

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

FLORIDA RISING TOGETHER, et al.,

Plaintiffs,

v.

LAUREL M. LEE, et al.,

Defendants.

Case Nos. 4:21-cv-201-MW/MJF

**FLORIDA RISING PLAINTIFFS' OPPOSITION TO MOTION TO QUASH SUBPOENA
FOR RULE 30(B)(6) DEPOSITION OF THE EXECUTIVE OFFICE OF THE
GOVERNOR**

The Court should deny the Executive Office of the Governor's motion to quash the subpoena. The Governor's Office has not met its burden to establish the privileges or undue burdens it asserts. Under well-settled precedent, the legislative privilege is qualified and can be overcome where important federal interests are at stake. That standard is easily met here. In any event, most of the topics that are the subject of Plaintiffs' Rule 30(b)(6) notice do not even implicate the legislative privilege. The Governor's Office also invokes the deliberative process privilege, but that is even further afield: none of the topics implicate deliberative process, which is a privilege usually invoked to block the production of draft documents, and certainly not to preemptively block an entire deposition. Nor can the Governor's Office substantiate its burden argument. The motion should be denied.

RELEVANT FACTUAL BACKGROUND

Plaintiffs are challenging multiple provisions of Florida's Senate Bill 90 (S.B. 90), a law that imposes substantial and unjustifiable restrictions on the ability of eligible Floridians to vote and register to vote. As particularly relevant here, Plaintiffs assert that the Florida legislature

adopted many of these restrictions for racially discriminatory purposes, in violation of the Fourteenth and Fifteenth Amendments and Section 2 of the Voting Rights Act. *See* Am. Compl. ¶¶ 165–182 (Case No. 201, ECF 59).

Notwithstanding his public statements extolling the success of Florida’s 2020 election, Governor DeSantis was a strong proponent of S.B. 90 and proposed several aspects of the bill that are subject to challenge, including limiting the use of drop boxes and making it more difficult to vote by mail. *See* Press Release, *Governor Ron DeSantis Highlights Proposed Legislation to Strengthen Election Integrity and Transparency Measures* (Feb. 19, 2021) (noting that, “today, Governor Ron DeSantis proposed new measures to safeguard the sanctity of Florida elections”).¹ Document discovery shows that the Governor’s Office instigated certain key components of the bill and closely monitored legislative developments, creating detailed tracking documents that compared the “Governor’s” version of the bill to various iterations during the House and Senate committee process. *See, e.g.*, Ex. A.

For example, document discovery has shown that the Governor’s Office was intimately involved in attempting to restrict the use of secure drop boxes during the November 2020 election. In October 2020, a senior lawyer in the Governor’s office (who now serves as the Governor’s Chief of Staff) drafted onerous guidance that eventually went out under the signature of the Secretary of State advising supervisors that, among other things, drop boxes had to be staffed by an employee of the supervisor’s office or a law enforcement officer at all times, *i.e.*, 24/7 or whenever they were in operation. *See* Ex. B. These restrictions were a precursor to the provisions in S.B. 90 that largely ban 24/7 drop boxes entirely. Document discovery has also shown that a second lawyer, who served as General Counsel to the Governor’s transition team,

¹ <https://www.flgov.com/2021/02/19/governor-ron-desantis-highlights-proposed-legislation-to-strengthen-election-integrity-and-transparency-measures/>

provided mark-ups and draft language on the bill (including on secure drop boxes) to Representative Ingoglia, the lead House sponsor. *See* Ex. C.

Following communications between the Governor's Office and counsel for the *League of Women Voters* counsel concerning service of subpoena, on October 6, 2021, Plaintiffs issued a Rule 30(b)(6) subpoena to the Governor's Office identifying 10 topics for an October 20, 2021 deposition. *See* ECF 220 ("Mot. to Quash" or "Mot.") Ex. 1. On October 14, 2021, Plaintiff served an amended notice identifying an 11th topic related to the University of Florida's attempted interference with Plaintiffs' prosecution of this case: the University informed three separate Plaintiffs' experts that that their work on this matter was not authorized because it would purportedly create a "conflict" with the "executive branch of the State of Florida." Mot. Ex. 2. As explained in more detail below, Plaintiffs had just learned about that interference a few days earlier. Plaintiffs thus noticed the following topics:

1. Each State interest, if any, that the Executive Office of the Governor believes or contends each of the Challenged Provisions serves, promotes, or advances, and all facts and evidence supporting a connection between the Challenged Provisions and the State interest(s).
2. The Executive Office of the Governor's statements and opinions concerning the conduct of the 2020 general elections in Florida.
3. The success or failure of the 2020 general election in Florida, and the Executive Office of the Governor's understanding of what contributed to that success or failure.
4. The Executive Office of the Governor's statements and opinions concerning Senate Bill 90, including any of its individual provisions; concerning actual or potential changes to Florida's election laws and policies since November 2020; or concerning the need for any such changes.
5. The role of the Executive Office of the Governor in drafting, discussing, negotiating and enacting Senate Bill 90.
6. All communications regarding Senate Bill 90 between the Executive Office of the Governor and the following individuals and entities: members of the Florida Legislature, the Florida Attorney General's Office, the Florida Department of State, any Florida Supervisor of Elections, the Florida Supervisors of Elections ("FSE"), Defendant-Intervenors, the National Republican Congressional Committee, any

Republican State or local officials, the Heritage Foundation, Heritage Action for America, and any of their employees, staff, contractors, consultants, advisors, agents, representatives, lobbyists, or anyone acting on their behalf.

7. Any analysis that the Executive Office of the Governor has conducted relating to or concerning the anticipated or actual effects of any of the Challenged Provisions on voting in Florida and any communications involving the Executive Office of the Governor regarding the anticipated or actual effects of any of the Challenged Provisions on voting in Florida.
8. Any analysis that the Executive Office of the Governor has conducted relating to or concerning the anticipated or actual costs of implementing any of the Challenged Provisions.
9. Any analysis that the Executive Office of the Governor has conducted relating to or concerning the need for or purpose of any of the Challenged Provisions.
10. The Executive Office of the Governor's collection and production of documents in response to the subpoena from League of Women Voters *et al.* in No. 21-cv-186, including but not limited to the sources of documents that were collected, the means by which such documents were searched and reviewed, and any sources of potentially responsive documents that were not collected, searched, and reviewed.
11. Communications with the State Board of Education, the Board of Governors of the State University System of Florida, the State University System of Florida, or any public university in Florida, including any board members, trustees, employees, staff, contractors, consultants, advisors, counsel, agents, representatives, or anyone acting on their behalf, concerning SB 90, litigation involving SB 90, or experts witnesses involved in litigation involving SB 90.

The Office of the Governor does not dispute in its motion to quash that the information Plaintiffs seek to discover is highly relevant to their claims in this case, including to the *Arlington Heights* analysis. To resolve Plaintiffs' claims, this Court will need to determine whether race was a "motivating" factor in SB 90's enactment. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1997); *see also* ECF 49-1 & 122-1 (Mot. to Dismiss) at 13 (acknowledging that *Arlington Heights* standard "governs all intent claims at issue here"). That will require "a sensitive inquiry into such circumstantial and direct evidence of [legislative] intent as may be available," including, among other things, the extent to which the Governor knew or intended S.B. 90 would have a racially discriminatory impact and the sequence of events leading up to the law's enactment. *See Arlington Heights*, 429 U.S. at 266.

Following service of the subpoena, on October 14, 2021 the Plaintiffs met and conferred with counsel for the Office of the Governor. Following that call, the Governor's counsel reported that while "we agree that several of the Topics likely do not implicate either privilege on their face . . . we are inclined to exert the legislative privilege and/or deliberative process privilege" because "we believe subsequent questioning beyond factual issues would be covered by privilege." Ex. D at 2. On October 21, the Office of the Governor nonetheless moved to quash the deposition subpoena in its entirety, arguing principally that the legislative privilege grants it an absolute evidentiary privilege in civil cases, but also invoking deliberative process privilege and an objection on the basis of burden. These objections should be overruled.

LEGAL STANDARD

"The Federal Rules of Civil Procedure strongly favor full discovery whenever that is possible." *Odom v. Roberts*, 337 F.R.D. 359, 362 (N.D. Fla. 2020) (citing *Republic of Ecuador v. Hinchee*, 741 F.3d 1185, 1189 (11th Cir. 2013)). In particular, "[t]he right to take depositions is a 'broad' one because depositions are such an important tool of discovery." *Id.* (citation omitted). That rule applies to "[d]epositions of parties and non-parties alike." *Id.* at 363 (citation omitted). "[I]n light of the importance of depositions, courts have stated that a 'party has a general right to compel any person to appear at a deposition.'" *Id.*

The party seeking a protective order "bears the burden of demonstrating the existence of good cause for such an order," which requires "showing specific prejudice or harm will result if no protective order is granted." *Id.* (citations omitted). And "the movant must meet this burden with a 'particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements.'" *Ekokotu v. Fed. Express Corp.*, 408 F. App'x 331, 336 (11th Cir. 2011) (quoting *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978)).

These rules fully apply to motions to quash based on privilege: the party “invoking the privilege . . . bear[s] the burden of proving its existence.” *In re Grand Jury Investigation*, 842 F.2d 1223, 1225 (11th Cir. 1987). “The burden of proof in demonstrating that compliance with the subpoenas requires the disclosure of privileged or protected information or that compliance presents an undue burden lies with the moving party,” while the party issuing the subpoena has the burden of proving relevance. *Fadalla v. Life Auto Prods*, 258 F.R.D. 501, 504 (M.D. Fla. 2011) (citing *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir.2004)). Even where the party seeking to quash meets this burden, the court “must weigh factors such as relevance, the need of the party for the [discovery], the breadth of the [discovery] request, and the time period covered by the request against the burden imposed on the person ordered to produce the desired information.” *Cytodyne Techs., Inc. v. Biogenic Techs., Inc.*, 216 F.R.D. 533, 535 (M.D. Fla. 2003).

ARGUMENT

The Governor’s Office has not met its burden to establish either that the subpoena requires the disclosure of privileged information or subjects the office to undue burden. The privileges asserted do not even arguably apply to eight of the eleven topics in the notice, and in any event are qualified and are outweighed given the circumstances in this case. And the Governor’s Office has not submitted a declaration or any other evidence to meet its obligation to show that the subpoena imposes an undue burden.

I. The Legislative Evidentiary Privilege Is Qualified and Does Not Preclude This Deposition

Plaintiffs do not dispute that the legislative privilege—when it applies at all—can apply to the Governor in limited circumstances, namely to the Governor’s “actions in the proposal, formulation, and passage of legislation.” *In re Hubbard*, 803 F.3d 1298, 1308 (11th Cir. 2015).

But that principle is of no help to the Governor's Office here, because contrary to the Governor's Office's argument (Mot. 7) the legislative privilege is not "absolute" in civil cases, and is overcome in this case. Moreover, even if the legislative privilege did apply in this case, many of the 30(b)(6) topics simply do not implicate legislative privilege, as the Governor's counsel conceded on October 14 and October 18, *see* Ex. D, so the deposition must go forward at least as to those topics.

A. Legislative Privilege Is Qualified, Not Absolute, and It Is Overcome in this Case

The Governor's Office argues that legislative privilege is absolute in civil cases, relying on the same authority that the legislators relied on in their motion to quash filed a day earlier (ECF 217). Because Plaintiffs presume that the Court will be deciding these motions contemporaneously, Plaintiffs incorporate by reference their opposition filed yesterday to the legislators' motion to quash, which explains in detail why legislative privilege is (i) not absolute, ECF 228 at 4-15, and (ii) should be overcome in cases involving allegations of intentional racial discrimination, especially in the voting rights context, *id.* at 15-21.

Just as with Plaintiffs' subpoenas to the legislators, the important federal interests at stake here and Plaintiffs' strong interest in obtaining testimony from the Governor's Office outweighs legislative privilege. The Governor's Office admits that the evidence Plaintiffs seek will be highly relevant. The Governor's Office does not contend that a deposition here would chill further gubernatorial involvement in the legislative process, much less in any unusual or unique way. The Governor's Office's sole argument as to why the privilege, if qualified, should not be overcome is that "Plaintiffs have ample avenues for potentially obtaining relevant information from discovery requests and depositions of the Secretary of State's Office, the State's Supervisors of Elections, and the Republican Intervenors; and production of public records from

the Florida Legislature and Governor's Office." Mot. 10. This argument has no merit. The Governor's Office actually produced only a small number of documents, and in any event, documents are not a substitute for depositions. *See generally Odom*, 337 F.R.D. at 362 ("[t]he right to take depositions is a 'broad' one because depositions are such an important tool of discovery"); *Poller v. Columbia Broad. Sys., Inc.*, 368 U.S. 464, 473 (1962) ("where motive and intent play leading roles," key witnesses should be "present and subject to cross-examination" so that "their credibility . . . can be appraised"); *DiRienzo v. Philip Servs. Corp.*, 294 F.3d 21, 30 (2d Cir. 2002) ("[T]estimony is especially important . . . where the factfinder's evaluation of witnesses' credibility is central to the resolution of the issues.").

Moreover, the mere fact that *other* entities may have relevant information does not mean the Governor's Office should be shielded from providing indisputably relevant information. Here, given the Governor's Office's substantial involvement in S.B. 90, evidence from the Governor's Office is likely to be highly probative of core issues in the case, including not just direct evidence of intent but also evidence about the need (or lack thereof) for various provisions in S.B. 90. Plaintiffs, for example, seek to explore the information available to the Governor's Office about the potential impact of SB 90, in order to assess both "the foreseeability of the [law's] disparate impact" and the extent of the Governor's Office's "knowledge of that impact." *Greater Birmingham Ministries v. Sec'y of State*, 992 F.3d 1299, 1321-22 (11th Cir. 2021).

B. Legislative Privilege Does Not Apply to Eight of the Eleven Topics in the Notice

Even if the Court were to conclude that legislative privilege should not be overcome in this case, that still would not support the Governor's Office's motion to quash the subpoena in its entirety. The Governor's Office concedes in its motion that Topics 2 and 3, which relate to the 2020 election in Florida, on their face do not implicate any legislative privilege. The Governor's

Office nonetheless argues that “the only conceivable relevance of the Topics to this case stems from the questions that aim to connect the dots from a successful election to the need for election reform package.” Mot. 7. But the legislative privilege does not prohibit Plaintiffs from eliciting information about *non-legislative activities* just because that information might be helpful in proving intent. The fact that the questions to the Governor’s Office might demonstrate that the office was aware of no fraud in connection with drop boxes in the 2020 elections—and that some other pretextual purpose motivating S.B. 90’s restrictions on drop boxes may be inferred from that fact—does not transform the original question into one protected by legislative privilege. On the Governor’s Office’s theory, no plaintiff could ever obtain *any* information relevant to intent. As the Supreme Court has noted, a “trier of fact can reasonably infer from the falsity of the explanation that the [Defendants are] dissembling to cover up a discriminatory purpose.” *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000). Plaintiffs are clearly entitled to question the Governor’s Office about activity pre-dating the S.B. 90 effort.

Topics 1, 7, and 8 also are not covered by the qualified legislative privilege. Legislative privilege only applies to a governor when the governor is acting in a legislative capacity—to his “actions in the proposal, formulation, and passage of legislation.” *In re Hubbard*, 803 F.3d at 1308. It does not shield the Governor’s Office from discovery on anything having to do with state law merely because the law had to go through the legislature. The Governor also has responsibilities with respect to state law in his capacity as the chief executive officer of the State of Florida, tasked with enforcing and applying state law. Fla. Const. art. IV, sec. 1(a) (“The governor shall take care that the laws be faithfully executed...”). Topic 1 asks about state interests that the government official tasked with overseeing the enforcement of S.B. 90 believes support that enforcement, and facts and evidence relating to those state interests. That is a

standard question in any litigation involving a state law that is challenged as unconstitutional, and does not ask the Governor's Office to disclose anything about the Governor's role in proposing, formulating, or passing the legislation. And Topics 7-8 ask about the Governor's Office's analysis of the effects of S.B. 90 or the costs associated with S.B. 90, topics that concern the Governor's role in administering and enforcing the law, not passing the law. Given that the Governor's office played a significant non-legislative role in interpreting pre-S.B. 90 law related to drop boxes and coordinating with the Secretary of State's Office to provide direction to Supervisors, Ex. B, it is not credible to argue that questions about the effects or costs of S.B. 90 go to the Governor's role as legislator. *See also* Fla. Const. art. IV sec. 1(a) ("The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state.").

Topic 6 concerns communications with third parties about S.B. 90. If the Court concludes that legislative privilege applies here and is not overcome, that would only preclude questioning about one subset of the communications covered in Topic 6. Plaintiffs would agree under that circumstance not to ask the Governor's Office about its communications relating to the drafting or passage of S.B. 90 with members of the Florida legislature. But none of the rest of Topic 6—which relates to communications about S.B. 90 with third-party non-legislators (such as the Intervenor or the Heritage Foundation)—is protected by the legislative privilege. The Governor's Office bears the burden of substantiating the privilege it asserts, *In re Grand Jury Investigation*, 842 F.2d 1223, 1225 (11th Cir. 1987), but it offers no evidence or argument that every conversation it had with non-legislator third parties that touched on SB 90 was a "legislative" activity. The Governor's Office's discussions with third party Heritage Action, for example, are political activities. They do not on their face involve the "sphere of legislative

activity.” *Hubbard*, 803 F.3d at 1308. In a decision that the Eleventh Circuit cited with approval in *Hubbard*, the Third Circuit explained that a governor “act[s] in a legislative capacity” only when he “advocate[s] bills to the legislature.” *Baraka v. McGreevey*, 481 F.3d 187, 196 (3d Cir. 2007). Whatever assumption may be appropriate with actual legislators, it is inappropriate to simply assume that everything the Governor does involving a state law is covered by privilege.

Topic 10, which relates to the Governor’s Office’s document production, also does not implicate the legislative privilege.

Nor is Topic 11, which relates to communications with Florida’s public university system, even arguably barred by legislative privilege. As background, during the week of October 10, 2021, in the midst of expert discovery in this case, Plaintiffs’ counsel learned for the first time that the University of Florida had advised one of Plaintiffs’ experts (University of Florida professor Dan Smith) and subsequently two others (professors Michael McDonald and Sharon Austin) that they were not authorized to serve as experts on behalf of Plaintiffs in this matter as part of their “outside activities.” *See* Ex. E. The University told Dr. Smith that “outside activities that may pose a conflict of interest to the executive branch of the State of Florida create a conflict for the University of Florida,” and provided similar explanations for Dr. McDonald (“As UF is a state actor, litigation against the state is adverse to UF’s interests.”) and Dr. Austin (same). *See* Ex. E. Because University of Florida professors (including Dr. Smith) have historically been approved to serve as experts in numerous other cases both on behalf of and adverse to the State of Florida before, this rationale is obviously pretextual, and appears to be S.B. 90 specific.

As Plaintiffs advised the Governor’s Office during an October 14 meet and confer about the deposition, Plaintiffs intend to ask the Governor’s Office—which leads the “executive branch

of the state of Florida”—whether it played a role in this decision. Plaintiffs are legitimately concerned that prosecution of this litigation may be impeded by the efforts of “the executive branch of the State of Florida” to prevent testimony from or intimidate Plaintiffs’ experts on key issues—including racially discriminatory intent and racially disparate impact—and are clearly entitled to explore these issues in discovery. The Governor’s Office’s assertion that the University of Florida’s decisions relating to the participation of its employees in this litigation implicates the “legislative privilege” is nonsensical.

II. Deliberative Process Privilege Does Not Apply

The Governor’s Office alternatively argues that the subpoena should be quashed because the deliberative process privilege covers “much” of the “information sought.” Again, the Governor’s Office has not and cannot meet its burden of establishing a valid deliberative process privilege over oral testimony. The deliberative process privilege only covers material “prepared in order to assist an agency decision maker in arriving at his decision.” *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1263 (11th Cir. 2008). “[D]eliberative process” thus “covers ‘documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.’” *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001). As the Governor’s Office notes, that means that the material at issue must be both “predecisional” and “deliberative.” Mot. 11.

The deliberative process privilege is usually invoked with respect to draft *documents*, not deposition testimony. *See Dep’t of Interior*, 532 U.S. at 8. In addition to failing to cite any authority blocking a deposition in advance on the basis of deliberative process, the Governor’s Office fails to explain how any of the topics—which ask for the Governor’s Office actual opinions, not tentative opinions—would necessarily or exclusively involve questions

about predecisional, deliberative materials. None of the topics on their face ask for any information that is predecisional or deliberative. Thus, for example, Topic 1 asks about the state interests that the Governor's Office believes S.B. 90 promotes—not about internal predecisional deliberations about what state interests *might* be invoked to support S.B. 90. Topic 2 asks about the Governor's Office "statements and opinions" concerning the conduct of the 2020 general election. Nor does anything about that topic request information that is predecisional or deliberative. The same is true of the rest of the topics.

Despite moving to quash the entire deposition on grounds of deliberative process, in its brief the Governor's Office only contends that four out of the eleven topics implicate deliberative process. Mot. 11-12. But none of them do. The Governor's Office notes that Topic 4 concerns, among other things, the Governor's Office's "opinions" about "potential" changes to Florida election law and policy. But this information would not be predecisional or deliberative; the topic asks for the Governor's Office's opinions, *i.e.*, conclusions. Discussion of *potential conclusions* might be deliberative; but an actual conclusion about whether the Governor's Office will support a potential change to the law is not. The Governor's Office also points to Topics 7, 8, and 9, which ask for the Governor's Office's "analysis" about the effects of S.B. 90, about the costs of S.B. 90, and about the need for S.B. 90. But the Governor's Office fails to explain how that request implicates subjects that are predecisional *or* deliberative, especially given that this deposition will be taken *after* the relevant decisions (such as supporting S.B. 90) were made. For example, Plaintiffs might ask under Topic 7 whether S.B. 90 will have the effect of reducing access to mail voting, or whether aspects of S.B. 90 will have a racially disparate impact. That is not deliberative.

Ultimately, the Office’s “speculation that [Plaintiffs] will seek information protected by the deliberative process privilege is no basis for blocking” a deposition. *Brush v. Sears Holdings Corp.*, 2010 WL 11558010, at *2 (S.D. Fla. Sept. 2, 2010). The Governor’s Office does not even come close to carrying its burden on deliberative process privilege.

III. The Subpoena Was Timely Sent and Does Not Impose an Undue Burden

The Governor’s Office’s timeliness and burden arguments are equally meritless. Indeed, the “Government has not presented an affidavit or other evidence in support of its claim of undue burden,” which “alone is a basis to reject the Government’s claim.” *United States v. 3M Co. (3M Combat Arms Earplug Prods. Liab. Litig.)*, No. 3:19-md-2885, 2020 U.S. Dist. LEXIS 230043, at *16 (N.D. Fla. Dec. 8, 2020).

Plaintiffs noticed the deposition on October 6, 2021, two weeks in advance of the October 20 date, and advised the Governor’s Office that a later date (October 21 or 22) would be possible too. Ex. D at 6. The Governor’s Office does not cite a single decision, of any court, concluding that two weeks is not “reasonable written notice” within the meaning of Rule 30(b)(1), and the local rules of many federal courts provide 14 days (or less) is sufficient notice. *See, e.g.*, M.D. Fla. Local Rule 3.04 (“A deposition by oral examination or written questions and a subpoena duces tecum require fourteen days’ written notice.”).² With the delay achieved through filing the present motion, the Governor’s Office will have even more time to prepare. And “reasonableness” should be assessed in light of all the circumstances, including the fact that the Secretary of State’s counsel—who are representing the Governor’s Office in this motion—provided much less time than fourteen days when they issued 30(b)(6) topics to Plaintiffs. For

² https://www.flmd.uscourts.gov/sites/flmd/files/local_rules/flmd-united-states-district-court-middle-district-of-florida-local-rules.pdf

example, notice of the 30(b)(6) topics for Plaintiff Florida Rising was provided by defense counsel on October 14, three business days before the October 20 deposition.

Nor does the Governor's Office explain how the various case scheduling dates it references renders the amount of notice not "reasonable." Mot. 13. Plaintiffs noticed the deposition for October 20, 2021, two days before fact discovery concluded. Many other parties, including defense counsel, noticed depositions for that week as well.

Plaintiffs' October 14 amended notice added the 11th topic concerning the University of Florida's efforts to prevent Plaintiffs' experts from testifying in this case on the ground of a "conflict of interest" with the "executive branch." As noted, Plaintiffs noticed this topic promptly after learning of the factual predicate for it. Plaintiffs' expert Dan Smith advised Plaintiffs' counsel of the University's disapproval because of perceived adversity against "the executive branch of the State of Florida" on October 11, and expert Michael McDonald was advised of the University's disapproval on October 13. Ex. E. Plaintiffs served an amended notice adding a question about this issue on October 14. Subsequently, Plaintiffs' expert Sharon Austin was advised of the University's disapproval on October 15, 2021. Ex. E. So this topic is plainly timely.

The Governor's Office next contends, in support of its burden argument, that it is engaged in other litigation and has other responsibilities, such as preparing for a legislative session that will begin over two months from now on January 11, 2022. Mot. 13. It is always the case that witnesses, including government witnesses, have other responsibilities, and the Governor's Office does not explain how such garden-variety obligations could render a 30(b)(6) deposition an undue burden when the rule itself expressly authorizes depositions of a "governmental agency." Fed. R. Civ. P. 30(b)(6).

The Governor's Office also argues that Plaintiffs "could have sent the subpoena sooner" because certain documents were produced in July 2021 and because some of the topics involve statements from 2020. Mot. 14. But Plaintiffs (counsel for the League of Women Voters on behalf of the Plaintiffs) first raised the need for a deposition with defense counsel (who is representing the Governor) on a call September 8, and reached out directly to the Governor's office on September 14. Ex. F. Moreover, Plaintiffs are entitled to set their own schedule and strategy for discovery. A significant amount of discovery that will bear on the topics and questions for the Governor's Office was produced or occurred in October, including document productions from the Secretary of State and deposition testimony from supervisors of elections about drop box issues. And the two cases the Governor's Office cites in support of this argument are, to put it mildly, irrelevant. One involves a motion for disqualification. *Ransburg Corp. v. Champion Spark Plug Co.*, 648 F. Supp. 1040, 1047 (N.D. Ill. 1986). In the other, the court explained that a litigant who had taken an expert deposition *too early* in the discovery period did not get a second bite at the apple after receiving more documents. *Austin v. Public Reputation Mgmt. Servs.*, 2020 U.S. Dist. LEXIS 172968, at *7-10 (S.D. Fla. Sept. 22, 2020).

The Governor's Office finally argues that the topics are too broad. Mot. 15. But during the parties' meet and confer, the Governor's Office only objected to the breadth of a single topic, Topic 6. Plaintiffs invited the Governor's Office to propose ways to narrow the topic and the Governor's Office did not respond. See Ex. D. Moreover, during the parties' meet-and-confer, over a week after the deposition was noticed, the Governor's Office advised that it had not even identified a corporate representative or made any effort to begin preparation.

In any event, the noticed topics, including Topic 6, are not overbroad: they are all narrowly tailored to the issues in this litigation, namely S.B. 90 and the 2020 election in Florida.

Topic 6 asks about the Governor's Office's communications with third parties relating to the bill that is the subject of this lawsuit. Absent a privilege, that topic is clearly appropriate. Similarly, the Governor's Office's statements concerning the "conduct of the 2020 general elections in Florida"—which would not include statements about specific candidates, for example—is a topic that is narrowly tailored to the needs of this case. The Governor's Office also objects to the fact that the deposition might involve the "[o]ver 700 pages of documents" it produced, Mot. 15, but that is really a tiny number in the context of significant litigation like this (*e.g.*, the Secretary of State has produced almost 7 million pages), and many pages of the Governor's production are non-substantive.

The cases the Governor's Office cites in support of its burden argument do not advance its position. In *Reed v. Bennett*, 193 F.R.D. 689 (D. Kan. 2000), the subpoena was only overbroad because the topic list had stated that the "areas of inquiry will 'includ[e], but not [be] limited to' the areas specifically enumerated." *Id.* at 692. Plaintiffs here have done no such thing. In *Beaulieu v. Board of Trustees of University of West Florida*, 2007 U.S. Dist. LEXIS 108191, at *14–15 (N.D. Fla. Oct. 4, 2007), the Plaintiff included topics such as her "entire complaint" and failed to identify any topic with "particularity." And in *Martin v. I-Flow Corp.*, 2008 U.S. Dist. LEXIS 133976 (N.D. Fla. Dec. 4, 2008), the court merely held that a defendant could not issue a 30(b)(6) notice to its *own* representative early in discovery and require the plaintiff to take the defendant's deposition on that date before it had a chance to review documents produced in discovery. *Id.* at *7-8.

Although the Governor's Office has failed to meet its burden to substantiate its burden and overbreadth arguments, to the extent the Court agrees as to any particular topic, the proper

remedy would be to require the parties to meet and confer to narrow that topic for deposition, not to quash the subpoena.

CONCLUSION

For the foregoing reasons, this Court should deny the motion to quash.

Dated: October 29, 2021

Respectfully submitted,

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***Application for admission pro hac vice
forthcoming*

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LOCAL RULE 7.1(F) CERTIFICATION

Pursuant to Local Rule 7.1(F), this memorandum contains 5,507 words, excluding the case style, table of authorities, table of contents, signature blocks, and certificate of service.

s/ *Kira Romero-Craft*
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was served on all counsel of record through the Court's CM/ECF system on the 29th of October, 2021.

s/ *Kira Romero-Craft*
Attorney for Plaintiffs

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Exhibit A

RETRIEVED FROM DEMOCRAT DOCKET.COM

From: [Pollins, Stu](#)
To: [Dowd, Cory](#)
Cc: [Coyle, Frances](#)
Subject: FW: Elections Side by Side
Date: Wednesday, April 14, 2021 10:19:43 AM
Attachments: [Elections Bill Side by Side 04142021.xlsx](#)

Per your request.

From: Pollins, Stu
Sent: Wednesday, April 14, 2021 10:10 AM
To: Stephanie Kopelousos - EOG (Stephanie.Kopelousos@eog.myflorida.com)
<Stephanie.Kopelousos@eog.myflorida.com>; Chris Spencer (Chris.Spencer@laspbs.state.fl.us)
<Chris.Spencer@laspbs.state.fl.us>
Cc: Coyle, Frances <Frances.Coyle@LASPBS.STATE.FL.US>
Subject: Elections Side by Side

Please let me know if you have any questions or need anything else.

Stu Pollins
Florida Executive Office of the Governor
Office of Policy and Budget
Transportation and Economic Development Unit
850-717-9497
stu.pollins@laspbs.state.fl.us

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ELECTION TRANSPARENCY AND INTEGRITY: GOVERNOR, HOUSE (HB 7041), SENATE COMPARISON 4/14/2021

Category	Governor	CS/HB 7041	CS/CS/CS 90
Ballot Integrity	Address the use of ballot drop boxes.	<p>Early voting site drop boxes and discretionary drop boxes may only be used as secure drop box locations during early voting hours. All drop boxes not at an officer of a supervisor to be physically manned by an employee of the supervisor at all times. Secure drop boxes at the office of the supervisor must be monitored by an employee of the supervisor during regular office hours and must be otherwise secure from tampering and monitored by video surveillance during other hours.</p> <p>The bill requires the supervisors to designate the location of all drop box sites and notify the Division no later than the 30th prior to the election of the location of such sites. Once a drop box location is set, the location may not be moved or changed. No drop box can be placed in a location so as to favor or disfavor any one political party or candidate. Requires all drop boxes to be emptied each day at the end of early voting hours.</p> <p>The bill allows an elector’s designee with a declaration to return an elector’s ballot to a drop box. Under the bill, when a person returns a ballot to a drop box they must present their Florida driver license or Florida identification card to the employee monitoring the drop box. The declaration or attestation must be affixed to the return mailing envelope when the ballot is deposited into the drop box.</p>	<p>Early voting site drop boxes and discretionary drop boxes may only be used as secure drop box locations during early voting hours. All drop boxes not at an officer of a supervisor to be physically manned by an employee of the supervisor at all times. Secure drop boxes at the office of the supervisor must be monitored by an employee of the supervisor during regular office hours.</p> <p>The bill requires the supervisors to designate the location of all drop box sites and notify the Division no later than the 30th prior to the election of the location of such sites. Once a drop box location is set, the location may not be moved or changed. No drop box can be placed in a location so as to favor or disfavor any one political party or candidate. Requires all drop boxes to be emptied each day at the end of early voting hours.</p>
Ballot Integrity	Address ballot harvesting so that no person may possess ballots other than their own and their immediate family.	<p>The bill makes it a first degree misdemeanor to possess the ballot of another unless the person possessing the ballot has been designated to do so and has a related declaration. With such declarations, a person may carry a ballot belonging to an immediate family member and in any election may carry a maximum of two ballots belonging to persons who are not family members. The declaration must include a statement affirming they have been designated to carry the ballot of another, include the signature of the voter whose ballot is being carried and date signed by the voter, the signature of the designee designated to carry the ballot and date signed by the designee, as well as the relationship the designee has to the voter whose ballot they are carrying. In addition, the declaration must include a provision where the designee acknowledges that falsifying a declaration is a third degree felony. The bill extends the definition of immediate family to include a grandchild.</p>	Same as HB 7041.

ELECTION TRANSPARENCY AND INTEGRITY: GOVERNOR, HOUSE (HB 7041), SENATE COMPARISON 4/14/2021

Category	Governor	CS/HB 7041	CS/CS/CS 90
Ballot Integrity	No mass mailing of vote-by-mail ballots only voters who request a ballot should receive a ballot.	The bill explicitly spells out that no county, municipality, or state agency may send a VBM ballot to a voter unless the voter has requested the VBM as authorized under law. The bill makes exemptions for VBM ballots under s.101.662, F.S., relating to voters having a disability, s. 101.697, F.S., relating to overseas voters, and under ss. 101.6102-101.6103, F.S., relating to local referenda.	Same as HB 7041.
Ballot Integrity	Vote-by-mail requests must be made each election year.	The bill provides that a VBM request is sufficient to receive a VBM ballot through the end of the calendar year of the next regularly scheduled election. After the effective date of the act, if a voter makes a general request to vote by mail in 2021, he or she would receive VBM ballots for all elections through the end of the 2022 calendar year. The bill preserves the period under current law for a VBM request made after November 6, 2018 and before July 1, 2021. The bill preserves the current life of every request received prior to the effective date of the act.	Same as HB 7041.
Ballot Integrity	Vote-by mail ballot signatures must match the most recent signature on file.	The bill creates new guidelines for the signature verification process conducted by supervisors. Specifically, the bill provides that anytime a signature is verified with the signature on file in the voter's registration records, the verifier may only use a signature in the registration books or precinct register from the preceding four years. If no wet signature is available within the preceding four years, the verifier may also use the most recent wet signature on record. The bill defines wet signature as one that a voter physically signed on paper with pen or another writing utensil. The bill provides that anytime a signature is verified, the person verifying the signature must not have any knowledge of the political affiliation of the voter whose signature they are verifying.	Same as HB 7041.
Transparency in the Elections Process	Political parties and candidates cannot be shut out from observing the signature matching process.		During each meeting of the county canvassing board, each political party and each candidate may have one watcher within a distance that allows him or her to directly observe ballots being examined for signature matching and other processes.
Transparency in the Elections Process	Supervisors of Elections must post over-vote ballots to be considered by the canvassing board on their website before the canvassing board meets.		

ELECTION TRANSPARENCY AND INTEGRITY: GOVERNOR, HOUSE (HB 7041), SENATE COMPARISON 4/14/2021

Category	Governor	CS/HB 7041	CS/CS/CS 90
Transparency in the Elections Process	Prohibits counties from receiving grants from private third-party organizations for "get out the vote" initiatives.	The bill prohibits any agency, state, or local official responsible for conducting elections from soliciting, accepting, using, or disposing of any donation in the form of money, grants, property, or personal services from an individual or a nongovernmental entity for the purpose of funding election-related expenses or voter education or registration programs.	Same as HB 7041.
Transparency In Elections Reporting	Requires real-time reporting of voter turnout data at the preceinct level.		Supervisors of elections shall make live voter turnout data on election day available on their respective websites. At a minimum, a supervisor must post updated turnout data on their website at 8 a.m., 2 p.m., and 6 p.m. on election day. The supervisors shall transmit the turnout data to the division, which must create and maintain a real-time statewide turnout dashboard that is available for viewing by the public on its website as the data becomes available.
Transparency In Elections Reporting	Supervisors of Elections must report how many ballots have been requested, how many have been received, and how many are left to be counted.		For each election, supervisors of elections shall make available on their respective websites the number of vote-by-mail ballots requested, the number of completed vote-by-mail ballots received, and the number of vote-by-mail ballots not yet tabulated. Such information must be updated daily.

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Exhibit B

RETRIEVED FROM DEMOCRAT DOCKET.COM

From: Uthmeier, James <James.Uthmeier@eog.myflorida.com>
Sent time: 10/09/2020 05:57:20 PM
To: McVay, Brad R.
Subject: drop boxes guidance
Attachments: Legal Requirements for Dropboxes.docx

EMAIL RECEIVED FROM EXTERNAL SOURCE

The attachments/links in this message have been scanned by Proofpoint.

Brad – here is what I quickly put together re: drop boxes. Let’s discuss on Monday, make whatever adjustments necessary, and get something out the door by COB Monday.

Thanks and have a nice weekend.

James

Please note that under Florida law correspondence sent to the Governor's Office, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.

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Draft, Attorney Work Product

LEGAL REQUIREMENTS FOR VOTING BY MAIL DROPBOXES

TO: Supervisors of Elections
 RE: Vote by Mail Drop Boxes

As we prepare for 2020 Election Day and the administration of early voting and voting by mail (VBM), it has come to our attention that Supervisors may not be consistently administering VBM secure drop boxes in accordance with Florida law. Therefore, the Florida Department of State provides this guidance to Supervisors regarding the legal requirements for drop boxes.

As you know, VBM secure drop boxes are required at the main office and each branch office of Supervisors as well as each early voting site. *See* § 101.69(2), Fla. Stat. Further, Supervisors may also place drop boxes “at any other site that would otherwise qualify as an early voting site under § 101.657(1), provided, however, that any such site *must be staffed* during the county’s early voting hours of operation by an employee of the Supervisor’s office or a sworn law enforcement officer.”

It has long been the policy of the State to prioritize VBM election security. To this end, Section 101.67(1), F.S., requires Supervisors to “safely keep *in his or her office* any envelopes received containing marked ballots of absent electors . . .” (emphasis added).

To be clear, Supervisors may not place VBM secure drop boxes at locations other than the following:

- Main office of the Supervisor;
- Each branch office of the Supervisor;
- Each Early Voting Site. § 101.69(2), Fla. Stat.
- Sites that would otherwise qualify as an Early Voting Site under Section 101.657(1).

Further, to facilitate a safe and secure election, Florida law requires the following for administration of VBM drop boxes:

- VBM secure drop boxes must always be kept in the custody and control of the Supervisor or Supervisor’s staff. Drop boxes **may not** be left unattended and **must be** monitored at all times by the Supervisor or his or her staff (or a law enforcement officer). *See* § 101.67(1), Fla. Stat.; § 101.68(2); R. 1S-2.034, F.A.C., DS-DE11 “Polling Place Procedures Manual,” p. 23.
- Drop boxes must be clearly labeled.
- Drop boxes must be sealed.

Draft, Attorney Work Product

- VBM ballots returned and placed in authorized drop boxes must be kept separate from canceled returned vote-by-mail ballots from voters that chose to vote in person.
- VBM ballots in secure drop boxes must be retrieved and placed in a transfer box, case or bag with numbered seals and returned to the Supervisor of Elections' office at the end of every day of voting.
- The transfer box, case or bag must include audit forms documenting the number of VBM ballots received and the seal numbers used to secure the box, case or bag.

Questions

1. Can a VBM drop box be located inside the Supervisor's main office or office branch?

Yes. It is mandatory for a secure VBM drop box to be placed "at the main office of the supervisor" and "at each branch office of the supervisor." § 101.69(2).

2. Can a secure VBM drop box be located directly outside a Supervisor's main office or branch office?

Yes. However, the drop box must be "secure"—meaning that it is clearly labeled, sealed, and in the custody and control of the Supervisor or the Supervisor's employees at all times.

3. Can a Supervisor have a 24-hour VBM drop box located outside of their main office or branch office that is not monitored or monitored only by a security camera?

No. In order to be a "secure" VBM drop box, it must be monitored by the supervisor or supervisor's employee at all times. Section 101.67(1) requires the supervisor to "safely keep in his or her office any envelopes received . . ." Thus, a drop box located outside of a Supervisor's office and left unmonitored would not comply with § 101.67(1).

4. Can a Supervisor provide optional secure VBM drop boxes (at locations other than their main office or branch office) for hours or days when early voting is not being offered in the county?

No. Optional secure VBM drop boxes may only be located at sites "that would otherwise qualify as an early voting site under section 101.657(1)" and must meet all applicable early voting location requirements that apply in Section 101.657(1), including geographic location, hours of operation and days of operation.

5. May a Supervisor have a volunteer monitor an optional secure VBM drop box site instead of a Supervisor's employee or law enforcement officer?

No. Section 101.69(2) requires an optional VBM drop box site to be monitored by a Supervisor's employee or law enforcement officer. A volunteer would not qualify as either.

Exhibit C

RETRIEVED FROM DEMOCRACY DOCKET.COM

From: Blaise For Florida <info@blaiseforflorida.com>
Sent: Tuesday, July 13, 2021 4:13 PM
To: Maida, Michael
Subject: Fwd: Stealing ideas from Senator Thurston Amendment to SB 90

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

----- Forwarded message -----

From: **Benjamin J. Gibson** <BGibson@shutts.com>
Date: Mon, Apr 5, 2021 at 10:22 AM
Subject: Stealing ideas from Senator Thurston Amendment to SB 90
To: Blaise For Florida <info@blaiseforflorida.com>

Senator Thurston has filed a large strike-all to the amendment to SB 90 to be heard tomorrow. There were a couple of provisions in his strike-all amendment that seem good:

1. (Lines 1018-1021)

(Amendment to section 102.031)

(6) Bullhorns or other devices used to amplify sound are prohibited in close proximity to:

(a) A polling place during voting hours.

(b) An office of the supervisor during a recount.

- This would prohibit the large concerts that often are done nearby early voting sites and can deter people from wanting to vote because they attract large crowds of non-voters and can create a chaotic scene. Note that this also could be argued to create a potential First Amendment issue too.

You could modify the above as follows:

(6) Bullhorns or other devices used to amplify sound are prohibited in close proximity to:

(a) A polling place, **early voting location, or secure drop box** during voting hours.

(b) An office of the supervisor during a recount.

-
2. (Lines 1056-1065), Section 27 creating section 102.181

102.181 Action against supervisor of elections.—

(1) Any elector qualified to vote in or any candidate for office in an election may file an action against the supervisor of elections administering such election for noncompliance with any provision of this code.

(2) Any elector or candidate who files such an action is entitled to an immediate hearing.

(3) In any such action, any filing fees or costs shall be waived and attorney fees shall be awarded to the prevailing party or parties.

- This helps with enforcement of the Election Code, which is the biggest complaint out there that supervisors ignore provisions and there is little remedy at times. However, I would modify this to also allow a political party, or political committee to bring suit, and I would get rid of the attorney's fees and waiver of fines provisions because that will encourage frivolous suits.

You could modify the above as follows:

102.181 Action against supervisor of elections.—

(1) Any elector qualified to vote in or any candidate for office in an election, ~~political party with a candidate on the ballot, or political committee sponsoring a measure on the ballot~~ may file an action against the supervisor of elections administering such election for noncompliance with any provision of this code.

(2) Any elector or candidate who files such an action is entitled to an immediate hearing.

~~(3) In any such action, any filing fees or costs shall be waived and attorney fees shall be awarded to the prevailing party or parties.~~

--

Political Advertisement Paid For And Approved By Blaise Ingoglia, Republican, For State Representative District 35

From: Blaise For Florida <info@blaiseforflorida.com>
Sent: Tuesday, July 13, 2021 4:14 PM
To: Maida, Michael
Subject: Fwd: Updated: Draft Edits to HB 7041 Strike All
Attachments: Edits to HB 7041 Strike All (3).DOCX

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

----- Forwarded message -----

From: Benjamin J. Gibson <BGibson@shutts.com>
Date: Sun, Apr 11, 2021 at 3:49 PM
Subject: Updated: Draft Edits to HB 7041 Strike All
To: Blaise Campaign <info@blaiseforflorida.com>

--

Political Advertisement Paid For And Approved By Blaise Ingolia, Republican, For State Representative District 35

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7041 (2021)

Amendment No.

17 nullifies, suspends, or is in conflict with any provision of the
18 Florida Election Code, unless:

19 (a) At the time settlement negotiations have begun in
20 earnest, written notification is given to the President of
21 the Senate, the Speaker of the House of Representatives, and
22 the Attorney General.

23 (b) Any proposed settlement, consent decree, or order that
24 is proposed or received and would nullify, suspend, or conflict
25 with any provision of the Florida Election Code is promptly
26 reported in writing to the President of the Senate, the Speaker
27 of the House of Representatives, and the Attorney General.

28 (c) At least 10 days before the date a settlement or
29 presettlement agreement or order is to be made final, written
30 notification is given to the President of the Senate, the
31 Speaker of the House of Representatives, and the Attorney
32 General.

33 ~~(2) If any notification required by this section is~~
34 ~~precluded by federal law, federal regulation, court order, or~~
35 ~~court rule, the officer, agent, official, or attorney~~
36 ~~representing such agency or officer, or the Attorney General,~~
37 ~~shall challenge the constitutionality in the civil suit~~
38 ~~affected and give prompt notice thereof to the President of the~~
39 ~~Senate, the Speaker of the House of Representatives, and the~~
40 ~~Attorney General.~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7041 (2021)

Amendment No.

elections shall issue the new voter information card.

Section 7. Section 97.106, Florida Statutes, is created to read:

97.106 Prohibition on use of private funds for election related expenses.—No agency or state or local official responsible for conducting elections, including, but not limited to, a supervisor of elections, may solicit, accept, use, or dispose of any donation in the form of money, grants, property, or personal services from an individual or a nongovernmental entity for the purpose of funding election-related expenses or voter education, outreach, or registration programs. This section shall not be construed to prohibit the donation and acceptance of space to be used for a polling room or early voting location.

COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. HB 7041 (2021)
Amendment No.

In addition to the notification required under subparagraph 1., subparagraph 2., or subparagraph 3., the supervisor must notify the elector of the signature deficiency by first-class mail and direct the elector to the cure affidavit and instructions on the supervisor's website. Beginning the day before the election, the supervisor is not required to provide notice of the signature deficiency by first-class mail, but shall continue to provide notice as required in subparagraph 1., subparagraph 2., or subparagraph 3. In addition, a supervisor must notify the registered political party, if any, of an elector who has a signature deficiency. The ~~state or county executive committee of a political party~~ ~~political parties~~ must provide the supervisor of each county one e-mail address that the supervisor may use to notify the political party of the signature deficiency. The supervisor must ~~immediately~~ ~~promptly~~ contact the political party after contacting the elector.

Section 13. Subsection (2) of section 101.051, Florida Statutes, is amended to read:

101.051 Electors seeking assistance in casting ballots; oath to be executed; forms to be furnished.-

(2) It is unlawful for any person to be in the voting booth with any elector except as provided in subsection (1). A person at a polling place, drop box site, or early voting site, or within 150 100 feet of the entrance of a polling place, drop box site, or early voting site, may not solicit any elector in an effort to provide assistance to vote pursuant to subsection

STRIKE ALL LINES 463-504

Section 16. Paragraph (a) of subsection (4) of section 101.5614, Florida Statutes, is amended to read:

101.5614 Canvass of returns.—

(4)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in a room open and accessible ~~room~~ to the public in the presence of witnesses and substituted for the original damaged ballot. Likewise, a duplicate ballot must ~~shall~~ be made of a vote-by-mail ballot containing an overvoted race or ballot measure or a marked vote-by-mail ballot containing an undervoted race or ballot measure, if there is a clear indication on the original ballot that the voter has made a definite choice in the overvoted or undervoted race or ballot measure. A duplicate ballot ~~in which every race is undervoted which must~~shall~~~~ include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). A duplicate ballot may not include a vote for an overvoted or undervoted race or ballot measure if there is not a clear indication on the ballot that the voter has made a definite choice.~~the voter's intent in such race or on such measure is not clear.~~ Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof, must be allowed to observe the duplication of ballots. Each candidate, political party, or political committee is entitled to have one authorized designee observe per ballot duplicating station. The observer must be allowed to stand in close enough proximity to the process in such a way that they are able to see the markings on each ballot and the duplication taking place. All duplicate ballots must ~~shall~~ be clearly labeled "duplicate," bear a serial

number which shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. The duplication process must happen in the physical presence of at least one canvassing board member. If the canvassing board has employed clerical help from the supervisor's office, ballot duplication must be performed by at least two members of the supervisor's staff working in tandem at each ballot duplicating station and in the physical presence of at least one canvassing board member. If the supervisor's staff are unable to determine whether the ballot contains a clear indication that the voter has made a definite choice based on the rules adopted by the division pursuant to s. 102.166(4), the ballot shall be presented to the canvassing board for a determination. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct. Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof, must be allowed to inspect adjacent images of each original and duplicate ballot within a reasonable time prior to tabulation. Upon objection by a candidate, political party official, political committee official, or an authorized designee thereof to a duplicate of a ballot based on the rules adopted by the division pursuant to s. 102.166(4), the duplicate ballot must be presented to the canvassing board and must be compared with the original ballot for a determination of the validity correctness of that the duplicate correctly reflects the voter's definite choice on the original ballot based on the rules adopted by the division pursuant to s. 102.166(4). The canvassing board must document the serial number of the ballot in the canvassing board's minutes. The canvassing board must decide whether the duplicate ballot duplication is correct valid. If the duplicate

ballot is determined to be ~~correct~~ ~~valid~~, the duplicate ballot shall be tallied with the other ballots for that precinct. If the duplicate ballot is determined to be ~~incorrect~~ ~~invalid~~, the duplicate ballot must be rejected and marked "canceled" by the canvassing board and placed with the other canceled ballots. A ~~correct~~ ~~proper~~ duplicate ballot must be made by the canvassing board and tallied with the other ballots for that precinct in lieu of the original ~~defective~~ ballot. The canvassing board must document the nature of the objection made, the canvassing board's decision, and the serial number of the defective and duplicate ballots in the canvassing board's meeting minutes.

(b) A true duplicate copy shall be made of each federal write-in absentee ballot in the presence of witnesses and substituted for the federal write-in absentee ballot utilizing the same procedures for duplication of ballots made under paragraph (a). The duplicate ballot must include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). All duplicate ballots shall be clearly labeled "duplicate," bear a serial number that shall be recorded on the federal write-in absentee ballot, and be counted in lieu of the federal write-in absentee ballot. After a ballot has been duplicated, the federal write-in absentee ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with other ballots for that precinct.

STRIKE ALL LINES 708-842

Section 21. Subsections (1) and (2) and paragraphs (a) of subsection (4) of section 101.68, Florida Statutes, are amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(1) (a) The supervisor of the county in which ~~where~~ the absent elector resides shall receive the ~~voted~~ vote-by-mail ballot, at which time the supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books or the precinct register, in accordance with s. 101.046, to determine whether the elector is duly registered in the county and must ~~may~~ record on the elector's registration record ~~certificate~~ that the elector has voted. During the signature verification process, the verifier may not have any knowledge of the party political affiliation, or lack thereof, of the voter whose signature is subject to verification. An elector who dies after casting a vote-by-mail ballot but on or before election day shall remain listed in the registration books until the results have been certified for the election in which the ballot was cast. The supervisor shall safely keep the vote-by-mail ballot in the mailing envelope unopened in his or her office until the county canvassing board canvasses the vote and authorizes the mailing envelope to be opened and the ballot to be removed from the secrecy envelope and tabulated. The canvassing board may not vote to authorize the mailing envelope to be opened and the ballot tabulated before the vote-by-mail ballot has been received by the supervisor. Except as provided in subsection (4), after a vote-by-mail ballot is received by the supervisor, the ballot is deemed to have been cast, and changes or additions may not be made to the voter's certificate.

(b) Prior to the canvassing board's vote to canvass the

ballot and authorize the opening of the mailing envelope and tabulation of the ballot, a physically present candidate, political party official, political committee official, or authorized designee thereof must have reasonable access, upon request, to compare the signature of the elector on the voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the signature of the elector in the registration books or the precinct register. Before the 5 days preceding election day, such access must be available for at least 48 hours before the canvassing board votes to authorize the opening of the corresponding mailing envelope and separating it from the secrecy envelope containing the ballot. During the 5 days preceding election day, such access must be available for at least 24 hours before the canvassing board votes to authorize the opening of the corresponding mailing envelope and separating it from the secrecy envelope containing the ballot. Beginning election day, such access must be available for at least 2 hours before the canvassing board votes to authorize the opening of the corresponding mailing envelope and separating it from the secrecy envelope. The Department of State shall adopt detailed rules no later than August 1, 2021, prescribing the reasonable access a supervisor of elections must provide for signature-match review. The rules shall address, at a minimum, the following duties of the supervisor of elections:

1. Public notice of time and place for signature-match review;
2. Segregating signature matches and mismatches for review;
3. Providing access in a secure manner to digital images side-by-side of the signature on the voter's certificate or cure affidavit and the voter's signature in the precinct register or registration books for review;
4. Process for objecting to a signature match or mismatch

and filing a protest with the canvassing board to review;
and

5. Maintaining the security of signatures and prohibiting
their invalid use or access.

(2)(a) The county canvassing board may begin the canvassing of vote-by-mail ballots upon the completion of the public testing of automatic tabulating equipment pursuant to s. 101.5612(2) ~~at 7 a.m. on the 22nd day before the election, but must begin such canvassing by not later than noon on the day following the election. In addition, for any county using electronic tabulating equipment, the processing of vote-by-mail ballots through such tabulating equipment may begin at 7 a.m. on the 22nd day before the election.~~ However, notwithstanding any such authorization to begin canvassing or otherwise processing vote-by-mail ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor, deputy supervisor, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of vote-by-mail ballots prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) To ensure that all vote-by-mail ballots to be counted by the canvassing board are accounted for, the canvassing board shall compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list.

(c)1. The canvassing board must, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the signature of the elector in the registration books or the precinct register, in

accordance with s. 101.046, to see that the elector is duly registered in the county and to determine the legality of that vote-by-mail ballot. A vote-by-mail ballot may only be counted if:

a. The signature on the voter's certificate or the cure affidavit matches the elector's signature in the registration books or precinct register; however, in the case of a cure affidavit, the supporting identification listed in subsection (4) must also confirm the identity of the elector; or

b. The cure affidavit contains a signature that does not match the elector's signature in the registration books or precinct register, but the elector has submitted a current and valid Tier 1 identification pursuant to subsection (4) which confirms the identity of the elector.

For purposes of this subparagraph, any canvassing board finding that an elector's signatures do not match must be by majority vote and beyond a reasonable doubt.

2. The ballot of an elector who casts a vote-by-mail ballot shall be counted even if the elector dies on or before election day, as long as, before the death of the voter, the ballot was postmarked by the United States Postal Service, date-stamped with a verifiable tracking number by a common carrier, or already in the possession of the supervisor.

3. A vote-by-mail ballot is not considered illegal if the signature of the elector does not cross the seal of the mailing envelope.

4. If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the cure affidavit, he or she may, at any time before the ballot is removed from the mailing envelope, file with the canvassing board a protest, on a form prescribed

by the division, against the canvass of that ballot, specifying the precinct, the voter's certificate or the cure affidavit ~~the ballot~~, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate or cure affidavit may not be accepted after the ballot has been removed from the mailing envelope.

5. If the canvassing board determines that a vote-by-mail ballot is illegal, a member of the board must, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that official ballots are preserved.

(d) The canvassing board shall record the ballot upon the proper record, unless the ballot has been previously recorded by the supervisor. The mailing envelopes shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style. The votes on vote-by-mail ballots shall be included in the total vote of the county.

(4)(a) As soon as practicable, the supervisor shall, on behalf of the county canvassing board, attempt to notify an elector who has returned a vote-by-mail ballot that does not include the elector's signature or contains a signature that does not match the elector's signature in the registration books or precinct register by:

1. Notifying the elector of the signature deficiency by e-mail and directing the elector to the cure affidavit and instructions on the supervisor's website;

2. Notifying the elector of the signature deficiency by text message and directing the elector to the cure affidavit and instructions on the supervisor's website; or

3. Notifying the elector of the signature deficiency by telephone and directing the elector to the cure affidavit and instructions on the supervisor's website.

In addition to the notification required under subparagraph 1., subparagraph 2., or subparagraph 3., the supervisor must notify the elector of the signature deficiency by first-class mail and direct the elector to the cure affidavit and instructions on the supervisor's website. Beginning the day before the election, the supervisor is not required to provide notice of the signature deficiency by first-class mail, but shall continue to provide notice as required under subparagraph 1., subparagraph 2., or subparagraph 3. In addition, a supervisor must notify the registered political party, if any, of any elector who has a signature deficiency. The state or county executive committee of a political party ~~political parties~~ must provide the supervisor of each county one email address that the supervisor may use to notify the political party of the signature deficiency. The supervisor must contact the political party immediately ~~promptly~~ after contacting the elector.

STRIKE ALL LINES 843-916

Section 22. Subsection (2) of section 101.69, Florida Statutes, is amended and subsection (3) is added to that section to read:

101.69 Voting in person; return of vote-by-mail ballot. -

(2)(a) The supervisor shall allow an elector who has received a vote-by-mail ballot to physically return a voted vote-by-mail ballot to the supervisor by placing the return mail envelope containing his or her marked ballot in a secure drop box. Secure drop boxes shall be placed at the main office of the supervisor, at each permanent branch office of the supervisor, and at each early voting site. Secure drop boxes may also be placed at any other site that would otherwise qualify as an early voting site under s. 101.657(1). Except for secure drop boxes at an office of the supervisor, a secure drop box may only be used; provided, however, that any such site must be staffed during the county's early voting hours of operation and must be monitored in person by an employee of the supervisor's office at all times it is accessible to the public or a sworn law enforcement officer. A secure drop box at an office of the supervisor must be continuously monitored in person by an employee of the supervisor's office at all times it is accessible to the public-during regular office hours. During other hours, a secure drop box at an office of the supervisor may only be accessible if it is secured from tampering and monitored by video surveillance. When a secure drop box is not accessible to the public, it must be securely locked inside the supervisor's office or the secure drop box location, or if permanently affixed outside the supervisor's office, must be secured from tampering and continuously monitored by video surveillance. The supervisors must keep

recordings of video surveillance of such secure drop boxes and provide a copy to any candidate or political party submitting a written request for the recordings within 24 hours after receipt of such request.

(b) A supervisor shall designate ~~each drop box site the~~ address of each secure drop box location and the days and hours it will be accessible to the public in writing to the division and post the information on its website at least 30 days before an election. A secure drop box must be clearly labeled with the hours it is available to the public. Drop boxes must be geographically located in the county so as to provide all voters in the county with an equal opportunity to cast a ballot, insofar as is practicable. After a drop box location and the days and hours it is accessible to the public have been designated, it may not be moved or changed except to conform with this subsection. ~~The supervisor shall provide the address of each drop box location to the division at least 30 days before an election.~~ On each day of early voting, all drop boxes must be emptied at the end of early voting hours and all the ballots retrieved from the drop boxes must be returned to the supervisor's office. The Department of State shall adopt a rule no later than August 1, 2021, prescribing the security mechanisms and ballot accounting procedures required for secure drop boxes. ~~After a drop box location has been designated, it may not be moved or changed. A drop box may not be placed in a location so as to favor or disfavor any one political party or candidate.~~

(c) An elector's designee designated under s. 104.0616 may also return the elector's ballot to a drop box if they have with them the declaration described in s. 104.0616(4).

(d) A person returning a ~~vote-by-mail~~ ballot by use of a secure drop box ~~monitored by an elections employee~~ must present

his or her Florida driver license or Florida identification card to the supervisor's employee monitoring the drop box. The employee must ensure that the name on the identification provided matches the printed name on the mailing envelope or the name of the designee on the declaration described in s. 104.0616(4). If an elector returning the elector's own ballot is not in possession of his or her Florida driver license or Florida identification card, the elector must complete a signed attestation stating that the elector did not have a Florida driver license or Florida identification card on their person when returning their own ballot and that they are returning their own ballot. If the name on the license or identification card does not match the name printed on the mailing envelope, the ballot may only be deposited if the person provides a completed declaration described under s. 104.0616(4) to the supervisor's employee which names the person as designee. The declaration or attestation must be affixed to the return mailing envelope and the ballot shall be deposited into the drop box. A copy of the declaration or attestation must be maintained with other election records.

(e) The Division shall ~~may~~ prescribe by rule a form of the attestation described in paragraph (d) which shall include notice that making false attestation is a felony of the third degree under s. 104.032. The Division and the supervisors shall ensure that copies of the attestation described in paragraph (d) ~~(e)~~ and the declaration described in s. 104.0616(4) are available online and at all supervisors' ~~supervisor's~~ offices for the convenience of voters. The supervisors shall ensure that copies of the attestation described in paragraph (d) are available at each drop box location.

(f) An additional poll watcher designated pursuant to s.

101.131 is entitled to observe any secure drop box location in close enough proximity to visually and aurally discern activity taking place at the location when it is accessible to the public.

(g) This subsection may not be construed to permit any mobile drop boxes or any type of drop box not stationary in its location and of a similar size and function as an official United States postal service mail box.

(h) Any elector, candidate, political party, or political committee may bring a civil action in circuit court to enforce compliance with the provisions of this subsection. The court, including an appellate court, shall set an immediate hearing, giving the case priority over other pending cases.

(3) If any drop box ~~not located at an office of the supervisor at an early voting site~~ is left accessible for ballot receipt when early voting is not underway, the supervisor is subject to a civil penalty of \$25,000. The Division of Elections is authorized to enforce this provision.

STRIKE ALL LINES 917-947

Section 23. Paragraphs (a), (b), and (e) of subsection (4) of section 102.031, Florida Statutes, are amended and subsection (6) is created to read:

102.031 Maintenance of good order at polls;
authorities; persons allowed in polling rooms and early
voting areas; unlawful solicitation of voters.-

(4)(a) No person, political committee, or other group or organization may solicit voters inside the polling place or within 150 feet of a drop box or the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor where vote-by-mail ballots are requested and printed on demand for the convenience of electors who appear in person to request them. Before the opening of the polling place or early voting site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.

(b) For the purpose of this subsection, the terms "solicit" or "solicitation" shall include, but not be limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, item, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; ~~and~~ selling or attempting to sell any item; and engaging in any activity with the intent to influence or the effect of influencing a voter. The terms "solicit" or "solicitation" may not be construed to prohibit exit polling.

(e) The owner, operator, or lessee of the property on which a polling place or an early voting site is located, or

an agent or employee thereof, may not prohibit the solicitation of voters by a candidate or a candidate's designee outside of the no-solicitation zone during polling hours.

(6) Bullhorns or other devices used to amplify sound are prohibited on the property of:

(a) A polling place, early voting location, or secure drop box location during voting hours or while accessible to the public.

(b) An office of the supervisor during a recount.

(7) Any elector, candidate, political party, or political committee may bring a civil action in circuit court to enforce compliance with the provisions of this section. The court, including an appellate court, shall set an immediate hearing, giving the case priority over other pending cases.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 7041 (2021)

Amendment No.

terms "solicit" or "solicitation" may not be construed to prohibit exit polling.

(e) The owner, operator, or lessee of the property on which a polling place or an early voting site is located, or an agent or employee thereof, may not prohibit the solicitation of voters by a candidate or a candidate's designee outside of the no-solicitation zone during polling hours.

Section 24. Section 102.07, Florida Statutes, is created to read:

102.07 Vote-by-mail count reporting.-Beginning at 7:00 p.m. the day before election day, the supervisor must, at least once every hour while actively counting, post on his or her website the number of vote-by-mail ballots that have been received and the number of vote-by-mail ballots that remain uncounted.

Section 25. Subsection (1) and paragraph (b) of subsection (2) of section 102.141, Florida Statutes, are amended to read:

102.141 County canvassing board; duties.-

(1) The county canvassing board shall be composed of the supervisor of elections; a county court judge, who shall act as chair; and the chair of the board of county commissioners. The names of the canvassing board members and alternate canvassing board members must be published on the supervisor's website before any vote-by-mail ballot is distributed or upon their appointment, whichever is sooner.

Alternate canvassing board members must be appointed pursuant

NEW LANGUAGE FOR BILL- POLL WATCHERS

Section XX. Subsections (1), (2), (4) and (5) of section 101.131, Florida Statutes are amended to read:

101.131 Watchers at polls. -

(1) The Legislature finds that open and transparent elections promote integrity, security, and confidence in the state's electoral process. To that end, each ~~Each~~ political party and each candidate may have one watcher in each polling room, ~~or~~ early voting area, secure drop box location, or ballot tabulation area at any one time during the election. A political committee formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot may have one watcher for each polling room, ~~or~~ early voting area, secure drop box location, or ballot tabulation area at any one time during the election. A ~~No~~ watcher ~~shall be permitted to~~ may not come closer to the officials' table, ~~or~~ the voting booths, drop box, or tabulation area than is reasonably necessary to meaningfully observe and properly perform his or her functions, but ~~each shall~~ must be allowed within the polling room, ~~or~~ early voting area, secure drop box location, or ballot tabulation area to watch and observe the conduct of electors, supervisor employees, and officials in close enough proximity to visually and aurally ascertain the proper administration of the election. The poll watchers shall furnish their own materials and necessities and shall not obstruct the orderly conduct of any election. The poll watchers shall pose any questions regarding polling place procedures, drop box procedures, or ballot tabulation procedures directly to the clerk or designated supervisor's employee for resolution. They may not interact with voters and may not interfere with the orderly administration of the election. A poll watcher exercising his or her right to meaningfully observe under this section is not to be deemed as

interfering with the election. Each poll watcher ~~shall~~ must either be a qualified and registered elector of the county in which he or she serves or a member in good standing with The Florida Bar and a qualified and registered elector of this state.

(2) Each party, each political committee, and each candidate requesting to have poll watchers shall designate, in writing to the supervisors of elections, on a form prescribed by the division, before noon of the second Tuesday preceding the election poll watchers for each polling room on election day. Designations of poll watchers for early voting areas, secure drop box locations, or ballot tabulation areas shall be submitted in writing to the supervisor of elections, on a form prescribed by the division, before noon at least 14 days before early voting begins. If the deadline for submitting the designation form falls on a Saturday, Sunday, or legal holiday, the form must be submitted before noon on the next business day. The poll watchers for polling rooms shall be approved by the supervisor of elections on or before the Tuesday before the election. Poll watchers for early voting areas, secure drop box locations, or ballot tabulation areas shall be approved by the supervisor of elections no later than 7 days before early voting begins, before a secured drop box is made accessible to the public, or before ballot tabulation begins, whichever is sooner. The supervisor shall furnish to each election board, secure drop box monitor, and any designated supervisor employee a list of the poll watchers designated and approved for such polling rooms, ~~or~~ early voting areas, secure drop box locations, or ballot tabulation areas. Designation of poll watchers shall be made by the chair of the state or county executive committee of a political party, the chair of a political committee, or the

candidate requesting to have poll watchers, or an authorized designee thereof.

(4) All poll watchers shall be allowed to enter, ~~and watch,~~ and meaningfully observe polls in all polling rooms and early voting areas, all secure drop boxes, and all ballot tabulation areas within the county or counties in which they have been designated if the number of poll watchers at any particular location ~~polling place~~ does not exceed the number provided in this section. Nothing shall prohibit a poll watcher from being designated for more than one location.

(5) The supervisor of elections shall provide to each designated poll watcher an ~~, no later than 7 days before early voting begins, a poll watcher~~ identification badge no larger than 3 inches by 5 inches that identifies the poll watcher by name but does not identify the candidate, party, or political committee designating the poll watcher. Each poll watcher must wear his or her identification badge while performing his or her duties.

NEW LANGUAGE FOR BILL- AUTHORITY OF SECRETARY TO INVESTIGATE

Section XX. Subsections (14) and (15) of section 97.012, Florida Statutes are amended to read:

97.012 Secretary of State as chief election officer.-

(14) Bring and maintain such actions at law or in equity by mandamus or injunction to enforce the performance of any duties of a county supervisor of elections or any official performing duties with respect to chapters 97 through 102 and 105 or to enforce compliance with a rule, opinion, or directive of the Department of State adopted or issued to interpret or implement any of those chapters.

(a) Venue for such actions shall be in the Circuit Court of Leon County.

(b) When the secretary files an action under this section and not more than 60 days remain before an election as defined in s. 97.021, or during the time period after the election and before certification of the election pursuant to s. 102.112 or s. 102.121, the court, including an appellate court, shall set an immediate hearing, giving the case priority over other pending cases.

(c) Prior to filing an action to enforce performance of the duties of the supervisor of elections or any official described in this subsection, the secretary or his or her designee first must confer, or must make a good faith attempt to confer, with the supervisor of elections or the official to ensure compliance with chapters 97 through 102 and 105 or the rules of the Department of State adopted under any of those chapters.

(15) Conduct preliminary investigations into any irregularities or fraud involving the official election administration duties of a county supervisor of elections or county canvassing board, voter registration, voting, candidate petition, or issue petition activities and report his or her findings to the

statewide prosecutor or the state attorney for the judicial circuit in which the alleged violation occurred for prosecution, if warranted. The Department of State may prescribe by rule requirements for filing an elections-fraud complaint and for investigating any such complaint.

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NEW LANGUAGE- CANDIDATE LEGAL FUND

Section XX. Paragraph (b) of subsection (1) of section 106.08, Florida Statutes is amended to read:

Section 106.08 Contributions; limitations on. -

Paragraph (b) of subsection (1) of section 106.08, Florida Statutes is amended to read:

(1)

(b) The contribution limits provided in this subsection do not apply to contributions made by a state or county executive committee of a political party or affiliated party committee regulated by chapter 103, contributions made to a candidate's legal expense fund used solely for legal fees and costs associated with a recount, election contest, or any legal proceeding relating to one's candidacy, or to amounts contributed by a candidate to his or her own campaign.

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**NEW LANGUAGE- DECLARATION FOR ASSISTING A VOTE-BY-MAIL VOTER
(RECOMMENDED BY 2012 MIAMI DADE GRAND JURY)**

Section XX. Section 101.661, Florida Statutes, is amended to read:

101.661 Voting vote-by-mail ballots.—

(1) All electors must personally mark or designate their choices on the vote-by-mail ballot, except:

~~(1)~~ (a) Electors who require assistance to vote because of blindness, disability, or inability to read or write, who may have some person of the elector's choice, other than the elector's employer, an agent of the employer, ~~or~~ an officer or agent of the elector's union, or a paid or volunteer campaign worker mark the elector's choices or assist the elector in marking his or her choices on the vote-by-mail ballot.

~~(2)~~ (b) As otherwise provided in s. 101.051 or s. 101.655.

(2) (a) If an elector needs assistance in voting a vote-by-mail ballot as described in (1)(a), and requests help from a person other than an immediate family member as defined in s. 104.0616(1), the person providing assistance shall take the following oath and sign the declaration along with the elector requiring assistance:

DECLARATION TO PROVIDE ASSISTANCE TO ELECTOR VOTING BY MAIL

State of Florida

County of

Date

Address where voting occurs

I, (Print name) , have been requested by (print name of elector needing assistance) to provide him or her with assistance to vote. I swear or affirm that I am not the employer, an agent of the employer, or an officer or agent of the union of the voter, that

I am not a paid or volunteer campaign worker, and that I have not solicited this voter in an effort to provide assistance.

(Signature of assistor)

(Signature of Elector Needing Assistance)

The signed declaration shall be placed in the return mailing envelope but shall not be placed in the secrecy sleeve when returned to the supervisor of elections. It shall be maintained with.

(b) The Division may prescribe by rule a form of the declaration in paragraph (a) that shall include notice that making a false declaration is a felony of the third degree under s. 104.XXX. The Division and the supervisors shall ensure that copies of the declaration in paragraph (a) are available on their websites.

STRIKE ALL LINES 1040-1048 (GOES WITH THE ABOVE CRIMINAL PENALTY)

Section XX. Section 104.03,2 Florida Statutes, is created to read:

104.032 False declaration or attestation regarding vote-by-mail ballots.--

Any person who makes a false declaration under s. 104.0616(4) to distribute, order, request, collect, deliver, or possess the vote-by-mail ballot of another person or makes a false attestation under s. 101.661(2)(a) or s. 101.69(2)(d) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

NEW SECTION- SEVERABILITY CLAUSE

Section XX. The provisions of this act are severable. If any provision of this act or the application is held invalid with respect to any person or circumstance, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

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STRIKE ALL LINE 1124- EFFECTIVE DATE UPON BECOMING LAW

Section 29. This act shall take effect July 1, 2021 upon
becoming a law.

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From: Blaise For Florida <info@blaiseforflorida.com>
Sent: Tuesday, July 13, 2021 4:06 PM
To: Maida, Michael
Subject: Fwd: Election Bill Language
Attachments: 14174156_1_(TLHDOCS)_Real Time Turnout Reporting.DOCX

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

----- Forwarded message -----

From: **Benjamin J. Gibson** <BGibson@shutts.com>
Date: Thu, Apr 15, 2021 at 9:01 PM
Subject: Election Bill Language
To: Blaise Campaign <info@blaiseforflorida.com>

Blaise:

1. **Real-Time Reporting:** Best shot at real-time reporting language attached. It should be run by supervisors. I am not sure whether all counties have the necessary equipment to do this currently.
2. **Signature Verification:** One option to avoid any unintended consequences is to strike the new section 101.046 ("wet signature") section and direct in section 101.68 that Department of State adopt rules no later than October 1, 2021 to provide guidelines for the signature verification process including priority of signatures, etc.
3. **Declaration to Assist VBM Voter-** If you add this language, you will want to also update the VBM instructions in section 101.65 to include reference to this declaration.

--

Political Advertisement Paid For And Approved By Blaise Ingoglia, Republican, For State Representative District 35

NEW Section: Real-Time Turnout Reporting

Section XX. Section 101.XXX Florida Statutes, is created to read:

101.XXX Real-time Voter Turnout Reporting.—

(1) During any early voting period, a supervisor must provide real-time continuous reporting on its website of the total number of voters casting a ballot at each early voting location in the county.

(2) On election day, a supervisor must provide real-time continuous reporting on its website of the total number of voters casting a ballot at each precinct in the county.

(3) The Department of State shall adopt rules to provide a uniform procedure for supervisors to implement the requirements of this section.

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: Blaise For Florida <info@blaiseforflorida.com>
Sent: Tuesday, July 13, 2021 4:15 PM
To: Maida, Michael
Subject: Fwd: HB vs SB
Attachments: Election Bills Key Differences (HB vs SB).pdf

EXTERNAL EMAIL: This email originated from outside of the Legislature. USE CAUTION when clicking links or opening attachments unless you recognize the sender and know the content is safe.

----- Forwarded message -----

From: Benjamin J. Gibson <BGibson@shutts.com>
Date: Thu, Apr 22, 2021 at 1:17 PM
Subject: HB vs SB
To: Blaise Campaign <info@blaiseforflorida.com>

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Political Advertisement Paid For And Approved By Blaise Ingolia, Republican, For State Representative District 35

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FL Elections Bill

CS/CS/HB 7041 vs. CS/CS/CS/SB 90 (as amended)

Thursday 4/22/2021 1:00pm

Key Differences

- **Prohibition on private funds for election related expenses**
 - Recommendation: take HB language (Section 7)
 - SB does not contain
- **Clarifying process for filling vacancy in nomination for U.S. Rep, state senator, state representative, state attorney, or public defender**
 - Recommendation: take HB language (Section 11)
 - SB does not contain
- **Signature Verification Procedure (“Wet signature”)**
 - Recommendation: take SB position and REMOVE language from HB (Section 12)
 - SB does not contain language
- **Ballot Duplication Observation**
 - Recommendation: take HB language (Section 16)
 - SB language removes ability to stand in close enough proximity to observe duplication
- **Reasonable Access to View Signature Match**
 - Recommendation: take HB language (Section 18)
 - SB does not contain
- **Request for VBM ballots every election cycle**
 - Recommendation: take HB language (Section 21)
- **Drop Boxes**
 - Recommendation: take SB language limiting drop boxes to only during early voting hours
 - HB has after hours drop boxes
 - Recommendation: take SB language requiring manning of drop boxes at all times
 - HB allows video monitoring
 - Recommendation: take HB language requiring ID for return of ballot to drop box
 - SB does not contain

- **No Solicitation Zone**

- Recommendation: take SB language prohibiting giving or attempting to give any item to a voter

- HB language too broad and difficult to enforce, prohibition on “engaging in any activity with the intent to influence or effect of influencing a voter”

- **VBM count Reporting**

- Recommendation: take HB language (Section 26)

- Senate Bill does not contain

- **Ballot Harvesting Language including Declaration for possession**

- Recommendation: take HB language (Section 29)

- **Effective Date**

- Recommendation: take HB language (Section 31) (take effect upon becoming a law)

Priorities- ADD TO BILL:

- **Poll Watcher Observation Rights** (language attached)

- Add poll watcher for drop boxes and tabulation areas
 - Clarify observation rights

- **Increased Authority for Secretary of State to Investigate Fraud** (language attached)

- **Severability Clause** (language attached)

NEW LANGUAGE FOR BILL- POLL WATCHERS

Section XX. Subsections (1), (2), (4) and (5) of section 101.131, Florida Statutes are amended to read:

101.131 Watchers at polls. -

(1) The Legislature finds that open and transparent elections promote integrity, security, and confidence in the state's electoral process. To that end, each ~~Each~~ political party and each candidate may have one watcher in each polling room, ~~or~~ early voting area, secure drop box location, or ballot tabulation area at any one time during the election. A political committee formed for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot may have one watcher for each polling room, ~~or~~ early voting area, secure drop box location, or ballot tabulation area at any one time during the election. ~~A No~~ watcher ~~shall be permitted to~~ may not come closer to the officials' table, ~~or~~ the voting booths, drop box, or tabulation area than is reasonably necessary to meaningfully observe and properly perform his or her functions, but ~~each shall~~ must be allowed within the polling room, ~~or~~ early voting area, secure drop box location, or ballot tabulation area to watch and observe the conduct of electors, supervisor employees, and officials in close enough proximity to visually and aurally ascertain the proper administration of the election. The poll watchers shall furnish their own materials and necessities and shall not obstruct the orderly conduct of any election. The poll watchers shall pose any questions regarding polling place procedures, drop box procedures, or ballot tabulation procedures directly to the clerk or designated supervisor's employee for resolution. They may not interact with voters and may not interfere with the orderly administration of the election. A poll watcher exercising his or her right to meaningfully observe under this section is not to be deemed as

interfering with the election. Each poll watcher ~~shall~~ must either be a qualified and registered elector of the county in which he or she serves or a member in good standing with The Florida Bar and a qualified and registered elector of this state.

(2) Each party, each political committee, and each candidate requesting to have poll watchers shall designate, in writing to the supervisors of elections, on a form prescribed by the division, before noon of the second Tuesday preceding the election poll watchers for each polling room on election day. Designations of poll watchers for early voting areas, secure drop box locations, or ballot tabulation areas shall be submitted in writing to the supervisor of elections, on a form prescribed by the division, before noon at least 14 days before early voting begins. If the deadline for submitting the designation form falls on a Saturday, Sunday, or legal holiday, the form must be submitted before noon on the next business day. The poll watchers for polling rooms shall be approved by the supervisor of elections on or before the Tuesday before the election. Poll watchers for early voting areas, secure drop box locations, or ballot tabulation areas shall be approved by the supervisor of elections no later than 7 days before early voting begins, before a secured drop box is made accessible to the public, or before ballot tabulation begins, whichever is sooner. The supervisor shall furnish to each election board, secure drop box monitor, and any designated supervisor employee a list of the poll watchers designated and approved for such polling rooms, ~~or~~ early voting areas, secure drop box locations, or ballot tabulation areas. Designation of poll watchers shall be made by the chair of the state or county executive committee of a political party, the chair of a political committee, or the

candidate requesting to have poll watchers, or an authorized designee thereof.

(4) All poll watchers shall be allowed to enter, ~~and watch,~~ and meaningfully observe polls in all polling rooms and early voting areas, all secure drop boxes, and all ballot tabulation areas within the county or counties in which they have been designated if the number of poll watchers at any particular location ~~polling place~~ does not exceed the number provided in this section. Nothing shall prohibit a poll watcher from being designated for more than one location.

(5) The supervisor of elections shall provide to each designated poll watcher an ~~, no later than 7 days before early voting begins, a poll watcher~~ identification badge no larger than 3 inches by 5 inches that identifies the poll watcher by name but does not identify the candidate, party, or political committee designating the poll watcher. Each poll watcher must wear his or her identification badge while performing his or her duties. (paragraph (5) currently in House Bill)

NEW LANGUAGE FOR BILL- AUTHORITY OF SECRETARY TO INVESTIGATE

Section XX. Subsections (14) and (15) of section 97.012, Florida Statutes are amended to read:

97.012 Secretary of State as chief election officer.-

(14) Bring and maintain such actions at law or in equity by mandamus or injunction to enforce the performance of any duties of a county supervisor of elections or any official performing duties with respect to chapters 97 through 102 and 105 or to enforce compliance with a rule, opinion, or directive of the Department of State adopted or issued to interpret or implement any of those chapters.

(a) Venue for such actions shall be in the Circuit Court of Leon County.

(b) When the secretary files an action under this section and not more than 60 days remain before an election as defined in s. 97.021, or during the time period after the election and before certification of the election pursuant to s. 102.112 or s. 102.121, the court, including an appellate court, shall set an immediate hearing, giving the case priority over other pending cases.

(c) Prior to filing an action to enforce performance of the duties of the supervisor of elections or any official described in this subsection, the secretary or his or her designee first must confer, or must make a good faith attempt to confer, with the supervisor of elections or the official to ensure compliance with chapters 97 through 102 and 105 or the rules of the Department of State adopted under any of those chapters.

(15) Conduct preliminary investigations into any irregularities or fraud involving the official election administration duties of a county supervisor of elections or county canvassing board, voter registration, voting, candidate petition, or issue petition activities and report his or her findings to the

statewide prosecutor or the state attorney for the judicial circuit in which the alleged violation occurred for prosecution, if warranted. The Department of State may prescribe by rule requirements for filing an elections-fraud complaint and for investigating any such complaint.

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NEW SECTION- SEVERABILITY CLAUSE

Section XX. The provisions of this act are severable. If any provision of this act or the application is held invalid with respect to any person or circumstance, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Exhibit D

RETRIEVED FROM DEMOCRAT DOCKET.COM

Theodore, Elisabeth

From: Theodore, Elisabeth
Sent: Monday, October 18, 2021 2:33 PM
To: zzz.External.mjazil@holtzmanvogel.com; 'Pratt, Joshua'
Cc: Fritz Wermuth; Cavataro, Benjamin; Michelle Kanter Cohen; zzz.External.kromero@latinojustice.org; Meros, Nicholas; John Cycon
Subject: RE: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Mo,

Thanks for your note and for meeting and conferring. While we continue to disagree that the legislative privilege and deliberative process privilege apply to the topics in our subpoena to the Executive Officer of the Governor, we understand that you do not plan to offer a Rule 30(b)(6) representative to testify on Wednesday, and we can agree that, if you file your motion to quash by Oct. 21, we will not seek to hold your client in contempt for failing to appear pending Judge Walker's decision on the motion. If the Court resolves your motion in our favor, we can work out a mutually agreeable time to reschedule.

Given your agreement that at least "several of the Topics likely do not implicate either privilege on their face," we do anticipate that the deposition will go forward, and we do not think that it will be possible to enter into a factual stipulation that would avoid the need for a subpoena.

You have also raised an objection about the amount of preparation time with respect to Topic 6. We believe that two weeks is an adequate amount of time to prepare, and we note that you served 18 extremely broad 30(b)(6) topics for the deposition of plaintiff Florida Rising Together on October 14, well less than two weeks in advance of the deposition date. Moreover, you advised us that, as of our October 14 meet and confer, which took place over a week after we served the subpoena, you had not even identified a 30(b)(6) witness or began preparations. Nonetheless, we are happy to discuss any proposals that you might have for narrowing Topic 6.

Regards,
Elisabeth

From: Mohammad O. Jazil <mjazil@holtzmanvogel.com>
Sent: Monday, October 18, 2021 10:50 AM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Pratt, Joshua' <Joshua.Pratt@eog.myflorida.com>
Cc: Fritz Wermuth <fwermuth@kbzwlaw.com>; Cavataro, Benjamin <bcavataro@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; zzz.External.kromero@latinojustice.org <kromero@latinojustice.org>; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>; John Cycon <jcycon@HoltzmanVogel.com>
Subject: RE: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

External E-mail

Elisabeth,

I write to follow-up on the last point in my email from Thursday: "Lastly, we tentatively agreed, subject to you checking with the two plaintiff groups not on the call, that the Executive Office of Governor DeSantis would have until October 21 to file a motion to quash and that you would not hold the Office in contempt until Judge Walker rules."

Thanks,
Mo

Mohammad O. Jazil
Mobile: (850) 274-1690

mjazil@holtzmanvogel.com // www.HoltzmanVogel.com



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DISCLAIMER

Any accounting, business or tax advice contained in this communication, including attachments and enclosures, is not intended as a thorough, in-depth analysis of specific issues, nor a substitute for a formal opinion, nor is it sufficient to avoid tax-related penalties. If desired, Holtzman Vogel, PLLC would be pleased to perform the requisite research and provide you with a detailed written analysis. Such an engagement may be the subject of a separate engagement letter that would define the scope and limits of the desired consultation services.

From: Mohammad O. Jazil

Sent: Thursday, October 14, 2021 7:51 PM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Pratt, Joshua' <Joshua.Pratt@eog.myflorida.com>

Cc: Fritz Wermuth <fwermuth@kbzwlaw.com>; Cavaturo, Benjamin <bcavaturo@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; kromero@latinojustice.org; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>; John Cycon <jcycon@HoltzmanVogel.com>

Subject: RE: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Elisabeth,

Thank you for taking the time to meet and confer with us this afternoon about the subpoena to the Executive Office of Governor DeSantis, and we appreciate your willingness to work with us on discovery issues. As discussed, after our conversation we are inclined to exert the legislative privilege and/or deliberative process privilege in response to the Topics in subpoena. While we agree that several of the Topics likely do not implicate either privilege on their face, we believe that subsequent questioning beyond factual issues would be covered by privilege. For example, you indicated that you'll want to ask questions that delve into the Governor's intent in promoting the bill, which would fall under the legislative privilege. Attached please find two cases that may be instructive. Also, we feel that factual questions would be more appropriately handled through stipulations, and we would be happy to work with you towards that end.

We will send you more formal objections early next week, but, in addition to the above, we think that the time provided between service of the subpoena (both the original and amended version provided today) is insufficient to prepare a 30(b)(6) representative—especially considering the scope of some of the topics. For example, Topic 6 calls for “[a]ll communications regarding Senate Bill 90 between the Executive Office of the Governor and . . . members of the Florida Legislature, the Florida Attorney General’s Office, the Florida Department of State, any Florida Supervisor of Elections, the Florida Supervisors of Elections (‘FSE’), Defendants-Intervenors, the National Republican Congressional Committee, any Republican State or local officials, the Heritage Foundation, Heritage Action for America, and any of their employees, staff, contractors, consultants, advisors, agents representatives, lobbyists, or anyone acting on their behalf.” Properly preparing a representative to discuss that Topic clearly takes more than two weeks, and is quite a burden for a third party.

Lastly, we tentatively agreed, subject to you checking with the two plaintiff groups not on the call, that the Executive Office of Governor DeSantis would have until October 21 to file a motion to quash and that you would not hold the Office in contempt until Judge Walker rules. Please confirm whether that will be acceptable.

Hope all is well,

Mohammad O. Jazil

Mobile: (850) 274-1690

mjazil@holtzmanvogel.com // www.HoltzmanVogel.com



PRIVILEGED AND CONFIDENTIAL

This communication and any accompanying documents are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon this communication is strictly prohibited. Moreover, any such disclosure shall not compromise or waive the attorney-client, accountant-client, or other privileges as to this communication or otherwise. If you have received this communication in error, please contact me at the above email address. Thank you.

DISCLAIMER

Any accounting, business or tax advice contained in this communication, including attachments and enclosures, is not intended as a thorough, in-depth analysis of specific issues, nor a substitute for a formal opinion, nor is it sufficient to avoid tax-related penalties. If desired, Holtzman Vogel, PLLC would be pleased to perform the requisite research and provide you with a detailed written analysis. Such an engagement may be the subject of a separate engagement letter that would define the scope and limits of the desired consultation services.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Thursday, October 14, 2021 10:37 AM

To: 'Pratt, Joshua' <Joshua.Pratt@eog.myflorida.com>

Cc: Fritz Wermuth <fwermuth@kbzwlaw.com>; Cavataro, Benjamin <bcavataro@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; kromero@latinojustice.org; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>; Mohammad O. Jazil <mjazil@holtzmanvogel.com>; John Cycon <jcycon@HoltzmanVogel.com>

Subject: RE: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Apologies, I realize I included the amended topics, but forgot to include the actual amended subpoena. It is attached.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Thursday, October 14, 2021 9:48 AM

To: 'Pratt, Joshua' <Joshua.Pratt@eog.myflorida.com>

Cc: Fritz Wermuth <FWermuth@kbzwlaw.com>; Cavataro, Benjamin <BCavataro@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; zzz.External.kromero@latinojustice.org <kromero@latinojustice.org>; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>; zzz.External.mjazil@holtzmanvogel.com <mjazil@holtzmanvogel.com>; John Cycon <jcycon@HoltzmanVogel.com>

Subject: RE: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Thanks, Josh. In advance of the call, I am also serving an amended deposition subpoena. The only change is to add one additional topic (#11).

Looking forward to speaking at 3.

From: Pratt, Joshua <Joshua.Pratt@eog.myflorida.com>

Sent: Thursday, October 14, 2021 8:39 AM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Cc: Fritz Wermuth <FWermuth@kbzwlaw.com>; Cavataro, Benjamin <BCavataro@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; zzz.External.kromero@latinojustice.org <kromero@latinojustice.org>; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>; zzz.External.mjazil@holtzmanvogel.com <mjazil@holtzmanvogel.com>; John Cycon <jcycon@HoltzmanVogel.com>

Subject: RE: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

External E-mail

Thanks Elisabeth. Talk to you all at 3:00 p.m. eastern time.

--

Conference Line: +1 (571) 440-7089; **access code:** 47014

--

Joshua E. Pratt

Deputy General Counsel

Executive Office of the Governor

850-717-9267

Please note that under Florida law correspondence sent to me, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Wednesday, October 13, 2021 10:55 PM

To: Pratt, Joshua <Joshua.Pratt@eog.myflorida.com>

Cc: Fritz Wermuth <FWermuth@kbzwlaw.com>; Cavataro, Benjamin <BCavataro@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; kromero@latinojustice.org; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>; mjazil@holtzmanvogel.com

Subject: RE: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Josh:

3pm works fine for me.

Thanks,
Elisabeth

From: Pratt, Joshua <Joshua.Pratt@eog.myflorida.com>

Sent: Wednesday, October 13, 2021 5:46 PM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Cc: Fritz Wermuth <FWermuth@kbzwlaw.com>; Cavataro, Benjamin <BCavataro@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; zzz.External.kromero@latinojustice.org <kromero@latinojustice.org>; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>; zzz.External.mjazil@holtzmanvogel.com <mjazil@holtzmanvogel.com>

Subject: RE: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

External E-mail

No worries. How does tomorrow at 3:00 p.m. sound? We'd be happy to send around a conference call invite.

--

Joshua E. Pratt
Deputy General Counsel
Executive Office of the Governor
850-717-9267

Please note that under Florida law correspondence sent to me, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, October 13, 2021 3:28 PM
To: Pratt, Joshua <Joshua.Pratt@eog.myflorida.com>
Cc: Fritz Wermuth <FWermuth@kbzwlw.com>; Cavatara, Benjamin <BCavatara@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; kromero@latinojustice.org; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>; mjazel@holtzmanvogel.com
Subject: Re: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Hi Josh - I am traveling on 10/15. Are you folks available tomorrow?

On Oct 13, 2021, at 3:24 PM, Pratt, Joshua <Joshua.Pratt@eog.myflorida.com> wrote:

External E-mail

Dear Elizabeth,

If it works for you and your team, I propose that we schedule a telephonic Rule 30(b)(6) meet and confer for the afternoon of 10/15/2021 to discuss the matters for examination and the date of deposition. We have some initial concerns regarding the scope of the subpoena, including matters of potential privilege, but are hopeful that we can work together in good faith to resolve such concerns prior to the deposition of our Rule 30(b)(6) representative.

We're currently free anytime after 1:00 p.m. on 10/15/2021.

- Sincerely, Josh

--

Joshua E. Pratt
Deputy General Counsel
Executive Office of the Governor
850-717-9267

Please note that under Florida law correspondence sent to me, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, October 13, 2021 8:49 AM
To: Pratt, Joshua <Joshua.Pratt@eog.myflorida.com>
Cc: Fritz Wermuth <FWermuth@kbzwlaw.com>; Cavataro, Benjamin <BCavataro@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; kromero@latinojustice.org; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>
Subject: Re: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Thanks Josh. The 21st or 22nd would work if the 20th does not.

On Oct 12, 2021, at 2:35 PM, Pratt, Joshua <Joshua.Pratt@eog.myflorida.com> wrote:

External E-mail

Dear Elizabeth,

Thanks for asking. I'll discuss with our team internally and plan on getting back to you by close of business tomorrow.

- Sincerely, Josh

--

Joshua E. Pratt
Deputy General Counsel
Executive Office of the Governor
850-717-9267

Please note that under Florida law correspondence sent to me, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Tuesday, October 12, 2021 1:05 PM
To: Pratt, Joshua <Joshua.Pratt@eog.myflorida.com>
Cc: Fritz Wermuth <FWermuth@kbzwlaw.com>; Cavataro, Benjamin <BCavataro@cov.com>; Michelle Kanter Cohen <mkantercohen@fairelectionscenter.org>; kromero@latinojustice.org; Meros, Nicholas <Nicholas.Meros@eog.myflorida.com>
Subject: Re: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Dear Josh - thanks very much for accepting service. I wanted to follow up to see if going forward on October 20 is agreeable or if you or the 30(b)(6) representative would prefer a different date.

Many thanks,
Elisabeth

On Oct 6, 2021, at 5:18 PM, Pratt, Joshua
<Joshua.Pratt@eog.myflorida.com> wrote:

External E-mail

Dear Elizabeth,

I hereby confirm receipt of the attached copy of the subpoena and accept service thereof. Thanks.

- Sincerely, Josh

--

Joshua E. Pratt
Deputy General Counsel
Executive Office of the Governor
850-717-9267

Please note that under Florida law correspondence sent to me, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.

From: Uthmeier, James <James.Uthmeier@eog.myflorida.com>
Sent: Wednesday, October 6, 2021 5:01 PM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Cc: 'Fritz Wermuth' <fweremuth@kbzwlaw.com>; 'Cavataro, Benjamin' <BCavataro@cov.com>; 'Michelle Kanter Cohen' <mkantercohen@fairelectionscenter.org>; kromero@latinojustice.org;
Pratt, Joshua <Joshua.Pratt@eog.myflorida.com>
Subject: Re: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Hi all - I have moved out of the Governor's legal office but am copying Deputy General Counsel Josh Pratt who may be able to help.

Best,
James

Get [Outlook for iOS](#)

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, October 6, 2021 4:55:14 PM
To: Uthmeier, James <James.Uthmeier@eog.myflorida.com>
Cc: 'Fritz Wermuth' <fweremuth@kbzwlaw.com>; 'Cavataro, Benjamin' <BCavataro@cov.com>; 'Michelle Kanter Cohen' <mkantercohen@fairelectionscenter.org>; kromero@latinojustice.org;
<kromero@latinojustice.org>
Subject: SB 90 Litigation (League of Women Voters et al v. Lee) - Service of Subpoena on Executive Office of the Governor

Mr. Uthmeier,

I'm counsel for the Florida Rising Together plaintiffs in the litigation relating to SB 90. I understand from my colleagues that you are able to accept service of a subpoena to take a deposition under Rule 30(b)(6) of a representative of the Executive Office of the Governor. I've attached a copy of the subpoena; could you please confirm receipt and that you will accept service? I have noticed this for October 20, 2021, but we are happy to work with you on a date once you have identified the representative who will testimony.

Regards,
Elisabeth

Elisabeth S. Theodore
Partner

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5891
Elisabeth.Theodore@arnoldporter.com | www.arnoldporter.com

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Exhibit E

RETRIEVED FROM DEMOCRAT DOCKET.COM

Smith, Daniel A

From: please-do-not-reply@ufl.edu
Sent: Monday, October 11, 2021 1:49 PM
To: Smith, Daniel A
Subject: DOI00019899 UFOLIO Disapproved



This is an automated notification. Please do not reply to this email.

UFOLIO Disclosure Disapproved

Disclosure: DOI00019899
Discloser: Daniel Smith
Department: LS-POLITICAL SCIENCE
Entity: Demos
Disclosure Type: Legal Consulting

David Richardson reviewed the above referenced disclosure and **disapproved** this request for the following reasons:

Comments: Outside activities that may pose a conflict of interest to the executive branch of the State of Florida create a conflict for the University of Florida.

Click [here](#) to access the disclosure.

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Smith, Daniel A

From: please-do-not-reply@ufl.edu
Sent: Wednesday, October 13, 2021 3:16 PM
To: Smith, Daniel A; McDonald, Michael
Subject: DOI00019897 UFOLIO Disapproved

Follow Up Flag: Follow up
Flag Status: Flagged



This is an automated notification. Please do not reply to this email.

UFOLIO Disclosure Disapproved

Disclosure: DOI00019897
Discloser: Michael McDonald
Department: LS-POLITICAL SCIENCE
Entity: Arnold and Porter
Disclosure Type: Legal Consulting

Gary Wimsett reviewed the above referenced disclosure and **disapproved** this request.

Comments: Reasons:

Impermissible Conflict of Interest

UF will deny its employees' requests to engage in outside activities when it determines the activities are adverse to its interests. As UF is a state actor, litigation against the state is adverse to UF's interests.

Gary Wimsett
Assistant Vice President, Conflicts of Interest

Click [here](#) to access the disclosure.

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Smith, Daniel A

From: please-do-not-reply@ufl.edu
Sent: Friday, October 15, 2021 10:51 AM
To: Smith, Daniel A; AUSTIN, SHARON D
Subject: DOI00020370 UFOLIO Disapproved



This is an automated notification. Please do not reply to this email.

UFOLIO Disclosure Disapproved

Disclosure: DOI00020370
Discloser: Sharon Austin
Department: LS-POLITICAL SCIENCE
Entity: Advancement Project
Disclosure Type: Legal Consulting

Gary Wimsett reviewed the above referenced disclosure and **disapproved** this request.

Comments: Reasons:

Impermissible Conflict of Interest

UF will deny its employees' requests to engage in outside activities when it determines the activities are adverse to its interests. As UF is a state actor, litigation against the state is adverse to UF's interests.

Gary Wimsett
Assistant Vice President, Conflicts of Interest

Click [here](#) to access the disclosure.

NOTE: This communication may contain information that is legally protected from unauthorized disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this message in error, you should notify the sender immediately by telephone or by return email and delete this message from your computer.

Exhibit F

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: Uthmeier, James <James.Uthmeier@eog.myflorida.com>

Sent: Monday, September 20, 2021 8:36 AM

To: Fritz Wermuth <FWermuth@kbzwlaw.com>

Cc: Melissa Hill <mhill@kbzwlaw.com>; Kimberly Healy <khealy@kbzwlaw.com>; Pratt, Joshua <Joshua.Pratt@eog.myflorida.com>

Subject: Re: Case 4:21-cv-00186-MW-MAF LEAGUE OF WOMEN VOTERS OF FLORIDA INC et al v. LEE et al. (N.D. Fla.) -- Service of Subpoenas

We can accept service by email. Thanks.

Get Outlook for iOS

From: Fritz Wermuth <FWermuth@kbzwlaw.com>

Sent: Tuesday, September 14, 2021 3:33 PM

To: Uthmeier, James

Cc: Melissa Hill; Kimberly Healy

Subject: RE: Case 4:21-cv-00186-MW-MAF LEAGUE OF WOMEN VOTERS OF FLORIDA INC et al v. LEE et al. (N.D. Fla.) -- Service of Subpoenas

Hi James,

As you may remember, you previously accepted service of document subpoenas in the above-referenced case. Plaintiffs in the above-referenced case and in consolidated cases challenging SB 90 plan

to send one or more subpoenas for deposition to Governor and a person most knowledgeable in the Governor's office regarding SB90. Please let me know if you will accept service for those subpoenas.

Thanks.

Fritz Wermuth | Shareholder

fwermuth@kbzwlaw.com

KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.

From: Uthmeier, James <James.Uthmeier@eog.myflorida.com>

Sent: Monday, June 7, 2021 3:07 PM

To: Kimberly Healy <khealy@kbzwlaw.com>

Cc: Fritz Wermuth <FWermuth@kbzwlaw.com>; Melissa Hill <mhill@kbzwlaw.com>

Subject: Re: Case 4:21-cv-00186-MW-MAF LEAGUE OF WOMEN VOTERS OF FLORIDA INC et al v. LEE et al. (N.D. Fla.) -- Service of Subpoenas

Hi Kim -

I am happy to accept service of these subpoenas by this email.

Thanks,

James

Get Outlook for iOS

From: Kimberly Healy <khealy@kbzwlaw.com>

Sent: Friday, June 4, 2021 2:48 PM

To: Uthmeier, James

Cc: Fritz Wermuth; Melissa Hill

Subject: Case 4:21-cv-00186-MW-MAF LEAGUE OF WOMEN VOTERS OF FLORIDA INC et al v. LEE et al. (N.D. Fla.) -- Service of Subpoenas

Dear Mr. Uthmeier:

We represent Plaintiffs in the above-referenced case. I am attaching two subpoenas – one to Governor DeSantis and one to the Executive Office of the Governor.

Are you willing to accept service of these subpoenas in lieu of formal service?

Thank you –

Kim Healy

Kimberly D. Healy

khealy@kbzwlaw.com

KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.

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Tel: 407-422-2472 | Fax: 407-648-0161

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Please note that under Florida law correspondence sent to the Governor's Office, which is not confidential or exempt pursuant to chapter 119 of the Florida Statutes, is a public record made available upon request.