January 13, 2023

BY CERTIFIED U.S. MAIL AND EMAIL

Hon. Cord Byrd
Florida Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

Re: Florida’s Non-Compliance with the National Voter Registration Act

Dear Secretary Byrd,

Pursuant to 52 U.S.C. § 20510(b), we write on behalf of the League of Women Voters of Florida, the Florida State Conference of the NAACP, the Brennan Center for Justice at NYU School of Law, the NAACP Legal Defense and Educational Fund, Inc., the American Civil Liberties Union Foundation of Florida, Inc., the American Civil Liberties Union Foundation, and persons similarly situated to formally notify you that Florida’s uniform statewide voter registration application violates the National Voter Registration Act of 1993 (“NVRA”).

In 2018, Florida voters overwhelmingly approved Amendment 4, a constitutional amendment that automatically restored voting rights to most people with felony convictions, except those convicted of murder or a felony sexual offense, after they complete their sentence, including probation and parole.¹ Shortly thereafter, in 2019, state lawmakers and Gov. Ron DeSantis enacted Senate Bill 7066,² which defined the phrase “felony sexual offense” and term “murder” in Amendment 4 to include an enumerated list of crimes,³ and the phrase “completion of all terms of sentence” in Amendment 4 to include satisfaction of certain, disqualifying legal financial obligations (“LFOs”) ordered by a court as part of a sentence for a felony conviction.⁴

As described in more detail below, Florida’s uniform statewide voter registration application violates the NVRA by failing to provide sufficient

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¹ Fla. Const. art. VI, § 4(a)–(b) (amended 2018).
² Fla. Stat. § 98.0751.
³ Id. § 98.0751(2)(b); id. 98.0751(2)(c).
⁴ Id. § 98.0751(2)(a). As a general matter, disqualifying LFOs only include fines, fees, costs, or restitution that are “contained in the four corners of the sentencing document.” Id. LFOs that accrue after sentencing, such as fees or surcharges, need not be paid before voting rights are restored. Id. § 98.0751(2)(a)5.c.
information to inform applicants with felony convictions of the eligibility requirements for voting in Florida. This matter takes on particular urgency in light of the ongoing arrests and prosecutions of Floridians with past convictions for what appear to be honest mistakes about their voter eligibility.⁵

As Florida’s chief election official, you are responsible for the state’s compliance with the NVRA. We seek confirmation that you will immediately modify Florida’s statewide voter registration application so that it provides sufficient information to inform applicants with felony convictions of the eligibility requirements for voting in Florida.

Continued use of the statewide voter registration application violates the NVRA because it does not adequately inform applicants with felony convictions of their eligibility under Florida law.

The NVRA requires states to “inform applicants . . . of . . . voter eligibility requirements.”⁶ Statewide voter registration forms must specify “each eligibility requirement.”⁷

Florida’s statewide voter registration application provides that applicants who “have been convicted of a felony . . . cannot register until [their] right to vote is restored.”⁸ It further asks applicants to affirm “that [they are] not [ ] convicted felon[s], or if [they are], [their] right to vote has been restored.”⁹ However, the application does not include all of the requirements that applicants with felony convictions must satisfy in order to be eligible to vote in Florida. The application likewise fails to mention the different mechanisms through which an individual who lost their voting rights may regain them.

Specifically, the statewide voter registration application is inadequate for at least three reasons. First, it fails to inform those convicted of murder or a felony sexual offense in Florida or another state that they are not eligible to vote unless

⁷ See id. §§ 20504(c)(2)(C)(i), 20505(a)(2), 20506(a)(6), 20508(b)(2)(A).
⁹ See id.
they received clemency or a pardon. Second, it does not inform those convicted of a felony in Florida (other than murder or a felony sexual offense) that they must not be on parole, probation, or community custody and that they must pay off all disqualifying LFOs that were assigned at the time of their felony sentence to regain the right to vote. Third, the application does not inform those with out-of-state felony convictions (other than murder or a felony sexual offense) that their eligibility to vote in Florida depends on whether they would be eligible to vote in the state where they were convicted.10

As a result, Florida’s statewide voter registration application violates the NVRA by not informing all applicants sufficiently of voter eligibility requirements.

The dearth of information on Florida’s statewide voter registration application, coupled with the state’s flawed and inadequate system for determining voter eligibility,11 puts applicants with felony convictions at risk of criminal liability. In fact, Florida has already started prosecuting at least 27 people with past felony convictions for allegedly submitting false voter registration information, including for falsely affirming that their voting rights have been restored.12 Yet publicly available information suggests most, if not all, of those charged likely did not know they were ineligible,13 nor could they have determined the requirements for their eligibility based on the information in Florida’s statewide voter registration application.

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10 Constitution Amendment 4/Felon Voting Rights, Fla. Division of Elections, https://dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights/ (last visited Jan. 13, 2023) (“A felony conviction in another state makes a person ineligible to vote in Florida only if the conviction would make the person ineligible to vote in the state where the person was convicted.”); see also Department of State Advisory Opinion 04–05 (May 27, 2004), http://opinions.dos.state.fl.us/searchable/pdf/2004/de0405.pdf (“Those persons convicted of felonies outside of Florida whose voting rights were restored by the state wherein the felony was committed, may register to vote in Florida. No evidence of the civil rights restoration is required at the time of registration.”).

11 A federal court found that it is “sometimes hard, sometimes impossible” to determine how much a person with a past felony conviction in Florida must pay in order to become eligible to register and to vote. Jones v. DeSantis, 462 F. Supp. 3d 1196, 1241 (N.D. Fla. 2020).

12 See Fortis, supra note 5; FDLE Press Release, supra note 5.

Immediate steps are needed to avoid a violation of the NVRA.

To ensure that Florida is complying with the NVRA, we seek:

1. Assurance that your office will develop a revised statewide voter registration application that complies with the NVRA;
2. A revised statewide voter registration application that informs individuals convicted of murder or a felony sexual offense in Florida or another state that they must have received clemency or a pardon to be eligible to vote;
3. A revised statewide voter registration application that informs individuals convicted of a felony in Florida (other than murder or a felony sexual offense) that they must not be on parole, probation, or community control and that they must have paid off all disqualifying LFOs that were assigned at the time of their felony sentence to be eligible to vote; and
4. A revised statewide voter registration application that informs individuals convicted of a felony in another state (other than murder or a felony sexual offense) that they are eligible to vote if they would be eligible to vote in the state where they were convicted.

In addition, we seek assurances that your office will take immediate steps to update the Florida Online Voter Registration (“OVR”) application, as well as the Division of Elections’ “Constitutional Amendment 4/Felon Voting Rights” and “FAQ – Voter Registration” webpages, so that they likewise include all of the requirements that applicants with felony convictions must satisfy in order to be eligible to vote in Florida.

We welcome the opportunity to work with your office to develop a plan to take immediate steps to resolve these issues and ensure that Florida meets its obligations under the NVRA as soon as possible. To that end, we have enclosed proposed modifications to the statewide voter registration application that would bring it into compliance with the NVRA. This language could also be incorporated into the OVR application and the Division’s webpages noted above. In addition, we are happy to work with your office to make said applications and webpages more accessible in terms of design and readability.

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Thank you for your attention to this matter. Please contact Sean Morales-Doyle at (646) 292-8310 or morales-doyles@brennan.law.nyu.edu for further discussion.

Sincerely,

/s/ Patrick Berry

Patrick Berry

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Enclosure
To Register in Florida, you must be:
- a U.S. citizen,
- a Florida resident,
- at least 18 years old (you may pre-register at 16 or 17, but cannot vote until you are 18). If you have been convicted of a felony, or if a court has found you to be mentally incapacitated as to your right to vote, you cannot register until your right to vote is restored.

For more information on voter eligibility for people with felony convictions, please see page 3 of this application.

If you do not meet any ONE of these requirements, you are not eligible to register.

Questions?
Contact the Supervisor of Elections in your county:
dos.myflorida.com/elections/contactsupervisor-of-elections
Visit the Florida Division of Elections’ website at:
dos.myflorida.com/elections

CRIMINAL OFFENSE: It is a 3rd degree felony to submit false information. Maximum penalties are $5,000 and/or 5 years in prison.
PUBLIC RECORD: Once filed, all information including your phone number and email address as provided as public record except for the following which can only be used for voter registration purposes: your FL DL#, FL ID#, SSN, where you registered to vote, and whether you declined to register or to update your voter registration record at a voter registration agency. Your signature can be viewed but not copied. (Section 97.0585, Fla. Stat.)

Where to Register: You can register to vote by completing this application and delivering it in person or by mail to any supervisor of elections’ office, office that issues driver’s licenses, or voter registration agency (public assistance office, center for independent living, office serving persons with disabilities, public library, or armed forces recruitment office) or the Division of Elections. Mailing addresses are on page 2 of this form.

Deadline to Register: The deadline to register to vote is 29 days before any election. You can update your registration record at any time, but for a Primary Election, party changes must be completed 29 days before that election. You will be contacted if your new application is incomplete, denied or a duplicate of an existing registration. Your Voter Information Card will be mailed to you once you are registered.

Identification (ID) Requirements: New applicants must provide a current and valid Florida driver’s license number (FL DL#) or Florida identification card number (FL ID#). If you do not have a FL DL# or FL ID#, then you must provide the last four digits of your Social Security number (SSN). If you do not have any of these numbers, check “None.” If you leave the field and box blank, your new registration may be denied. See section 97.053(6), Fla. Stat.

Special ID requirements: If you are registering by mail, have never voted in Florida, and have never been issued one of the ID numbers above, include one of the following with your application, or at a later time before you vote: 1) A copy of an ID that shows your name and photo (acceptable IDs—U.S. Passport, debit or credit card, military ID, student ID, retirement center ID, neighborhood association ID, or public assistance ID); or 2) A copy of an ID that shows your name and current residence address (acceptable documents—utility bill, bank statement, government check, paycheck, or other government document).

The special ID is not required if you are 65 or older, have a temporary or permanent physical disability, are a member of the active uniformed services or merchant marine who is absent from the county for active duty, or a spouse or dependent thereof, or are currently living outside the U.S. but otherwise eligible to vote in Florida.

Political Party Affiliation: Florida is a closed primary election state. In primary elections, registered voters can only vote for their registered party’s candidates in a partisan race on the ballot. In a primary election, all registered voters, regardless of party affiliation, can vote on any issue, nonpartisan race, and race where a candidate faces no opposition in the General Election. If you do not indicate your party affiliation, you will be registered with no party affiliation. For a list of political parties, visit the Division of Elections’ website at: dos.myflorida.com/elections

Race/Ethnicity: It is optional to list your race or ethnicity.

Boxes: Please check boxes (C) where applicable.

**Numbered rows 1 through 7 and 12 must be completed for a new registration.**

**Florida Voter Registration Application**
Part 2 – Form (DS-DE #39, RTS-2.040, F.A.C.) (eff. 10/2013)

This is: ☐ New Registration ☐ Record Update/Change (e.g., Address, Party Affiliation, Name, Signature) ☐ Request to Replace Voter Information Card

1. ☐ Are you a citizen of the United States of America? ☐ YES ☐ NO OFFICIAL USE ONLY
2. ☐ I affirm that I am not a convicted felon, or if I am, my right to vote has been restored.
3. ☐ I affirm that I have not been adjudicated mentally incapacitated with respect to voting or, if I have, my right to vote has been restored.
4. Date of Birth (MM-DD-YYYY)
5. Florida Driver License (FL DL) or Florida identification (FL ID) Card Number
6. Last Name First Name Middle Name Name Suffix (Jr., Sr., I, II, etc.):
7. Address Where You Live (legal residence-no P.O. Box) Apt/Lot/Unit City County Zip Code
8. Mailing Address (if different from above address) Apt/Lot/Unit City State or Country Zip Code
9. Address Where You Were Last Registered to Vote Apt/Lot/Unit City State Zip Code
10. Former Name (if name is changed) Gender ☐ M ☐ F State or Country of Birth Telephone No. (optional)
11. ☐ Email me SAMPLE BALLOTS if option is available in my county. (See Public Record Notice above) My email address is:

Party Affiliation (Check only one. If left blank, you will be registered without party affiliation)
☐ Florida Democratic Party
☐ Republican Party of Florida
☐ No party affiliation
☐ Minor party (print party name):

Race/Ethnicity (Check only one)
☐ American Indian/Alaskan Native
☐ Asian/Pacific Islander
☐ Black, not of Hispanic Origin
☐ Hispanic
☐ White, not of Hispanic Origin
☐ Multi-racial
☐ Other:

☐ I am an active duty Uniformed Services or Merchant Marine member
☐ I am a spouse or a dependent of an active duty uniformed services or merchant marine member
☐ I am a U.S. citizen residing outside the U.S.

Oath: I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, that I am qualified to register as an elector under the Constitution and laws of the State of Florida, and that all information provided in this application is true.

Sign/Mark

Date
| Address your envelope to your County Supervisor of Elections. (Rev 04/2022) |
|-----------------|-----------------|-----------------|-----------------|-----------------|
| **Flagler-Supervisor of Elections** | **Lake-Supervisor of Elections** | **Pasco-Supervisor of Elections** |
| PO Box 901 | PO Box 457 | PO Box 300 |
| Bunnell FL 32110-0901 | Tavares FL 32778 -0457 | Dade City FL 33526-0300 |
| Phone: 386-313-4170 | Phone: 352-343-9734 | Phone: 800-851-8754 |
| **Franklin-Supervisor of Elections** | **Lee-Supervisor of Elections** | **Pinellas-Supervisor of Elections** |
| 47 Ave F | PO Box 2545 | 13001 Starkey Rd |
| Apalachicola FL 32320-1723 | Fort Myers FL 33902-2545 | Largo FL 33773-1416 |
| Phone: 850-653-9520 | Phone: 239-533-8683 | Phone: 727-464-8683 |
| **Gadsden-Supervisor of Elections** | **Leon-Supervisor of Elections** | **Polk-Supervisor of Elections** |
| PO Box 186 | PO Box 737 | PO Box 1460 |
| Quincy FL 32353-0186 | Tallahassee FL 32314-7357 | Bartow FL 33831-1460 |
| Phone: 850-627-9910 | Phone: 850-606-8683 | Phone: 863-534-5888 |
| **Bay-Supervisor of Elections** | **Levy-Supervisor of Elections** | **Putnam-Supervisor of Elections** |
| 830 W 11th St | PO Box 100 | 2509 Crill Ave Ste 900 |
| Panama City FL 32401-2336 | 421 S Court St | Palatka FL 32177-4267 |
| Phone: 850-784-6100 | Bronson FL 32621-6520 | Phone: 386-329-0224 |
| **Bradford-Supervisor of Elections** | **Liberty-Supervisor of Elections** | **Santa Rosa-Supervisor of Elections** |
| PO Box 58 | PO Box 597 | PO Box 6495 Caroline St Ste F |
| Stark FL 32091-0058 | Bristol FL 32321-0597 | Milton FL 32570-4592 |
| Phone: 904-966-6266 | Phone: 850-643-5226 | Phone: 850-983-1900 |
| **Brevard-Supervisor of Elections** | **Madison-Supervisor of Elections** | **Sarasota-Supervisor of Elections** |
| PO Box 41081 | PO Box 100 | PO Box 4194 |
| Melbourne FL 32941-0819 | 239 SW Pinckney St | Sarasota FL 34230-4194 |
| Phone: 321-290-8683 | Madison FL 32340-2470 | Phone: 941-861-8600 |
| **Broward-Supervisor of Elections** | **Manatee-Supervisor of Elections** | **Seminole-Supervisor of Elections** |
| PO Box 29001 | PO Box 1000 | PO Box 343 |
| Ft Lauderdale FL 33302-9001 | Bradenton FL 34206-1000 | Sanford FL 32772-1479 |
| Phone: 954-357-7050 | Phone: 941-741-3823 | Phone: 407-585-8863 |
| **Calhoun-Supervisor of Elections** | **Marion-Supervisor of Elections** | **St. Johns-Supervisor of Elections** |
| PO Box 204 | PO Box 289 | PO Box 4455 Ave A Ste 101 |
| 20859 Central Ave E Rm 117 | Ocala FL 34478-0289 | St Augustine FL 32085-5200 |
| Blountstown FL 32424-2266 | Phone: 352-620-3290 | Phone: 904-823-2238 |
| Phone: 850-674-2449 | | |
| **Charlotte-Supervisor of Elections** | **Martin-Supervisor of Elections** | **St. Lucie-Supervisor of Elections** |
| 226 Taylor St Unit 120 | PO Box 1257 | 4132 Okeechobee Rd |
| Punta Gorda FL 33950-4458 | Stuart FL 34995-1257 | Ft Pierce FL 34982-3112 |
| Phone: 941-833-5400 | Phone: 772-288-5637 | Phone: 772-462-1500 |
| **Citrus-Supervisor of Elections** | **Miami-Dade-Supervisor of Elections** | **Sumter-Supervisor of Elections** |
| PO Box 1870 | PO Box 521550 | PO Box 7375 Powell Rd Ste 125 |
| Lecanto FL 34460-1870 | Miami FL 33152-1550 | Wildwood FL 34785-4228 |
| Phone: 352-664-7120 | Phone: 305-499-8363 | Phone: 352-569-1540 |
| **Clay-Supervisor of Elections** | **Monroe-Supervisor of Elections** | **Suwanee-Supervisor of Elections** |
| PO Box 337 | PO Box 500 | 302 Pine Ave SW |
| Green Cove Springs FL 32043-0337 | 530 Whitehead St # 101 | Live Oak FL 32064-2315 |
| Phone: 904-269-6350 | Key West FL 33040-6577 | Phone: 386-362-2616 |
| **Collier-Supervisor of Elections** | **Nassau-Supervisor of Elections** | **Taylor-Supervisor of Elections** |
| 3750 Enterprise Ave | 96135 Nassau Pk Pl Ste 3 | PO Box 1060 |
| Naples FL 34104-3659 | Yulee FL 32097-8699 | Perry FL 32348-1060 |
| Phone: 239-252-8683 | Phone: 904-491-7500 | Phone: 850-838-3515 |
| **Columbia-Supervisor of Elections** | **Ocala-Supervisor of Elections** | **Union-Supervisor of Elections** |
| 971 W Duval St Ste 102 | PO Box 100 | 175 W Main St |
| Lake City FL 32055-3709 | 302 N Wilson St Ste 102 | Lake Butler FL 32054-1639 |
| Phone: 386-758-1026 | Crestview FL 32536-3474 | Phone: 386-496-2236 |
| **Duval-Supervisor of Elections** | **Okeechobee-Supervisor of Elections** | **Volusia-Supervisor of Elections** |
| PO Box 12601 | 304 NW 2nd St Rm 144 | 1750 South Woodland Blvd |
| Pensacola FL 32591-2601 | Okeechobee FL 34972-4146 | DeLand FL 32720-7915 |
| Phone: 850-595-3900 | Phone: 863-763-4014 | Phone: 386-736-5930 |
| **Escambia-Supervisor of Elections** | **Orange-Supervisor of Elections** | **Wakulla-Supervisor of Elections** |
| PO Box 76 | PO Box 562001 | PO Box 305 |
| Pensacola FL 32596-0076 | Orlando FL 32856-2001 | Crawfordville FL 32326-0305 |
| Phone: 850-394-2912 | Phone: 407-836-2070 | Phone: 850-926-7575 |
| **Jefferson-Supervisor of Elections** | **Osceola-Supervisor of Elections** | **Walton-Supervisor of Elections** |
| 1175 W Washington St | 2509 E Irlo Bronson Memorial Hwy | 571 US Hwy 90 E |
| Monticello FL 32344-1126 | Kissimmee FL 34744-4909 | DeFuniak Springs FL 32433-1374 |
| Phone: 850-997-3348 | Phone: 407-742-6000 | Phone: 850-892-8112 |
| **Lake County Supervisor of Elections** | **Palm-Beach-Supervisor of Elections** | **Weston-Supervisor of Elections** |
| PO Box 22309 | PO Box 7375 | 1331 South Blvd Ste 900 |
| West Palm Beach FL 33416-2309 | Tallahassee FL 32314-7357 | Chipley FL 32428-2233 |
| Phone: 561-656-6200 | Phone: 850-606-8683 | Phone: 850-638-6230 |
Eligibility to Vote in Florida After a Felony Conviction

- If you were convicted of murder or a felony sexual offense in Florida or another state, you **CANNOT** register to vote unless your voting rights have been restored through clemency or a pardon.

- If you were convicted of a felony in Florida (other than murder or a felony sexual offense) **AND** you are not on parole, probation, or community control **AND** you do not owe any fines, fees, costs, or restitution that you were ordered to pay at the time of your felony sentence, you **CAN** register to vote.
  - If you are still on parole, probation, or community control for a felony conviction, you **CANNOT** register.
  - If you still owe fines, fees, costs, or restitution that you were ordered to pay at the time of your felony sentence, you **CANNOT** register.

- If you were convicted of a felony in another state (other than murder or a felony sexual offense) **AND** your right to vote was restored in that state, you **CAN** register to vote.

- If you are in jail for a misdemeanor or you are in jail awaiting trial, you **CAN** register to vote unless you are ineligible because of past felony convictions (see above).

- If you only have misdemeanor convictions, you **CAN** register to vote.

For more information, visit: dos.myflorida.com/elections/for-voters/voter-registration/constitutional-amendment-4felon-voting-rights/. 