the resources to compensate canvassers, APRI uses quotas as a means to encourage its volunteers to engage with a certain number of voters. A prohibition on the use of quotas would reduce the ability of APRI to reach significant numbers of voters and thereby interfere with its mission to convey its political message.

Perhaps most troubling, the proposed bill imposes severe civil penalties on organizations that submit 100 or more incomplete voter registration applications within a year. Per the bill, an application would be considered incomplete if it lacks the applicant's name, residential address, date of birth, declaration of eligibility, or signature. This penalty, in light of the other provisions of the bill, places organizations in a catch-22. The state would criminally penalize organizations for deficiencies in voter registration forms, but it fails to identify a legal way to help citizens whose error is discovered after the fact. Under this bill, organizations are forbidden from retaining the registrant's contact information, absent the registrant's permission. Further, organizations would nonetheless be required to submit the deficient registration forms within 10 days, which also opens them up to liability under the statute. As discussed above, there are more effective means of increasing the accuracy of voter registration forms without punishing civic organizations for errors that are neither intentional nor due to their actions.

When read together with the other penalties imposed by SB 0971, the requirement to return voter registration forms within ten days of completion poses serious burdens on groups like APRI. Courts have previously struck down time limitations imposed on third-party voter registration organizations. 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 v. Detzner*, No. 4:11-cv-628, 2012 WL 12810507 (N.D. Fla. Aug 30, 2012) (granting permanent injunction) (striking down a 48 hour time limit for submitting voter registration forms); *Am. Ass'n of Disabilities v. Herrera*, 690 F. Supp. 2d 1183 (N.D.M. 2010) (striking down a 48 hour time limit for submitting voter registration forms).⁴ A ten-day deadline, although meant to ensure that voter registration forms are submitted to election officials in a timely manner, raises serious legal concerns because it is likely to interfere with an organization's ability to follow up with a voter to address deficiencies on the voter registration form. The law should grant organizations a more reasonable period in which to identify and to help citizens to correct errors and missing fields in their registration forms. Tennessee and APRI both have an interest in ensuring that Tennessee voters are registered properly, but this provision does nothing to further that interest. In fact, this provision actually removes a level of scrutiny and care which might prevent inaccuracies.

⁴ Using the *Anderson-Burdick* analysis, a district court in Florida upheld a prior version of the bill at issue that included a ten-day requirement. The overall structure of the challenged statute in that case was far less burdensome and risky for voter registration organizations than the one proposed here. See *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298 (S.D. Fla. 2008) (denying a motion for preliminary injunction).

Senate Amendment 4 would exempt organizations from the provisions of SB0971 that do not pay its workers, but it is unclear as to whether or not this exception would apply to organizations that receive grants to conduct GOTV work but have unpaid volunteers conduct the actual canvassing. Similarly, it is unclear whether a “volunteer” whose expenses are paid or meals supplied would be a “paid” individual under the bill potentially subject to criminal sanctions for failure to register and train before their volunteer activities. In *Project Vote v. Blackwell*, 455 F. Supp. 2d 694 (N.D. Ohio 2006), a case out of the same federal circuit governing Tennessee, the court struck down an analogous third-party voter registration law that imposed substantial burdens, including a registration and training requirement, on compensated workers and their affiliated organizations. It found that there was “no rational basis for the differentiation between compensated and uncompensated voter registration workers.” *Id.* at 704. In past election cycles, APRI has relied on the ability to pay or otherwise compensate its canvassers to increase the reach of its’ GOTV operations and, provided the funds to do so, hopes to do so again in the future. Any restrictions on the ability to compensate canvassers, lest it becomes subject to additional burdensome requirements, would necessarily limit APRI’s free speech.

In sum, the purposes of SB0971 appear to be speculative at best and unworthy of the Tennessee Senate’s support. While the basis for this proposed legislation is not sufficiently grounded in fact, what decidedly is clear are the harmful effects of this provision on organizations like APRI with a proven record of assisting eligible citizens to engage in the political process. In a region with a history of state-sanctioned exclusion of voters from the ballot box, it would be a grave misstep to resume the business of placing the state in league with those who would deny the franchise. More important, this provision would invite a series of likely successful legal actions in light of the significant problems that have been noted above. Our sincere hope is that the Senate avoids these outcomes and carefully consider whether SB0971 serves the public interest.

APRI and other similar civic organizations rely heavily on volunteers, be they paid or unpaid, who are unlikely to help if faced with the threat of criminal and civil liabilities set forth in SB 0971. Without the help of its members, the Memphis chapter may have to shutter its voter registration efforts altogether and Tennessee voters would in turn lose a vital community service that has proven to be effective. APRI invites the opportunity to discuss more effective and less restrictive way to improve the accuracy of the voter registration process. For these reasons, APRI urges you to vote no on SB 0971.

Respectfully submitted,

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