

February 17, 2020

Senate President Bill Galvano
Speaker of the House Jose Oliva
The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 1794/HB 7037; SB 7062/JDC7 - Constitutional Amendments by Citizen Initiative

Dear President Galvano and Speaker Oliva:

Floridians' right to participate in direct democracy is sacred and protected by Florida's constitution. Elected officials should strive to make it easier for the people to access democracy and government at all levels, not harder.

We, the undersigned, represent a broad coalition of organizations that previously have led citizen's initiatives to pass amendments to Florida's constitution, including protecting Florida's waters and cherished lands, restoring Floridians' voting rights, ensuring fair elections, and guaranteeing Floridians access to medical marijuana. Combined we represent millions of Floridians. We are experts in elections, ballot measures and citizens' initiatives.

We oppose SB 1794/HB 7037 and SB 7062/JDC 7 and make the following observations. These bills purport to improve the citizen's initiative process, but their real effect is to silence grassroots direct democracy with unnecessary rules, restrictions, and obstacles, placing our citizens' initiative process solely in the hands of millionaires, corporations, and wealthy special interest groups. Proposing amendments to Florida's Constitution through the citizen's initiative process is already significantly more challenging and cumbersome than the process to which the Legislature and the Constitutional Review Commission must adhere.

- In our view, **many provisions in these bills would be unconstitutional** pursuant to Article XI, Sections 3 and 5, of the Florida Constitution. Through the decades, the Florida Supreme Court has established the applicable analysis for evaluating legislation that impacts the citizen initiative process to amend the constitution. *See, e.g., State ex rel. Citizens Proposition for Tax Relief v. Firestone*, 386 So. 2d 561 (Fla. 1980); *Smith v. Coal. to Reduce Class Size*, 827 So. 2d 959, 962 (Fla. 2002); *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1058 (Fla. 2010). The Florida Supreme Court has concluded-- unequivocally-- that Article XI's provisions are self-executing. Therefore, the Legislature has very limited authority to adopt regulations that

impact the initiative process. Any substantive change to the citizen initiative process must be approved by the voters as a constitutional amendment.

- Furthermore, these bills drastically **increase the requisite number of signatures** (SB 1794 - from 10% of the number of statewide electors to 33% of the state's electors; HB 7037 - from 10% to 50%) a proposed amendment must receive before the Secretary of State refers the proposed amendment to the Attorney General and Fiscal Impact Estimating Conference. In effect, this provision would foreclose everyday Floridians from the citizen initiative process and only provide the wealthy elite and special interest groups access to direct democracy. It would exponentially increase the cost of ballot initiatives, essentially requiring sponsors to amass millions before proposing any amendment to Florida's Constitution. This would severely curtail, if not outright eliminate, most Floridians and grassroots organizations' ability to propose amendments to Florida's Constitution, because they must constantly fundraise to lead these efforts to comport with already existing restrictions previously enacted passed by the Legislature.
- The **citizens' initiative process is already very expensive** due to existing restrictions; typically, totaling more than \$7 million for a Florida campaign just to qualify for the ballot. Under this bill, sponsors of a citizens' initiative would need at least \$3.5 million upfront to reach 33% before an initiative's language is even approved. This is not possible for grassroots efforts.
- This legislation purports to **resolve a problem that does not exist**. Most additions to Florida's Constitution were placed on the ballot by the Legislature, not voters. Since 1968, 185 amendments to the constitution appeared on the ballot and were considered by Florida's voters. Of those 185 amendments, only 38 - a mere 21% - reached the ballot via the citizens' initiative process. By contrast, 116 of the 185 amendments-- more than 62%-- were referred to the ballot and created by the Florida Legislature. The remaining 31 amendments-- an additional 17%-- were proposed by the Constitutional Revision Commission (CRC) or tax and budget reform commission (TBRC). Both bodies are appointed by the legislature and governor. In short, 79% of ballot measures have been referred by government officials.
- The bill **replaces stable pricing for verifying petitions with arbitrary, vague and potentially cost-prohibitive fees**. Presently, sponsors of citizen measures who wish to amend the constitution must currently pay for the cost of signature verification, at a stable and fixed rate of 10 cents per signature. Through Senate Bill 1794 (and companion House Bill 7037), however, legislators are proposing to replace that pricing with a so-called "actual cost" system determined annually, which invites an arbitrary and vague standard for assessing "actual cost" that is more likely to make qualifying for the ballot cost-prohibitive for individual activists and grassroots movements.
- **It creates a cause of action to litigate a petition circulator's failure to register**. This new rule risks frivolous and excessive litigation, abuse, and waste of judicial resources over simple paperwork mistakes or innocent registration delays. Additionally, the new

rule would advantage the richest corporate special interest groups that could manage the risk of litigation while undercutting the chances of grassroots-driven movements. Ultimately, this new provision is meant to frighten petition circulators and deter grassroots citizen's initiatives to amend the Florida constitution.

- The legislation **makes petition signatures expire much faster**. Under current rules, a petition signature remains valid for two years from the date of signature. Under the proposed restrictions, a signature would be valid only until the next February 1 of an even-numbered year. This change would drastically reduce the time a petition remains valid and make the time window for signature collection shorter and more expensive, again advantaging the richest corporate players. If a petition is signed in December 2021, it would only be valid for 2 months. But under current law it remains valid for two years.

In addition, we oppose SB7062/JDC 7, as arbitrary and unnecessary changes to Florida's constitution designed to make it more difficult for Floridians to place important issues on the ballot via the initiative process. These bills would *double* the number of congressional districts that must pass the 8% threshold of voters needed to qualify for the ballot. As with other requirements discussed above, the impact of this change will be to make it nearly impossible for any effort led by individual Floridians to put an initiative on the ballot.

Overall, these bills blatantly and unapologetically work to end citizen-led initiatives to amend Florida's Constitution and to silence citizens after recent and historic citizen-led victories that seek to enshrine Florida's commitment to individual rights. They contravene Florida's Constitution and disgrace Floridians' dedication, commitment, and passion undergirding Florida's purest form of democratic governance. They also insult the millions of Floridians who voted in favor of citizen-led amendments.

For these reasons and more, we add our voices to the many individual Floridians who object to legislative efforts to undermine direct democracy and urge you to oppose these citizens' initiative restriction bills (SB 1794/HB 7037/SB7062/JDC7).

Signed,

ACLU of Florida
Common Cause Florida
The Common Ground Project
Florida AFL-CIO
Florida Conservation Voters
Florida Latina Advocacy Network
LatinoJustice PRLDEF
League of Women Voters of Florida

National Congress of Black Women
New Florida Majority
Opportunity for All Floridians
Organize Florida
Progress Florida
SEIU Florida
SPLC Action Fund
Verified Voting