



Florida Voting Law Fact Sheet

Overview

Florida recently enacted Senate Bill 90, an elections omnibus that enhances Florida's already strong election integrity policies by adding several integrity reforms while continuing to make it easy for voters to participate in the political process.¹

Among its provisions, SB 90:

- establishes new procedures for absentee ballot drop boxes;
- creates requirements before election officials can enter into civil settlements that affect election procedures;
- precludes the acceptance of private funds for election administration;
- reforms third-party absentee ballot collection;
- mandates new disclosures for third-party voter registration organizations;
- bolsters voter identification requirements for absentee ballot applications;
- penalizes the solicitation of voters near polling places and drop boxes; and
- prohibits election officials from unilaterally—absent affirmative requests by voters—mailing absentee ballots or ballot applications to voters.

State legislatures generally have inherent authority to prescribe election procedures in state elections, unless their state constitutions provide otherwise. State legislatures are authorized to determine the time, place, and manner of federal elections within their state under Article I, Section 4 of the United States Constitution.² States have latitude to implement laws and procedures designed to administer their elections in an efficient, secure, and fair manner. States have adopted different election policies and procedures to balance these different concerns. While states may be lenient or in the minority on certain election procedures designed to enable voters to easily participate, they often balance these procedures with more stringent, mainstream election rules to guarantee honesty and fairness in the process. Florida has done this by enacting SB 90.

Four lawsuits have been filed challenging 5 of SB 90's 32 sections on the grounds that they place an unconstitutional burden on the fundamental right to vote under the Fourteenth Amendment. This memo examines these provisions of the bill by highlighting similar, valid election procedures already in use by numerous states across the country to demonstrate the degree to which SB 90's provisions are solidly within the mainstream.

¹ See Senate Bill 90, Chpt. 2021-11, Laws of Fla. (2021), available at: <http://laws.flrules.org/2021/11>.

² U.S. Const. art. I, § 4, cl 1.



Drop Boxes

*Claim: SB 90's new drop box provisions unconstitutionally burden the right to vote for voters "who struggle to vote on election day or during early voting hours due to personal circumstances."*³

While every state provides voters with at least some opportunity to vote by absentee ballot, a clear minority of states, including Florida, allow voters to return their completed ballots to a designated drop box.⁴ In considering whether to allow voters to return their mail ballots to designated drop boxes, states must weigh the desire for voters to easily return their mail ballots with the security risk created when this option is abused. States that currently permit the use of drop boxes, therefore, have established various safeguards to ensure drop boxes can be easily used by voters without being taken advantage of by bad actors.⁵

During the COVID-19 pandemic, jurisdictions across the country were compelled to provide voters with expanded access to mail voting, which often included ballot return methods such as drop boxes.⁶ However, even after the 2020 election, only a dozen or so states statutorily provide voters the opportunity to return completed ballots to a drop box or other early voting location.⁷ Roughly half of these states mandate or recommend that drop boxes be continuously monitored by staff or video camera and most limit the authority of election supervisors to go beyond what statute prescribes, such as having mobile or 24-hour drop boxes.⁸

Florida enacted the limited use of drop boxes in 2019, which were first implemented during the 2020 election cycle.⁹ The law required each early voting location and office of the respective supervisor to be equipped with a secure drop that voters could utilize to return their mail ballots during the early voting period.¹⁰

After the 2020 election, legislators passed SB 90 to revise the requirements governing the placement and supervision of secure drop boxes for the return of vote-by-mail ballots.¹¹ Under Section 28 of SB 90, drop boxes must be geographically located, to the extent practicable, to ensure that all voters have an equal opportunity to cast a ballot.¹² Drop box locations must be set at least 30 days before an election and can only be moved to comply with the law.¹³ Drop boxes are required to be continuously monitored by an election worker during the

³ *League of Women Voters of Florida v. Lee*, Compl. at 38 (May 6, 2021), available at: <https://www.democracydocket.com/wp-content/uploads/sites/45/2021/05/Florida-Filed-Complaint-1.pdf>.

⁴ *Ballot Drop Box Definitions, Design Features, Location and Number*, NCSL (April 23, 2021), available at: <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-9-ballot-drop-box-definitions-design-features-location-and-number.aspx>.

⁵ *Id.*

⁶ *Changes to election dates, procedures, and administration in response to the coronavirus (COVID-19) pandemic*, Ballotpedia (Nov. 19, 2020), available at: [https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_\(COVID-19\)_pandemic,_2020](https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020).

⁷ *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, NCSL (Sept. 24, 2020), available at: <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

⁸ *Ballot Drop Box Definitions, Design Features, Location and Number* (April 23, 2021).

⁹ Chpt. 2019-162, Laws of Fla. (2019), available at: <http://laws.flrules.org/2019/162>.

¹⁰ *Id.* at 22.

¹¹ Chpt. 2021-11, Laws of Fla. at 2 (2021).

¹² *Id.* at 24.

¹³ *Id.*



normal early voting hours of operation, which is when the drop box must be accessible to voters.¹⁴ Lastly, the new law penalizes election officials who utilize drop boxes outside the scope of the law.¹⁵

Like half of the states that utilize drop boxes, Florida now requires drop boxes to be monitored, and like most, Florida limits the discretion election officials have to vary from the statute in providing drop boxes. With these safeguards, Florida remains among the more progressive states offering this voting option while ensuring drop boxes are properly and uniformly used throughout the state.

Ballot Harvesting (Third Party Ballot Collection)

*Claim: SB 90's limitation on ballot harvesting poses an unconstitutional "barrier to the franchise for voters with disabilities," leading to "outright disenfranchisement."*¹⁶

In efforts to expand ways in which voters may return their absentee ballots, many states allow voters to solicit the help of someone else to return their absentee ballot. When states provide this option, they often enact safeguards and limitations to prevent fraud, voter coercion, and undue influence by persons assisting voters.

Only 13 states do not impose any parameters around who can return a voter's completed absentee ballot.¹⁷ The 37 remaining states, in varying degrees, limit both who may handle or return a voter's completed ballot and the number of completed ballots a person may return.¹⁸ Twenty-seven states and Washington, D.C. permit ballot harvesting so long as the voter designates the collector as his or her agent.¹⁹ Of these 27 states, 12 limit the number of ballots a designated agent is permitted to return.²⁰ Nine states allow absentee ballots to be returned only by the voter's family member or caregiver.²¹

Prior to SB 90, Florida already limited the number of completed absentee ballots a person could return each election cycle to two ballots, not including the person's own.²² A person was permitted to collect and return any number of their immediate family members' ballots.²³

Section 32 of SB 90 did not change the aforementioned provisions, the law simply extended the two-ballot maximum to a person distributing, ordering, requesting, and collecting ballots.²⁴ With SB 90, Florida follows 12 other states that limit the number of ballots a person may return. Furthermore, Florida follows the vast majority of states that allow a family member to return the voter's absentee ballot.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Florida NAACP v. Lee*, Compl. at 51 (May 6, 2021), available at: <https://www.democracydocket.com/wp-content/uploads/sites/45/2021/05/Florida-Voting-Law-Complaint-1.pdf>.

¹⁷ *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options* (Sept. 24, 2020). See also *Ballot Harvesting*, Lawyers Democracy Fund (Apr. 2021), available at: <https://lawyersdemocracyfund.org/other-issues/ballot-harvesting/>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Chpt. 2021-11, Laws of Fla. at 27 (2021).

²³ *Id.*

²⁴ *Id.*



Note: The United States Supreme Court’s recent decision in *Brnovich v. Democratic National Committee* upheld Arizona’s law limiting ballot harvesting.²⁵ Arizona’s law was far more strict than Florida’s, allowing only persons in close relationship to the voter – family, caregiver, guardian – to return the voter’s completed ballot and making it a felony for unauthorized third parties to collect and return completed absentee ballots.²⁶ In doing so, the 6-3 Court solidified the ability of states to implement similar election integrity safeguards in light of the strong and entirely legitimate state interests of deterring potential fraud, protecting against undue influence, and improving voter confidence.²⁷

Third-Party Voter Registration

Claim: SB 90’s requirements on third-party voter registration organizations “will have the effect of discouraging Floridians from registering and associating with third-party organizations.”²⁸

States have a significant interest in registering their eligible voters; therefore, most allow third-party organizations to help in this effort. However, states rightfully place parameters on third-party organizations to ensure voters are properly and timely registered.²⁹ Roughly half of states impose deadlines for third-party groups to return completed registrations, ranging from 30 days to 48 hours of receipt from the voter with most states setting deadlines of about 10 days.³⁰ A vast majority of states with deadlines impose penalties on third-party organizations for failing to adhere to the law.³¹

Florida has long allowed third-party organizations to register voters. Even before SB 90, Florida subjected third-party organizations to certain regulations, such as requiring the organization to register with the Division of Elections, to return completed registration applications within 48 hours, and to use specific forms provided by the state identifying the organization.³² Florida has long penalized these groups for noncompliance.³³

Section 7 of SB 90 extends the deadline for returning completed voter registration applications from 48 hours to 14 days of receipt from the voter or by the registration deadline, whichever is earlier.³⁴ Groups are now required to inform potential registrants of the reality that the voter’s registration application might not get delivered by the deadline, that the voter can deliver her own completed application in person or by mail, and that the voter has the option to register to vote online.³⁵

²⁵ *Brnovich v. Democratic National Committee*, 19-1257, 2021 WL 2690267 (U.S. July 1, 2021), available at:

https://www.supremecourt.gov/opinions/20pdf/19-1257_g204.pdf.

²⁶ *Id.*

²⁷ *See id.*

²⁸ *League of Women Voters of Florida*, Compl. at 50.

²⁹ *Applying for an Absentee Ballot, Including Third-Party Registration Drives*, NCSL (Aug. 6, 2020), available at:

<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-5-applying-for-an-absentee-ballot-including-third-party-registration-drives.aspx>.

³⁰ Diana Kasdan, *State Restrictions on Voter Registration Drives*, Brennan Center for Justice (2012), available at:

<https://www.brennancenter.org/sites/default/files/legacy/publications/State%20Restrictions%20on%20Voter%20Registration%20Drives.pdf>.

³¹ *Id.*

³² *See* Fla. Admin. Code Ann. r. 1S- 2.042; Fla. Stat. § 97.0575.

³³ *Id.*

³⁴ Chpt. 2021-11, Laws of Fla. at 8 (2021).

³⁵ *Id.* at 7-8.



With its deadlines, requirements, and penalties, Florida is among the numerous states that impose similar requirements on third-party voter registration organizations in an effort to protect voters and help ensure efficient registration administration. Furthermore, Florida's lenient 14-day deadline provides these groups with ample time to deliver completed registration forms compared to most states. Lastly, Florida's disclosure requirements that third-party organizations must provide to voters likely does not offend the traditional administrative requirements that states subject these organizations to and furthermore ensures voters are sufficiently informed of their options for registering.

Absentee Ballot Application Verification

*Claim: SB 90's requirement that voters verify their identity by providing either their Florida driver's license number, Florida identification card number, or the last four digits of their Social Security number when requesting an absentee ballot unconstitutionally "imposes[s] burdens and barriers on the right to vote."*³⁶

Almost every state requires voters to authenticate their absentee ballot application.³⁷ These measures help ensure that the voter requesting the absentee ballot is who she says she is and not someone else. Nineteen states require the voter to sign the request to match the signature to the voter's registration record.³⁸ Sixteen states verify the information provided on the absentee ballot application against the voter's registration file.³⁹ Several other states have more stringent methods, such as requiring a notary signature, a witness signature, or a copy of the voter's identification.⁴⁰

Prior to SB 90, Florida was in the minority of states in having virtually no absentee ballot application verification procedures. Officials were required to mail an absentee ballot to any person who made a request in person or in writing without requiring anything more; a voter's signature was required only when the ballot was to be delivered to an address other than the one on file.⁴¹

Section 7 of SB 90 instead requires a voter to provide her Florida driver's license number, Florida identification card, or the last four digits of her Social Security number when requesting a mail ballot.⁴² While Florida's requirements now exceed the strength of most states' verification requirements for absentee ballot applications, Florida's laws are still well within the norm to advance an important objective.

³⁶ *Florida NAACP*, Compl. at 28.

³⁷ See *How States Verify Absentee Ballot Applications*, NCSL (Apr. 29, 2020), available at: <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-8-how-states-verify-absentee-ballot-applications.aspx>. Only three states (Alaska, North Dakota, and Vermont) have no verification procedures in place for absentee ballot applications.

³⁸ *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options* (Sept. 24, 2020).

³⁹ *Id.*

⁴⁰ See *id.* Alabama requires voters to include a copy of their ID. Mississippi requires voters to have their requests notarized. South Dakota requires voters to have their request notarized or to include a copy of their photo ID. Wisconsin requires voters to include a copy of their voter ID.

⁴¹ Chpt. 2021-11, Laws of Fla. at 18 (2021).

⁴² *Id.*



Frequency of Requesting Absentee Ballots

*Claim: SB 90's requirement that voters request an absentee ballot every 2 years instead of 4 imposes an unconstitutional burden and barrier on the right to vote.*⁴³

Some states allow a voter's request to vote by mail for one election to apply to future elections as well, rather than requiring the voter to request a mail ballot for each election. Some states even allow voters to permanently receive mail ballots; however, many restrict this option to elderly voters and voters with permanent disabilities.⁴⁴ Only a handful of states allow any voter to elect to receive a mail ballot every election without having to make additional requests.⁴⁵ States impose limitations to confirm voters still desire to vote by mail, to ensure voters expect to receive a ballot by mail, to verify ballots go to actual, active voters, and to prevent a flood of idle ballots that can be taken advantage of by bad actors.

Prior to SB 90, Florida allowed a voter's request to vote by mail to apply to all elections through the end of the calendar year of the second ensuing general election for a total of four years.⁴⁶ Section 24 of SB 90 changed the law to allow one request to apply to all elections through the next general election for a total of two years.⁴⁷ This change leaves Florida among the more lenient states that allow a voter's request to vote by mail to apply to future elections.

Voter Solicitation

*Claim: SB 90's non-solicitation provision "impinge[s] upon voters' fundamental right to cast a ballot."*⁴⁸

Every state has in place limitations on political activities in and around polling places while ballots are being cast. These limitations aim to protect the integrity of the electoral process by reducing pressure or undue influence on voters at the voting location. Thirty-seven states prohibit campaign materials, including signs, banners, and literature.⁴⁹ Twenty-eight states directly prohibit influencing voters and soliciting votes.⁵⁰ Another 15 states prohibit campaign apparel, including buttons, stickers, and placards.⁵¹ States usually ban these types of activities within 50-200 feet of a polling location.⁵²

⁴³ Florida NAACP, Compl. at 28-29.

⁴⁴ States With Permanent Absentee Voting for All Voters, Voters With Permanent Disabilities and/or Senior Voters, NCSL (Apr. 27, 2021), available at: <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-3-states-with-permanent-absentee-voting-for-all-voters-voters-with-permanent-disabilities-and-or-senior-voters.aspx>.

⁴⁵ See *id.* Excluding states that conduct their elections entirely by mail, the only states that permit voters to remain on a permanent mail voting list are Arizona, California, Minnesota, Montana, and New Jersey.

⁴⁶ Chpt. 2021-11, Laws of Fla. at 18 (2021).

⁴⁷ *Id.*

⁴⁸ Florida NAACP, Compl. at 40.

⁴⁹ Electioneering Prohibitions, NCSL (Apr. 1, 2021), available at: <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-3-states-with-permanent-absentee-voting-for-all-voters-voters-with-permanent-disabilities-and-or-senior-voters.aspx>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*



Prior to SB 90, Florida prohibited political activity, including but not limited to soliciting votes, contributions, or petition signatures; distributing political or campaign materials, including leaflets and handouts; and selling items within 150 feet from a polling location.⁵³ Section 29 of SB 90 modified this statute to prohibit “engaging in any activity with the intent to influence or effect of influencing a voter” within 150 feet of a polling location or drop box.⁵⁴

The plain language of Section 29 of SB 90 still permits Good Samaritans, family members, caregivers, volunteers, or election workers to provide non-partisan assistance to voters within the 150-foot limit. The amendment also specifically authorizes election officials to provide items to voters in need. Even with this expanded solicitation prohibition, Florida’s electioneering prohibitions still mirror the majority of states that preclude the influencing of voters within a certain zone near the ballot booth.

Conclusion

Allegations that these provisions of Florida’s SB 90 place an unconstitutional burden on the fundamental right to vote implies that the standard rules in an overwhelming number of states that implement similar provisions are invalid as well. Florida’s recent reforms may put the state in the minority in terms of permitting the use of drop boxes, but Florida policies to limit ballot harvesting, to place regulations on third-party voter registration organizations, to provide reasonable options for voters to prove their identity, and to combat high-pressure electioneering near ballot booths are well within the mainstream. Even if some of these reforms go farther than other states with similar laws, some are more lenient. Ultimately, these reforms manifest Florida’s efforts to maintain voter access while safeguarding fairness and honesty in elections. Ultimately, Florida’s reforms are neither new nor unique; they are commonplace election safeguards that have been enacted and upheld for years across the country that seek to meaningfully protect voter participation while safeguarding election integrity.

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⁵³ Chpt. 2021-11, Laws of Fla. at 24-25 (2021).

⁵⁴ *Id.*