



MARCH 12, 2021

## MAKING DEMOCRACY WORK IN SC: UPCOMING ACTION ON TWO APPROACHES TO SEC RESTRUCTURING

### H. 3444 and S.499

There are major developments in efforts to restructure the State Election Commission (SEC). H. 3444, which we have discussed previously, has been passed by the House and sent to the Senate. Also, Senator Chip Campsen has filed S.499, which takes an alternative approach that the League finds far preferable to that in H. 3444.

S.499 addresses the practice of legislative intervention in cases involving interpretation of state law. The Attorney General and agency attorneys are normally charged with defending state interests in court, but in 2020 the houses of the General Assembly intervened in both state and federal court cases. The practical effect of S. 499 would be to remove any doubt about the legitimacy of this existing practice, already authorized by state and federal judges. We have concerns about separation of powers and about the number of attorneys, both public and private, that the state has been paying for largely redundant services, but this measure simply codifies and doesn't really expand existing practice.

The significant change in S.499 is making appointment of the Executive Director of the SEC subject to the advice and consent of the Senate. This is an important and positive measure that will bring a broader range of voices to the process of selecting the head of this important agency.

We also have been following H. 3444,<sup>1</sup> now sent to the Senate. The bill has now been stripped down to include only the provisions that would give the SEC Executive Director, under §7-3-10(1): "plenary authority to supervise and standardize the performance, conduct, and practices of the county board of elections and voter registration." However, as we have said in the past, SEC already explicitly has the authority to ensure statewide conformity under §7-3-20(C). Why expand that power to "plenary" (absolute) power over, potentially, every aspect of county election administration?

H. 3444 would make it possible for SEC to prevent county election commissioners from doing what should be their job --- making elections within their counties well-adapted to local circumstances, while remaining consistent statewide in important aspects of state and federal election law. It also opens the door to some forms of voter suppression. Further, H. 3444 gives authority to the state while both operational and fiscal responsibility remain with the counties. This would surely lead to more tensions and issues in an already unbalanced election system marked by unfunded mandates and sometimes poor communication.

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<sup>1</sup> <https://www.scstatehouse.gov/billsearch.php?billnumbers=3444>

In summary, the League of Women Voters supports S. 499 and opposes H. 3444. S. 499 has been referred to a subcommittee consisting of Senator Campsen as chair, accompanied by senators Young, Hutto, and McLeod. H.3444 might (or might not) join S.499 on their subcommittee agenda. We will provide an update when a subcommittee meeting is scheduled. When that occurs, we hope that others will join us in testifying that S. 499 is a sound bill that should pass. If H. 3444 is added to their agenda, we will oppose it and hope others will as well.

In addition, we believe that it is time for a comprehensive look at the election system. Either through an ad hoc study committee or through legislative oversight hearings, the General Assembly needs to examine the full allocation of authority and responsibility in the election system and bring these aspects of election administration more closely into alignment with one another. The goal must be responsible administration of secure and accessible elections in which all of South Carolina's citizens can have confidence.

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