

Nos. 22-11133-GG, 22-11143-GG, 22-11144-GG, 22-11145-GG (consolidated)

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**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., et al.,  
*Plaintiffs-Appellees,*

v.

FLORIDA SECRETARY OF STATE, et al.,  
*Defendants-Appellants.*

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Appeal from the United States District Court for the Northern District of Florida,  
4:21-cv-242, 4:21-cv-186, 4:21-cv-187, 4:21-cv-201 (Walker, C.J.)

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**BRIEF FOR AMICUS CURIAE LAWYERS DEMOCRACY FUND IN  
SUPPORT OF DEFENDANT-APPELLEES 'APPEAL**

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**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT (CIP)**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, 26.1-2, and 26.1-3, Lawyers Democracy Fund (“LDF”) states that it is a 501(c)(4) non-profit organization. It has no parent corporation and no publicly held corporation holds a 10% or greater ownership interest in it. LDF provides the following Certificate of Interested Persons and Corporate Disclosure Statement:

1. Joseph S. Van de Bogart – Counsel for *Amicus Curiae* LDF
2. Lawyers Democracy Fund – *Amicus Curiae*
3. Van de Bogart Law, PA. – Counsel for *Amicus Curiae* LDF

Besides those listed above, in the proposed *Amicus Curiae* Restoring Integrity and Trust in Elections, Inc.’s Certificates of Interested Persons and Corporate Disclosure Statements, and in the Defendants-Appellants’ Certificate of Interested Persons and Corporate Disclosure Statement, no other associations of persons, and no other firms, partnerships, or corporations have an interest in the outcome of this case or appeal.

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**BRIEF OF AMICUS CURIAE LAWYERS DEMOCRACY FUND**

**INTEREST OF AMICUS CURIAE<sup>1</sup>**

Lawyers Democracy Fund (“LDF”) is a social welfare organization that promotes ethics and legal professionalism in the electoral process. LDF seeks to ensure that all citizens are able to exercise their right to vote and that reasonable, common-sense administrative processes and protections are implemented to prevent the dilution of any citizen’s vote or disenfranchisement as a result of administrative error or fraud and to instill public confidence in election procedures and outcomes. LDF educates the public and officials regarding reforming their electoral systems, and it also conducts, funds, and publishes research regarding the effectiveness of current election systems and procedures. LDF also periodically engages in public interest litigation to uphold the rule of law and integrity in elections and files briefs as *amicus curiae* in cases where its background, expertise, and national perspective

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<sup>1</sup> Counsel for Amicus Curiae certifies that no party has objected to the filing of this brief, though not all parties have responded to notification emails sent by Amicus Curiae to all parties notifying of the intent to file this brief. Therefore, pursuant to 11th Cir. R. 35-8 and FRAP 29(a)(3) this brief is accompanied by a motion for leave to file. Pursuant to FRAP 29(a)(4)(E), counsel for Amicus Curiae states that no counsel for a party authored this brief in whole or in part, and no person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

in the field of election law may help illuminate important points for consideration. For these reasons, LDF has an interest in the issues presented in these consolidated cases.

### **SUMMARY OF THE ARGUMENT**

This case concerns Senate Bill 90 (“SB 90”), a robust elections package that implemented several meaningful election integrity policies in Florida. The provisions within SB 90’s 32 sections are neither novel nor unique, as several other states have the same or similar provisions in place. Nevertheless, these provisions were immediately challenged in court through several lawsuits, and in 2022, the federal court below struck down three of the SB 90’s challenged provisions but left the remaining provisions in place. This Brief examines two of SB 90’s struck provisions—the drop box and non-solicitation provisions—by highlighting similar, valid election procedures currently in use by other states to exemplify the degree to which these two provisions are well within the mainstream and should be upheld by this court. This Brief will not address the third struck provision—the voter registration disclaimer—since this provision of SB 90 was repealed by the Florida Legislature in 2022 with the enactment of SB 524. *See* Merits Brief of Appellant Florida Secretary of State, et al. Nor will this Brief discuss temporary emergency measures utilized by states during the 2020 Election in light of the public health

crisis. This brief focuses solely on states' duly enacted statutes.

LDF's *amicus* brief will showcase the degree to which these provisions of S.B. 90, far from being extraordinary or unique election measures, bring Florida in line with the election laws and practices implemented by many other states for the purpose of safeguarding election integrity and bolstering public confidence in elections.

### **ARGUMENT**

#### **1. The Court Should Consider Other States' Election Practices in Evaluating S.B. 90.**

The provisions of S.B. 90 that plaintiffs challenge do not exist in a vacuum. They are intricately interwoven parts of an election administration system carefully calibrated by the Florida legislature to protect the fundamental right to vote while ensuring integrity and uniformity in the process. The U.S. Constitution assigns this responsibility to the state legislature. U.S. Constitution, Art. I, § 4; *Cf. Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 29 (2020) ("The Constitution provides that state legislatures—not federal judges, not state judges, not state governors, not other state officials—bear primary responsibility for setting election rules.") (Gorsuch & Kavanaugh, JJ. concurring). Accordingly, "the legislature in each state of our federal system possesses the presumptive authority to regulate elections within that state's sovereign territory. This authority stems directly from .

.. Article I Section 4 Clause 1 of the Constitution . . . .” *Libertarian Party of Virginia v. Alcorn*, 826 F.3d 708, 714 (4th Cir. 2016).

Moreover, the S.B. 90 provisions are fully consistent with the election laws of states across the country. Courts often consider the experiences of other states and the election administration rules fashioned in response to those experiences as a relevant touchstone for judging the necessity and reasonableness of rules in a particular case. For example, in evaluating whether Indiana’s voter identification law violated the Fourteenth Amendment, the U.S. Supreme Court surveyed the “different methods of identifying eligible voters at the polls” that states use and noted the “increasing number of States [that] have relied primarily on photo identification.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008); *see also id.* at 222-23 (citing briefs comparing various other states’ voter identification laws relative to Indiana’s law and *Randall v. Sorrell*, 548 U.S. 230, 253 (2006), in which the Court compared Vermont’s campaign contribution limits with those in other states) (Scalia, Thomas, and Alito, JJ. concurring). Similarly, in evaluating whether Arizona’s ban on voters voting outside of their precincts violated the Fifteenth Amendment and Section 2 of the Voting Rights Act (VRA), the Supreme Court looked to other states’ election laws and determined that such a ban was

“widespread” among the states. *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2345 (2021) ((citing *Democratic National Committee v. Hobbs*, 948 F.3d 989, 1072-1088 (9th Cir. 2020) (Bybee, J., dissenting))). The bottom line is that the procedures in current use by other states directly support the viability of a state’s newly enacted election procedures. And, as a practical matter, this Court cannot rule that Florida’s new election rules are unlawful without also casting doubt on the validity of the duly-enacted, longstanding election laws in scores of other states.

The U.S. Constitution gives Congress *secondary* authority to “make or alter” the election laws, in the first instance, “prescribed in each State by the Legislature thereof” in connection with elections for federal office. U.S. Const., Art. I, § 4. However, even under the VRA, courts are required to give great deference to election practices when they are used by multiple states. *See Brnovich*, 141 S. Ct. at 2338-39. So while the Plaintiffs allege key provisions of S.B. 90 violate Section 2 of the VRA, the widespread use of similar provisions in other states over many decades is support for their lawfulness.

In considering whether Arizona’s regulation of absentee ballots violated the VRA, the U.S. Supreme Court recently observed:

The burdens associated with the rules in widespread use when [Section 2] was adopted are therefore useful in gauging whether the burdens imposed by a challenged rule are sufficient to prevent voting from being



equally “open” or furnishing an equal “opportunity” to vote in the sense meant by [Section 2]. Therefore, it is relevant that in 1982 [when Section 2 was last amended] States typically required nearly all voters to cast their ballots in person on election day and allowed only narrow and tightly defined categories of voters to cast absentee ballots.

*Id.* Such “rules in widespread use” showcase how S.B. 90’s provisions are lawful under the VRA. And courts often have resolved Fourteenth Amendment claims by comparing a state’s election laws to those of other states. *See Crawford, supra.*

In sum, this Court should measure the challenged provisions of S.B. 90 against the election practices used in other states. As this *amicus* brief shall demonstrate, the Florida law is fully consistent with methods used by other states to administer their elections.

## **2. The Challenged S.B. 90 Provisions Are Fully Consistent With Other States’ Laws.**

### **I. DROP BOXES**

While Florida already statutorily authorized the use of absentee ballot drop boxes prior to SB 90’s enactment, SB 90 implemented meaningful safeguards and requirements for drop boxes that combat fraud and ensure their proper and uniform use in Florida elections. *See Fla. Stat. § 101.69 (2021); 2021 Fla. Sess. Law Serv. Ch. 2021-11.*

Florida passed legislation in 2019 allowing drop boxes, albeit with relatively

minimal limitations. *See* Fla. Stat. § 101.69(2) (2019); 2019 Fla. Sess. Law Serv. 2019-162. The former law required each early voting location and office of the respective Supervisor to be equipped with a secure drop box that voters could utilize to return their mail ballots during the early voting period up to Election Day. While the old law did not statutorily authorize Supervisors to make drop boxes available 24-hours a day during the early voting, most Supervisors took the statutory silence as license to do so, leading to disproportionate drop box use across the state.<sup>2</sup> Florida addressed this nonuniform use in passing SB 90.

Florida's changes to its drop box rules were by no means extreme. SB 90 revised the requirements governing the placement and supervision of secure drop boxes for the return of vote-by-mail ballots to ensure their proper and uniform use.<sup>3</sup> SB 90 required drop boxes to be geographically located, to the extent practicable, to ensure that all voters have an equal opportunity to cast a ballot. The law also required drop box locations to be fixed at least 30 days before an election and allowed them to be moved only to comply with the law. Most significantly, SB 90 required drop

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<sup>2</sup> *See* Allison Ross, *Late guidance from Florida's elections chief could affect counties' plans for mail ballot drop boxes*, TAMPA BAY TIMES (Oct. 16, 2020), available at: <https://www.tampabay.com/news/florida-politics/elections/2020/10/16/late-guidance-from-floridas-elections-chief-could-limit-use-of-mail-ballot-drop-boxes/> (last visited July 12, 2022); *see also* *League of Women Voters of Florida, Inc. v. Lee*, \_\_\_ F.Supp.3d \_\_\_, 2022 WL 969538, 92-94 (N.D. Fla. 2022).

<sup>3</sup> 2021 Fla. Sess. Law Serv. Ch. 2021-11.

boxes to be continuously monitored by an election worker during the normal early voting hours of operation, the time when the drop boxes are permitted to be accessible to voters. Ultimately, SB 90 ensures the uniformity and security of drop boxes across the state. As will be discussed below, Florida's drop box rules are nothing short of reasonable, for they fall well within the mainstream of other states' laws.

States' use of drop boxes is a recent phenomenon. Pam Fessler, *Ballot Drop Boxes Become Latest Front In Voting Legal Fights*, NPR.ORG (Aug. 11, 2020)<sup>4</sup> ("In the [2016] presidential election, about 16% of voters nationwide used drop boxes, but they were concentrated in states such as Washington, Oregon and Colorado, where almost all voters cast absentee ballots."). The trend to allow voters to return their absentee ballots via drop box was predominantly fueled by the COVID-19 pandemic, as many jurisdictions across the country for the first time provided voters with expanded access to mail voting due to the extenuating circumstances.<sup>5</sup> While

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<sup>4</sup>Pam Fessler, *Ballot Drop Boxes Become Latest Front In Voting Legal Fights*, NPR.ORG (Aug. 11, 2020) available at: <https://www.npr.org/2020/08/11/901066396/ballot-drop-boxes-become-latest-front-in-voting-legal-fights>.

<sup>5</sup> *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\\_administratio](https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020)  
[n in response to the coronavirus \(COVID-19\) pandemic, 2020](https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administratio). This brief does not examine the use of drop boxes by states under an emergency declaration; it only

many states moved to codify the use of drop boxes into law after the 2020 election, concern about the lack of meaningful safeguards for drop boxes gave rise to a separate trend of states also clarifying their drop box laws to provide greater protections in future elections.<sup>6</sup>

However, even with these recent trends, only half of states, including Florida, statutorily provide some means by which voters may return their completed ballots to a designated drop box.<sup>7</sup>

Twenty-six states, including Florida, currently authorize ballot drop boxes by statute, and many of these states only did so very recently.<sup>8</sup> It is worth noting that

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examines and accounts for where states statutorily prescribe or do not prescribe drop boxes.

<sup>6</sup> See e.g., Georgia: SB 202 (2021), Iowa: SF 413 (2021), Missouri: HB 1878 (2022), Texas: SB 1 (2021).

<sup>7</sup> *Ballot Drop Box Definitions, Design Features, Location and Number*, NCSL (Feb. 14, 2022), available at:

<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-9-ballot-drop-box-definitions-design-features-location-and-number.aspx>.

<sup>8</sup> Cal. Elec. Code §§ 3025.5, 4005; Colo. Rev. Stat. § 1-7.5-107(4)(b)(i)(a); Conn. Gen. Stat. § 9-140b(c); Fla. Stat. § 101.69(2)(a); Ga. Code § 21-2-382; Haw. Rev. Stat. § 11-109(d); 10 Ill. Comp. Stat. 5/19-6; Ind. Code § 3-11-10-24(f)-(h); Iowa Code 53.17(1)(c); Kan. Stat. § 25-1124(a); Ky. Rev. Stat. § 117.086; 21-A Me. Rev. Stat. § 754-A(D); Md. Code, Election Law, § 2-304(C); 54 Mass. Gen. Laws § 92(a); Mich. Comp. Laws § 168.761d; Minn. Stat. § 203B.082; Neb. Rev. Stat. § 32-960; Nev. Rev. Stat. § 293.269921; N.J. Stat. § 19:63-16.1; N.M. Stat. 1978 § 1-6-9(E); Ore. Rev. Stat. § 254.470(6)(b); R.I. Gen. Laws, 1956, § 17-20-22.1; Utah Code § 20A-5-403.5; 17 Vt. Stat. § 2543a; Va. Code § 24.2-707.1; Wash. Rev. Code § 29A.40.170.

eight of these states conduct their elections entirely by mail.<sup>9</sup>

Fourteen of these states, including Florida, statutorily *require* the use of drop boxes.<sup>10</sup> The remaining 12 states authorize election officials to establish drop boxes but do not require them.<sup>11</sup> The infrequently acknowledged truth is that half of states do not statutorily allow election officials to establish drop boxes.

The laws in 18 states simply do not explicitly authorize the use of absentee ballot drop boxes explicitly. *See* Alaska Code §§ 15.20.061, 15.20.081(e); Ariz. Rev. Stat. § 16-548(A); Ark. Code § 7-5-411; 15 Del. Code § 5507; Idaho Code § 34-1005(1); La. Rev. Stat. § 18:1308(B);<sup>12</sup> Mont. Code § 13-13-201(2)(e); N.H. Rev.

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<sup>9</sup> California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington. *States With All-Mail Elections*, NCSL (Feb. 2, 2022), *available at*: <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-18-states-with-all-mail-elections.aspx>.

<sup>10</sup> Cal. Elec. Code §§ 3025.5, 4005, 2 CA Code of Regs §§ 20132-37; Colo. Rev. Stat. § 1-5-102.9; Fla. Stat. § 101.69; Ga. Code § 21-2-382, SB 202 (2021); Ky. Rev. Stat. § 117.086(2)(c), HB 574 (2021); Md. Code, Election Law, § 2-304(C), SB 683 (2021); Neb. Rev. Stat. § 32-960; Nev. Rev. Stat. § 293.269921; N.J. Stat. § 19:63-16.1; Ore. Rev. Stat. § 254.470; R.I. Gen. Laws, 1956, § 17-20-22.1; Utah Code § 20A-5-403.5, HB 313 (2022); Va. Code § 24.2-707.1, Ch. 522 of 2021 Laws (SB 1245); Wash. Rev. Code § 29A.40.170.

<sup>11</sup> *See* Conn. Gen. Stat. § 9-140b(c); Haw. Rev. Stat. § 11-109; § 11-1, § 11-B, § 11-I; 10 Ill. Comp. Stat. 5/19-6; Ind. Code § 3-11-10-24, SB 398 (2021); Iowa Code § 53.17, SF 413 (2021); Kan. Stat. § 25-1124(a); 21-A Me. Rev. Stat. § 754-A(D); 54 Mass. Gen. Laws § 92(a); Mich. Comp. Laws § 168.761d; Minn. Stat. § 203B.082, Minn. R. 8210.3000 Subp. 9; N.M. Stat. 1978, § 1-6-9; 17 Vt. Stat. § 2543a.

<sup>12</sup> Louisiana effectively prohibits drop boxes for absentee ballots being hand delivered by someone other than the voter, the U.S. Postal Service, or commercial courier. Under such circumstances, “the registrar shall require that the person

Stat. § 657:17(I); N.Y. Election Law § 8-410; N.C. Gen. Stat. § 163-231(b), (c); N.D. Cent. Code § 16.1-07-09; Ohio Rev. Code § 3509.05(A); 25 Pa. Stat. § 3146.6(a); S.C. Code § 7-15-385; S.D. Codified Laws § 12-19-7; W. Va. Code § 3-3-5(f); Wis. Stat. § 6.87(4)(b)(1); Wyo. Stat. § 22-9-113. At least one of these states, Pennsylvania, found that the use of drop boxes was permissible even though its statute is silent on the issue. *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 361 (Pa. 2020) (“[T]he Election Code should be interpreted to allow county boards of election to accept hand-delivered mail-in ballots at locations other than their office addresses including drop-boxes.”); 25 Pa. Stat. § 3146.6(a).

Insofar as some of the above-mentioned 18 states may have implemented ballot drop boxes in practice, they are operating under “ambiguous” statutes, with “competing interpretations . . . on this issue [being] reasonable.” *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d at 360. In *Boockvar*, the Pennsylvania Supreme Court ultimately concluded the Pennsylvania statute permitting voters to “deliver [their mail ballots] in person to [the] county board of election” authorized the use of drop boxes, but only in light of the legislative intent underlying the broader bill enacting this provision into law, which was “to provide electors with options to

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making such delivery sign a statement, prepared by the secretary of state, certifying that he has the authorization and consent of the voter to hand deliver the marked ballot.” *Id.*

vote outside of traditional polling places.” *Id.* at 361. However, for the reasons explained elsewhere in this brief, there is no general mandate under the U.S. Constitution or the VRA for Florida or any other state to expand voting in this manner. Therefore, absent the particular circumstances the Pennsylvania Supreme Court found in *Boockvar*, these other states are free to ban the use of ballot drop boxes in light of their statutes’ silence on this issue. *See, e.g., Teigen v. Wisconsin Elections Commission*, \_\_\_ N.W.2d. \_\_\_, 2022 WL 2565599 (Wis. 2022) (holding Wisconsin law did not authorize the Wisconsin Elections Commission to authorize municipal clerks and local election officials to establish absentee-ballot drop boxes).

Perhaps most significant is how the laws in the six remaining states effectively *prohibit* the use of absentee ballot drop boxes:

- **Alabama** requires absentee voters to “forward [their ballot] by United States mail to the absentee election manager *or hand it to him or her in person.*” Ala. Code 1975 § 17-11-9 (emphasis added).
- **Mississippi** requires voted absentee ballots to be “deposit[ed] [] in the post office or some government receptacle provided *for deposit of mail* so that the absent elector’s ballot will be *postmarked.*” Miss. Code § 23-15-631(1)(c) (emphasis added); *see also* Emily Wagster Pettus, *Mississippi unlikely to ease*

*its strict election laws*, CLARION-LEDGER (Apr. 11, 2021)<sup>13</sup> (“Mississippi does not have drop boxes.”).

- **Missouri** recently enacted legislation precluding the use of absentee ballot drop boxes in elections. Mo. Rev. Stat. § 115.291(5), HB 1878 (2022).
- **Oklahoma** requires voters to return their absentee ballots in person to “provide proof of identity” to elections officials. 26 Okla. Stat. Ann. § 14-108(C).
- **Tennessee** does not permit in-person delivery of absentee ballots, but rather provides that the “voter shall [] mail the ballot” and that elections officials shall process ballots upon “receipt by mail of the absentee ballot.” Tenn. Code § 2-6-202(e), (g); *see also* Tenn. Sec’y of State, Absentee Voting Frequently Asked Questions<sup>14</sup> (“Can I hand deliver my ballot to the election office? No. You must return your ballot by mail (USPS, FedEx, UPS, etc.).”).

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<sup>13</sup> Emily Wagster Pettus, *Mississippi unlikely to ease its strict election laws*, CLARION-LEDGER (Apr. 11, 2021), available at: <https://www.clarionledger.com/story/news/politics/2021/04/12/mississippi-strict-election-laws-early-voting-absentee-ballots-analysis/7164366002/>.

<sup>14</sup> Tenn. Sec’y of State, Absentee Voting Frequently Asked Questions<sup>14</sup> (“Can I hand deliver my ballot to the election office? No. You must return your ballot by mail (USPS, FedEx, UPS, etc.), available at: <https://sos.tn.gov/products/elections/absentee-voting>).



- **Texas** statutorily bars the use of unmanned drop boxes for the return of absentee ballots and only allows for voters to return their ballots by dropping them off at their polling locations or via U.S. mail so long as their ballots arrive before the close of polls on Election Day. Tex. Elec. Code § 86.006(a-1); *see also* Jolie McCullough, *Texas counties will be allowed only one drop-off location for mail-in ballots, state Supreme Court rules*, THE TEXAS TRIBUNE (Oct. 27, 2020)<sup>15</sup> (“*Texas does not have drop-off boxes for absentee ballots, as do some other states. Instead, to drop off a mail-in ballot in person at any location, voters must present an approved form of identification to a poll worker . . . .*”) (emphasis added).<sup>16</sup>

Clearly, Florida cannot somehow be magically violating the law when SB 90 does something that 24 other states do not even statutorily authorize—and 6 of these states prohibit: provide voters the opportunity to return their mail ballots via drop box.

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<sup>15</sup> Jolie McCullough, *Texas counties will be allowed only one drop-off location for mail-in ballots, state Supreme Court rules*, THE TEXAS TRIBUNE (Oct. 27, 2020), available at: <https://www.texastribune.org/2020/10/27/texas-voting-elections-mail-in-drop-off/>.

<sup>16</sup> Texas recently passed Senate Bill 1, which made this prohibition on drop boxes explicit in statute where it was previously ambiguous. *See* Texas SB 1 (2021). This clarification is currently being challenged. *See La Unión Del Pueblo Entero, et al., v. Abbott*, 5:21-CV-0844-XR (W.D. Tex. 2021).

When comparing the provisions of SB 90 concerning drop boxes to other states' laws on this issue, it would be illogical to claim that Florida is somehow violating the Voting Rights Act and the U.S. Constitution when its laws are comparable to half of states that statutorily allow drop boxes. *Brnovich*, 141 S. Ct. at 2338-39 (“the degree to which a voting rule departs from what was standard practice when [VRA] § 2 was amended in 1982 is a relevant consideration . . . We doubt that Congress intended to uproot facially neutral time, place, and manner regulations that have a long pedigree or are in widespread use in the United States.”).

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 permit the use of drop boxes, therefore, often establish various safeguards to ensure drop boxes can be readily used by voters without being abused by bad actors or in danger due to honest mistakes. These various safeguards include mandating or recommending that drop boxes be continuously monitored by staff or video camera and/or limiting the authority of election supervisors to supersede what statute prescribes—*e.g.*, preventing supervisors from establishing 24-hour drop boxes

where statute does not authorize them.<sup>17</sup> States employ various means to achieve this balance.<sup>18</sup>

SB 90 entails Florida's reasonable and commonsense effort to allow voters to return their ballot by drop box without compromising the security and integrity of the vote. While some states have fewer restrictions on drop boxes than Florida, this does not take away from the fact that Florida is nevertheless among half of states that even authorize drop boxes by statute. Furthermore, if Florida wasn't violating the law in 2018 before it enacted drop boxes, it's difficult to assert that it somehow now is after implementing reasonable safeguards for their use after just one election cycle.

Like Florida, several other states only allow drop boxes at election offices and polling locations.<sup>19</sup> Over a dozen states, including Florida, require drop boxes to be monitored by video surveillance and/or election workers.<sup>20</sup> Almost every state,

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<sup>17</sup> *Ballot Drop Box Definitions, Design Features, Location and Number* (Feb. 14, 2022), available at: <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-9-ballot-drop-box-definitions-design-features-location-and-number.aspx>.

<sup>18</sup> *See id.*

<sup>19</sup> Ariz. Rev. Stat. § 16-548; Fla. Stat. § 101.69(2)(a); Ga. Code § 21-2-382(c)(1); Iowa Code § 53.17(1)(c); 21-A Me. Rev. Stat. 752-B(3) (must obtain prior approval from the Secretary of State to place at other locations).

<sup>20</sup> Fla. Stat. § 101.69(2)(a); Ga. Code § 21-2-382(c)(1); Iowa Code § 53.17(1)(c)(4); Ky. Rev. Stat. § 117.086(2)(c); 21-A Me. Rev. Stat. § 752-B(5); Md. Code, Election Law, § 2-305(A); Mich. Comp. Laws 168.761d(4)(c); Minn. Stat. § 203B.082; N.J.

including Florida, that offers voters the opportunity to return their ballots to a designated drop box requires drop boxes to be physically secured to prevent tampering and bad actors.<sup>21</sup> Clearly SB 90 did not thrust Florida into some no man's land in terms of drop box protections. Rather, SB 90 presents reasonable and meaningful limitations to ensure accessibility without compromising the integrity of the process. If Florida was not violating federal law or the U.S. Constitution before it enacted drop boxes in 2019, it certainly could not be now when it has expanded voters' options for returning absentee ballots and supplemented that expansion with reasonable safeguards.

SB 90's limitations on drop boxes are not abnormal; they reflect common and meaningful safeguards used by the minority of states that even allow drop boxes to be used. If this court were to find SB 90's limitations on drop boxes to be improper, it would assert that the laws in a majority of other states are invalid as well.

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Stat. § 19:63-16.1(b)(2)(a); N.M. Stat. 1978, § 1-6-9(E); R.I. Gen. Laws, 1956, § 17-20-22.1(b); Utah Code § 20A-5-403.5(1)(d); 17 Vt. Stat. § 2543a(d)(2).

<sup>21</sup> Cal. Elec. Code §§ 3025.5(b), 4005(1)(B); Conn. Gen. Stat. § 9-140b(c); Fla. Stat. § 101.69(2)(a); Ga. Code § 21-2-382(c)(1); Haw. Rev. Stat. § 11-109; Illinois, 10 Ill. Comp. Stat. 5/19-6; Iowa Code § 53.17(1)(c)(3); Ky. Rev. Stat. § 117.086(2)(c); 21-A Me. Rev. Stat. § 752-B (4); Md. Code, Election Law, § 1-101(D-1); Mich. Comp. Laws 168.761d(3)-(4), 168.764a; Minn. Stat. § 203B.082; Neb. Rev. St. § 32-960(2); Nev. Rev. Stat. 293C.26321(5); N.J. Stat § 19:63-16.1(b)(2)(a); N.M. Stat. 1978, § 1-6-9; R.I. Gen. Laws, 1956, § 17-20-22.1(a); 17 Vt. Stat. § 2543a(d)(3).

## II. VOTER SOLICITATION

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. According to data from the National Conference of State Legislatures following the 2020 election, 37 states prohibit campaign materials, including signs, banners, and literature near the polling location.<sup>22</sup> Twenty-eight states directly prohibit influencing voters and soliciting votes.<sup>23</sup> Another 15 states prohibit campaign apparel, including buttons, stickers, and placards.<sup>24</sup>

States usually ban these types of activities within 50-200 feet of a polling location to reduce pressure and undue influence on voters.<sup>25</sup> Although states vary in the distances in which solicitation is restricted, 37 states restrict solicitations between 100 and 300 feet of the polling location.<sup>26</sup>

Prior to S.B. 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

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<sup>22</sup> *Electioneering Prohibitions*, NCSL (Apr. 1, 2021), available at: <https://www.ncsl.org/research/elections-and-campaigns/electioneering.aspx>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

feet from a polling location.<sup>27</sup> S.B. 90 modified Fla. Stat. § 102.031 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.<sup>28</sup> This expansion of solicitation restrictions to within 150 feet of a polling location or drop boxes is similar to restrictions in other states:

- **California** restricts electioneering within 100 feet of the “entrance to a building that contains a polling place” or “an outdoor site, including a curbside voting area, at which a voter may cast or drop off a ballot”. Cal. Elec. Code § 18270. Electioneering includes “obstructing access to, loitering near, or disseminating visible or audible electioneering information at a vote by mail ballot drop boxes.” Cal. Elec. Code § 319.5.
- **Illinois** restricts electioneering and soliciting of votes within 100 feet. (10 ILCS 5/7-41) (from Ch. 46, par. 7-41) Sec. 7-41. Illinois also restricts vote buying (10 ILCS 5/29-1) (from Ch. 46, par. 29-1) and buying a voter’s promise to vote (10 ILCS 5/29-2) (from Ch. 46, par. 29-2).
- **Ohio** restricts electioneering within 100 feet. Ohio Rev. Code § 3501.30(A)(4). In this area persons “shall not loiter, congregate, or engage in

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<sup>27</sup> Chpt. 2021-11, Laws of Fla. at 24-25 (2021).

<sup>28</sup> *Id.*

any kind of election campaigning.” *Id.*

These restrictions are common throughout the country. Florida is not an outlier by enacting legislation that effectively and reasonably prevents voters from being unduly influenced while voting. Furthermore, some states go so far as to restrict this type of activity within 300 feet or greater:

- **Iowa** restricts electioneering within 300 feet. Iowa Code § 39A.4. This area restricts “[l]oitering, congregating, electioneering, posting signs, treating voters, or soliciting votes.” Iowa Code § 39A.4.
- **Louisiana** restricts electioneering within 600 feet. La. Code § 1462. This area prohibits “solicit[ing] in any manner or by any means whatsoever any other person to vote for or against any candidate or proposition being voted on in such election.” *Id.*
- **Oklahoma** restricts electioneering within 300 feet. 26 Okla. Code § 26-7-108. The statute goes on to restrict the display of “printed material other than that provided by the election board” in the 300-foot zone. *Id.*

Clearly the means and distance by which SB 90 prevents voter solicitation near voting locations is not novel. The Florida legislature, in enacting S.B. 90, also clarified that certain activities are allowed within the 150-foot zone. The plain language of Fla. Stat. § 102.031(4)(b) provides that “[t]he terms ‘solicit’ or

‘solicitation’ may not be construed to prohibit an employee of, or a volunteer with, the supervisor from providing nonpartisan assistance to voters within the no-solicitation zone such as, but not limited to, giving items to voters, or to prohibit exit polling.” Therefore, S.B. 90 still permits volunteers with the supervisor 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. The only persons prohibited from doing so are those who *intend* to influence voters. Even with SB 90’s 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 S.B. 90 place an unconstitutional burden on the fundamental right to vote imply 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 regulate drop boxes and combat high-pressure electioneering near ballot booths are well within the mainstream. Even if some of these reforms are stronger than other states with similar laws, they are likewise more lenient than several others. 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. If SB 90's provisions are improper, the laws of countless other states are as well.

For the foregoing reasons, Lawyers Democracy Fund respectfully urges the Court to defer to the reasonable "time, place, and manner" rules established by the state legislature to administer fair and honest elections that promote voter confidence and to recognize that Florida has adopted reasonable and widely used measures to safeguard the integrity and transparency of its elections.

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-column limitation of Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 5090 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word version 16.62 in 14-point Times New Roman.

Dated: July 18, 2022

/s/ Joseph S. Van de Bogart  
Joseph S. Van de Bogart, Esq.

### **CERTIFICATE OF SERVICE**

I hereby certify that on July 18, 2022, I electronically filed the foregoing *amici curiae* brief with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

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