

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

Case No.: 4:21-cv-00186-MW-MAF

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., et al.,

Plaintiffs,

vs.

LAUREL M. LEE, FLORIDA SECRETARY OF STATE, et al.,

Defendants.

**SUPERVISOR OF ELECTIONS' RESPONSE TO LEAGUE OF
WOMEN VOTERS PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM**

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Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, the referenced Supervisor of Elections Defendants submit the following in response to the League of Women Voters Plaintiffs' ("League Plaintiffs") Motion for Partial Summary Judgment and Supporting Memorandum of Law. (ECF 320; ECF 320-1.)¹

INTRODUCTION

The League Plaintiffs seek partial summary judgment on Counts IV and V of their operative complaint. (ECF 160.)

Count IV concerns 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. On October 8, 2021, this Court in ECF 274 ("*League Litigation*"), concluded that the Supervisors of

¹ The following Supervisors of Elections have joined in this Motion and are collectively referred to as the "Supervisor Defendants": Aletris Farnam, in her official capacity as Supervisor of Elections for Glades County, Diane Smith, in her official capacity as Supervisor of Elections for Hardee County, Brenda Hoots, in her official capacity as Supervisor of Elections for Hendry County, Therisa Meadows, in her official capacity as Supervisor of Elections for Holmes County, Tammy Jones, in her official capacity as Supervisor of Elections for Levy County, Melissa Arnold, in her official capacity as Supervisor of Elections for Okeechobee County, and Ron Turner, in his official capacity as Supervisor of Elections for Sarasota County.

Elections were the only defendants against whom Plaintiffs had standing to assert their challenges to SB 90's amendments to sections 101.62 and 102.031, Florida Statutes. (ECF No. 274.) In a separate order, this Court rejected the Supervisors' request to stand aside in the *League Litigation* and let the state actors defend SB 90, stating that the Supervisors "must choose—default or defend." (ECF No. 273 at 4.) The Supervisor Defendants submit this response to the League Plaintiffs' Motion with respect to Count IV of their operative complaint.²

LOCAL RULE 56.1(C) STATEMENT OF FACTS

The parties to this Response note that Plaintiffs and certain Defendants submitted extensive briefing at the motion to dismiss phase (*see, e.g.*, ECF Nos. 107-1, 120, 175-1, 176, 197, 198) and that Plaintiffs and certain Defendants, including four Supervisors of Elections, submitted extensive summary judgement briefing (*see* ECF Nos. 315,

² Count V 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, among other things. This Court's Order on Motions to Dismiss (ECF 274) ordered that "claims against the Defendant Supervisors with respect to section 97.0575, Florida Statutes, are **DISMISSED for lack of standing.**" Thus, the Supervisor Defendants submit no response to League Plaintiffs motion with respect to Count V.

320, 321-1, 326). Also, the parties to this Response reasonably anticipate that certain Defendants, including some Supervisors of Elections, will file responses affirmatively opposing Plaintiffs' Motion for Partial Summary Judgement.

With respect to League Plaintiffs' Statement of Facts in its motion for partial summary judgment as to Counts IV and V, the Supervisor Defendants do not dispute that the League "is a third-party voter registration organization," and that Plaintiff Scoon "has conducted and currently conducts voter registration through the League." (ECF 320-1: at 6.)

Nor do the Supervisor Defendants dispute that SB 90 altered the definition of "solicit" or "solicitation" for the purpose of the 150 foot no-solicitation zone. The revised definition can best be illustrated by the text of Section 29 of SB 90:

Section 29. Paragraphs (a), (b), and (e) of subsection (4) of section 102.031, Florida Statutes, are amended 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 a drop box location, a the** polling place, or an 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, act, 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; and engaging in any activity with the intent to influence or effect of influencing a voter.** The terms “solicit” or “solicitation” 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, or** 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 29, Chapter 2021-11, Laws of Florida (emphases added).³

³Words ~~stricken~~ are deletions; words underlined are additions.

With respect to the 150 foot no-solicitation zone, various Supervisor Defendants testified or provided responses to written discovery regarding the revised non-solicitation provision. *See, e.g.*, (ECF 319-6 at 87:8-11 and 88: 11-15.) Beyond this, the Supervisor Defendants do not dispute the statement of facts submitted by Plaintiffs or Co-Defendants.

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).

ARGUMENT

Plaintiffs facially challenge SB 90’s amendment to the definition of “solicit” on grounds that it is either unconstitutionally vague or overbroad. Plaintiffs’ vagueness challenge centers around whether SB 90’s amendment to the definition of “solicit” “fails to provide people with ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” or “authorizes or even encourages arbitrary and discriminatory enforcement.” *See Hill v. Colorado*, 530 U.S. 703, 732 (2000); (ECF 320 at 25-28; ECF 321 at 31-36.) Plaintiffs further argue

that SB 90's amendment to the definition of "solicit" now criminalizes the handing out of food or water to those waiting in line to vote, and that handing out food and water is constitutionally protected speech. (ECF 320 at 29-30.)

The Supervisor Defendants acknowledge the applicability of *Jacobson v. Florida Secretary of State*, 974 F.3d 1236 (11th Cir. 2020) and the burdens it places on this Court and the parties by requiring that all 67 of Florida's Supervisors of Elections be named as defendants to satisfy the elements of "traceability and redressability." 974 F.3d at 1258. However, the fact remains that none of the Supervisor Defendants advocated for the enactment of any of the provisions challenged in this litigation. During the course of the Legislature's consideration of SB 90 and its House counterpart, PCB PIE21-05 / HB 7041, the Florida Supervisors of Elections (the Supervisor Defendants' state association) issued three letters opposing the legislation. (ECF 238-18 at 182:18-185-5; 185-20-187:25, and 188-1-190:25.)

Supervisors of Elections are sworn to uphold and apply the laws as enacted by the Legislature, subject to judicial determination as to the constitutionality of those laws. As noted by the Florida Supreme Court

“[n]othing can be more essential for a supervisor of elections to maintain strict compliance with the statutes in order to ensure credibility in the outcome of the election.” *Jacobs v. Seminole Cty. Canvassing Bd.*, 773 So. 2d 519, 524 (Fla. 2000) (footnote omitted).

Whether the challenged provisions are constitutional will clearly impact the fundamental rights and the duties and responsibilities of the Supervisor Defendants. But whether SB 90 is or is not constitutional or whether it violates the Voting Rights Act are legal questions for the Court. *See, e.g., United States v. Paradies*, 98 F.3d 1266, 1284 (11th Cir. 1996). On these issues, the Supervisor Defendants take no position and, upon determination by the Court of the issues presented in this case, they will comply with all orders and judgments relating to the challenged provisions of SB 90.

CONCLUSION

The Supervisor Defendants do not dispute the Statement of Facts submitted by Plaintiffs or Co-Defendants, and take no position on the purely legal questions raised by Plaintiffs’ Motion for Partial Summary Judgment and Supporting Memorandum of Law. If the Court determines that any of the challenged provisions of SB 90 violate federal

law, the parties to this Response request the opportunity to provide additional briefing regarding the timing and feasibility of specific remedies the Court might order, as well as the impact of those remedies on the administration of elections.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

The undersigned certifies that the foregoing filing complies with the size, font, and formatting requirements of Local Rule 5.1(C), and that the foregoing filing complies with the word limit in Local Rule 7.1(F) because it contains 1,647 words, excluding the case style, signature block, and certificates.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 3, 2021 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel in the Service List below.

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