



PROTECTING THE VOTE FOR ALL AMERICANS

Fair Elections Center Testimony -- Strike-all Amendment 262784 to SB 90
Florida Senate Rules Committee
April 14, 2021

Fair Elections Center opposes SB 90 because this bill would make our elections less efficient and less accessible, and would likely lead to expensive litigation. While Fair Elections Center appreciates that Amendment 262784 makes some improvements to the current form of SB 90, the bill as amended still makes problematic changes that move Florida elections in the wrong direction.

Fair Elections Center is a national, nonpartisan voting rights and election reform organization which works to remove barriers to registration and voting for traditionally underrepresented constituencies. Formed in 2017 to continue the work of the Fair Elections Legal Network, the Center works to improve election administration through legislative, legal and administrative reform, to protect access to the ballot through litigation, and to provide election law expertise, voter information and technical assistance to voter mobilization organizations.

SB 90 as Amended by Amendment 262784 Curtails Efficient Election Practices

SB 90 in its current form (without Amendment) inexplicably eliminates successful, voter-friendly and efficient election procedures, most notably, use of drop boxes for vote by mail ballots. Drop boxes are valuable in saving time and money for voters and election officials. In addition to giving voters confidence that their ballots arrive regardless of mail delays and making voting accessible for voters who cannot obtain postage, drop boxes also save Florida voters money in counties where return postage is not prepaid, and save officials money in places where it is. For this reason, it is not surprising that the supervisors of election oppose this change. For example, in Pinellas County, by October 20, 2020 it was reported that 76,890 mail ballots had already been dropped off by voters, or roughly 45 percent of all mail ballots returned by that time.¹

Amendment 262784 will still undermine and restrict the use of drop boxes by prohibiting their use outside early voting hours and requiring that they be monitored in person by staff.² These changes to current law will make drop boxes less efficient by requiring staff time and therefore money for supervisors to comply. The amendment would also require supervisors to designate drop box locations no more than 30 days before an election, without the ability to add locations at a later

¹ <https://www.tampabay.com/news/florida-politics/elections/2020/10/20/drop-boxes-florida-voters-are-using-them-to-deliver-mail-ballots/>

² Amendment 262784 to SB 90, Lines 726-730.

date³, giving supervisors less flexibility in case of changing circumstances. Moreover, the amendment severely penalizes supervisors for making drop boxes more accessible and serviceable to voters.⁴

SB 90 Will Likely Lead to Costly Litigation Defending Illegal Requirements

SB 90 as amended by Amendment 262784 also severely limits assistance for voters in submitting their vote by mail ballots.⁵ These changes violate federal law regarding voter assistance, risking costly litigation.⁶

Amendment 262784 also adds a confusing requirement for third party voter registration drives—who are already required to submit applications on time under current law—to inform voters who apply through the drives that their applications may *not* be submitted on time.⁷ This is likely to lead to litigation as well; in the past, courts have not looked favorably on requirements that were inherently incorrect or contradictory, such as the sworn statement deleted by this bill—consistent with a federal court’s ruling the statement unconstitutional and unenforceable.

Thank you for this opportunity to provide this feedback. If you have any questions or need further information, please contact Michelle Kanter Cohen, Policy Director & Senior Counsel, Fair Elections Center, (202) 331-0114, mkantercohen@fairelectionscenter.org.

³ Amendment 262784 to SB 90, Lines 731-733.

⁴ Amendment 262784 to SB 90, Lines 740-743.

⁵ Amendment 262784 to SB 90, Lines 887-896.

⁶ See 52 U.S.C. § 10508; *Democracy North Carolina v. NC State Bd. of Elections*, 476 F.Supp.3d 158 (M.D.N.C. 2020) (holding Section 208-covered voter was entitled to assistance with mail ballot delivery by nursing home staff under federal law even though state law banned that assistance); *OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017) (holding rule that adding restrictions to who could assist voters violated Section 208).

⁷ Amendment 262784 to SB 90, Lines 223-229.