

April 15, 2019

Via Email

Members of the Tennessee House and Senate
Tennessee General Assembly
Cordell Hull Building
Nashville, TN 37243

Re: SB971/HB1079

Dear Members of the Tennessee General Assembly:

We, the undersigned civil and voting rights organizations, are committed to a democracy in which all Americans can fully and freely participate. We write in opposition to SB971/HB1079 as amended, which proposes new restrictions and penalties for voter registration drives in Tennessee, and we urge you to reject this onerous, vague, and unnecessary legislation which will drive away critical, patriotic activities at the heart of American democracy: efforts to encourage and assist fellow citizens in having their voices heard.

Community-based voter registration drives serve a critical role in reaching out to citizens, especially those who are marginalized in the political process and otherwise would not register to vote and participate. Drives also play an important role in keeping voter rolls up-to-date, because many voters otherwise do not realize they must update their information when they move or change their name. But burdensome restrictions such as those proposed by SB 971/HB1079 stunt voter registration efforts and reduce the number of citizens they reach. Instead of recognizing voter registration drives as a patriotic act, this bill criminalizes them.

The bill puts onerous criminal and civil penalties on honest civic engagement efforts. Among other provisions, amended SB 971/HB 1079 would require registration and state-sponsored training for persons attempting to collect more than 100 voter registration applications; require applications to be turned in within 10 days, including a requirement that appears to illegally prohibit use of regular U.S. mail; and contain restrictions on management practices that could lead to making it harder for drives to make sure their workers are effective and efficient. All of these restrictions carry criminal consequences. The bill would also allow the State Election Commission to fine people or organizations that submit numerous forms “deemed deficient.”

Tennessee’s criminal laws already protect voters and prohibit voter registration fraud, making these vague and perverse new restrictions unnecessary. For example, it is already a felony for someone to knowingly make or consent to any false entry on any official voter

registration document.¹ It is also a crime to knowingly do any act for the purpose of preventing the exercise of someone's rights under Tennessee election law.²

At every turn, the bill's provisions are both onerous and vague in their application, creating a significant chilling effect because groups will avoid conducting community-based drives to avoid the risk of being subject to the bill's severe penalties. Those who run afoul of this proposed law risk significant consequences, and yet it is hard to even determine when those consequences would apply—or to whom. For example, the proposed law places new requirements and potential penalties on people or organizations who conduct “voter registration drives that attempt to register one hundred (100) or more people to vote,”³ without specifying what a “voter registration drive” means. For example, it is unclear whether a group that seeks to help voters register year-round is covered if they attempt to collect 100 applications over the whole year, or whether it applies to registration at one event or during an election cycle. Because of the immense penalties at stake, groups that conclude they *may* fall under the law but the requirements are too burdensome and/or too risky will likely stop doing voter registration at all, in part because such onerous penalties make it significantly more difficult to recruit volunteers and canvassers willing to take on these risks.

The new and exorbitant penalties for forms “deemed deficient” – an inevitable aspect of any program given the logistical and administrative challenges of having many individuals fill out paperwork— would likely keep organizations from even trying to conduct voter registration drives. If passed, Tennessee would be the only state to impose this type of penalty for honest mistakes. These penalties would put registration drive volunteers in an untenable position and also have potential perverse consequences. Under the bill, volunteers would be required to turn in incomplete forms handed to them by applicants knowing that doing so could subject them to large fines, forcing a “heads-I-win, tails-you-lose” dilemma. Perversely, volunteers who are afraid of the penalties may be incentivized to throw away incomplete forms, and many organizations are likely to decide that they will forego their efforts to avoid being caught in this dilemma. The penalties also apply to a set raw number of forms, particularly discouraging larger efforts to sign up more voters, since the law does not take into account the scale of the program when imposing penalties.

Moreover many forms deemed deficient by election administrators have included such issues as duplicate registrations, which are often filed when an applicant is not sure they have been successfully registered, and which the drive would have no way of knowing about, or applications that are “incomplete” because someone may have used a nickname instead of a legal name—another issue that a volunteer would have no way of knowing, and other issues outside the group's control, such as an applicant who hands a partially-complete application to a drive volunteer at a table or bus stop and then leaves. Often, these applications contain sufficient information for the election official to follow up with the voter, obtain the missing

¹ Tenn. Code § 2-19-109.

² Tenn. Code § 2-19-103.

³ HA0284 to TN HB 1079 (2019), <http://www.capitol.tn.gov/Bills/111/Amend/HA0284.pdf>

information, and register the person. It is both critical to that person's right to vote and a best practice for drives to turn in all such forms they collect, and the drive is likely unable to determine the minimum amount of information that would enable election officials to follow up with the voter.

While registration drives play a critical outreach role supplementing the work of election officials, ultimately it is the job of those election officials to review and process applications and add eligible voters to the roll. Community organizations cannot be put in the untenable role of making decisions about the completeness and validity of applications. Best practices and common sense dictate that drives should hand in all forms they receive so that individual follow-up and decisions regarding voter eligibility are made only by those officials who have both the responsibility and the tools to review applications and follow up with voters as necessary. Moreover, while requiring community groups to turn in applications within 10 days, the bill provides no timeline for election officials to follow up with voters in the event of missing information or other issues.

Expecting perfect forms in every case is also an unreasonable standard. In the normal course of business, election officials frequently collect applications that are deemed deficient. Volunteer voter registration drives should not be forced to be better and more accurate than the forms normally collected by a county election commission.

The bill requires state-sponsored training without ensuring groups can actually participate.

Training is important, but mandatory state-sponsored training can present problems with scheduling and availability to drives, particularly for large-scale programs that must train new canvassers often, and for volunteers who may not be available to attend trainings during business hours, or who sign up at the last minute to participate, for example in a weekend event with a school group or church. As written, this bill has no requirement that training be made available on any particular schedule, on any particular timeframe, or that it be made available on-demand online or otherwise. Indeed, there is nothing in the bill that would prevent county election officials from offering only one training opportunity per election cycle, or offering training only during business hours when most volunteers could not attend.

In addition, the training requirement in the bill is confusing and vague as to its application, and with its attached *criminal* penalties, it is likely that groups will be forced either to comply with the requirements, if they can, or stop conducting voter registration for fear of prosecution.

The bill supposedly carves out unpaid voter registration drives from the restrictions,⁴ but this provision does not actually mitigate the bill's onerous effects. During testimony on the bill during the committee process, it became evident that the supposed carve-out is in fact no more than a smokescreen. Coordinator of Elections Goins was unable to articulate clear answers as to whether particular situations would be subject to the restrictions. But testimony indicated that if a paid staff member's job description included duties related to a registration drive, or a

⁴ See HA0285 to TN HB 1079 (2019), available at <http://www.capitol.tn.gov/Bills/111/Amend/HA0285.pdf>.

nonprofit organization received a financial grant for registration even if conducted entirely by volunteers, the organization would be subject to the restrictions and penalties under the bill.⁵ Therefore this bill would likely shut down almost all volunteer voter registration drives due to the risk of criminal and civil liability—a risk such community groups would be unable to take.

Our democracy is stronger when more citizens are engaged and voting. At a time when Tennessee lags behind other states in voter participation, we encourage you to reject this legislation and instead focus on modernizing Tennessee’s registration and election administration to promote participation and bring more eligible citizens into our democracy.

For additional information, please contact Michelle Kanter Cohen, Counsel, Fair Elections Center, 202-331-0114, mkantercohen@fairelectionscenter.org.

Signed,

ACLU

American-Arab Anti-Discrimination Committee (ADC)

Arab American Institute

Asian and Pacific Islander American Vote (APIAVote)

Campaign Legal Center

Coalition of Black Trade Unionists

Disability Rights Tennessee

Fair Elections Center

Franciscan Action Network

Lawyers’ Committee for Civil Rights Under Law

Leadership Conference for Civil and Human Rights

League of Women Voters of the United States

National Disability Rights Network

NETWORK Lobby for Catholic Social Justice

Service Employees International Union (SEIU)

Southern Poverty Law Center

Tennessee State Conference NAACP

Transformative Justice Coalition

UFCW Minority Coalition

⁵ Tenn. Senate State and Local Govt. Comm. Hearing on SB0971 (Apr. 10, 2019), *available at* http://tnga.granicus.com/MediaPlayer.php?view_id=414&clip_id=17123