UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

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

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, et al.,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE, and NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

Intervenor-Defendants.

Case No.: 4:21-cv-186-MW/MAF

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LEAGUE PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT LATIMER'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT WHITE'S JOINDER THERETO

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INTRODUCTION

Defendants Latimer and White, Supervisors of Elections for two of Florida's largest counties, move for summary judgment on the narrow ground that, whether the challenged provisions of SB90 are constitutional or not, *they* have not done anything wrong: Plaintiffs (they say) have not suffered any injury traceable to Latimer or White or redressable by relief against them.[1]

The Court has already rejected this argument. In its Order on Defendants' Motion to Dismiss, the Court held that Plaintiffs have standing to sue the Supervisors of Elections based on three of the challenged provisions: the Drop Box Restrictions, the Repeat Request Requirement, and Line Warming Ban. ECF No. 274 at 21, 24-25. Nothing in discovery has changed this fact, which was based on the Supervisors' statutory authority to enforce those provisions. *Id.* To the contrary, discovery has demonstrated that the Supervisors' enforcement of these provisions—including enforcement by Latimer and White in their home counties—will impose considerable burdens on Plaintiffs. At the very least, genuine issues of material fact squarely preclude granting the Motion.

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[1] White joined Latimer's Motion by means of an untimely Joinder, filed three days after the Court's deadline for summary judgment. ECF No. 326. As Plaintiffs explain by separate motion, White's joinder should be stricken for that reason. This Opposition nevertheless addresses both Supervisors' arguments.

First, there is substantial evidence that Latimer's and White's implementation of the Drop Box Restrictions, Repeat Request Requirement, and Line Warming Ban injures Plaintiffs. Both supervisors are reducing the availability of drop boxes in their counties because of SB90. Latimer plans on reducing drop box hours of availability, while White will cancel access to two drop box locations on the day before Election Day and on Election Day itself. Moreover, while Latimer and White argue that they can handle the administrative burdens that the Repeat Request Requirement imposes on them, they ignore the far more important burdens that their *enforcement* of the Requirement will place on *voters*. That burden is supported by ample evidence, including from Latimer and White themselves. And while Latimer and White argue that the Line Warming Ban will not burden voters because there are no lines in their counties, the record shows otherwise—and, in any event, the Ban's prohibition on Plaintiffs' protected expression is itself an injury-in-fact.

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Second, this Court already held that Plaintiffs' harms associated with the Drop Box Restrictions, Repeat Request Requirement, and Line Warming Ban are caused by the Supervisors of Elections, who are the individuals tasked with implementing those provisions. ECF No. 274 at 21, 24-25. This was a legal conclusion based on the relevant statutes, and nothing in discovery refutes it.

Finally, an injunction against Latimer and White would redress Plaintiffs' injuries in Hillsborough and Miami-Dade Counties, because the Supervisors would

no longer be constrained by SB90's limitations on drop box availability, and would no longer be able to enforce the requirement that voters must renew their request for a vote-by-mail ballots every general election cycle, or its prohibition on line warming in the no-solicitation zone.

For all of these reasons, the Court should deny the Motion.

STATEMENT OF FACTS

The facts of this case are addressed in more detail in Plaintiffs' Partial Motion for Summary Judgment (ECF No. 320) and Plaintiffs' Opposition to the Secretary's Motion for Summary Judgment (ECF No. 352). Defendant Craig Latimer (the Supervisor of Elections of Hillsborough County) and Defendant Christina White (the Supervisor of Elections of Miami-Dade County) seek summary judgment on narrow grounds, and Plaintiffs here recite only those facts relevant to those narrow arguments.

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A. The Drop Box Restrictions

SB90 restricts the hours that certain drop boxes may be available, and it requires that drop boxes for the return of mail ballots must be physically monitored, in person, by an employee of a Supervisor's office at all times they are available for use. Fla. Stat. § 101.69(2)(a). As a result of these restrictions, at least 24 counties

will reduce either the hours or numbers of drop boxes available to voters. Ex. 9[2] at tbl. 24, para. 213.[3] Evidence from White and Latimer themselves establish that their counties—Hillsborough and Miami-Dade—are among those where availability of drop boxes will be impacted. *Id.* As a result of SB90, Hillsborough County will no longer offer a 24-hour drop box. Ex. 30 at 3 (affidavit from employee of Latimer's stating "[t]he SOE 24 hour drop box at the Elections Service Center will be discontinued."). And, because of SB90, Miami-Dade will no longer offer drop boxes at two locations (the North Dade and South Dade Regional Libraries) on the Monday before Election Day or on Election Day. Ex. 6 at 16:8-16; 39:15-40:11.

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B. The Vote-By-Mail Repeat Request Requirement

The Vote-By-Mail Repeat Request Requirement reduces the period of time for which voters' requests to receive vote-by-mail ballots will be effective. Fla. Stat. § 101.62(1)(a). Before SB90, such requests were effective for two general election cycles, or a total of four years. After SB90, they are effective for, at most, only a single general election cycle—the practical effect being that many voters will

[2] All exhibit numbers correspond to the exhibits attached to the Notice of Filing Exhibits in Support of League Plaintiffs' Oppositions to Summary Judgment, ECF No. 350, and pincites to transcripts correspond to the original transcript page or pages.

[3] These numbers are likely underinclusive, because several counties stated in response to discovery that they do not yet know their plans for drop box locations and hours in 2022. *See, e.g.*, Ex. 27 at 2-3; Ex. 28 at 3; Ex. 29 at 2-3.

have to renew their vote-by-mail request each time they vote. *See id.* SB90 will therefore require voters who wish to receive vote-by-mail ballots to request them twice as often. *Id.*

Many Supervisors of Elections, including Latimer and White, testified that the Repeat Request Requirement will burden voters: it will confuse voters; "it kills this process [that] . . . our voters are extremely familiar with"; and it will limit voters' access to mail ballots. Ex. 7 at 129:4-131:9; Ex. 3 at 25:14-26:6, 137:23-138:1; Ex. 24 ¶ 23 ("Due to SB 90, voters in Orange County will have a higher level of confusion regarding their vote-by-mail status due to the request limitation. Voters have grown accustomed to their request granting them ballots for two general elections."); Ex. 6 at 91:3-14 (the Requirement "does not benefit the voters whose access is being limited"). Supervisor Latimer testified that the Repeat Request Requirement will "cause confusion in voters" and impose an "undue burden" on voters who now must request a vote-by-mail ballot twice as often as they did before SB90's passage. Ex. 3 at 25:14-26:6, 137:23-138:1. Supervisor White stated that the Requirement will "have grave impacts on voting accessibility." Ex. 32; Ex. 6 at 89:18-90:1, 91:3-14.

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Additionally, before SB90, many Supervisors, including Supervisor Latimer, allowed voters to renew their request for a vote-by-mail ballot by checking a box on their vote-by-mail envelope stating that they wished to continue receiving vote-by-

mail ballots in future elections (referred to as the "check-box method"). Ex. 3 at 135:7-14; *see also* Ex. 7 at 129:4-131:9 (Leon County); Ex. 23 at 69:20-70:12; 73:8-10 (Flagler County); Ex. 25 ¶ 26 (Palm Beach County); Ex. 31 at 68:1-18 (Manatee County). Supervisors testified that the check box method was an easy and popular way for voters to continue to receive a vote-by-mail ballot. *See, e.g.*, Ex. 3 at 135:12-14; Ex. 25 ¶ 26; Ex. 7 at 129:4-131:9.

Because of SB90, this option is no longer available to voters. *Id.* Many of the Supervisors who used the check-box method testified about the burden this change will have on voters. For instance, Supervisor Earley testified that the removal of the check-box "introduces new hurdles" and is going to be "confusing for voters," Ex. 7 at 132:16-133:15, while Supervisor Link stated that, without the check-box, "it will be more burdensome for voters to request a vote by mail ballot." Ex. 25 ¶ 26. Supervisor Latimer echoed those concerns. Ex. 3 at 25:14-26:6, 137:23-138:1.

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Plaintiffs, who have members in Hillsborough and Miami-Dade Counties, also provided testimony about the burdens the Repeat Request Requirement will impose upon their members. *See* ECF No. 352 at 13; Ex. 22 ¶ 3; Ex. 41 ¶¶ 3-4. One example of a League member and Hillsborough County voter who will be negatively impacted by the Repeat Request Requirement is Catherine Teti. In prior elections, Ms. Teti requested a vote-by-mail ballot via the check-box method. Ex. 33 ¶ 5. She worries that under the new law (and without the check-box method available), she

will forget to timely request her vote-by-mail ballot. *Id.* ¶ 8. If that happens, she will have to vote in person. *Id.* ¶ 9. Voting in person poses a significant hardship for Ms. Teti, who cannot drive to the polls, needs the assistance of a walker, cannot walk even short distances without becoming very tired, and cannot stand in a line for more than a few minutes without her legs becoming swelled and becoming very tired. *Id.* ¶ 10.

C. The Line Warming Ban

Florida's history of long lines at the polls is well-known and was recounted during discovery in this case. *See, e.g.*, Ex. 4 at 130:12-15 (acknowledging that "at least some counties in Florida have a history of long lines at the polls"); Ex. 23 at 91:11-15 (same). Hillsborough and Miami-Dade Counties are no exception. Miami-Dade County, in particular, has a history of very long lines at the polls: Supervisor White testified that in 2012, there were reports that some precincts did not close until after 1:00 a.m. the day after Election Day. Ex. 6 at 50:18-51:9. Hillsborough County has also experienced lengthy lines in past elections. *See, e.g.*, Ex. 34 (recounting a line of an hour and a half at a 2004 Hillsborough County polling location).

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While lines have improved in Florida in recent years, even during the 2020 General Election there were lines exceeding half an hour in many Florida counties, including Hillsborough and Miami-Dade. At least one polling location in Hillsborough County saw over 150 people waiting in line for approximately one

hour. Ex. 35. In Miami-Dade, early voting locations experienced wait-times of 40, 45, and 90 minutes. Ex. 36; Ex. 40 at ¶ 240.[4]

Additionally, several Supervisors testified that SB90 will likely make lines longer, because it has the effect of limiting other available voting options like voting via USPS or drop-box. *See, e.g.*, Ex. 5 at 145:18-146:4 (SB90 "makes it [lines] worse . . . [b]y making it more difficult for us to have drop boxes available as often as we would like to."); Ex. 6 at 51:13-18 (agreeing that "[e]very voter who votes by mail is one fewer person potentially in line on Election Day").

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LEGAL STANDARD

Summary judgment is proper as to any "claim or defense" only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[C]redibility determinations . . . are inappropriate on summary judgment." *See Ga. State*

[4] Hillsborough and Miami-Dade are not alone. A number of Florida counties saw long lines in 2020. See, e.g., Ex. 37 (describing lines at one early voting location in Flagler County: "It has been crazy here. Lining up since 7am and the cars are parked up and down Palm Coast Parkway, sidewalks, and the grassy knoll area of the library parking lot. I am giving out waters to candidates and voters. It is extremely hot and many are waiting 2 hours to vote."); Ex. 38 (describing line of nearly 100 people on the first day of early voting in Manatee County as "a zoo"); Ex. 39 ("[m]ost of the nine early voting locations in Collier County had waits of about 45 minutes to an hour," and in Lee County, one early voting location had a wait time of over an hour); Ex. 40 at § XI.IV (explaining that certain Orange County early voting locations had wait times of over an hour).

Conference of NAACP v. Fayette Cty. Bd. of Comm'rs, 775 F.3d 1336, 1344 (11th Cir. 2015). Rather, in deciding a summary judgment motion, "the Court must construe the evidence and all reasonable inferences arising from it in the light most favorable to the non-moving party." *Whitehead v. BBVA Compass Bank*, 979 F.3d 1327, 1328 (11th Cir. 2020).

"The moving party bears the initial burden of proving the absence of a genuine issue of material fact." *Id.* The nonmoving party must then "'go beyond the pleadings' to establish that there is a 'genuine issue for trial'"—that is, that "'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Id.* (first quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), then quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)) (quotation marks omitted).

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ARGUMENT

Plaintiffs have Article III standing to sue Latimer and White. The changes to voting in Hillsborough and Miami-Dade counties resulting from Latimer and White's enforcement of the Drop Box Restrictions, Repeat Request Requirement, and Line Warming Ban will meaningfully injure Plaintiffs' members in those counties; Plaintiffs' injuries are traceable to Latimer and White—who have the statutory authority to enforce those provisions; and an injunction prohibiting Latimer and White's enforcement of the provisions will provide Plaintiffs with redress.

I. Defendants' implementation of SB90 will cause Plaintiffs to suffer injury-in-fact.

Contrary to their arguments, Latimer's and White's implementation of the at-issue provisions of SB90 will injure Plaintiffs because (1) Latimer and White are reducing the availability of drop boxes in their counties as a result of SB90, which will harm voters in Hillsborough and Miami-Dade Counties, including Plaintiffs' members; (2) both supervisors testified that the Repeat Request Requirement will burden voters in their Counties; and (3) Latimer's and White's enforcement of the Line Warming Ban deprives Plaintiffs of their First Amendment rights, and Florida's history of long lines in both Hillsborough and Miami-Dade Counties necessitate the line warming activities that Plaintiffs would participate in but for SB90. At a minimum, there are disputes of material fact on those issues.

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A. Drop Box Restrictions

Latimer centers his argument regarding the Drop Box Restrictions on the fact that the number of drop boxes available in Hillsborough County in 2022 will be the same as, or perhaps more than, what was available in 2020. ECF No. 315 at 6. But even if Hillsborough has the same *number* of drop boxes, it will offer them for fewer hours, because Hillsborough County previously offered a 24-hour drop box that "will be discontinued" because of SB90. Ex. 30 at 3. And White's joinder to this argument is just plain wrong: as White herself testified, Miami-Dade is among the 11 Florida counties that *will be* reducing drop box locations in 2022. Ex. 6 at 16:8-

16; 39:15-40:11 (explaining that two drop box locations will not be available on the Monday before Election Day or Election Day due to SB90).

Thus, it is simply not the case that the Drop Box Restrictions "will not affect Hillsborough [or Miami-Dade] County voters." *See* ECF No. 315 at 11. And the organizational Plaintiffs testified about how the Drop Box Restrictions and resulting reductions in drop box locations and hours will make voting more difficult for their members throughout Florida, which include individuals in Hillsborough and Miami-Dade Counties. *See* ECF No. 352 at 10-11; Ex. 22 ¶ 3; Ex. 41 ¶¶ 3-4.

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Latimer and White's other arguments that Plaintiffs lack injury-in-fact to challenge their implementation of the Drop Box Restrictions similarly miss the mark. Latimer claims that because no one has voted in Hillsborough since SB90's passage, the impact on voters is speculative. But plaintiffs can, of course, bring pre-enforcement challenges, and injury-in-fact premised on "future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citation and quotation marks omitted). Because Latimer and White testified that they will be reducing drop box availability in 2022, the risk of harm to Plaintiffs and their members is "certainly impending." *See id.*

Further, to the extent Supervisors Latimer and White contend that Plaintiffs lack standing because the changes they are making to drop box availability is not

"severe," *see* ECF 315 at 6; ECF 326 at 2, Plaintiffs do not agree that the evidence supports this characterization of the very real burdens the Drop Box Restrictions impose upon them. In any event, the severity of the burden is not relevant for standing purposes: "a small injury, 'an identifiable trifle,' is sufficient to confer standing." *Common Cause/GA v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009). The harm caused to the organizational Plaintiffs by Latimer's and White's changes to drop box availability certainly meets this low bar for the purposes of summary judgment.

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B. Repeat Request Requirement

Latimer and White's argument regarding the Repeat Request Requirement is even further off the mark. Latimer and White argue that *Plaintiffs* are not harmed by the Requirement because *Latimer and White* are prepared to meet the administrative burdens that the Requirement will impose on *them*. ECF No. 315 at 7-8; ECF No. 326 at 2-3. Whether the Supervisors can meet the administrative burdens SB90 places on their offices is entirely beside the point. Plaintiffs' concern is with the burden that the Repeat Request Requirement imposes on *voters*, not administrators.

Specifically, the Requirement burdens voters by requiring them to request vote-by-mail ballots at least twice as often as in the past, and voters who do not timely request a ballot may miss their opportunity to vote. *See* Fla. Stat. § 101.62(1)(a). Supervisors—including Latimer and White—testified at length

about the burdens the Repeat Request Requirement will impose on voters, including by confusing voters, reducing access, and changing a process that voters were extremely familiar with. Ex. 7 at 129:4-131:9; Ex. 3 at 25:14-26:6, 137:23-138:1; Ex. 24 at ¶ 23; Ex. 32; Ex. 6 at 89:18-90:1, 91:3-14. And the elimination of the check-box method in Hillsborough and several other counties—which is a direct result of the Repeat Request Requirement—will impose an additional burden on voters who were accustomed to using that method to renew their vote-by-mail ballot requests. *See* Ex. 3 at 135:7-11; *see also, e.g.*, Ex. 7 at 129:4-131:9; Ex. 25 ¶ 26.

The impact the Repeat Request Requirement will have on Ms. Teti is illustrative of the burdens the Requirement will impose upon Plaintiffs' members. Because Hillsborough County will no longer offer the check-box method, Ms. Teti fears she will forget to timely request a vote-by-mail ballot after the Requirement takes effect. Ex. 33 ¶ 8. If this happens, she will be forced to vote in person, which is an extremely burdensome proposition due to her age and health. *Id.* ¶¶ 9-10.

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In light of the considerable testimony about the Repeat Request Requirement will impose upon voters—including testimony from Latimer and White themselves—they have not met their burden of showing that there is no genuine issue of material fact regarding whether Plaintiffs will be injured by their implementation of the Requirement.

C. The Line Warming Ban

Latimer and White's contention that Plaintiffs will not be injured by the Line Warming Ban in Hillsborough and Miami-Dade Counties because there are no long lines at the polls is both factually and legally flawed. Factually, Latimer's contention that there are only "short lines" in Hillsborough County, ECF No. 315 at 12-14, is simply not true. Hillsborough County experienced at least one 150-person long line lasting approximately one hour during early voting in October 2020, and has experienced long lines in past elections. Ex. 35; Ex. 34. And, to the extent Supervisor White joins in Latimer's argument about the ostensibly short lines (which is not clear from the Joinder), Miami-Dade is one of several Florida counties with a history of long lines at the polls. Most recently, in 2020, voters in Miami-Dade County experienced wait times of 40, 45, and 90 minutes during early voting. Ex. 36; Ex. 6 at 50:18-51:9; Ex. 40 ¶ 240. Additionally, testimony from several supervisors including White demonstrates that the cumulative burdens of SB90 will likely *increase* lines for future elections, because SB90 makes other methods of voting more difficult. *See, e.g.*, Ex. 6 at 51:13-18; Ex. 5 at 145:18-146:4. This testimony further undercuts the assertion that Hillsborough (or Miami-Dade) will not experience long lines in the future.

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Further, whether or not Latimer and White think line warming is "necessary," Plaintiffs would like to offer it, and SB90 prohibition on their doing so is a violation

of Plaintiffs' constitutional rights. The Motion ignores this separate, constitutional harm the Line Warming Ban imposes on Plaintiffs, by prohibiting them in engaging in First Amendment-protected expression. As explained in detail in Plaintiffs' Partial Motion for Summary Judgment (ECF No. 320), the League's and BVM's provision of water and snacks to voters at polling places is constitutionally protected expressive conduct. *See, e.g., Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1242 (11th Cir. 2018) (holding that publicly sharing food with the homeless constitutes expressive conduct protected by the First Amendment); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1286 (11th Cir. 2021) ("We have already concluded that the Individual Plaintiffs were engaging in constitutionally protected expression . . . ."). The League's and BVM's self-censorship in forgoing distributing water and snacks at the polls because they fear fines or prosecution under SB90 constitutes injury-in-fact for standing purposes. *See ACLU v. Fla. Bar*, 999 F.2d 1486, 1492, 1494 (11th Cir. 1993) (self-censorship due to reasonable fear of disciplinary action for exercising First Amendment rights sufficient to establish injury-in-fact); *see also Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393 (1988) (standing existed where "the alleged danger of this statute is, in large measure one of self-censorship; *a harm that can be realized even without an actual prosecution*") (emphasis added).

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Indeed, when the League and BVM provide water and food to people near polling locations they intend, in part, to encourage voters to cast a ballot. Doing so "necess[arily] involves . . . the expression of a desire for political change," *Meyer v. Grant*, 486 U.S. 414, 421 (1988), which is "appropriately described as 'core political speech,'" *id.* at 422. Plaintiffs have a First Amendment right to engage in core political speech, and the deprivation of that right constitutes injury-in-fact. *Food Not Bombs II*, 11 F.4th at 1286 ("Undeniably," plaintiffs are "injured" where a law "directly interfer[es] with and bar[s] their protected expression.").

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Plaintiffs therefore have a constitutional right to engage in line warming activities, and, at the very least, Hillsborough and Miami-Dade Counties' history of long lines creates a genuine issue of material fact. Because Plaintiffs would like to provide nonpartisan assistance at polling places in Hillsborough and Miami-Dade counties, there is also a factual issue as to whether they will be injured by Latimer's and White's implementation of SB90's prohibition on line warming. Ex. 22 ¶ 7.

II. This Court already held that Plaintiffs' injuries are traceable to the Supervisors, and discovery did not reveal any facts to the contrary.

Latimer and White also argue that Plaintiffs' injuries are not traceable to them. ECF No. 315 at 13. But the Court has already rejected that argument, holding that the injuries caused by the Drop Box Restrictions, Repeat Request Requirement, and the Line Warming Ban are all fairly traceable to the Supervisors. ECF No. 274 at 21 (holding that the Supervisors are "directly responsible for offering drop boxes and

complying with the statute limiting the locations, operating hours, and monitoring of such drop boxes."); *id.* at 24 (the Supervisors are "solely responsible for processing vote-by-mail requests" in their counties); *id.* at 24-25 (the Supervisors are "responsible for designating 'no-solicitation zones' at voting locations and marking their boundaries" and they are "also statutorily authorized to 'take any reasonable action necessary to ensure order at the polling places'").

Nothing from discovery contradicts this Court's holding—for Latimer, White, or any other Supervisor of Elections. To the contrary, at their depositions, the Supervisors discussed how they are responsible for overseeing drop boxes, vote-by-mail requests, and lines at the polls. Ex. 3 at 16:21-17:18; Ex. 6 at 8:6-15, 21:21-22:3. Thus—at the very least—it cannot be said that there is no genuine issue of material fact regarding whether Plaintiffs' injuries are "fairly traceable to the challenged action of the defendant."[5] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1324 (11th Cir. 2012) (explaining the element of causation for Article III standing purposes "require[s] less than a showing of proximate cause") (quotation marks and citation omitted).

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[5] That "the Complaint challenges nothing that Latimer has done or has said" (ECF No. 315 at 13), is irrelevant for the purposes of summary judgment, which considers the factual record after the close of discovery, not merely Plaintiffs' allegations. *See Whitehead*, 979 F.3d at 1328.

Latimer claims that under *Jacobson v. Fla. Secretary of State*, 974 F.3d 1236, 1253 (11th Cir. 2020), Plaintiffs must show that their injury is directly traceable to Latimer's actions, and to establish this, they must do more than demonstrate that Latimer has a "duty to administer elections in Hillsborough County." ECF No. 315 at 12-13. Latimer's reliance on *Jacobson* is misplaced. As this Court is aware, *Jacobson* held that plaintiffs lacked standing to sue the Secretary of State where "Florida law tasks the Supervisors, independently of the Secretary, with implementing" the challenged statute, and as such, "any injury [was] traceable only to 67 Supervisors of Elections[.]" 974 F.3d at 1253. Because the Secretary did not play "any role" in the operation of the ballot order scheme at issue there, she was not a proper defendant. *Id.*

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This Court accordingly held that under *Jacobson* the Secretary is not the appropriate defendant for the Repeat Request Requirement or the Line Warming Ban, because only the Supervisors are tasked with implementing those portions of SB90 under Florida law. ECF No. 274 at 24-25. *Jacobson* does not require anything further to establish causation. *See id.* To the contrary, *Jacobson* supports Plaintiffs' claim that the Supervisors, including Latimer and White, are the appropriate defendants here. 974 F.3d at 1253.

III. The organizational Plaintiffs' injuries will be redressed by a favorable decision against the Supervisors of Elections, including Latimer and White.

In denying Defendants' Motion to Dismiss the claims at issue here, this Court held that enjoining the Supervisors from enforcing the Drop Box Restrictions, the Repeat Request Requirement, and the Line Warming Ban would redress Plaintiffs' injuries because the Supervisors will no longer be required to enforce these provisions that burden Plaintiffs' right to vote. ECF No. 274 at 28 ("the practical effect of enjoining [the Supervisors] from complying with the challenged drop box restrictions is that Defendant Supervisors will no longer be limited to providing voters with drop boxes that must be always monitored in person and open only during early voting hours"; and injunctions regarding the Repeat Request Requirement and the Line Warming Ban "will have a similar practical effect with respect to Plaintiffs' alleged injuries."). Nothing learned through discovery changes this conclusion, with regard to Latimer, White, or any other supervisor.

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Latimer and White raise three arguments to contrary, each of them unavailing. *First*, Latimer argues that the number of drop boxes in Hillsborough County will be unchanged whether or not the Court enjoins Latimer from enforcing SB90. But as explained above, while the *number* might be unchanged, the *hours* would be affected. And additional drop boxes could be made available in Miami-Dade County. No more is required for redressability. *See Lujan*, 504 U.S. at 561-62; *see*

also Lewis v. Governor of Ala., 944 F.3d 1287, 1301 (11th Cir. 2019) (redressability is established when the court's judgment would require the defendant to redress Plaintiffs' injury either "directly or indirectly.").

Second, Latimer and White argue that the Repeat Request Requirement will not take effect until January 1, 2023. But an injunction against that provision would redress Plaintiffs' injuries for elections after that date, in all Florida counties, including Hillsborough and Miami-Dade.

Finally, White argues that an injunction against enforcement of the Line Warming Ban would not matter in Miami-Dade, because her office will not allow non-partisan line warming activities in any event. ECF No. 326 at 3. But the pre-SB90 law under which White prohibited such activities gives her authority only to "maintain order at the polls." Fla. Stat. § 102.031(1). It is far from clear that this provision in fact authorizes White to impose a blanket prohibition on orderly, non-partisan line warming activities. And Plaintiffs have explained that the far broader prohibition in SB90 is deterring them from even attempting to engage in line warming activities—a form of self-censorship that constitutes injury-in-fact, and that would be redressed by an injunction prohibition White from enforcing SB90's new Line Warming Ban. *See, e.g.*, *Wollschlaeger v. Governor*, 848 F.3d 1293, 1305 (11th Cir. 2017); *ACLU*, 999 F.2d at 1494 & n.13.

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CONCLUSION

For the foregoing reasons, the Court should deny the Latimer's Motion for Summary Judgment and White's Joinder in the same.

LOCAL RULE CERTIFICATION

The undersigned certifies that this response contains 4,893 words, excluding the case style and certifications.

Respectfully submitted this 3rd day of December, 2021.

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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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