



Louisiana House And Governmental Affairs Committee
Box 94062, 900 North 3rd Street
Baton Rouge, LA 70804

Submitted via email

Dear Chairman Stefanski, Vice Chair Duplessis, and Committee Members:

As counsel for Fair Elections Center,¹ I write to register the Center's opposition to HB 138, HB 167, and Section 2 of HB 581. These changes would penalize constitutionally protected speech and unnecessarily compound registrars' duties. Moreover, overzealous removals of still-eligible voters are a threat to the integrity of our elections.

I respectfully request that this letter be entered in the record as written testimony.

HB 138

HB 138 would establish "supplemental" canvass procedures, in addition to the annual canvass utilizing United States Postal Service (USPS) data under existing law.² Under these new procedures, the *Secretary of State* would be required to identify and send a "supplemental address confirmation card" to the following voters, as well as move them to the inactive voter list:

- Those whose registration addresses were not verified or who USPS records indicate may have moved to a new address outside their parish of registration, and who were not sent a confirmation card by the registrar as required under LRS-R.S. 18:192(A)(2)
- Those who have not voted in an election in the previous 10 years
- Those who have not submitted a voter registration application or applied to receive an absentee ballot by mail, participate in the nursing home voting program, or change their name, address, party affiliation, or other registration information in the previous 10 years

Voters who do not respond to the supplemental address confirmation card who are not restored to active status within the following two regularly scheduled federal general election cycles would be canceled.

¹ Fair Elections Center is a national, nonpartisan voting rights and election reform 501(c)(3) non-profit organization based in Washington, D.C. Its mission is to use litigation, education, and advocacy to remove barriers to registration and voting, particularly those disenfranchising underrepresented and marginalized communities, and to improve election administration.

² See LRS-R.S. 18:192. "Inactive" voters may be restored to the official list of voters in several ways, including by signing a petition or voting from the same address or a new address in Louisiana. LRS-R.S. 18:196

HB 138 would codify the same failed “use it or lose it” scheme unsuccessfully implemented other states. As a general matter, voters whose information has not changed should have the right to decide not to vote in any election and still be able to participate when they do want to speak out. But HB 138 would also punish voters who *do* regularly participate in elections but have no reason or need to make changes to their registration, or who may not qualify to vote by mail, as Louisiana requires an excuse to vote by mail. Logistically, “use it or lose it” laws have resulted in less accurate voter rolls and, consequently, taxpayer-funded litigation. In one high profile instance, the President of the League of Women Voters of Ohio was flagged as inactive and threatened with removal despite having voted in the three previous elections and never receiving notice that her registration was at risk of being cancelled.³

HB 138 will also have a discriminatory effect. Even if they do qualify to vote by mail, some voters prefer to vote in person. For example, despite the risks posed to public health by COVID-19 in the 2020 General Election, Black voters nationwide were the least likely to vote by mail.⁴ And because registrars cannot consider inactive voters for certain purposes, *see* LRS-R.S. 18:196(A)(1), the bill could adversely affect election preparedness and resource allocations. By increasing the number of voters on the inactive list, voters will be underserved when turnout goes up in a precinct, because they will not be assigned the polling places, voting equipment, or other resources to which the community would otherwise be entitled.

HB 167

HB 167 would also increase the likelihood of erroneous removals and create unnecessary work for registrars. Under existing law, each month, the Department of Health must provide the Department of State with a list of residents who passed away. LRS-R.S. 18:173(D)(1). “The Department of State shall cancel the registration of any deceased person when the information provided by the Louisiana Department of Health corresponds exactly to the criteria for cancellation of voter registration as established in R.S. 18:108.” *Id.* 18:173(D)(2). HB 167 would require the cancellation of a voter’s registration when the voter’s record corresponds with at least three of the following criteria in a death record: name, address, date of birth, sex, Social Security number, place of birth, mother’s maiden name, or alias name. It would also establish a three-day deadline for election officials to remove people based on death records.

The bill would also mandate that registrars actively search obituaries for deceased persons whose registration has not been cancelled. Currently, registrars may, but are not required to, cancel a voter’s registration based off an obituary “if the notice provides sufficient information to properly identify the voter and the registrar has confirmed the voter’s death with the office of vital records.” *Id.* 18:173(E).

³ Nicholas Casey, *Ohio Was Set to Purge 235,000 Voters. It Was Wrong About 20%*, N.Y. Times (Oct. 14, 2019), <https://www.nytimes.com/2019/10/14/us/politics/ohio-voter-purge.html>; *see also* Angela Caputo, Geoff Hing, and Johnny Kauffman, *After the Purge: How a massive voter purge in Georgia affected the 2018 election*, APM Reports (Oct. 29, 2019), <https://www.apmreports.org/story/2019/10/29/georgia-voting-registration-records-removed> (finding that approximately 45,500 removed voters likely remained eligible to stay on the rolls because they re-registered in the same county).

⁴ *The voting experience in 2020*, PEW RES. CTR. (Nov. 20, 2020), <https://www.pewresearch.org/politics/2020/11/20/the-voting-experience-in-2020/>.

HB 167 would enact a reckless purge process that would erroneously remove voters as supposedly “deceased” who in fact are very much alive, and worse, would risk doing so in a discriminatory manner. Discriminatory, erroneous purges have a sordid history and also invite litigation. By requiring only three criteria of the named data fields to match in order to require removal, some of those combinations are likely to lead to numerous misidentified voters; for example, under this bill, a voter could be removed simply for having the same name, place of birth, and sex as a death record. Using name, sex, and birth date as sufficient to match will also result in significant inaccuracies, as many different people actually share the same name and birthdate.⁵ These changes would especially impact individuals with common names born in major metropolitan areas.

Moreover, by mandating an obituary search regardless of local differences in reported deaths, the bill makes registrars’ work less efficient. Allowing registrars discretion appropriately permits them to make the judgment calls as to whether obituary information in their parish contains sufficient information to be of value for accurate list maintenance purposes, and whether such information adds value as compared with existing vital records already required under state law. In addition, without safeguards as to what information criteria are required to cancel a record, this requirement similarly risks erroneous removals. The three-day deadline makes errors even more likely.

HB 581, Section 2:

Section 2 of HB 581 would amend LRS-R.S. 18:1461.7 to make it an election offense to “knowingly, willfully, or intentionally. . . [f]alsify the election information obtained from contacting a telephone number of the office of the secretary of state, clerk of court or registrar of voters, or impersonating the secretary of state, clerk of court or registrar of voters in connection with any statutorily mandated election duty of the secretary of state, clerk of court or registrar of voters.” It was explained during the State Board of Election Supervisors’ meeting on January 28, 2021 that this provision responds to a series of text messages allegedly sent to some Louisiana voters last year which misstated election information and included the telephone number for Secretary Ardoin’s office, making it seem as though the texts were official communications issued by his office.

Section 2 of HB 581 would chill protected speech. As written, advocates who conduct voter engagement could face prosecution for publishing education materials or making oral communications that contain typographical or other inadvertent errors, if the underlying information was obtained by contacting election officials by phone. Even the mere fear of prosecution could deter many advocates from participating in First Amendment protected speech with voters and make it more difficult for civic engagement groups to recruit volunteers, further discouraging their speech. Indeed, chilling effects on protected voter education communications have recently been held to likely violate the First Amendment. *See League of Women Voters of Tenn. v. Hargett*, 400 F. Supp. 3d 706 (M.D. Tenn. 2019).

Voter education programs conducted by private organizations are critical to voter participation and cannot operate in the absence of information obtained from official sources. While it is a laudable goal to prevent voters from being misled, these restrictions as drafted are too broad and excessively

⁵ McDonald, Michael P. and Levitt, Justin, *Seeing Double Voting: An Extension of the Birthday Problem* (July 1, 2007). 7 Election L. J. 111 (2008), 2nd Annual Conference on Empirical Legal Studies Paper, available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.

vague.⁶ They should not move forward unless it is clarified that they are limited to instances in which a communicator had the intent to mislead or intimidate voters or potential voters. However, it appears that such prohibitions are in fact already covered by Louisiana statute; Louisiana law already makes it a felony to “knowingly, willfully, or intentionally . . . [i]ntimidate, deceive, or misinform, directly or indirectly, any voter or prospective voter in matters concerning voting or nonvoting or voter registration or nonregistration, . . .”. LSA-R.S. 18:1461.4(A)(1).

If enacted, this proposal may well have the perverse effect of driving individuals or organizations conducting voter education or campaign activities to refrain from contacting election officials for direct information, for fear of legal consequences if there is a dispute over whether it is conveyed accurately. This could result in *less accurate*, rather than more accurate, information being disseminated to voters. Similarly, where proponents indicate Section 2 targets text messages that misstated information and provided the Secretary of State’s phone number, this proposal could also have the effect of discouraging private groups from directing *voters* to contact official sources for election information. When conducting voter outreach, it is often useful for organizations to direct voters to official information sources, not to falsely intimate that the organization’s educational materials come from these official sources, but rather to help voters obtain additional information from an authoritative source—the officials running elections.

Fair Elections Center agrees that disinformation in our elections is a serious problem, especially when employed by bad actors to depress the vote in historically marginalized communities. However, at minimum, any law aimed at quelling disinformation should be narrowly drawn and should explicitly require prosecutors to show specific intent to mislead voters, so that law enforcement officials cannot use the statute to punish speech with which they disagree.

Should the Secretary of State and registrars determine that voters would benefit from more election information disseminated through election officials, the Legislature should pass a robust statutorily-required civic and voter education program to ensure citizens are fully aware of their rights and the means to exercise them. In the interim, Louisiana should avoid chilling protected First Amendment speech and creating disincentives to contacting election officials for authoritative information.

Thank you for allowing Fair Elections Center to share its opposition to this legislation. Should you have questions or require additional information, please do not hesitate to contact me at caguilera@fairelectionscenter.org or (202) 331-0114.

Sincerely,

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⁶ See *Johnson v. United States*, 576 U.S. 591, 595 (2015) (a law violates due process when it is “so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.”).