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

FLORIDA RISING TOGETHER, et al., Plaintiffs, v. LAUREL M. LEE, in her official capacity as Florida Secretary of State, et al., Defendants.	Case No. 4:21-cv-201-MW/MJF

FLORIDA RISING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs Florida Rising Together, UnidosUS, Equal Ground Education Fund, Hispanic Federation, Poder Latinx, Haitian Neighborhood Center Sant La, and Mi Familia Vota Education Fund (the "*Florida Rising* Plaintiffs") move for summary judgment on the following claims under Federal Rule of Civil Procedure 56 and Local Rule 56.1: Claims 5, 6, and 8 of the First Amended Complaint (ECF 59). The *Florida Rising* Plaintiffs' arguments are fully set forth in the attached Memorandum of Law in Support of Motion for Partial Summary Judgment.

Dated: November 12, 2021

Respectfully submitted,

s/ *Kira Romero-Craft*

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(D), an attorney conference was not conducted as the motion would determine the outcome of several of Plaintiffs' claims.

LOCAL RULE 7.1(F) CERTIFICATION

Pursuant to Local Rule 7.1(F), this motion contains 82 words. The attached Memorandum of Law in Support of Motion for Partial Summary Judgment contains 7,703 words, excluding the case style, signature block, and any certificate of service.

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 12th of November, 2021.

s/ *Kira Romero-Craft*
Attorney for Plaintiffs

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FLORIDA RISING PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

The *Florida Rising* Plaintiffs seek partial summary judgment on Claims 5, 6, and 8 of the operative complaint (ECF 59). Claims 5 and 6 concern Section 29 of Senate Bill 90 ("SB 90"), Fla. Stat. § 102.031(4)(b) ("Section 29"), which prohibits anyone from "engaging in any activity with the intent to influence or effect of influencing a voter" within 150 feet of a polling location. Claim 8 concerns SB 90 Section 7, Fla. Stat. § 97.0575(3)(a) ("Section 7") which requires organizations that register voters to provide a lengthy warning to applicants that, among other things, the organization "might not deliver" the application on time.

The discovery record confirms that summary judgment is warranted on these claims. Specifically, the record confirms that Section 29 is unconstitutionally vague and encourages discriminatory enforcement, *see generally FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012), and has impermissibly interfered with assistance that the plaintiffs are entitled to provide voters under the Voting Rights Act and the First Amendment. And the record has also confirmed that in enacting Section 7, Florida is "telling" plaintiffs "what they must say," without a compelling interest, in violation of the First Amendment. *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc. (FAIR)*, 547 U.S. 47, 61 (2006).

Plaintiffs' remaining claims under the Equal Protection Clause, the Voting Rights Act, and the *Anderson-Burdick* standard are fact-intensive and will need to be

adjudicated when trial starts on January 31. But Claims 5, 6 and 8 are ripe for adjudication, and summary judgment should be granted against the Defendants.

LOCAL RULE 56.1(B) STATEMENT OF FACTS ("SOF")

A. Plaintiffs' Voter Registration Activities and Polling-Place Assistance Prior to SB 90

1. Plaintiffs are voter engagement organizations that seek to increase the political power of marginalized constituencies in Florida by, among other things, educating and mobilizing voters. ECF 238-21 at 22:11-23:5; ECF 238-23 at 28:16-23; ECF 238-24 at 19:4-20:8; ECF 238-25 at 8:14-21, 14:18-23; ECF 238-29 at 40:12-41:9; ECF 238-30 at 13:15-16, 24:21-25:1, 29:9-14; ECF 238-31 at 23:23-24:19, 53:4-16; As relevant to this motion, Plaintiffs have engaged in two mobilization tactics.

2. ***Voter Registration***: Plaintiffs FRT, Unidos, Equal Ground, Hispanic Federation, Poder Latinx, and Mi Familia have all run voter registration programs. ECF 238-23 at 28:16-23, 36:20-37:5, 42:20-43:1; ECF 238-24 at 19:11-20:8, 34:17-35:5, 40:1-41:9, 75:23-76:6; ECF 238-25 at 14:18-23, 35:10-13; ECF 238-29 at 32:12-23, 33:23-34:6, 43:8-11, 45:12-23, 46:6-11, 63:8-64:19; ECF 238-30 at 29:9-11, 30:22-31:4, 31:11-13, 32:6, 36:6-14, 42:21-22; ECF 238-31 at 42:18-23, 43:11-17, 53:18-55:6. For example, in 2020, Unidos collected 71,160 applications; Poder collected 40,516 applications; Hispanic Federation collected 12,896 applications, Equal Ground collected 2,800 applications; Mi Familia collected 4,186 applications.

ECF 238-25 at 19:13-14; ECF 238-30 at 32:6; ECF 240-2 at ¶ 22; ECF 240-5 at ¶ 8.

3. As of August 2021, an estimated 763,240 individuals who had registered to vote in Florida had registered through a third-party voter registration organization ("3PVRO"). ECF 238-9 ¶¶ 39-40. This number is likely an undercount, as it reflects only the most recent registration and would not include people who initially registered through a 3PVRO and then renewed at a DMV. ECF 238-9 ¶¶ 40-41.

4. Third-party registration is a particularly important method to register Black and Hispanic voters; at least 10.9% of Black and 9.6% of Hispanic voters registered through a 3PVRO, compared to only 1.87% of white voters. ECF 238-9 ¶ 46 & tbl.2.

5. ***Polling-Place Assistance***: Florida has a history of long lines at in-person polling locations, particularly in heavily Black and Hispanic precincts. ECF 238-9 ¶¶ 225, 230, 233, 242-44; ECF 238-8 ¶¶ 12-16, 64, 76; ECF 238-7 ¶ 73.

6. In response, Plaintiffs FRT, Equal Ground, Hispanic Federation, Poder Latinx, Sant La, and Mi Familia run programs to assist voters at polls. ECF 238-21 at 51:19-53:19, 56:5-21; ECF 238-23 at 45:12-46:8, 66:17-67:11; ECF 238-24 at 59:13-60:21, 76:17-77:6; ECF 238-25 at 23:23-24:4, 44:23-45:19; ECF 238-30 at 45:19-46:24; ECF 238-31 at 79:10-80:15, 115:8-117:19. Some Plaintiffs provide language assistance as part of their programs. ECF 238-21 at 51:19-53:19, 56:5-21; ECF 238-30 at 45:24-46:24; ECF 238-31 at 79:21-80:10, 115:8-117:3. Mi Familia

provides assistance to voters with disabilities. ECF 240-4 at ¶ 21. And some Plaintiffs provide material assistance to voters in line, such as water, food, chairs, or umbrellas. ECF 238-23 at 45:12-46:8; ECF 238-24 at 59:13-62:12, 76:17-77:6; ECF 238-25 at 23:23-24:6, 27:17-28:1, 44:23-45:10; ECF 238-31 at 79:10-80:15, 81:13-82:17, 117:5-19. Almost all of the Plaintiffs previously conducted line warming activities within 150 feet of polling places and other voting sites. ECF 238-21 at 52:19-53:19 (provides language assistance in polling site); ECF 238-24 at 61:12-62:12 (volunteers would offer assistance within 150 feet of polling place); ECF 238-25 at 27:17-28:1 (assistance provided 100 feet from polling center); ECF 238-30 at 45:24-46:24 (assistance provided 50 feet from polling location); ECF 238-31 at 81:19-82:6, 116:22-117:19 (providing refreshments and language assistance within 100 and 150 feet of polling location, respectively).

7. Plaintiffs engage in this voter assistance activity to encourage individuals to vote and to communicate the importance of participating in the political process. ECF 238-21 at 54:12-20 (Plaintiff "tr[ies] to prevent" voters from leaving because they did not understand how to vote); ECF 238-23 at 46:18-25 (providing assistance to supplement low turnout at early poll sites); ECF 238-24 at 59:22-60:1 (discussing how efforts are focused in "Latino and Black communities where it's very common for there to be a very long line" and including "different ways to make people feel comfortable as they wait in lines"); *id*. at 65:3-9 (encouraging voters not to leave a

line when it was raining); ECF 238-30 at 46:4-8 (troubleshooting with voters who are turned away from voting because of an ID issue to prevent disenfranchisement); ECF 238-31 at 80:11-15 ("[W]e help people to stay in line whether providing chairs, little toys for the kids, even if people have to charge their phone to communicate they have to stay longer in the line").

B. SB 90's Compelled Disclaimer Provision ("Section 7")

8. As relevant here, Section 7 requires 3PVROs to:

> notify the [voter registration] applicant at the time the application is collected that the organization might not deliver the application to the division or the supervisor of elections in the county in which the applicant resides in less than 14 days or before registration closes for the next ensuing election.

Fla. Stat. § 97.0575(3)(a). In addition, the provision also requires 3PVROs to "advise the applicant that he or she may deliver the application in person or by mail," and to "inform the applicant how to register online with the division and how to determine whether the application has been delivered." *Id.*

9. Several of the Defendant Supervisors of Elections recognized that the new provision will hinder third-party registration efforts. For example, when Leon County Supervisor Mark Earley was asked whether Section 7 would make third-party voter registration more difficult, he responded yes. He explained: "You're asking somebody to entrust your voter registration form to me -- to them but you're telling them that I might not turn it in. What the hell? That's crazy." ECF 238-13 at

175:5-176:5; *see also id.* ("[C]ertainly it's a disincentive to the voter to take advantage of their services and … it makes it harder for those groups to provide the services."); ECF 238-15 at 32:21-33:3 ("[It] greatly erodes trust if they have to say that to people as they are trying to get them to register to vote"); *id*. at 155:5-13 ("I think it was designed to make it so that more often than not people will just walk away and not get registered").

10. Defendants have not been able to identify the interest that Section 7 serves. The Secretary's response to written discovery states that the provision "serves to remind voters that they can register directly through various means, including online and, that by registering through a third-party group, the voters run the risk of their registration not being processed in time for book closing before an upcoming election." ECF 238-6 at No. 1. But the Secretary's 30(b)(6) witness admitted during deposition that she could not identify any voter "who was unable to vote in an election as a result of an untimely filed application by a 3PVRO." ECF 238-26 at 138:23-139:5.

11. Numerous Supervisors similarly testified they either were not aware of any voter applications being turned in late, ECF 238-12 at 106:4-107:4; ECF 238-16 at 96:23-97:2; ECF 238-11 at 129:4-129:20; ECF 238-15 at 86:25-87:4, or were aware of only small numbers of applications being turned in sufficiently late that the applicant was not able to vote. ECF 238-19 at 165:6-165:21 ("approximately eight");

ECF 238-13 at 92:17-92:24 ("I would say it's rare"), ECF 238-14 at 147:25-148:10 ("[N]one of those contributed to somebody not being registered to vote and not being able to vote"); ECF 238-10 at 31:5-8 (failing to recall any forms "delivered after book closing"); ECF 238-17 at 90:20-25 (unaware of any voter prevented from voting because 3PVRO turned in form late); ECF 238-28 at ¶¶ 30-31 (same); ECF 238-22 at ¶¶ 33-34 (same). In discovery, 63 supervisors admitted they are unaware of any voter who was unable to vote in 2020 because a 3PVRO returned their application late. ECF 238-33.

12. No other state has adopted a compelled disclaimer requirement comparable to Florida's. Defendants' expert, Dr. Quentin Kidd, claimed to have looked at the laws of all 50 states and could not identify any other state with a comparable disclaimer requirement for 3PVROs. ECF 238-32 at 65:10-76:15. Of the seven states identified in his report, none has a comparable oral requirement for organizations engaged in registration activities. *Id.* And Kidd was not able to identify any state besides Florida that requires the 3PVRO to state that "the organization might not deliver the application to the division or the supervisor of elections in the county in which the applicant resides in less than 14 days or before registration closes for the next ensuing election" or to provide the other statements required by Section 7. *Id.* at 76:16-77:17.

13. Plaintiffs' expert, Dr. Michael McDonald, has confirmed that no other state has a comparable disclaimer requirement for 3PVROs. ECF 238-18 at 13-15.

C. SB 90's Polling Place Assistance Restriction ("Section 29")

14. Florida has long prohibited the "solicitation" of voters within a set distance of a polling location. "Solicitation," however, was previously defined as "seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, 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." Fla. Stat. § 102.031(4)(b) (2020). The prohibition did not encompass the provision of non-partisan assistance at the polls. Accordingly, many of the Plaintiffs provided various forms of non-partisan assistance at polling places prior to the passage of SB 90. *See* SOF ¶ 6.

15. Section 29 expanded the definition of "solicitation." The prohibited acts now include "engaging in any activity with the intent to influence or effect of influencing a voter." Fla. Stat. § 102.031(4)(b).

16. Section 29 came up repeatedly during legislative debates, with the lead sponsors taking shifting—and conflicting—positions on what the provision means. For example, at a Senate Rules Committee hearing, Senator Baxley stated that he could "ensure, unlike other states, that a glass of water given in sincerity is not a

violation of the law." ECF 238-2 at 9:3-16. Similarly, when asked at a hearing whether the law would ban giving water to voters in line, Representative Ingoglia initially seemed to indicate the answer was no; he stated that the provision "boils down to" a prohibition on "campaigning on line." ECF 238-1 at 23:13-24:14. At other times, however, Representative Ingoglia took a harder line, emphasizing that only Supervisor employees were allowed to provide *anything* to voters in line. *See, e.g.*, ECF 238-4 at 5:4-14 (stating that the bill "expressly permits employees and volunteers of the supervisors to provide nonpartisan assistance and give such items as water to voters in line"); *id*. at 39:10-41:6 (only "an elections office can hand out that stuff [water, food, medication, an umbrella] if they want"). And he seemed to indicate that providing this type of assistance could be an attempt to "influence" voters in line. *Id*. at 43:16-44:11 ("[I]f the opposite side thinks that there was an intent for you to influence the vote of people on line, then I think [providing water and pizza to voters] would run afoul of the language"); *id*. at 54:19-55:9 ("My only worry is people trying to influence voters while they are standing in line waiting to vote.").

17. The Secretary's 30(b)(6) witness added to the confusion. At her deposition, she interpreted the provision as barring only activities that constitute "harassment, intimidation and undue influence." ECF 238-26 at 160:2-5, 161:4-12. When asked whether "encouraging a voter to stay in line to vote without discussing

any candidate or issue" would be prohibited, she said the answer was no—"as long as it's not intending, it's not harassing them, you are not trying to solicit them in any way." *Id.* Similarly, in response to an interrogatory asking the Secretary to identify "each State interest" that Section 29 is alleged to promote, the Secretary stated: "The limitation on partisan solicitation of voters in line serves the State's interest in curbing harassment, intimidation, and undue influence at the polls; it seeks to *prevent* a chilling effect on the exercise of the franchise." ECF 238-6 at No. 1.

18. But the Supervisors of Elections—the parties responsible for enforcing Section 29[1]—largely testified that they understood this provision required far broader restrictions than the Secretary apparently does. They understand the provision to bar *all* interactions between nonpartisan organizations and voters within 150 feet of the polls. Miami-Dade Supervisor Christina White testified that she considers the provision to be "vague" and that her office bans all activity within 150 feet of the polls "because it's impossible … to discern what is partisan and what is non-partisan activity." ECF 238-10 at 77:9-21, 101:18-102:3. Similarly, Hillsborough Supervisor Craig Latimer testified that he considered a "nonpartisan volunteer provid[ing] a bottle of water to a voter on his or her way into the polling place" to be unlawful solicitation because he does not "have any idea what that person is talking to the voter about." ECF 238-14 at 170:9-18. Several other

[1] *See* ECF 201 at 25-26.

supervisors testified similarly. *See* ECF 238-20 at 57:4-58:14 ("[N]o activities can take place within 150 feet of a polling place entrance or early voting site"), ECF 238-11 at 130:16-131:8 ("[I]nside that 150-foot radius, nobody is allowed to interact with them except the election workers themselves").

19. Section 29, like Section 7, is unique among the states. Defendants' expert, Dr. Kidd, could not identify any other state with an electioneering statute prohibiting any "activity that has the effect of influencing a voter." ECF 238-32 at 43:18-50:1.

20. Plaintiffs' expert Dr. McDonald confirms that none of the state laws identified by Dr. Kidd is comparable to Florida's. ECF 238-18 at 17-18.

D. Impact of Sections 7 and 29 on Plaintiffs

21. Sections 7 and 29 directly impact Plaintiffs' efforts to mobilize voters, either by making it illegal to engage in some of their previous activities or by substantially increasing their compliance costs. For example:

a. Sant La understands that Section 7 "prohibits people from providing language assistance to an individual voter inside the polling place." ECF 238-21 at 60:11-23, 99:3-11, 101:7-102:6. Accordingly, it no longer plans to provide these services.

b. Unidos expects that it will have to hire new staff and incur significant expenditures to comply with the new requirements for voter registration. It further expects the registration disclaimer to cause voter confusion and deter people from registering. ECF 238-29 at 104:6-106:25, 118:9-23, 122:1-6, 123:15-17, 135:6-137:25; ECF 240-5 at ¶¶ 11-19.

c. FRT has had "to rework [its] trainings and [its] model to account for the chilling effect" of the mandatory disclosure and because it "is onerous" and makes "it cost prohibitive to do our work." ECF 238-24 at 33:4-34:15,

43:2-44:16, 54:3-55:2, 75:23-76:6; ECF 238-27 at 41:3-8. FRT also believes that SB 90 prevents "organizations from handing out water and food and other items" and will have to "make some real assessments" whether they can provide assistance. ECF 238-24 at 67:7-25, 76:17-79:7; ECF 238-27 at 67:10-23.

d. The Hispanic Federation is "currently not doing voter registration" and must develop a strategy to comply with Section 7 before resuming its in-person program. It is "reassessing" whether it will engage in voter assistance activities despite Section 29's restrictionand are "not sure if [they] will be able to continue" providing assistance. ECF 238-31 at 67:4-17, 69:15-21, 99:25-100:15, 105:1-16; ECF 240-2 at ¶¶ 12, 23.

e. Mi Familia has not handed out food or water in any elections since SB 90 passed, and is concerned Section 29 will "not allow us to help the voters like we did in 2020," and that applicants feel "insecure" after hearing the disclaimer. ECF 238-25 at 30:7-17, 35:4-9, 42:17-20.

f. Equal Ground has concluded that providing food and water is "not something we'd be able to do" and that it will "no longer provide any voter registration program" in-person. ECF 238-23 at 53:2-18, 58:16-59:5, 68:18-71:2, 72:14-73:4.

g. Poder Latinx has received feedback from its staff that the registration disclaimer "is disengaging voters . . . to register to vote with us" and that it makes the organization seem "unreliable." ECF 238-30 at 53:4-20, 57:1-22. Poder has also concluded that it is "no longer able to provide language access support to voters that are in line." ECF 238-30 at 54:22-24, 69:12-24.

22. Governor DeSantis recently proposed new "election integrity" legislation that would create an "Election Crimes" office within the Secretary of State to investigate and "crack down" on election-related crimes.[2]

[2] *See* Press Release, Office of Governor Ron DeSantis, Governor Ron DeSantis Announces Legislative Proposal to Protect Florida's Election Integrity (Nov. 3, 2021), https://flgov.com/2021/11/03/governor-ron-desantis-announces-legislative-

LEGAL STANDARD

Summary judgment is appropriate where the moving party demonstrates that "there is no genuine dispute as to any material fact" and the moving party is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The nonmoving party may not defeat summary judgment by presenting "[a] mere 'scintilla' of evidence supporting [its] position;" rather, "there must be enough of a showing that the jury could reasonably find for that party." *Brooks v. Cty. Comm'n of Jefferson Cty., Ala.*, 446 F.3d 1160, 1162 (11th Cir. 2006).

ARGUMENT

I. SECTION 7 CONSTITUTES COMPELLED SPEECH IN VIOLATION OF THE FIRST AMENDMENT

Section 7's disclaimer requirement unconstitutionally compels speech. By forcing Plaintiffs and other 3PVROs to speak a particular message, Florida is necessarily regulating the content of their speech and altering their discourse on issues of public concern. This kind of restriction is subject to strict scrutiny, which Section 7 cannot survive. As the record demonstrates, the provision does not serve *any* state interest at all, much less a compelling one, and is not narrowly tailored in any event.

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proposal-to-protect-floridas-election-integrity; Tal Axelrod, DeSantis floats formation of police force to crack down on election crimes, Hill (Nov. 3, 2021), https://thehill.com/homenews/state-watch/579886-desantis-floats-formation-of-police-force-to-crack-down-on-election (quoting Governor DeSantis' statement that "[t]he first person that gets caught, no one is going to want to do it again after that").

A. Plaintiffs Have Standing to Challenge Section 7

As explained, several Plaintiffs engage in third-party voter registration activities and are therefore subject to Section 7. *See* SOF ¶ 2. These Plaintiffs are directly injured by the compelled disclaimer requirement. *See* SOF ¶ 21(b)-(g). It is well-settled that being forced to speak a particular message is an injury sufficient to confer standing. The Supreme Court has held that "measures compelling speech are at least as threatening" to First Amendment rights as restrictions on speech; indeed, they cause "additional damage" by "[f]orcing free and independent individuals to endorse ideas they find objectionable." *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018); *see also Hallandale Prof'l Fire Fighters Local 2238 v. City of Hallandale*, 922 F.2d 756, 760 (11th Cir. 1991) (holding injuries to First Amendment rights are sufficient to establish standing).

Section 7 has directly injured Plaintiffs in other ways as well. Plaintiff Equal Ground has ceased in-person voter registration altogether out of fear that the compelled disclaimer "would tarnish the organization's reputation and brand," ECF 238-23 at 53:7-18, and other Plaintiffs are assessing whether to continue their programs, SOF ¶ 21(d). That chilling effect on protected speech is enough to establish standing. *Hallandale*, 922 F.2d at 760; *see also League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1158, 1163 (N.D. Fla. 2012) ("[S]oliciting a [voter registration] application is core First Amendment speech."). For those

organizations that continue to engage in voter registration activities, Section 7 has impaired their ability to achieve their objectives. *See* ECF 238-29 at 135:6-137:25 (predicting that the disclaimer "may cause [voters] not to register in the first place"); ECF 238-30 at 53:8-9 (reporting feedback from staff that the disclaimer "is disengaging voters, potential voters to register to vote with us"), ECF 238-24 at 43:2-44:16 (noting "chilling effect"); ECF 238-27 at 41:3-42:14 (same).

Finally, Plaintiffs also have organizational standing under *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). Section 7 has "impaired" their ability "to engage in [their] own projects" and has "forc[ed] [them] to divert resources in response" to the law. *Arcia v. Sec'y of Fla.*, 772 F.3d 1335, 1341 (11th Cir. 2014). For example, Plaintiffs Unidos and Hispanic Federation are diverting resources for various purposes, including training staff on how to counter the discouraging effects of the disclaimer on the registration process. ECF 240-5 at ¶¶ 9-18; ECF 240-2 at ¶¶ 18-24; ECF 240-3 at ¶¶ 17-23; *see also Fla. State Conference of the NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008) (finding standing where organizations "reasonably anticipate[d] that they will have to divert personnel and time to educating volunteers and voters" in response to challenged law).

As this Court has previously ruled, each of these injuries is fairly traceable to Defendants and would be redressed by a favorable decision. ECF 201 at 14-16, 25,

30-31. Nothing in the summary judgment record warrants revisiting those conclusions.

B. Section 7 Is Subject to, and Fails, Strict Scrutiny

The First Amendment "prohibits the government from telling people what they must say." *Rumsfeld v. Forum for Acad. & Inst. Rights, Inc. (FAIR)*, 547 U.S. 47, 61 (2006). Forcing a speaker to convey a message not only coerces people into "betraying their convictions," *Janus*, 138 S. Ct. at 2464; it "necessarily alters the content of the speech," *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). For these reasons, "a law commanding involuntary affirmation of objected-to beliefs [requires] even more immediate and urgent grounds than a law demanding silence." *Janus*, 138 S. Ct. at 2464 (quotation marks omitted). The same is true of "compelled statements of 'fact.'" *Riley*, 487 U.S. at 797. Accordingly, such laws are subject to strict scrutiny. *NIFLA v. Becerra*, 138 S. Ct. 2361, 2371 (2018); *see also League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 730 (M.D. Tenn. 2019) (applying strict scrutiny to a mandatory voter registration disclaimer); *Masonry Bldg. Owners of Or. v. Wheeler*, 394 F. Supp. 3d 1279, 1297 (D. Or. 2019) (applying strict scrutiny to disclaimer relating to building safety).

Section 7 is precisely this kind of content-based regulation of speech. The provision compels organizations to tell every voter they seek to register that their

registration may not arrive in time—regardless of the organization's intention or ability to process registrations or its record in timely submitting registrations.

A content-based law is "presumptively unconstitutional" and fails strict scrutiny unless it is "narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, *Ariz.*, 576 U.S. 155, 163 (2015). "To be a compelling interest, the State must show that the alleged objective was the legislature's *actual* purpose . . . ." *Shaw v. Hunt*, 517 U.S. 899, 908 n.4 (1996) (emphasis added). Here, Defendants have not identified any compelling state interest that the Florida legislature actually intended the compulsory disclaimer to serve. Defendants have instead offered two *post hoc* rationales, which are insufficient as a matter of law. Even on their own terms, the alleged state interests served by Section 7 only confirm how poorly tailored the provision is.

First, in response to interrogatories, the Secretary of State has said that the disclaimer provision "serves to remind voters that . . . by registering through a third-party group, the voters run the risk of their registration not being processed in time for book closing before an upcoming election." ECF 238-6 at No. 1. But this interest cannot be compelling in the absence of significant evidence that 3PVROs routinely submit forms late, and the record overwhelmingly shows that they do not. Numerous Supervisors of Elections testified they either were not aware of any voter applications

being turned in late or were aware of only miniscule numbers being turned in sufficiently late that the applicant was not able to vote. *See* SOF ¶ 11.

The government is not permitted to compel speech in response to an invented problem. As the Supreme Court has emphasized, "The simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348 (1995). There must instead be a compelling interest *beyond* the provision of information that justifies the compelled disclosure. And that is especially so where "the compelled disclosure will almost certainly hamper the legitimate efforts," *Riley*, 487 U.S. at 799, of the parties forced to speak—here, the 3PVROs working to register voters.

Second, the Secretary's 30(b)(6) witness testified that it is "important for voters who are not always savvy" to know "that 3PVROs are not an extension of the Supervisor of Elections office." ECF 238-26 at 143:1 -143:6. But a federal court has already concluded that this precise state interest in a voter registration disclaimer was not compelling. *See Hargett*, 400 F.Supp.3d at 730-31. Prospective voters are undoubtedly aware that 3PVROs are not part of the Supervisors' offices, and there is nothing in the record to suggest otherwise. Indeed, the only record evidence is that third-party organizations like Plaintiffs are known fixtures in the communities they serve. *See, e.g.*, ECF 238-24 at 21:13-21:24 (noting that FRT is "knocking on

doors and talking to people on a regular basis" in the counties they serve). And a prospective voter is of course free to ask questions if they are confused about an organization's relationship to the Supervisor's office. *Cf. Riley*, 487 U.S. at 799 (expressing doubts about the necessity of a compelled disclosure when the intended audience is "free to inquire" how an organization functions).

Neither of these weak asserted interests justifies the substantial burdens that Section 7 places on protected speech. Those burdens have been clear from the beginning: During the debate on SB 90, legislators opposed to this provision warned that Section 7 would harm the work of 3PVROs. Representative Thompson informed the House of Representatives that they were "shaking confidence in voter registration by having to inform people that the ballot might not get there in time." ECF 238-5 at 83:11-23. Likewise, during the Senate debate, Senator Jones advised that Section 7 would "likely have a chilling effect on the willingness of potential electors to participate in voter registration drives." ECF 238-3 at 15:4-8, 17:7-12. In response, the legislative sponsors said nothing, failing to identify any interest served by Section 7.

Several Supervisors have similarly recognized the impact that Section 7 would have on third-party organizations. SOF ¶ 9. And Plaintiffs confirmed that impact at their depositions. SOF ¶ 21(b), (d)-(e), (g). For these reasons, Defendants cannot

show that Section 7 serves any compelling government interest that could plausibly justify the First Amendment harms.

Even if Defendants could establish that Section 7 aims to remedy a real problem, "more benign and narrowly tailored options are available." *Riley*, 487 U.S. at 800. For example, if Florida is concerned that voters are insufficiently informed, it could "communicate the desired information to the public" itself through a public awareness campaign or include a disclaimer on the state-issued voter registration form. *Id.* Alternatively, if Florida is concerned about untimely submissions, it could vigorously enforce its law penalizing third-party organizations that submit voter registration forms late. Indeed, these fines *already* work to promote the timely submission of forms, as demonstrated by how rare it is for third-party organizations to submit voter registration forms late. *See* SOF ¶ 11. Each of these "more narrowly tailored" options would be "in keeping with the First Amendment directive that government not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored." *Riley*, 487 U.S. at 800.

* * *

Section 7 is a marked departure from standard regulations of voter registration activities, both in Florida and throughout the nation. No other state compels 3PVROs to provide Florida's scripted disclaimer—or make any other statement that undermines voters' confidence in their ability to turn in registration forms on time.

See SOF ¶¶ 12-13. There is a reason no other state has adopted this type of provision: "The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it." *Riley*, 487 U.S. at 790-91. Section 7 plainly runs afoul of this basic principle of constitutional law.

II. SECTION 29 IS UNCONSTITUTIONALLY VAGUE

Using statutory language unprecedented in Florida—or anywhere in the United States—Section 29 prohibits anyone not associated with a Supervisor of Elections from "engaging in any activity with the intent to influence or effect of influencing a voter." Fla. Stat. § 102.031(4)(b). This new provision is unconstitutionally vague. It leaves Plaintiffs, Supervisors, and others, unable to determine whether Florida law bars them from providing nonpartisan assistance at or outside of polling places, as they have in the past. The provision thus fails to provide fair notice of what the law prohibits and risks arbitrary, standardless enforcement, including against Plaintiffs' constitutionally protected nonpartisan assistance to voters.

A. Plaintiffs Have Standing to Challenge Section 29

As explained, several Plaintiffs engage in polling-place voter assistance activities and are therefore directly regulated by Section 29. *See* SOF ¶ 6. Several Plaintiffs no longer plan to engage in these activities as a consequence of Section

29's prohibition. SOF ¶ 21(a), (c), (e)-(g). Plaintiffs' self-censorship in response to the law is sufficient to establish injury-in-fact.

Moreover, Plaintiffs' voter assistance activities constitute protected speech under the First Amendment because they are intended to communicate the importance of participating in the political process. *See* SOF ¶ 7; *Coley-Pearson v. Martin*, No. 520-151, 2021 U.S. Dist. LEXIS 4782272, at *8 (S.D. Ga. Oct. 13, 2021) ("Plaintiff's right to assist voters in voting" is protected by the First Amendment as expressive conduct); *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1332-34 (S.D. Fla. 2006) (assisting voters with registration is inherently expressive conduct). *See also Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1240-43 (11th Cir. 2018) (identifying when food sharing is expressive conduct).

Several Plaintiffs also have organizational standing, as they reasonably anticipate diverting resources in response to Section 29. *See generally* SOF ¶ 21. For example, Plaintiff FRT explained that changes would need to be made to their voter-assistance activities at the polls, including the potential diversion of resources to other voter education efforts. ECF 238-24 at 78:17-80:12; *see also* ECF 238-31 at 89:15-23, 101:13-25; ECF 238-21 at 75:12-76:22, 78:4-21; ECF 238-29 at 104:12-15 (noting the need "to divert staff time," which "takes away focus from our other campaigns that we also need to advance"); *id*. at 117:22-118:23 ("[F]unds have been

diverted" from "[o]ther civic engagements funds to staff time"); ECF 238-23 at 72:19-75:5 (discussing the need to hire a program manager to create materials, attend community events, and start election programming activities, two months earlier than intended); ECF 240-2 at ¶¶ 5-14.

These injuries are fairly traceable to the Supervisors and would be redressed by a favorable decision, for reasons the Court has previously explained. ECF 201 at 26-27, 30.[3]

B. Section 29 Is Impermissibly Vague and Thus Violates the Due Process Clause

The Due Process Clause incorporates the "fundamental principle in our legal system" that "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Any statute that "forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926); *see also Fox Television Stations*, 567 U.S. at 253 (holding that the Due Process Clause "requires the invalidation of

[3] Plaintiffs' testimony established that they engaged in assistance in Broward, Duval, Hillsborough, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Seminole, and Volusia Counties. ECF 238-25 at 23:23-24:6; ECF 238-24 at 61:4-5; ECF 238-31 at 36:1-24; ECF 240-1 at ¶ 20; ECF 240-3 at ¶¶ 5,10; ECF 240-2 at ¶¶ 6-11. If the Court declares Section 29 unconstitutional, that determination will apply uniformly to all Supervisors regardless of where Plaintiffs engage in assistance activities.

laws that are impermissibly vague"); *Papachristou v. Jacksonville*, 405 U.S. 156, 162 (1972) ("'[All persons] are entitled to be informed as to what the State commands or forbids.'" (citations omitted)).

The Supreme Court has emphasized two important reasons for the void-for-vagueness doctrine: (1) "regulated parties should know what is required of them so they may act accordingly," and (2) "precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *Fox Television Stations*, 567 U.S. at 253 (citation omitted). When speech is at issue, "rigorous adherence to [these] requirements is necessary to ensure that ambiguity does not chill protected speech." *Fox Television Stations*, 567 U.S. at 253-54; *NAACP v. Button*, 371 U.S. 415, 432 (1972) ("[S]tandards of permissible statutory vagueness are strict in the area of free expression.").

Section 29's sweeping prohibition on "any activity with the intent to influence or effect of influencing a voter" violates the Due Process Clause in two ways: it fails to provide "fair notice of what is prohibited," and it "is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Fox Television Stations*, 567 U.S. at 253.

As to fair notice, Section 29 fails to define any of the key statutory terms—"intent to influence," "effect of influencing," or "activity." It leaves Plaintiffs and the Supervisors without guidance as to what activities are prohibited within the 150-

foot zone and whether Plaintiffs may continue to engage in *any* voter assistance activities in that area without violating Florida law. Does encouraging a voter to stay in line and vote, in a nonpartisan way, violate Section 29? Does providing a glass of water have the "intent" or "effect of influencing a voter"? What about an umbrella? The statutory text provides no answer to any of those questions, and that is enough to doom the provision. The term "influence"—without any statutory language answering the question "influence to do *what*"—is so open-ended and vague as to encompass almost anything.

Nor can Plaintiffs or election officials look to any judicial precedent to interpret Section 29. As defense expert Dr. Quentin Kidd conceded at deposition, no other state "electioneering" law is similar:

> Q: [T]his is a litigation about SB 90 and SB 90 added the phrase to Florida's definition of electioneering "effect" -- "the effect of influencing a voter." So I want to know, can you, sitting here today can you name any other state besides Florida where that is prohibited under the electioneering laws?
>
> A: I can't name for you a state right now that has the word "effect."

ECF 238-32 at 49:18-50:1.

Although certain statutes use the phrase "intent to influence," none does so without further defining or limiting the word "influence." For example, Florida's statute prohibiting bribery in athletic contests prohibits bribing a participant in a sports match "*with intent to influence him or her or them to lose or cause to be lost any game*." Fla. Stat. § 838.12 (emphasis added). Other examples include statutes

prohibiting the influencing of a juror's vote[4] or influencing an employee or officer's official action or judgment.[5] Each of these statutes confirms the commonsense point: To give fair notice to regulated parties, the legislature must give some indication as to *what* must be influenced or *how*. Section 29 fails that basic requirement.

S.B. 90's legislative history underscores the vagueness of Section 29. The provision was specifically criticized on the floor for being "too vague, too subject to somebody's biased point of view." ECF 238-5 at 40:20-41:2 (statement of Rep. Joe Geller). The legislation's sponsors *disagreed* about whether Section 29 bars nonprofit groups from distributing food or water to voters standing in line. SOF ¶ 16. Senate sponsor Dennis Baxley, for example, stated that "[his] motivation [was] to protect votes . . . [and] ensure, unlike other states, that a glass of water [that] is given in sincerity is not a violation of the law." ECF 238-2 at 9:3-16 (emphasis added). But House sponsor Blaise Ingoglia ultimately concluded that the law broadly prohibited anyone who did not work for a Supervisor from providing anything to voters in line. *See* ECF 238-4 at 5:4-14, 39:10-41:6 ("an elections office can hand out that stuff if they want").

[4] Alaska Stat. § 11.56.590(a)(1) ("A person commits the crime of jury tampering if the person directly or indirectly communicates with a juror other than as permitted by the rules governing the official proceeding with intent to . . . influence *the juror's vote, opinion, decision, or other action as a juror*[.]" (emphasis added)).

[5] Fla. Stat. § 337.105(1)(g) (prohibiting the act of "willfully offer[ing] an employee or officer of the department any pecuniary or other benefit, with the intent to influence *the employee's or officer's official action or judgment*" (emphasis added)).

Adding to the confusion, the Secretary of State has interpreted the law in a different manner than both sponsors. Division of Elections Director Matthews has testified that she interprets the statute to mean that a *nonpartisan* organization could hand out water within the no-solicitation zone "[a]s long as the activity is not for the purpose of -- with the intent of influencing or affecting the influence of a voter," by which she apparently means to vote for a particular candidate. ECF 238-26 at 158:3-163:17; *see also* SOF ¶17, ECF 122-1 at 30-31 (arguing that "any activity" in Section 29 cannot mean "any activity" and should be understood only to "prohibit[] partisan efforts of individuals or campaigns to pressure or influence voters' decisions within the no-solicitation zone"). But it is not clear how her interpretation is consistent with S.B. 90's text, which implies that nonpartisan assistance by Plaintiffs is prohibited by stating that the term "solicit . . . may not be construed to prohibit *an employee of, or a volunteer with, the supervisor* from providing nonpartisan assistance to voters within the no-solicitation zone such as, but not limited to, giving items to voters." Fla. Stat. § 102.031(4)(b) (emphasis added).

Against this backdrop, Plaintiffs and the Supervisors alike can do no more than guess whether the statute forbids providing assistance to voters as they stand in long lines outside of polling places because the intent or effect of such activities may be to influence people to continue waiting until they are able to vote.

Section 29 is independently unconstitutionally vague because it "authorizes or encourages seriously discriminatory enforcement." *Fox Television Stations*, 567 U.S. at 253. The Supervisors' testimony confirms this. As Miami-Dade Supervisor White warned, the provision is "vague" and it is "impossible for me to discern what is partisan and what is non-partisan activity with the volume of people doing whatever it is that they're doing out there." ECF 238-10 at 77:9-21, 101:18-102:3. In light of this uncertainty, these Supervisors and others have given Section 29 the broadest possible interpretation that Florida prohibits any interaction between a non-partisan group and voters within 150 feet of the polls. SOF ¶ 18. If the Supervisors and the Secretary are offering competing interpretations of Section 29, discriminatory enforcement is assured.

In short, Plaintiffs and Supervisors of Election should not have to guess what Section 29 means. Their uncertainty about the provision's scope is already generating the very problems the vagueness doctrine is supposed to prevent. Plaintiffs and other organizations lack clarity on what activities are permitted at polling places and have responded accordingly by ending or reassessing their assistance programs. *See* SOF ¶ 21(a), (c)-(g). And their reasonable concerns about the provision's enforcement have only been compounded by Gov. DeSantis's recent legislative proposal to create a state division to investigate and "crack down" on

election-related crimes. *See* SOF ¶ 22. These consequences flow from a fundamental constitutional infirmity: Section 29 is impermissibly vague.

III. SECTION 29 IS PREEMPTED BY SECTION 208 OF THE VOTING RIGHTS ACT

Section 29 is also preempted under the Supremacy Clause. By its plain terms, the law prohibits voters with disabilities and limited English proficiency from receiving the assistance they are entitled to receive under Section 208 of the Voting Rights Act. That provision states: "Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by *a person of the voter's choice*, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508 (emphasis added). Under Section 29, voters protected under this section can no longer receive assistance at their polling places from Plaintiffs or other trusted organizations. Because that restriction directly conflicts with the rights guaranteed by Section 208, it is preempted under the Supremacy Clause.

A. Plaintiffs Have Standing to Enforce Section 208

As explained, Hispanic Federation, Poder, and Sant La have historically offered language assistance to voters with the intent and the effect of encouraging voters to remain in line to cast their ballots, and Mi Familia has provided assistance to voters with disabilities. *See* SOF ¶ 6. Section 29, on its face, prevents them from engaging in these protected activities, and multiple organizations have therefore

suspended or decided not to provide language assistance (or other types of voter assistance) at the polls. *See* SOF ¶ 21(a), (d), (e), (g). That chilling effect is a sufficient injury for standing purposes. *See supra* pp. 22-23.

B. Section 29 Is Preempted by Section 208 Under the Doctrine of Conflict Preemption

A state law is conflict preempted whenever it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 567 U.S. 387, 399 (2012). Congress's purpose is thus the "ultimate touchstone" in every preemption case. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). And here, Congress's clear purpose in enacting Section 208 was to ensure that *all* citizens, regardless of disability status or language ability, have the opportunity to cast their ballots and ensure those ballots are counted. As the Senate report explains, Congress sought to continue "the effort to achieve full participation for all Americans in our democracy"—including those who need assistance at the polls. S. Rep. No. 97-417, at 4 (1982).

Section 29 directly interferes with that purpose. The provision bars any person from engaging in conduct that either intends to "influence … a voter" or has that effect. Fla. Stat. § 102.031(4)(b). That language clearly bars an organization's provision of language assistance. If, for example, a volunteer seeking to ensure that a limited-English voter can cast her vote effectively helps the voter communicate with poll workers about wait times or voting technologies, the volunteer has engaged

in conduct that has the "intent" and "effect" of "influenc[ing]" the voter, *i.e.*, such communications make it more likely the voter will cast her vote. Similarly, if a volunteer provides assistance (such as water or seating) to disabled voters waiting in line, the volunteer has influenced the voter to stay and vote. *See supra* p. 27. Both types of assistance are barred under Section 29.

That prohibition on assistance cannot be squared with Section 208, which *requires* that disabled voters and voters with limited English proficiency be able to choose who provides them with assistance at the polls (with two exceptions not relevant here). As the Fifth Circuit has explained, Section 208 guarantees the right to receive assistance not just for "the mechanical act of filling out the ballot sheet," but also for "steps in the voting process *before entering* the ballot box." *OCA-Greater Houston v. Texas*, 867 F.3d 604, 615 (5th Cir. 2017) (emphasis in original); *see also* S. Rep. No. 97-417, at 62-63 (1982) (recognizing that a state law would be preempted if it "den[ies] assistance at some stages of the voting process during which assistance was needed"). Section 29 deprives protected voters of that federally protected right. Any person who wishes to receive assistance at the polls from a trusted organization—say, a person who has received such assistance in the past and wishes to do so again—is simply out of luck: there is no chance that voter will be able to receive assistance from the "person of [his] choice." 52 U.S.C. § 10508.

In light of that direct conflict with the mandates of Section 208, Section 29 is preempted under the Supremacy Clause. *See Felder v. Casey*, 487 U.S. 131, 151 (1988) (state law preempted where it "interferes with and frustrates the substantive right Congress created"); *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) ("state law is naturally preempted to the extent of any conflict with a federal statute").

CONCLUSION

For the foregoing reasons, summary judgment should be granted in Plaintiffs favor on Claims 5, 6, and 8.

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Respectfully submitted,

s/ *Kira Romero-Craft*

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LOCAL RULE 7.1(F) CERTIFICATION

Pursuant to Local Rule 7.1(F), this memorandum contains 7,703 words, excluding the case style, table of authorities, table of contents, signature blocks, and certificate of service.

s/ *Kira Romero-Craft*
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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 12th of November, 2021.

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