



To: Interested Parties

From: Charlane Oliver, Executive Director, The Equity Alliance Fund

Date: 2/24/2020

Re: HB2363/SB2298 (Voter Registration Drives) and HB2364/SB2299 (Election Security)

Memo on HB2363/SB2298 and HB2364/SB2299

During the 2019 legislative session, the Tennessee General Assembly passed Public Chapter 250, which added criminal and civil penalties to some voter-registration drives in Tennessee. Parts of that law are now enjoined in federal court, pending a hearing in February 2021. In response to the judge's ruling, Secretary of State Tre Hargett has proposed a new version of last year's draconian voter suppression law. HB2363 amends last year's law by removing certain civil and criminal penalties and restrictions, including penalties for incomplete voter registration applications, and narrows the language within the confines of the pending lawsuit. HB2364 is new legislation that expands penalties for those who target Tennessee's election security or otherwise commit election fraud.

We are opposed to this bill due to the civil penalties applied to voter registration groups and the intimidation this signals to groups who mobilize communities of color. We call into question, once enacted, how the law would be applied equitably to all groups, given the state's history of voter suppression tactics that disproportionately affect disadvantaged communities. If state officials are concerned about protecting voters who fill out voter registration forms, then there is a simple solution to their concern and that is automatic voter registration.

- HB2363 passed the Elections & Campaign Finance Subcommittee last week and is headed to full committee next week.
- It will be heard in the Senate State & Local Government Committee - 2/25 @ 10:30am, Senate Hearing Room 1
- House Local Committee - 2/26 @ 2pm, House Hearing Room 1

SB2298 / HB2363 Overview (Voter Registration Drives)

- SB 2298 applies to a broader range of organizations and individuals, eliminating the distinction between paid and unpaid registrars and applying even to those who register a single voter.
- SB 2298 reduces the number of requirements and penalties placed on voter-registration drives.
- Collected voter-registration applications must be submitted within 15 days.
- Compensating individuals for each application collected or establishing quotas is prohibited.

- Training is now voluntary, but organizations and individuals that participate may have their names published.
- Any person or organization who provides or publishes erroneous information about voting must immediately notify the Election Commission and the Coordinator of Elections once they discover their error.
- Copying voter registration applications for political reasons (i.e. voter participation, voter engagement, or voter turnout) is now permitted.
- SB 2298 uses a similar, and similarly vague, enforcement mechanism. The State Election Commission has discretionary power to impose civil penalties under SB 2298: It may impose a maximum civil penalty up to \$50 for each violation.
- SB 2298 requires the state to take cybersecurity into account when certifying new election systems.

Our Position on SB2298 / HB2363

- We should not be making changes to voter registration law in an election year.
- The state is already in a lawsuit for passing a similar law.
 - A judge blocked that law and placed a preliminary injunction on our case until February 2021.
 - We should not rush into passing another law with a lawsuit still pending.
 - To do otherwise appears like revenge for not being able to pass aggressive punitive restrictions on targeted voter registration groups.
- Tennessee is at the bottom of all states for voter participation.
 - We should not be creating arbitrary penalties for voter registration groups that are trying to change our dismal voter registration and turnout rates.
- The Secretary of State has had an entire year to work on solutions that improve our states voter participation; instead, he has actively doubled-down on finding a way to seek restrictions and penalties on people who engage in getting more people on the voter rolls.
- We should be focused on *proven* ideas that increase voter participation but have not yet been supported by our Secretary of State and members of the Tennessee General Assembly:
 - Automatic voter registration
 - Registration on Election Day
 - Updating the paper voter registration form

SB2299 / HB2364 Overview (Election Security)

SB 2299 creates a new prohibited practice, the violation of which is a Class E felony, and expands the scope of acts prohibited as election interference.

- **SB 2299 makes the knowing dissemination of false, election-related information a felony.**

SB 2299 creates a new Class E felony, which applies to someone who, with an intent to deceive or to disseminate information that person *knows to be incorrect*, provides or publishes false or misleading information regarding (1) the qualifications and requirements to register to vote, (2)

whether an individual is eligible to register or is currently registered to vote and (3) general election information like voter-registration deadlines and polling dates, times and locations.

This requirement may interact with a similarly worded section in SB 2298, which adds a new reporting requirement, albeit one without penalties for violations, for individuals or organizations that share erroneous election information.

- **SB 2299 expands the scope of, and increases penalties for, prohibited acts of election interference.**

Previously, Tennessee law prohibited tampering with, mutilating or defacing voting machines, the violation of which was a Class E felony. SB2299 prohibits a broader range of acts related to election interference and increases from a Class E felony (up to six years in prison) to a Class D felony (up to twelve years in prison) the penalties for violations.

New on SB2299's list of prohibited practices are acts such as damaging pieces of election infrastructure like electronic poll books, vote-tabulating devices or ballot-tally software; interfering with the voter registration database and election websites and attempting to substitute forged or counterfeit election results.

Our Position on SB2299/HB2364

We have serious concerns about the application of Section 1 of this amendment. The language is almost identical to a clause in SB2298/HB2363. This requirement may interact with a similarly worded section in SB2298/HB2363, which adds a new reporting requirement, albeit one without penalties for violations, for individuals or organizations that share erroneous election information. In the previous voter registration law, the criminal penalties amounted to a Class A misdemeanor. Now, under this new proposed law, violations will be subject to a Class E felony (up to one to six years in prison). This creates the unfortunate consequence of someone potentially losing their voting rights for having a felony conviction.

With the state's history of enacting voting ID laws and policies that suppress voters, we have serious concerns as to whether the law will be applied equitably and responsibly to all groups in Tennessee.