

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.

Cases Consolidated for Trial:

Nos.: 4:21-cv-186-MW/MAF  
4:21-cv-187-MW/MAF  
4:21-cv-201-MW/MAF  
4:21-cv-242-MW/MAF

**LEAGUE PLAINTIFFS' WRITTEN CLOSING STATEMENT**  
**AND POST-TRIAL BRIEF**

Pursuant to the Court's orders, Plaintiffs in the *League of Women Voters of Florida v. Lee* case, No. 4:21-cv-186, one of four cases that were consolidated for trial before the Court from January 31, 2022 to February 16, 2022, hereby submit this written closing statement and post-trial brief. The *League* Plaintiffs are: League of Women Voters of Florida, Inc. and League of Women Voters of Florida Education

Fund, Inc. (together, the “League”); Black Voters Matter Fund, Inc. ; Florida Alliance for Retired Americans, Inc. (“FLARA”); Cecile Scoon; Dr. Robert Brigham; Alan Madison; and Susan Rogers. The provisions of SB90 that the *League* Plaintiffs challenge are: Fla. Stat. § 97.0575(3)(a), as amended by Section 7 of SB90 (the “Registration Disclaimer Provision”); Fla. Stat. § 101.62(1)(a), as amended by Section 24 of SB90 (the “Vote-By-Mail Request Provision”); Fla. Stat. § 101.69, as amended by Section 28 of SB90 (the “Drop Box Provisions”); and Fla. Stat. § 102.031(4), as amended by Section 29 of SB90 (the “Solicitation Definition”). Together, these four provisions are the “Challenged Provisions.”

Accompanying this brief are five appendices meant to aid the Court. **Appendix 1** includes evidence relating to SB90’s background, passage, and general justifications. **Appendix 2** is a master chart of the *League* Plaintiffs’ standing, summarizing which Plaintiffs have standing for which claims. **Appendix 3** includes evidence relating to the *League* Plaintiffs’ standing. **Appendix 4** includes evidence relating to the *League*’s First Amendment claims. **Appendix 5** includes evidence relating to the *League*’s *Anderson-Burdick* claims.

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## BACKGROUND<sup>1</sup>

### **I. The Challenged Provisions were imposed after increased participation by minority and Democratic voters using vote-by-mail.**

In the 2020 general election, over 4.8 million Floridians—over 40% of the electorate—voted using a vote-by-mail (“VBM”) ballot. Ex. 5, ECF No. 608-1 at 35, Table 5 (Dr. Herron Rpt.). While that was more than in any prior general election, millions and millions of Floridians have used VBM over the past two decades. *Id.*

In 2020, VBM patterns changed in two notable ways. First, Black voters increased their use of VBM substantially. From the 2016 to the 2020 general election, the percentage of Black voters utilizing VBM went from approximately 20% to 40%—that is, a nearly 100% increase in use. *Id.* A whopping 52% of Black voters used a VBM ballot in the 2020 primary. *Id.* The upshot is that while “white voters have traditionally used VBM voting more than Black voters, the White-Black gap in VBM voting rates shrunk” significantly in 2020. *Id.* at ¶ 100.

Second, for the first time in Florida’s modern history, Democratic voters’ use of VBM ballots in 2020 outpaced Republican voters’ use—and by a substantial margin. *Id.* at 38, Tbl. 8. In the 2020 primary, nearly 70% of Democratic voters used a VBM ballot. *Id.* By the 2020 general election, 53% of Democratic voters were

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<sup>1</sup> An appendix including evidence relating to SB 90’s background, passage, and general justifications is attached at Appendix 1.

using a VBM ballot, compared to only 34% of Republican voters. *Id.* These rates are shown below:

Table 8: VBM rates by party affiliation in recent Florida statewide elections

Election	Democrat	Republican	NPA	Other party
2014 Primary	42.06	44.66		
2014 General	30.73	33.32	28.81	30.29
2016 Primary	41.82	43.53		
2016 General	29.05	30.09	25.80	28.48
2018 Primary	36.78	37.44		
2018 General	32.37	32.73	29.65	26.10
2020 PPP	40.18	55.04		
2020 Primary	68.63	48.32		
2020 General	53.31	34.78	43.70	40.60

*Id.*

While all Florida voters have been eligible to use VBM voting for the past twenty years, Senator Baxley, SB90's sponsor, expressed concerns about the VBM electorate's expansion in 2020: "The vote-by-mail ballots on this broad scale where we're just practically sending the entire voter file that wants [vote] by mail ballots was really a new experience. . . ." Ex. 6, ECF No. 608-5, at 6 (Burch Rpt.). Of course, that is the purpose of a no-excuse VBM system: any voter who wants to use one may do so. Left unstated but plainly implied is that it was a "new experience" for so many Democratic voters and voters of color to use the VBM system.

## **II. There is no evidence of any significant voter fraud in Florida.**

Political scientists agree that voter fraud in American elections is exceedingly rare. *See* Tr. Day 8, 2216:21-2218:10 (Dr. Herron). Even those who have made a concerted effort to find evidence of voter fraud have had difficulty doing so.

President Trump’s presidential commission to document voter fraud “was disbanded without finding evidence of” the “systemic voter fraud” that Trump himself so fervidly claimed had occurred. *Id.* Academics who separately studied the 2016 election were unable to find such evidence. Tr. Day 8, 2216:21-2217:12. And “no one’s found systematic voter fraud remotely consistent with the claims that were made in the aftermath of the 2020 election.” Tr. Day 8, 2207:3-5 (Dr. Herron).

Florida’s Supervisors agree that voter fraud is not a problem in Florida. *See, e.g.*, Tr. Day 4, 1268:12-23 & Ex. 109, ECF No. 608-27 (Pasco County Supervisor Brian Corley explaining that “true voter fraud is isolated and infrequent”); Tr. Day 9, 2608:2-21 (Leon County Supervisor Mark Earley explaining that VBM fraud in particular is “very rare,” “very isolated,” and a “one-off” when it does occur). As Supervisor Corley explained, “most ‘anomalies’ or ‘irregularities’ [in elections] are the result of clerical errors by elections’ staff who are taxed by extremely long hours in high stress environments.” Ex. 109, ECF No. 608-27; *see also* Tr. Day 12, 3255:25-3256:12 (Lee County Supervisor Tommy Doyle agreeing that “perceived fraud in an election is often just a mistake by a voter or a mistake by an election worker”). Similarly, most allegations of “double voting” are not that at all, but rather cases of mistaken identity: there are “hundreds of millions of voters” across the United States, and “when individuals with the same name and birthday live in

different states, and it can look like someone voted twice when actually these are two different people.” Tr. Day 8, 2215:20-2216:16 (Dr. Herron).

Florida has long had strong measures in place to prevent voter fraud. Supervisor Doyle confirmed this at trial, testifying that, “Florida has some of the strictest election laws in the United States,” and he agreed that before SB90, it was difficult to commit fraud in Florida’s elections. Tr. Day 12, 3232:21-24, 3255:25-3256:12; *see also* Ex. 212, ECF No. 608-47 (Hillsborough County Supervisor Craig Latimer explaining that before SB90, “we already had strong laws in that enabled us to run our 2020 election with accessibility and integrity”). Florida’s Supervisors also agree that Florida’s VBM system was secure before SB90. Tr. Day 9, 2606:24-2607:12 (Supervisor Earley). As Supervisor Latimer explained, there were multiple layered security measures in place. “To get a vote by mail ballot, you first off have to be a registered voter. When you register to vote, you are supplying identification and information that the State is able to make a match to verify you are who you say you are. You then have to request that ballot. When we get that ballot back, you had to have signed the oath on the outside of the envelope, and we physically compare that signature to the signatures that we have on file.” ECF No. 549-3, 105:18-106:5. Florida also has multiple layers of security in place to prevent double voting. A few years ago, Florida joined ERIC, which allows the state to “identify individuals who appear to be registered to vote in multiple states.” Tr. Day 10, 2760:3-5 (Director of



Division of Elections Maria Matthews). This system helps detect any instances of double voting that occur out-of-state, which Supervisor Earley described as “definitely” rare. Tr. Day 9, 2623:19-22. There are also separate intra county-to-county protections in Florida that would stop double voting in the State, *Id.* at 2622:19-2623:4, as well as operate to thwart anyone attempting to vote another’s ballot. According to Miami-Dade County Supervisor Christina White, Florida’s “voter rolls have never been more accurate and up to date.” Tr. Day 5, 1362:18-19.

The 2020 election was celebrated as an extremely successful and secure election. Both Secretary Lee and Director Matthews maintain that Florida voters should “be confident in the integrity of the election system and the security of their vote in the 2020 elections.” Tr. Day 10, 2759:2-8 (Director Matthews). Florida’s Supervisors universally had confidence in the integrity of the 2020 election, and have no reason to believe that it was infected with voter fraud. *See, e.g.*, Tr. Day 12, 3229:6-12 (Supervisor Doyle); Tr. Day 5, 1333:18-3 (Supervisor White).

And when SB90 was debated in the Legislature, the bill’s sponsors could not point to any evidence of voter fraud. As Senator Farmer summarized:

Q. What evidence do you recall being presented during the debates over SB 90 that indicated that voter fraud was a significant problem in Florida?

A. None. There was no evidence whatsoever presented of any voter fraud problems in the 2020 election.

Tr. Day 5, 1517:23-1518:2 (Senator Farmer); *see also id.* at 1456:9-20 (Rep. Thompson agreeing no such evidence was presented).

**III. Florida’s election apparatus did not support SB90 or believe that significant changes to the state’s voting system were necessary to ensure election integrity.**

As SB90 made its way through the Legislature, Florida’s Supervisors spoke with one voice, opposing the legislation. They did so both through the Florida Supervisor of Elections Association, or FSE, as well as their own statements.

Florida’s Supervisors were not consulted before SB90 or HB7041 were introduced, an unusual change from prior election legislation. Tr. Day 9, 2611:16-19 (Supervisor Earley); Ex. 112, ECF No. 608-30 (Supervisor Corley writing to his own representatives, “[n]either of the bill sponsors (nor any member of the legislature) reached out to an SOE on the legislation before it was filed, which is ironic as we are the subject matter experts who actually administer elections”). As the legislation progressed, Supervisors felt there was “reticence about even hearing what we had to say.” Tr. Day 9, 2611:16-19, 2616:12-22 (Supervisor Earley); *see also* Tr. Day 5, 1447:9-17 (Rep. Thompson opining that “there was very little regard for the Supervisors’ opinions and positions”).

The timing and scope of the bills was also a surprise to Supervisors. As Supervisor Latimer explained, “[t]he Governor and Secretary of State and others came out and said what a fantastic election we had run. As a matter of fact, I think

the Governor said we should be a model for the country, and then turned right around and all of a sudden we need election reform.” ECF 549-3, 98:17-24 (Supervisor Latimer). Overall, the Supervisors described SB90’s passage as “very partisan” in that it “mirrored” the dialogue from one party that there were reasons to “doubt the 2020 election” and to doubt “vote-by-mail” voting. Tr. Day 9, 2613:2-24 (Supervisor Earley); Ex. 149, ECF No. 608-35.

As Supervisor Earley testified, from his perspective, “very little of the true reasoning behind the bill was actually stated.” Tr. Day 9, 2614:1-10. “When some of the sponsors of the bill and other people supporting the bill were asked pretty difficult questions about why certain measures were in the bill, their answers didn’t really make much sense. . . [I]f that was the reasoning, their answers reflected the true reasoning, then it was, frankly, nonsense.” Ex. 149 at 1, ECF No. 608-35. Even Republican Supervisors felt similarly: After SB90 passed, Supervisor Corley wrote to his fellow Supervisors, explaining, “I have so much I want to say about the motives, intent and content of this election bill but to be honest, beyond disillusioned so I’ll keep my pie hole shut!” Ex. 115 at 1, ECF No. 608-32.

The FSE, for its part, is a “total bipartisan group” of all 67 Supervisors who are “advocates” for their voters. ECF 549-3, 91:19-24 (Supervisor Latimer). As Supervisor Earley explained, the FSE will advocate against legislation “if we see something that can adversely affect our voters, [or] cause disruptions in our ability

[to run elections].” Tr. Day 9, 2609:25-2610:9. Multiple times throughout the legislative session, FSE issued statements against the bill. *See, e.g.*, Ex. 215, ECF No. 608-50; Tr. Day 9, 2634:7-2636:2 (Supervisor Earley). As FSE’s President-elect, Supervisor Earley, explained at trial, “I don’t think [FSE] ever made a statement as an association, certainly, that it was a necessary change in statute or necessary bill, just the opposite. I think we said repeatedly it was not.” Tr. Day 9, 2670:20-2671:1. And as FSE’s former President, Supervisor Latimer, said after the bill passed: “[S]weeping election reform was not needed or requested by Supervisors of Elections. And making a lot of changes all at once has the potential to create voter confusion, more cumbersome administration and bureaucracy, and worst of all, an erosion of the confidence we’ve worked so hard to earn.” Ex. 216 at 257, ECF No. 549-3. As Senator Farmer testified, the Supervisors were “unanimous in their opposition to SB 90, which I found to be extremely significant. Florida is an incredibly diverse state . . . I’ve never seen 67 different counties’ elected officials agree on anything in my time in the Florida Senate . . . .” Tr. Day 5, 1521:4-11.

The Supervisors’ positions have not changed in the year since SB90 passed. If Supervisor White “had the option to administer future elections under the law that was in effect prior to Senate Bill 90,” she would do so. *Id.* at 1381:6-1382:5. “Our state, my county, was revered as having a near flawless election cycle; record voter turnout; no irregularities, as we’ve talked about; results substantiated, submitted on

time . . . . So to have that election cycle then conclude with an election reform bill, you know, with all of these various provisions, I think was something that took all of us as administrators off guard. . . . So, in the end of the day, I just don't think that any of it was necessary." *Id.*

**IV. Even moderate changes to Florida's election system have historically wreaked chaos on voters and election administrators.**

Almost exactly ten years before the Florida Legislature passed SB90, it passed a different election omnibus bill that took aim at specific modes of voting. Ten years ago, it was not VBM, but early voting that was the subject of the Legislature's revisions. Those changes came after President Obama's 2008 campaign was particularly effective at motivating Florida Democrats, and particularly Black voters, to vote early in person. Tr. Day 6, 1728:15-1729:2; 1730:12-1731:2 (Dr. Kousser). In the 2008 election, Democrats outpaced Republicans in early in-person voting by more than 20 percentage points (notably, just about the same gap that Florida saw with VBM voting in 2020, *see supra* at Part (I)). *See id.* In response, Florida passed HB1355, which limited early in-person voting by decreasing early voting hours, days, and banning early in-person voting the Sunday before election day, when many Black voters traditionally went to the polls. *See id.* HB1355 was sponsored by the same Senator Baxley who in 2021 also sponsored SB90. *See id.*

HB1355's cutbacks in early voting proved catastrophic for Florida's voters, increasing voting lines all across the state. As Supervisor White testified, "in the

2012 election, there were some precincts that did not close until after 1:00 am on the day after election day.” Tr. Day 5, 1371:20-1372:5. As Supervisor Earley described it, even what he considered to be a “moderate decrease in early voting ability” in HB1355 had tremendous consequences. Tr. Day 13, 3507:16-3508:7. “[E]ven that change, I think, resulted – was all over the news. And I know I use – sorry, Your Honor – colorful adjectives, but it was chaos in 2012, and there was substantial changes as a reaction to try and repair the damage to our voters in the 2013 legislative cycle. And, frankly, we warned the legislature of that same potential during the Senate Bill 90 committee hearings.” *Id.*

In other words, recent history in Florida has shown—and the Supervisors agree—that a change to one modality of voting has inevitable ripple effects on other forms of voting. If you hit “vote-by-mail in general, if you impact that, then you increase demands” and build pressure on the rest of the system. Tr. Day 9, 2618:22-2619:11 (Supervisor Earley); *see also* Tr. Day 5, 1372:8-13 (Supervisor White explaining effective VBM voting takes pressure off her in-person voting). As Supervisor Earley explained, his county is dependent on multiple forms of voting to administer elections: “[W]e just don’t have the capacity, and it would be tough to get the capacity to handle” all in-person elections like Florida used to administer. Tr. Day 13, 3507:4-15.

Dr. Kousser similarly testified that, given Florida's population growth between 1980 and 2020, it is "not physically feasible for everybody to vote on election day" as they had in 1980. Tr. Day 6, 1786:13-1787:2. "And so Florida, which became the third largest state in the country over that period of time – Florida had to find other ways to [] vote in general. Voting by mail is one of them; early in-person voting is another; drop boxes in 2020, or another – one can think of other means as well. . . . Florida [has] had to increase the ways of voting in order to keep the experience of voting anything like what it had been in 1980." *Id.* The upshot, of course, is that Florida's election system is not built for any of its methods of voting to break down without the full system suffering severe consequences.

For the reasons that follow, the Court should find for the *League* Plaintiffs on each of their claims, and invalidate the Challenged Provisions.

## ARGUMENT

### **I. The *League* Plaintiffs have standing to bring each of their claims.**

#### **A. Legal Standard**

To have Article III standing, a plaintiff must prove (1) an injury in fact (2) fairly traceable to the defendant's challenged action, (3) that is likely to be redressed by a favorable decision. *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)).

In voting cases, plaintiffs satisfy the injury in fact requirement when subjected to laws that make it more difficult for them to exercise their right to vote—even if they are not ultimately disenfranchised. *See, e.g., Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (“A plaintiff need not have the franchise wholly denied to suffer injury.”); *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1351–52 (11th Cir. 2009) (“Even if [plaintiffs] possessed an acceptable form of photo identification, they would still have standing to challenge” law requiring voters “produce photo identification to cast an in-person ballot” because “[r]equiring a registered voter either to produce photo identification to vote in person or to cast an absentee or provisional ballot is an injury sufficient for standing”).

Separately, requiring persons or entities to engage in expression they disagree with, or chilling expression they would like to engage in, is an injury-in-fact. *Janus v. AFSCME*, 138 S. Ct. 2448, 2464 (2018) (finding when state or federal government “prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines [the] ends” that free speech serves). And where the danger “is ‘one of self-censorship,’ harm ‘can be realized even without an actual prosecution,’” so long as, but for the challenged law, the plaintiff “would engage in speech arguably protected by the First Amendment.” *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1305 (11th Cir. 2017) (quoting *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988)). Persons or



entities are also injured by laws that “limit[] the number of voices that will convey [their] message . . . and, therefore, limit[] the size of the audience they can reach.” *Meyer v. Grant*, 486 U.S. 414, 422-23 (1988); *see also Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 194-95 (1999) (same).

Organizations may have standing in two ways. First, a membership organization has associational standing to sue on behalf of its members if “its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1160 (11th Cir. 2008); *see also Hunt v. Wash. State Apple Advertising Comm’n*, 432 U.S. 333, 345 (1977).<sup>2</sup> Second, “an organization has standing to sue on its own behalf if the defendant’s illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts.” *Browning*, 522 F.3d at 1165 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). This includes diversion

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<sup>2</sup> As discussed in Plaintiffs’ February 7 filing in response to the Court’s specific questions about standing, organizations need not be formal membership organizations to sue on behalf of quasi-members or constituents. ECF No. 557 at 2-3. This issue, however, does not impact the *League* Plaintiffs. Of the three organizational *League* Plaintiffs, two—the League and FLARA—have traditional members who testified to their injuries, and the third—Black Voters Matter—does not rely on associational standing.

not only of money, but also other resources, including volunteer time. *Ft. Lauderdale Food Not Bombs v. City of Ft. Lauderdale*, 11 F.4th 1266, 1287 (11th Cir. 2021) (*Food Not Bombs II*); *Arcia v. Florida Secretary of State*, 772 F.3d 1335, 1341 (11th Cir. 2014); *see also* ECF No. 557 at 6-8 (citing additional cases).

To meet the “fairly traceable” requirement, a plaintiff’s injury must be “traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Jacobson*, 974 F.3d at 1253 (quoting *Lujan*, 504 U.S. at 560). To meet the “redressability” requirement, “it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Lujan*, 504 U.S. at 561 (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42, (1976)). If a plaintiff “is himself an object of the action (or foregone action) at issue, . . . there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.” *Id.* at 561–62.

## **B. Injury-In-Fact**

Appendix 2 to this filing contains a chart reflecting which of the *League* Plaintiffs challenge which provisions of SB90, and which bases for standing are applicable to each such claim. Appendix 3 contains tables quoting key testimony regarding the *League* Plaintiffs’ injuries from the challenged provisions.

## **1. Individual Plaintiffs' Standing**

Individual Plaintiffs Cecile Scoon, Dr. Robert Brigham, Alan Madison, and Susan Rogers each have standing to challenge one or more of the Challenged Provisions.

### **a. Cecile Scoon's Standing**

Cecile Scoon is a resident of Panama City, in Bay County, Florida. Tr. Day 1, 33:7-8. Ms. Scoon is both the President of and a member of the League. *Id.* at 33:22-34:15. Ms. Scoon has standing to challenge all four of the Challenged Provisions: the Registration Disclaimer, the Drop Box Provisions, the VBM Request Provision, and the Solicitation Definition.

#### **i. Registration Disclaimer Provision**

Ms. Scoon has standing to challenge the Registration Disclaimer Provision because it will force her to engage in speech she does not want to engage in when conducting voter registration. Ms. Scoon has been “personally registering voters” for “about 35, 36 years.” Tr. Day 1, 36:14-16. Now, after SB90, when she does so she must communicate the Registration Disclaimer. *See id.* at 48:5-17.

Being required to convey the Disclaimer undermines Ms. Scoon's voter registration efforts. She testified that the Disclaimer is “invalidating all the work that we've done. It's building distrust in the person you are trying to build trust with, . . . making people distrust us when we are trying to build trust, have those conversations

to build the trust, and then you have to turn around and kind of break it down.” *Id.* at 49:9-19. Ms. Scoon has personally experienced people’s response when she directs their attention to the Disclaimer, and it is oftentimes very negative. She recalled a recent experience interacting with a young man while registering voters at the library: “[H]e was all ready to register to vote; and after he read the warning, he . . . was, like, withdrawing from me. And he says, You know what? I’m going to do it later. I don’t – I’m not going to do it now. And he walked away. He did not register.” *Id.* at 50:15-51:2. Ms. Scoon testified that having to give the Disclaimer is “frustrating and it’s upsetting, and, frankly, I feel a little bit sick to my stomach personally every time I say, Sir or ma’am, would you please look at this sign? I literally feel sick to my stomach.” *Id.* at 51:3-16.

The result of the Disclaimer Provision is that Ms. Scoon and the League cannot “register voters as effectively as [they] could before SB90.” *Id.* at 52:3-5. “It has made life a lot harder, and some people [in the League] have said they don’t want to do voter registration anymore because it’s too embarrassing.” *Id.* Having to say the Disclaimer is limiting the quantum of speech, and the number of willing speakers, specifically as it relates to Cecile’s and the League’s voter registration and education efforts. *See Meyer*, 486 U.S. at 422-23; *Buckley*, 525 U.S. at 194-95.

## ii. Drop Box Provisions

Ms. Scoon has standing to challenge the Drop Box Provisions: she votes using drop boxes, and the Provisions will make it harder for her to vote. She has primarily used drop boxes to vote over the last five to ten years, going after hours, around 8 or 9 p.m. Tr. Day 1, 77:2-10. For Ms. Scoon, being able to return her ballot using a drop box has been “a godsend” given how busy she is, between family obligations, work, and frequent travel. She takes comfort in “know[ing] that I saw with my own eyes I put it in the drop box myself.” *Id.* Before the enactment of SB90, Ms. Scoon never saw the primary drop box she used outside the Bay County Supervisors’ Office being personally monitored by a staff person. *Id.* at 77:25-78:2.

As a result of the passage of SB90, Ms. Scoon’s Supervisor took down the drop box she had primarily used. *Id.* at 82:12-25. A press release from Ms. Scoon’s Supervisor confirms both the removal of the box and the direct link to SB90: “The Vote By Mail Drop Box outside of the Supervisor of Elections office has been removed. Due to Florida Senate Bill 90 expected to be signed by the Governor, the office will no longer be allowed to have the Vote By Mail Drop Box except during Early Voting Hours.” Ex. 701, ECF No. 608-84.

Returning the ballot using USPS is not a viable alternative for Ms. Scoon, who is not comfortable mailing her ballot. Tr. Day 1, 84:8-85:11. It would also require her to complete her ballot well in advance of election day to ensure it is delivered to

election officials in time, but it is important to Ms. Scoon that she has as much information as possible about the candidates before filling out her ballot:

I've noted that sometimes candidates mature and evolve during the process. Sometimes they evolve in a way that I go, Oh, I like that. I wasn't going to vote for them, but maybe I will, you know. And sometimes people that I might have thought I was going to vote for, Uh, I don't like that answer. That just was not right. And then they lost my vote. So I wait.

*Id.* at 84:12-85:20.

### iii. Vote-By-Mail Request Provision

Ms. Scoon has standing to challenge the VBM Request Provision: she votes using a VBM ballot, and will be subject to the new provision. Before SB90, Ms. Scoon “had a standing request” for VBM ballots, and she requested future VBM ballots using a check box when she returned her ballot. Tr. Day 1, 87:17-23. In Ms. Scoon’s experience as a voter, that system worked “[e]xtremely well. Between it lasting the four years, where I didn’t have to remember every election cycle, it was also an additional benefit to have the little place on the envelope to check.” *Id.* at 87:24-88:3. But SB90 halves the maximum validity period and imposes onerous verification requirements. As Ms. Scoon testified, “frankly, there are just so many things that need doing, I’m concerned that I could forget and not request in time, and then I would be – have a difficult time voting where I would normally do.” *Id.* at 89:10-18. Moreover, Ms. Scoon does not remember what form of identification she provided when she first registered to vote, over 40 years ago. *Id.* at 87:13-16.

#### iv. The Solicitation Definition

Ms. Scoon has standing to challenge the Solicitation Definition, because she previously engaged in line warming activities within 150 feet of polling places, and would continue to do so but for SB90's prohibition. As Ms. Scoon testified, she and other League members have often provided voter support at polling places. While they "usually *set up* outside the 150-foot buffer zone," with a banner identifying them as part of the League and stocking their table with educational materials, Tr. Day 1, 57:1-9, 58:3-12, in a variety of scenarios, Ms. Scoon and other League volunteers have crossed into the buffer zone to assist voters:

Testimony	Cite
"[I]f we see someone is having any difficulty getting up the steps, opening the door, if they're sweating, . . . it's a small community, you might actually know the person going in. And if you know that they generally need help, you would usually walk up to them and say, Mrs. Smith, I see - you know, can I open the door for you? or How are you doing? And then she might say, you know, I had to wait for my ride, and I couldn't get my meal and my blood sugar is dropping. You know, they would say things like that because the elderly coming in, someone had to bring them. . . . So you just inquire, and you might get an answer, I'm feeling a little bit light-headed. So then you would say, Can I get you a cookie or a candy? You know, it would be wrapped, and you would bring it to them. They'd say yes, and you might bring it to them."	Tr. Day 1, 59:2-22
"Sometimes people are going in and they come to a table, and they say, I'm not comfortable going in. I went and talked to [the elections officials] yesterday, and I don't like how they talked to me. They were talking down to me. I was upset. Can you double-check and make sure I get treated properly? So there are different things that you might be pulled into in that zone and help the person in some way."	Tr. Day 1, 59:23-60:4

“[T]here have been times if there’s a problem with a machine or something, some little delay, you know, they can back up. The line can back up. And sometimes it’s really hot. The sun is really out and there’s no shade in a lot of these places, and so you would then see the person and you would say, Wow, it’s hot. Would you like some water? And we have a cooler with little baby waters in there and there’s ice and everything. So I’ve done that.”	Tr. Day 1, 60:19-61:1
“I know, like, if people are upset and they feel like they have been mistreated by the Deputy Supervisor of Elections and they don’t want to vote provisionally or something like that, they often come to our table and they say, I don’t feel like I’m being treated properly, you know. I’m upset. Can you come in with me and talk with them – with me to the person in charge? And you’d always say yes and go in and have that conversation and support them.”	Tr. Day 1, 61:2-9

When Ms. Scoon has crossed into the buffer zone to help voters,

A good portion is physical support, and then others are emotional support. The fact of the matter is that for many persons of color – I said Black people – they have not had a lot of good experiences with the government. The government has often been the police. It’s often been somebody in authority who is challenging them: Why are you here? What are you doing? [M]aking them feel uncomfortable and often disrespected. So our presence there and when they ask for our help, we’re just providing a little bit of a shield and a vitamin so they feel that, you know, their voice is going to be heard; they’re going to be given every consideration. And for those people I think it’s education for them and it’s also emotional support.

*Id.* at 61:10-24. Voters who Ms. Scoon has been able to help in this way are “[s]o grateful, just like, I am so glad you’re here. . . . I was really nervous about this, and I feel much better.” *Id.* at 61:25-62:6. Even when Ms. Scoon is unable to resolve an issue, for example when a voter may “have to vote provisionally, or a few times they



couldn't vote at all, just to know that a nonpartisan, unbiased organization stood with them through that process is powerful." *Id.* at 62:16-63:2.

But because of SB90, Ms. Scoon and the League are "absolutely not going to [assist voters in the buffer zone] anymore because the interpretation of what the law means and providing assistance is so broad." *Id.* at 63:3-8. Ms. Scoon and the League are very concerned that the Solicitation Definition is open to a very broad interpretation, and even heard legislators articulate such an interpretation: "Don't do anything. Don't give them water. Don't do anything." *Id.* at 65:13-23. They are concerned that under SB90, someone could accuse them of doing something wrong, and the experience would be very negative, scary, and hurtful for the League's members. They "don't want it to be within the discretion of any particular person to say, It means this, it means that in that moment." *Id.* at 65:23-25. They are even concerned that law enforcement could get involved:

So rather than go down that negative trail and to expose our members, to expose the potential voter who was trying to vote, and to also not cause distress to the Supervisor of Elections' office trying to discern, What are you doing? Are you interfering in some illegal way? We're just not going to do it.

*Id.* at 63:13-64:22.

**b. Dr. Robert Brigham's Standing**

Dr. Robert Brigham is an 87-year-old resident of Orange County, Florida, Tr. Day 5, 1596:10-22, and a member of the League. *Id.* at 1596:23-1597:4. He has standing to challenge the Drop Box and VBM Request Provisions.

**i. Drop Box Provisions**

Dr. Brigham has standing to challenge the Drop Box Provisions: he votes using drop boxes, and the Provisions will make it harder for him to vote. Dr. Brigham testified that “in the presidential election [in 2020] and the municipal election this year, I voted using a drop box.” Tr. Day 5, 1597:14-20. Dr. Brigham stopped voting in person because he had cancer and surgery that left him with a serious and unpredictable incontinence problem. *Id.* at 1597:21-1598:2. As a result, Dr. Brigham “tr[ies] very much not to go to places where there are – where I have to spend time away from bathrooms.” *Id.* He cannot predict how long he can be away. He explained, “I often walk my dog around the block. That’s maybe a 15- to 20-minute walk, and I lose control in that. Other times I can go an hour, hour and a half. But there is no warning. It just happens.” *Id.* at 1598:3-8. When Dr. Brigham has an episode, he immediately goes back home to clean up; he hopes that it will be better the next time he goes out, but it often isn’t. *Id.* at 1598:9-12.

As a result of Dr. Brigham’s condition, he is very sensitive to lines and delays, and he is particularly concerned that they could prohibit him from voting. As he

explained, “anything that restricts my options impacts me because the more options I have, the more likely I will be to get through the voting process.” *Id.* at 1606:7-14. Using a VBM ballot helps Dr. Brigham manage his condition, because it allows him to fill out even quite lengthy ballots at home. *Id.* at 1604:20-1605:6. As a result of bad experiences he has had recently with mail—including a time when he mailed back his property tax and it never got to its destination—Dr. Brigham is unwilling to use USPS to return his VBM ballot. *Id.* at 1604:10-20.

Easy access to drop boxes is accordingly very important to Dr. Brigham. The drop box Dr. Brigham used for the 2020 general election, before SB90, was accessible to him precisely because it “was not in the Supervisor’s office; it was across the street. It was out of doors but covered by a tent . . . and it was a drive through and there were signs pointing the way and all.” *Id.* at 1603:10-20. That drop box was “busy.” *Id.* “There was a line of cars, and we joined that line and eventually made our way.” *Id.* When Dr. Brigham voted in a municipal election after SB90, that outdoor drop box was no longer available. Instead, he “had to park the car and go in and physically drop it in the box” in the Supervisor’s office. *Id.* at 1598:13-1599:8. Parking was “very difficult,” the lot is “relatively small.” *Id.* Dr. Brigham is very concerned that if the drop box were indoors for an election as busy as the 2020 general election, it would be difficult for him to vote:

Each of the cars would have to park before me and that would take extra time. To me time is a really important thing. . . . Then,

of course, you'd have to go out and get in – walk into the Supervisor's office, and then I don't know how long it would take to drop ballots when there was a line there, but I'd have to join that line. And my situation gets worse when I do physical actions as opposed to sitting [in] the car, so it would have been more difficult for me, definitely.

*Id.* at 1601:18-1602:5. And if Dr. Brigham had an onset of his condition while trying to vote, he would be unable to finish: “I would go home. Stop what I was doing and go home and then hope I could get back another day.” *Id.* at 1607:6-13.

## ii. Vote-By-Mail Request Provision

Dr. Brigham has standing to challenge the VBM Request Provision: for the reasons discussed above, he is a VBM voter and he will be subject to the new Provision, which will make it harder for him to vote.

Now under SB90, to request a VBM ballot, Dr. Brigham will need to provide his driver's license number or the last four digits of his Social Security number, whichever is on file with the Supervisor. But Dr. Brigham does not remember whether he ever provided that information to the Supervisor; he testified that he rarely is willing to supply that sort of information online. Tr. Day 5, 1607:17-1608:8.

The VBM Request Provision also threatens Dr. Brigham's right to vote because, at 87 years old, his “memory is not as good as it used to be” and he is concerned he will forget to make the request every time he has to do it. *Id.* at 1608:13-20; *see also id.* at 1605:14-21 (“I’ve had some health problems. I feel creakier. I find I misplace things more. I forget some things. It’s – it’s all the things

you read about happening to older people that I never thought would happen, but they do. And I'm experiencing some of that." Dr. Brigham explained he may mistakenly think he has requested his ballot, but not realize he has not until close to the election when news about the election increases. *Id.* at 1608:21-1609:9. By then it may be too late. *See* Fla. Stat. § 101.62(2) (requiring VBM ballots be requested at least ten days before election day). It's "hard to say" whether Dr. Brigham would manage to vote if he forgot to request a ballot. Tr. Day 5, 1609:10-25. For the reasons discussed, voting in person poses significant difficulties for Dr. Brigham, and he "would be very worried about" his ability to successfully vote. *Id.*

**c. Alan Madison's Standing**

Alan Madison is a 73-year-old resident of Indian River County. Tr. Day 3, 695:5-10. Mr. Madison has standing to challenge the Registration Disclaimer, the Drop Box Provisions, and the VBM Request Provision.

**i. Registration Disclaimer**

Mr. Madison has standing to challenge the Registration Disclaimer because it will force him to engage in speech he does not want to engage in when he volunteers to conduct voter registration. Mr. Madison has previously volunteered with a Third-Party Voter Registration Organization, helping voters register to vote. *See* Tr. Day 3, 703:3-10. Mr. Madison was reluctant to volunteer again after SB90, because he found the required disclaimer "insulting" and untrue: "obviously, it's not my intent

not to return it on time.” *Id.* at 704:10-18. He also worried that “people would be much more reluctant to give me their registration or register with me.” *Id.* at 704:10-18. Despite these serious concerns, Mr. Madison has recently gone through training to get ready to register voters with a Third-Party Voter Registration Organization again. *Id.* at 704:10-18. Mr. Madison remains very concerned that “having to give the disclaimer warning will impact [his] ability to” register voters. *Id.* at 705:1-6. “If you’re telling somebody you can’t guarantee that you’re going to get their registration on time so that they can vote, why would they want to give it to you? In conversations with friends and family, I mean, they are all pretty much in agreement that that – that would be a turnoff for them.” *Id.* at 704:19-25.

## **ii. Drop Box Provisions**

Mr. Madison has standing to challenge the Drop Box Provisions: he votes using drop boxes, and the Provisions will make it harder for him to vote.

In the 2020 general and primary elections, Mr. Madison voted by VBM ballot and returned them using a drop box. Tr. Day 3, 695:5-12. During the 2020 general election, Mr. Madison used a drop box at his county Supervisor’s office that was accessible via “a drop slot on the wall outside on the building.” *Id.* at 696:19-697:6. Mr. Madison dropped off his ballot around 7 a.m. and there was no one monitoring the drop box; “I don’t even think the office was open.” *Id.* at 696:19-697:6.

The Drop Box Provisions eliminated the 24-hour drop box that Mr. Madison used in 2020. *See id.* at 697:10-25 (when Mr. Madison voted in 2021 after SB90, the drop box he used in 2020 “was not available”). As a result, Mr. Madison “couldn’t drop [his ballot] off when [he] had planned to.” *Id.* at 697:10-25. This is in marked contrast to his pre-SB90 experience, when he “could have dropped it off anytime of day or night. If I had an emergency, I could do it at 10 o’clock at night and take care of what was happening the following morning.” *Id.* at 699:16-23. Mr. Madison is concerned that, due to personal circumstances that regularly take him away on short notice, this lack of after-hours accessibility will hinder his ability to vote. *Id.* As Mr. Madison explained, “[m]y father-in-law right now is medically and mentally very challenged. We have him down in Boynton Beach, but it requires us periodically, in fact frequently, to go down and help out.” Tr. Day 3, 695:13-24. Mr. Madison’s father-in-law is “[a]bout an hour and a half” away. *Id.* at 696:9-18. Mr. Madison must visit him “weekly, sometimes more often,” often with no advance notice. *Id.*

In Mr. Madison’s experience voting after SB90, he had to wait for the Supervisor’s office to be open to use the drop box. *Id.* at 699:16-23. Once the office opened, Mr. Madison had to enter the building and hand his ballot to a staff member, rather than depositing it in the box himself. He testified that the experience made him feel “uncomfortable” and “was disconcerting.” *Id.* at 698:1-7. He pointed out

that when you vote in person, “nobody takes your ballot once you fill it out; you put it yourself in a machine.” *Id.*

Using USPS to return his ballot is not a viable alternative for Mr. Madison who has had “significantly poor experience with the U.S. Postal Service delivering my mail on time, delivering my mail appropriately.” *Id.* at 699:24-700:3. Among other issues, he has had “things that I’ve mailed to others including a thousand dollar bond go missing. . . . So I don’t trust the Postal Service like I used to.” *Id.* at 700:15-19. In fact, during the 2020 general election, Mr. Madison “didn’t receive [his mail ballot] until very late,” *id.* at 702:21-22, giving him more reason to doubt USPS, and little time to return his ballot by mail, making his access to drop boxes all the more important so that he can be sure that his ballot arrives in time to be counted.

### **iii. Vote-By-Mail Request Provision**

Mr. Madison has standing to challenge the VBM Request Provision because as a vote-by-mail voter, he will be subject to the new Provision. Mr. Madison is concerned that under the new provision, he may forget to renew his request. Tr. Day 3, 702:5-15.

### **d. Susan Rogers’ Standing**

Susan Rogers is a 66-year-old resident of Pinellas County. Tr. Day 4, 1088:8-9, 12-13. Ms. Rogers has standing to challenge the VBM Request Provision, which will make it harder for her to exercise her right to vote.



Ms. Rogers has severely impaired vision and has voted by mail in every Florida election since 2012. *Id.* at 1091:3-17. Ms. Rogers testified that, as a result of her condition, she has no central vision. *Id.* at 1089:7-18. “I have to magnify things or have things read to me. I’m not mobile. I don’t drive, obviously. And I have to pretty much stay in my familiar world.” *Id.* Ms. Rogers’ vision impairment makes voting in person extraordinarily difficult. “Obviously, I have to arrange for transportation and pay for transportation to go to the polling place, and then I’m a little lost anytime I leave my home in terms of navigating and getting around. And then reading, I can’t read the ballot. So I have to use devices or have someone assist me in reading it and in filling parts of it out.” *Id.* at 1091:19-1092:3.

Ms. Rogers’ vision impairment also makes it far more difficult for her to request a VBM ballot. Before SB90, to renew her request for a VBM ballot, she checked a box on the VBM ballot that she returned indicating she wanted to continue receiving VBM ballots. *Id.* at 1095:4-9. But SB90 eliminated that option, even as it dramatically shortened the validity period for each VBM request. As a result, Ms. Rogers “[does not] know for certain” how she will request a ballot. *Id.* at 1095:25-1096:6.” She testified that she has “tried to do a little research” as to how she would attempt to request the ballot online or by filling out “a printed form that I would have to print, or make a phone call and provide information.” *Id.* But it is not clear to her

how she would make that request in the future because of her condition. *Id.* at 1095:25-1096:6.

Each of the options available to Ms. Rogers—requesting by phone, online, or in writing—will be extraordinarily burdensome due to her vision impairment. *See id.* at 1096:14-1102:1. Ms. Rogers’ phone, which she receives because she is disabled and indigent, “doesn’t have a lot of adaptive features [or] accessibility features to it,” so it is very difficult for her to use and she cannot see anything on it. *Id.* at 1096:14-21, 1097:8-9. To find out what phone number to call, Ms. Rogers must access her Supervisor’s website on her iPad, using multiple applications and accessibility features to magnify the screen and read the page’s text, requiring numerous steps, screen taps, and changes between applications. *Id.* at 1097:8-24. Often, she accidentally taps a link while doing so and must “go back and start all over again.” *Id.* at 1100:7-12. Ms. Rogers must then manually enter that phone number on her phone, which she cannot see. *Id.* at 1099:16-18. Ms. Rogers ends up dialing the wrong number “all the time,” and must often start again from scratch. *Id.* at 1100:7. Renewing online would be no better—the Pinellas County Supervisor’s website is “not that adaptable for the visually impaired,” making it very difficult for Ms. Rogers to use. *Id.* at 1100:18-1101:8. Nor is printing the form and mailing it an option: Ms. Rogers does not have a printer, and she would have extraordinary difficulty reading the printed form. *Id.* at 1101:14-1102:1.

Ms. Rogers also worries she may forget to make the request for a ballot. She testified: “As I get older, I’m more forgetful. My vision also impacts my memory. . . . I used to be able to sort of take a snapshot of something. I have a photographic memory of things. And now that I can’t see as well, that doesn’t happen as well.” *Id.* at 1102:12-1103:5. Unlike voters without visual impairments, even writing a note to herself as a reminder is a multi-step and burdensome process, that may ultimately be ineffectual. As Ms. Rogers explained, “to make notes or use a calendar, I have a very large calendar that takes up about half the wall. I have to write things on there with Magic Marker to remind me of things, and that takes a lot of extra work. And I have to always switch my glasses so that I can read what I’m writing and/or put it in notes or do some other task to write down what it is I’m supposed to do. And then I have to be able to find it and have it read to me with VoiceOver or what have you. And it’s just one more task in my daily life that isn’t necessary given the way it was such a simple system before that you could just request your ballot every year by checking a box.” *Id.*

Reminder notices in the mail, should Ms. Rogers’ Supervisor send them, would do little to help her. As she testified: “I really can’t read any of my mail that I get at the mailbox. I have to – it’s a daunting process when I get mail because I can’t even spot read as I could maybe even two years ago what it might pertain to, so I have to go through the whole process of putting whatever mail I have behind a

Magnifier, a canopy reader, or take a picture of it or something to try to figure out what it is.” *Id.* at 1103:6-16. And while it is true that Ms. Rogers previously, once, voted early in person in 2012, her vision has worsened since then, and it would be far more difficult for her to vote in person now. *Id.* at 1094:18-20.

## **2. The League’s Standing**

The League of Women Voters of Florida, Inc. and the League of Women Voters of Florida Education Fund, Inc. (together, “the League”) are two affiliated non-profit organizations that share the same members, leadership, and staff. Tr. Day 4, 1120:14-1121:6. The League has standing to challenge all four of the Challenged Provisions: the Registration Disclaimer, the Drop Box Provisions, the VBM Request Provision, and the Solicitation Definition. The League has standing both on behalf of its injured members and based on its own direct injuries.

### **a. The League’s Associational Standing**

The League has “thousands” of natural persons as members. Tr. Day 1, 34:19-20. Members of the League “possess all of the indicia of membership in an organization.” *Hunt*, 432 U.S. at 344. They pay “membership dues,” which help finance the League’s activities. Tr. Day 4, 1121:19-20. They elect the Board of Directors which governs the League. *Id.* at 1121:21-1122:3. And “League members direct the organization’s priorities,” such as by telling the League what legislative priorities the League should focus on. *Id.* at 1122:4-11.

The League's members range from Floridians in their 80s to student members. Tr. Day 1, 34:21-35:14. Their members are located across the state, from "the Panhandle all the way down to the lower Keys." Tr. Day 4, 1121:7-10. League members "belong to both organizations" that are plaintiffs in this case—that is, the League of Women Voters of Florida, Inc., and the League of Women Voters of Florida Education Fund, Inc. *Id.* at 1121:5-6.

Among the League's thousands of members, many regularly use VBM ballots and utilize drop boxes, Tr. Day 1, 69:18-21, 70:4-72:4, and will be directly affected by the VBM Request and Drop Box Provisions. Approximately 600 League members engage in voter registration efforts, Tr. Day 4, 1131:4-9, all of whom must deliver the Disclaimer Provision at the time they do so. And the League has members who have offered assistance to Florida voters in the buffer zone at the polls, Tr. Day 1, 59:2-60:4, but will no longer do so because of the Solicitation Definition, *id.* at 63:3-8, as well as members who may themselves need assistance at the polls, *see id.* at 34:21-35:3 (the "typical League member" "is about 70 or maybe a little bit north of 70 . . . and we have many members in their 80s, also"); *id.* at 70:6-71:2 ("We have many members that are getting elderly or more disabled . . . . some of our members were not as mobile as they were before and requiring assistance, driving them from point A to point B, a lot more assistance.").

League members injured by each of the challenged provisions testified at trial about their League membership and injuries resulting from SB90. In addition to being individual plaintiffs, Cecile Scoon is a League member who is injured by all four Challenged Provisions, *supra* Part I.B.1.a, and Dr. Robert Brigham is a League member who is injured by the Drop Box and VBM Request Provisions, *supra* Part I.B.1.b.

Catherine Teti is also a League member injured by VBM Request Provision. *See* Tr. Day 5, 1587:21-25 (testifying to League membership). Ms. Teti is 76 years old and a registered voter in Hillsborough County. *Id.* at 15807:12-16, 1588:7-8. She has been voting by mail for several years, including in 2020. *Id.* at 1588:24-1589:6. She does not remember what form of identification she used when she registered to vote in 1980. *Id.* at 1590:2-5. Ms. Teti has significant mobility issues that make it hard for her to vote in person. *Id.* at 1589:7-15. Before SB90, Ms. Teti renewed her requests for VBM ballots using a check box on the envelope when she returned her mail-in ballot: “I [would] just check it, and I get the ballot for the next session – the next election.” *Id.* at 1590:8-13. Ms. Teti did not know that the Legislature had changed the law and that her request would expire. “I thought they said if I kept checking it, it would go on forever.” *Id.* at 1590:21-24. Ms. Teti is not sure how she will request a ballot now. “[H]owever you do it will be much more complicated than that, I’m sure. . . . I don’t know quite how they’re going to require you to do it. . . .

I don't know how I would request it otherwise, when you have to do it, where you have to do it, how you have to do it. I guess we'll find out." *Id.* at 1590:25-1591:8. And Ms. Teti is worried she will forget to renew her request. *Id.* at 1591:14-21.

If that happens, and Ms. Teti does not receive a VBM ballot, it would be very hard for her to vote in person due to her mobility issues. *Id.* at 1591:22-1593:4. To walk, Ms. Teti must use a cane, a walker, or a scooter. *Id.* at 1589:16-25. With her cane, she cannot "climb stairs unless there is a handrail," and she "can't step over curbs." *Id.* at 1592:6-9. She "was off someplace with a cane and dropped it and couldn't pick it up, and I had to wait until someone walked by that I could ask to pick the cane up for me." *Id.* at 1592:9-11. She "can't stand very long with just a cane"—not even long enough to brush her teeth—so if there was a line, she "would wear out very shortly." *Id.* at 1592:7-12. The walker is not an option to go vote, because "neither my husband or I can really get it into the car." *Id.* at 1592:23-24. That leaves the scooter, but "[t]he problem with the scooter, of course, is it can't do curbs." *Id.* at 1593:3-4.

The League also meets the final two prongs of associational standing. The interests at issue in this suit are germane to the League's purpose—to register and empower Florida's voters. Tr. Day 1, 33:23-34:12. Through this lawsuit, the League seeks to ensure (1) it can effectively register voters, (2) it can continue to assist voters at the polls, and (3) its members can vote without unnecessary barriers, all of which

are centrally germane to its purpose and give the League a clear stake in this litigation. *See, e.g., United Food and Com. Workers Union Loc. 751 v. Brown Group, Inc.*, 517 U.S. 544, 555-56 (1996) (“*Hunt*’s second prong . . . raises an assurance that the association’s litigators will themselves have a stake in the resolution of the dispute”). As the Eleventh Circuit has held, when the relief sought is injunctive—as it is here—individual participation of the organization’s members is “not normally necessary.” *Browning*, 522 F.3d at 1160 (quoting *United Food*, 517 U.S. at 546). Thus, the League has proven it has associational standing for each of the Challenged Provisions.

#### **b. The League’s Organizational Standing**

The League has also suffered its own direct organizational injuries which independently give it standing, including diversion of resources resulting from the Challenged Provisions, as well as First Amendment injuries arising from the Registration Disclaimer and the Solicitation Definition Provisions.

#### **i. The League’s Diversion of Resources Injury**

The League has diverted resources to address each of the Challenged Provisions. Those resources have been diverted from the League’s fundraising efforts, its redistricting work, and its Amendment 4 campaign. Because both League entities share the same members, staff, and leadership, Tr. Day 4, 1121:2-6, any diversion of resources on behalf of League staff, leadership, or members is a



diversion for both organizations. The Challenged Provisions had a strong and immediate impact on the League's operations. The League "had to move very, very quickly" to respond to the law because "there were changes in the law that affected our operations and how [we did] the things we regularly did." *Id.* at 1122:12-21.

To address the Registration Disclaimer Provision, the League updated its voter registration policies, including updating a quiz that each member must take before they can register voters. *Id.* at 1129:4-18. Any member who wants to engage in voter registration must now re-take the quiz as a result of SB90 to ensure they know how to comply with the Registration Disclaimer Provision. *Id.* The League also created notices of the Registration Disclaimer, in multiple languages, for members to display and explain when registering voters: "We asked them to show this notice wherever they are registering people to vote" and "directed our members to tell them about it." *Id.* at 1132:19-1133:19. The League has also hosted numerous trainings for members on how to comply with the Registration Disclaimer Provision, and will continue to do so as it ramps up voter registration activities for this election cycle. *Id.* at 1134:21-1135:6. The training is essential, because "some of these people have been registering voters for decades, so [it is] not easy to change something you've been doing for 20, 30 years." *Id.* The League "spent weeks working" on the training, and "some people have said they don't want to do voter registration anymore because it's too embarrassing" to give the Disclaimer. Tr. Day 1, 52:10-14.

To combat the remaining Challenged Provisions, the League has put “hours and hours” into creating informational materials for members to understand the changes to VBM and the Solicitation Definition. Tr. Day 4, 1126:6-1127:7. Ms. Scoon has personally spent “many, many hours, researching the law, writing up information, guidelines, writing PowerPoints, revising the PowerPoints, having talks on our lunch-and-learn,” and hosting webinars about the changes. Tr. Day 1, 91:25-92:16. The League has “received tons of calls and emails about SB 90” that its staff and leadership must divert resources to answer. Tr. Day 4, 1125:20-21, 1128:8-15. It has given several educational presentations to its members on how to comply with the VBM Request, Drop Box Provisions, and Solicitation Definition Provisions, and will continue to in the future. *Id.* at 1125:8-1126:4, 1128:8-21.

The impact of SB90 goes far beyond ordinary changes to election laws and the resources the League has had to devote to addressing it have been commensurately and unusually substantial. “[W]e did so much more planning, development and execution than we would have done with any other law.” *Id.* at 1140:23-1141:7. The League’s Executive Director has personally put “hundreds of hours” of time into SB90 compliance and education efforts. *Id.* at 1135:7-11. Other staff, volunteers, and leadership have also diverted significant time to address SB90. *Id.* at 1135:7-1136:2. The League does not “do that with every change in the law. There’s changes every year. We’ve never done that before.” Tr. Day 1, 107:19-

108:7. The League has had to “put triple-time effort into the process because there’s many more questions that come . . . with the changes with Senate Bill 90. So it’s not really continuing the same. It’s different in quantity and quality.” *Id.* at 130:18-25.

All of this time and effort has come at the direct expense of the League’s other priorities. The League’s Executive Director has personally been unable to spend as much time as she otherwise would have on grant applications and fundraising because of the time spent addressing SB90, and as a result, the League does not “have as many grants this year as we have [had] in the past.” Tr. Day 4, 1136:3-18, 1137:7-1138:4. The League has also had to divert resources away from redistricting and responding to Amendment 4, which restored voting rights to many citizens who have completed felony sentences. *Id.* at 1136:19-1137:6, 1138:5-1139:3, 1139:12-1140:11. Ms. Scoon leads the Amendment 4 project, but because of SB90 has not been able to dedicate the time necessary to the project, and “[w]hen Cecile’s not available, like, physically not available because she’s working on SB 90, the returning citizens project/Amendment 4 stuff suffered.” *Id.* at 1139:12-1140:11; *see also* Tr. Day 1, 93:5-25 (“[W]orking on Senate Bill 90 and all the trainings took directly . . . from doing the work and the training on Amendment 4 with many of the people that I work with, the volunteers, our interns, and many of our pro bono lawyers who seek additional advice . . . . That’s been a direct hit, and many other topics that we want to work on.”). This negative impact on the League’s activities

will continue, as it continues to divert mission-critical resources to SB90 education and compliance efforts. Tr. Day 4, 1140:12-20; *see also* Tr. Day 1, 94:20-25.

**ii. The League's First Amendment Injuries**

The Registration Disclaimer Provision also directly injures the League by compelling it to engage in speech that it otherwise would not, by reducing the effectiveness and quantum of the League's political speech, and by harming the League's reputation. And the Solicitation Definition directly injures the League by causing it to self-censor its activities near polling places.

**1. The Registration Disclaimer Provision injures the League by compelling its volunteers to speak.**

The Registration Disclaimer Provision injures the League by requiring it to engage in speech that it would not otherwise engage in, speech that it considers false and misleading. *See* Tr. Day 1, 46:5-47:24, 183:23-184:5; *see also supra* Part I.B.1.a.i. But for that Provision, the League would not tell prospective voters it might not deliver their registration forms on time. *See, e.g.,* Tr. Day 1, 51:17-52:2. The Disclaimer also directly undermines the League's efforts to register voters: "You are sitting at the table, and you are trying to row the boat this way, and the sign [with the disclaimer] is going the opposite direction." *Id.* at 96:16-20.

**2. The Registration Disclaimer Provision reduces the effectiveness and amount of the League’s speech, and harms the League’s reputation.**

The Registration Disclaimer Provision also directly injures the League by reducing the amount and effectiveness of the League’s expression relating to voter registration, and by harming the League’s reputation.

Because of the Provision, the League’s voter registration activities are less effective, take longer, and lead to fewer registered voters. *See, e.g.*, Tr. Day 1, 52:3-53:14. Individuals have refused to register with the League after viewing the disclaimer. *Id.* at 50:12-51:1. And the League has fewer members who are willing to do voter registration as a direct result of the Registration Disclaimer. Tr. Day 4, 1131:1-14; *see also* Tr. Day 1, 52:13-14 (some League members have refused to do registration “because it’s too embarrassing” to deliver the Disclaimer). As a result, the League will have fewer conversations with voters about the importance of voter registration and voting. Tr. Day 4, 1131:15-1132:17.

The need to deliver the Disclaimer also harms the League’s reputation. The League is a “trusted” brand in Florida for voter registration, and it is “very harmful for [it] to have to give those kind of warnings” that it might not deliver registration forms on time. Tr. Day 1, 49:3-19. The Registration Disclaimer Provision will “absolutely” impact the League’s reputation. *Id.* at 52:15-18. And that reputational harm is entirely unwarranted, because out of the thousands and thousands of forms

that the League has turned in for Florida voters over the past ten years, only six were turned in after the deadline (then ten days) by which Third-Party Voter Registration Organizations are required to submit such forms—the result of a hurricane, and (once) a one-day miscalculation of the deadline—and the League has *never* submitted a form past book closing. *Id.* at 46:5-47:24.

### **3. The Solicitation Definition causes the League to self-censor its activities at polling places.**

The Solicitation Definition directly injures the League by requiring it to self-censor its activities at polling places. Before SB90, the League directly assisted Florida voters in the buffer zone outside polling places. Tr. Day 1, 59:2-61:1; *see also supra* Part I.B.1.a.iv. Because of the Solicitation Definition, the League is self-censoring and will no longer provide any kind of assistance within the 150-foot buffer zone. Tr. Day 1, 63:9-16; *see supra* Part I.B.1.a.iv. The Solicitation Definition is therefore injuring the League by preventing it from engaging in activities that it would otherwise undertake.

### **3. Black Voters Matter's Organizational Standing**

Black Voters Matter is a nonpartisan organization working across the country, including in Florida, to build power in Black communities. Tr. Day 7, 1979:17-25. It engages in direct electoral mobilization and voter outreach work, as well as organizing around issues that affect Black communities such as environmental justice, economic justice, police accountability work, and more. *Id.* at 1980:10-22.

Black Voters Matter has standing to challenge the Drop Box, the VBM Request, and Solicitation Definition Provisions, based on its own direct injuries.

**a. Black Voters Matter’s Diversion of Resources**

Black Voters Matter has diverted resources to address the Drop Box, VBM Request, and Solicitation Definition Provisions. Those resources have been diverted from Black Voters Matter’s staffing in other Southern states and from its issue advocacy work in Florida.

SB90 has required Black Voters Matter to educate its staff and partner organizations about the Solicitation Definition and what it prohibits. Tr. Day 7, 1989:5-12. Black Voters Matter has also begun to conduct virtual town halls and prepare informational materials to educate voters about the Drop Box and VBM Request Provisions. *Id.* at 1999:5-9, 2002:7-15. Those provisions require a significant amount of education to ensure voters are able to navigate the changes and new requirements. *Id.* at 2002:7-15. Black Voters Matter’s efforts will include training, “texting and emailing, and social media messaging, radio advertisements . . . a range of communication tactics in order to communicate what’s fairly complex in some cases, these provisions that have changes, and for some people it’s a change in the way that they’ve been doing things for years, if not decades.” *Id.* at 1989:13-1990:2, 2002:16-2004:9.

“[A]ll of that requires a significant voter education effort which requires [] time and energy and financial resources that we otherwise would not have to expend and which puts a burden on us as an organization.” *Id.* The kind of education that SB90 requires is also more expensive to do than traditional voter outreach because the messages are longer and they require more frequency. *Id.* As a result of the Challenged Provisions, Black Voters Matter anticipates spending more money on voter education in Florida in 2022 than it did even in 2020, a presidential election year. *Id.* at 2010:1-12. And Black Voters Matter has had to hire two additional staff members to assist with voter education in Florida. *Id.* at 2010:18-2011:8.

Black Voters Matter’s activities in response to SB90 are a substantial change for the organization. While it previously did some voter education on the mechanics of voting, “the nature of that communication is significantly different” after SB90. *Id.* at 2019:14-23, 2020:20-21.

There is a substantive difference between saying, ... don’t forget, you know, you can drop off your ballot via drop box and saying, Hey, you know, you can drop it off, but keep in mind that the locations are less than before and the hours are different. You can’t go, you know, after work or in nontraditional hours. Oh, and by the way, there might be somebody there monitoring you. You know, it’s night and day between the type of communication that we had to do before and what we’ll have to do now. . . . SB 90 creates a whole other mega universe of changes that have to be communicated.

*Id.* at 2019:14-2020:21.



Black Voters Matter’s response to the Challenged Provisions will come at the direct expense of its other programs, in Florida and elsewhere. Its need to increase staffing in Florida in response to SB90 means that it could not hire additional staff in Tennessee, leaving that state “shorthanded.” *Id.* at 2011:15-20. And its need to focus on voter education takes away resources from its issue advocacy work in Florida specifically, as well, including organizing around environmental justice and police accountability. *Id.* at 2012:23-2014:3. “[I]t’s a frustrating situation to have to divert resources from the other work that we could be doing in order to deal with provisions that are wholly unnecessary and which are going to have a negative impact on Black voters and Black voter turnout.” *Id.*

**b. Black Voters Matter’s First Amendment Injury**

Black Voters Matter also has standing to challenge the Solicitation Definition because it has caused it to self-censor its prior activities at polling places. Before SB90, Black Voters Matter engaged in what it calls “voter comfort” activities at polling places in Florida, which involved providing water, food, cell phone chargers and encouragement to voters. Tr. Day 7, 1981:1-1982:5, 1983:10-16, 1984:3-11. As part of those activities, the organization’s own staff members, including its Executive Director, engaged with and provided assistance to Florida voters within the 150-foot buffer zone outside polling places. *Id.* at 1985:7-24, 1986:3-8. These activities have “an impact in helping people to stay in line, to engage in the process

of voting.” *Id.* at 1981:1-1982:5, 1984:22-24, 1991:14-1992:8. They also “send[] a message about celebrating the voting experience.” *Id.* “Part of the purpose is to communicate to voters that they matter, even as they are waiting in long line.” *Id.*

As a result of SB90’s Solicitation Definition, Black Voters Matter will no longer allow staff or volunteers to assist voters within the 150-foot buffer zone. *Id.* at 1986:9-23. It is concerned about the potential for arbitrary enforcement given the Solicitation Definition’s expansive language, particularly because Black Voters Matter has previously experienced arbitrary enforcement of prior solicitation laws, such as when Florida Supervisors have told them that their shirts saying “Black Voters Matter” contain a partisan statement. *Id.* at 1986:24-1988:25. If SB90 were not the law, Black Voters Matter would continue to offer assistance to voters within the buffer zone, as it has in the past. *Id.* at 1992:9-12.

#### **4. The Florida Alliance of Retired Americans’ Standing**

The Florida Alliance of Retired Americans (FLARA) has standing to challenge the Drop Box, VBM Request, and Solicitation Definition Provisions. It has standing both on behalf of its injured members and based on its own direct injuries.

**a. FLARA's Associational Standing**

FLARA has associational standing to challenge the Drop Box, VBM Request, and the Solicitation Definition Provisions based on injuries to its members, including testifying witness and FLARA President William Sauers.

FLARA has approximately 200,000 members across Florida, from Pensacola to Miami. Tr. Day 5, 1618:7-20. FLARA's members "possess all of the indicia of membership in an organization." *Hunt*, 432 U.S. at 344. FLARA's member dues primarily finance FLARA activities. Tr. Day 5, 1619:4-11. FLARA's members elect its Board of Directors, which governs FLARA. *Id.* at 1620:3-4. And FLARA's members direct the organization's priorities. *Id.* at 1620:5-6.

The average FLARA member is between 65 to 95 years old. *Id.* at 1619:1-3. Some of FLARA's members have disabilities or are homebound. *Id.* at 1622:19-23. Many FLARA members traditionally with a VBM ballot, *id.* at 1620:14-16, and use drop boxes, *id.* at 1637:2-3. FLARA also has members who vote at the polls and who are likely to need assistance when doing so. *Id.* at 1628:7-25.

FLARA's President William Sauers is one member who is injured by the Drop Box, VBM Request Provision, and Solicitation Definition Provisions. Mr. Sauers is a member of FLARA. *Id.* at 1618:23-24. He has consistently voted with a VBM ballot, has historically used drop boxes, and wishes to use drop boxes in the future. *Id.* at 1620:17-18, 1625:6-11, 1625:21-22. But St. Lucie County, where Mr. Sauers

lives, is reducing drop box locations and hours as a result of the Drop Box Provisions, which will make it harder for Mr. Sauers to vote. *Id.* at 1616:8-10; Ex. 5 tbl. 24, ECF No. 608-1. And Mr. Sauers will need to make new, more frequent requests for mail ballots as a result of the VBM Request Provision. Tr. Day 5, 1623:18-23. Should Mr. Sauers have to vote in person, such as if he forgets to request a VBM ballot, he would likely need assistance at the polls due to his heart and lower back conditions—assistance that is less likely to be available because of the Solicitation Definition. *Id.* at 1627:19-1628:6.

Finally, the interests at issue in this suit are germane to FLARA's purpose. FLARA exists to advocate for retirees, which it typically does through its advocacy and lobbying efforts. *Id.* at 1617:25-1618:6. FLARA's members cannot make their voices heard through their elected officials and accomplish the organization's purposes if they cannot successfully cast their ballots. And just as with the League, because FLARA seeks purely injunctive relief, participation by individual FLARA members is not necessary. *Browning*, 522 F.3d at 1160.

#### **b. FLARA's Organizational Standing**

FLARA also has organizational standing to challenge the Drop Box, VBM Request, and Solicitation Definition Provisions. FLARA's mission is to “advocat[e] for retirees” and educate elected officials on legislation that affects Florida's seniors. Tr. Day 5, 1617:25-1618:6. FLARA will have to divert resources to address the Drop

Box, VBM Request, and Solicitation Definition Provisions if they survive this lawsuit. In particular, FLARA will need to educate its members about the Drop Box and VBM Request Provisions, so that its members can still request mail ballots and know how to return them. *Id.* at 1624:7-16, 1627:5-13. And FLARA will educate its members about the need to shift to VBM (for those members that previously voted in person) if the Solicitation Definition stands so that assistance is not available at polling places. *Id.* at 1629:12-17.

The resources needed to conduct that education will have to be diverted from FLARA's core mission of issue advocacy work on behalf of retirees. *Id.* at 1618:3-6. FLARA did not traditionally spend its resources teaching its members about the mechanics of voting, and it must make choices about how it asks its members and volunteers to spend their limited time. *Id.* at 1630:7-22. As a result, when FLARA spends time educating its members about the mechanics of voting, it must spend less time on its core advocacy and lobbying efforts. *Id.* at 1629:18-1631:11.

**C. Plaintiffs Satisfy the Causation and Redressability Requirements.**

Plaintiffs satisfy the causation and redressability requirements as to each of the Challenged Provisions, because their injuries are traceable to the challenged action of the defendants—namely, their enforcement of an unconstitutional law—and would be redressed by a favorable decision against those defendants. *E.g.*,

*Lujan*, 504 U.S. at 561. The Court previously addressed this issue in its Order on Motions to Dismiss, ECF No. 274, and nothing has changed since then.

### **1. The Registration Disclaimer Provision**

Plaintiffs' injuries from the Registration Disclaimer Provision are directly traceable to Defendants Lee and Moody, who are tasked by Florida law with enforcing that Provision, and redressable by relief against those Defendants. ECF No. 274 at 26; *see* Fla. Stat. § 97.0575(4) ("If the Secretary of State reasonably believes that a person has committed a violation of this section, the secretary may refer the matter to the Attorney General for enforcement. The Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order."). Director Matthews confirmed the existence of this enforcement mechanism, which is the only mechanism in the statute for enforcing the Disclaimer requirement. *See* Tr. Day 10, 2778:5-7. If the Court enjoins Defendants Lee and Moody from enforcing that provision, Plaintiffs will be free to stop providing the Disclaimer, and their injuries will be redressed.

### **2. The Drop Box Provisions**

Plaintiffs' injuries from the Drop Box Provisions are directly traceable to Defendant Lee, who has specific authority to enforce those provisions by fining any Supervisor who does not comply with them, as well as to the Supervisors, who are

the officials who decide where and when drop boxes will be made available in their counties. ECF No. 274 at 20-21. Plaintiffs' injuries from the Drop Box Provisions are redressable by relief against those same Defendants, in the form of an order enjoining enforcement of the Drop Box Provisions. *Id.* Multiple Supervisors testified that were it not for the Drop Box Provisions and the \$25,000 fine, they would offer additional drop box locations or hours. *See, e.g.*, Tr. Day 4, 1251:23-1252:1 (Supervisor Scott: I would have gone for 40 drop boxes if it weren't for Senate Bill 90."); Tr. Day 5, 1367:9-12 (Supervisor White: "As a result of Senate Bill 90's change, . . . [Miami-Dade] will have two fewer boxes on Monday and Tuesday"—the day before election day and election day). An order enjoining the Supervisors and Defendant Lee from enforcing the Drop Box Provisions would redress Plaintiffs' injuries from those provisions.

### **3. The Vote-By-Mail Request Provision**

Plaintiffs' injuries from the VBM Request Provision are directly traceable to the Supervisors, and redressable by relief against them, because it is the Supervisors who enforce that provision. ECF No. 274, at 24. Trial testimony confirmed the Supervisors' role in enforcing the VBM Request Provision and thus in causing Plaintiffs' injuries from it. *See, e.g.*, Tr. Day 5, 1352:9-18 (Supervisor White explaining the VBM Request Provision will require her office to treat all of the hundreds of thousands of existing vote-by-mail requests as expired on January 1,

2023, and after every general election thereafter). An order enjoining the Supervisors from enforcing that provision would directly redress those injuries.

#### **4. The Solicitation Definition**

Plaintiffs' injuries from the Solicitation Definition are traceable to the Supervisors, who enforce the prohibition of "solicitation" within buffer zones outside polling places, and redressable by an injunction against the Supervisors. ECF No. 274 at 24-25; Fla. Stat. § 102.031(4)(a). Testimony from the Supervisors confirmed that they and their staff are responsible for enforcing this provision. *See, e.g.*, Tr. Day 5, 1376:8-1377:11 (Supervisor White explaining it is the "essential poll workers" employed by her office who enforce this provision). An order enjoining the Supervisors from enforcing the new definition would therefore redress Plaintiffs' injuries from it.

Defendants have argued that the causation and redressability requirements are not met with respect to the Solicitation Definition because some Supervisors testified that even before SB90, they enforced an absolute prohibition on contact with voters near polling places, without attempting to ascertain whether that contact involved "solicitation" as Florida law defines it. *See* Tr. Day 10, 2875:2-2880:25 (argument of Defendant Lee's counsel); *id.* at 2884:23-2886:10 (argument of Defendant White's counsel). In particular, Defendants have emphasized Supervisor White's



testimony that even if SB90 were repealed, she would not change her policy barring all contact with voters within 150-feet of the polls. *See* Tr. Day 5, 1392:12-14.

The record demonstrates, however, that not every Supervisor followed the absolutely-no-contact policy Supervisor White described. The Court heard from multiple witnesses about line-warming activities they conducted within the buffer zone before SB90 was enacted. *See, e.g.*, Tr. Day 1, 60:19-61:1 (Ms. Scoon has offered water to voters waiting in line); Tr. Day 7, 1985:7-24, 1986:3-8) (Mr. Albright has personally engaged with and provided assistance to Florida voters within the 150-foot buffer zone). Even in Miami-Dade, Supervisor White's policy has not been consistently applied by her staff: the Hispanic Federation handed out pizza within the 150-foot buffer zone at a Miami-Dade polling place in 2018. Tr. Day 3, 810:18-811:4. And both Ms. Scoon and Mr. Albright testified that they and their organizations will no longer conduct such activities after SB90, because of the change to the Solicitation Definition. Tr. Day 1, 63:3-8; Tr. Day 7, 1986:9-23.

Moreover, even for Supervisors like Supervisor White who attempt to prohibit *all* contact within the buffer zone, it still makes a significant difference to Plaintiffs whether their conduct constitutes prohibited "solicitation" or not. A violation of the Florida election code is punishable as a "misdemeanor of the first degree." Fla. Stat. § 104.41. If activity constitutes "solicitation" under the Solicitation Definition, it is a criminal offense, enforceable by deputy sheriffs at polling places who are "subject

to all lawful commands of” the polling place staff that report to the Supervisors. *See* Fla. Stat. § 102.031(2), (4)(a). In contrast, the other provisions that Supervisor White relies upon in enforcing a broader prohibition on any conduct do not involve criminal liability in the first instance, but merely authorize the issuance of “lawful commands” and the taking of “reasonable action,” such as removing disruptive persons. *Id.* § 102.031(1), (4)(d).

It is one thing for Plaintiffs to engage in line-warming activities at the risk that a poll worker may order them to stop; it is quite another to commit a crime and risk arrest. Plaintiffs have reasonably engaged in self-censorship in the face of potential criminal liability. *E.g.*, Tr. Day 1, 63:3-8; Day 7, 1986:9-23. The potential for such liability is traceable to the Supervisors’ enforcement of the Solicitation Definition, and it is redressable by an order enjoining the Supervisors from doing so.

## **II. The Registration Disclaimer Provision violates the First Amendment.**

The Registration Disclaimer Provision violates Plaintiffs’ First Amendment rights. Appendix 4 contains tables quoting key testimony regarding the invalidity of the Provision under the First Amendment.

### **A. Legal Standard**

The Registration Disclaimer Provision is subject to strict scrutiny as a law that “compel[s] individuals to speak a particular message.” *NIFLA v. Becerra*, 138 S. Ct. 2361, 2371 (2018); *see also Riley v. Nat’l Fed’n of Blind of N.C.*, 487 U.S. 781, 795

(1988). “When the government ‘compel[s] speakers to utter or distribute speech bearing a particular message,’ . . . such a policy imposes a content-based burden on speech and is subject to strict-scrutiny review.” *McClendon v. Long*, 22 F.4th 1330, 1337-38 (11th Cir. 2022). As Plaintiffs have previously explained, ECF No. 583, and Defendants have conceded, ECF No. 582, it makes no difference that Plaintiffs may comply with the Registration Disclaimer Provision by displaying a written sign or disclaimer rather than through literal speech—the same was true in both *NIFLA* and *McClendon*. See *NIFLA*, 138 S. Ct. at 2369; *McClendon*, 22 F.4th at 1333-34.

As Plaintiffs explain in their separately filed Response to the Court’s Order Requesting Briefing on specific questions related to First Amendment scrutiny, ECF No. 647, the applicable standard is strict scrutiny rather than exacting scrutiny. Exacting scrutiny applies to laws that involve the “compelled disclosure of *affiliation with* groups engaged in advocacy,” which operates as a “restraint on freedom of association.” *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958)) (emphasis added); see also ECF No. 647 (addressing additional cases).<sup>3</sup>

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<sup>3</sup> This distinction makes little practical difference because, as the Supreme Court held in *Bonta*, exacting scrutiny requires narrow tailoring just as strict scrutiny does, and even “a substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored.” *Bonta*, 141 S. Ct. at 2384. Thus, for the reasons given below, the Registration Disclaimer Provision could no more survive exacting scrutiny than strict scrutiny.

The Registration Disclaimer Provision, in contrast, requires Plaintiffs to express a message—that they might not deliver voter registration forms on time, and the voter can register to vote in other ways—with which Plaintiffs disagree and consider misleading, and which simultaneously undermines their registration efforts. The Registration Disclaimer is analogous to the law in *NIFLA*, which compelled pro-life pregnancy centers to express a message—that women could get low cost care, including abortion care, elsewhere—that, even if factually true, directly undermined the centers’ work and was contrary to their values. *See* 138 S. Ct. at 2371 (“By requiring petitioners to inform women how they can obtain state-subsidized abortions—at the same time petitioners try to dissuade women from choosing that option—the licensed notice plainly ‘alters the content’ of petitioners’ speech.”).

The Registration Disclaimer Provision is also not subject to *Anderson-Burdick*, because it “does not control the mechanics of the electoral process,” but is rather “a regulation of pure speech.” *McIntyre v. Ohio Election Comm.*, 514 U.S. 334, 345 (1995). “[E]ncouraging others to register to vote’ is ‘pure speech,’ and, because that speech is political in nature, it is a ‘core First Amendment activity.’” *League of Women Voters of Tenn. v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019) (quoting *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155,

1158 (N.D. Fla. 2012)) (alteration in original).<sup>4</sup> *NIFLA* is explicit that laws “compelling individuals to speak a particular message,” including by posting a message, are classic, content-based speech restrictions at the core of the First Amendment’s protections. 138 S. Ct. at 2371. Under *McIntyre*, such restrictions are not subject to *Anderson-Burdick* balancing, even in the electoral context. See 514 U.S. at 345. And while *McIntyre* applied exacting rather than strict scrutiny, that was because that law at issue in that case prohibited only *anonymous* speech, and thus functioned as a “disclosure requirement,” requiring that any speech be accompanied by the disclosure of the speaker. *Id.* at 336, 348.

Absent some categorical exception, the Registration Disclaimer Provision is therefore subject to strict scrutiny. *NIFLA*, 138 S. Ct. at 2371. No such exception applies. The Court has already held that the speech at issue is not commercial. ECF No. 636 at 2; ECF No. 380 at 18. And as explained in Plaintiffs’ separately filed Response to the Court’s Order Requesting Briefing on specific questions related to First Amendment scrutiny, there is no basis for applying lesser scrutiny as

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<sup>4</sup> In contrast, in *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1322 (S.D. Fla. 2008), the court applied *Anderson-Burdick* to a voter-registration regulation that did “not place any direct restrictions or preconditions on” organizations’ “interactions with prospective voters,” but “simply regulates an administrative aspect of the electoral process—the handling of voter registration applications by third-party voter registration organizations *after* they have been collected from applicants.” Here, the Registration Disclaimer Provision *does* place “direct restrictions or preconditions” on Plaintiffs’ interactions with prospective voters, by requiring Plaintiffs to deliver the disclaimer with which they disagree. *Id.*

professional speech or an informed consent requirement, either. ECF No. 647; *Otto v. City of Boca Raton*, 981 F.3d 854, 867 (11th Cir. 2020) (holding that there is no professional speech exception to strict scrutiny).

Under strict scrutiny, the Registration Disclaimer Provision may be upheld only if “the government proves that [it is] narrowly tailored to serve compelling state interests.” *NIFLA*, 138 S. Ct. at 2371. “This stringent standard reflects the fundamental principle that governments have ‘no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” *Id.* (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). As the Eleventh Circuit has recently emphasized, “[l]aws or regulations almost never survive this demanding test.” *Otto*, 981 F.3d at 862.

**B. The Registration Disclaimer Provision constitutes compelled speech and undermines Plaintiffs’ expression.**

The Registration Disclaimer Provision constitutes compelled speech, because it forces Plaintiffs and other Third-Party Voter Registration Organizations to deliver a message they would not otherwise deliver. In particular, they must notify voters “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 and must advise the applicant that he or she may deliver the application in person or by mail,” and “must

also inform the applicant how to register online with the division and how to determine whether the application has been delivered.” Fla. Stat. § 97.0575(3)(a).

Multiple witnesses testified that, were it not for the Registration Disclaimer Provision, they would not tell potential voters that they might not deliver their voter registration forms on time, nor provide information about other ways to register. As Ms. Scoon explained, “I do not think that warning that I may not turn in the voter registration application on time is accurate or fair. I would never make that statement, but the law is forcing me to do this.” Tr. Day 1, 51:24-52:5; *see also id.* at 271:21-272:1 (Rosemary McCoy: “I would never tell an individual that I might not do what I am required to do by law. I would never tell anyone that. That’s a contradiction. It’s a – it’s a – makes a person feel as though they can’t trust you. It’s unworthy for me to even say to a person. I would never do that.”).

The remaining portion of the required disclaimer, requiring organizations to inform voter of other ways to register, likewise requires them to convey information they would not otherwise convey, and thereby undermines their work, by “impl[y]ing that they shouldn’t register with us” and increasing the risk that “they may say in their head they are going to do it later, but they haven’t done it up until then, so the chances of them doing it go way down.” *Id.* at 49:20-50:1, 102:16-22.

And being required to convey the disclaimer directly undermines Plaintiffs’ own expression, in which they encourage potential voters to register. Providing the

disclaimer is “invalidating all the work that we’ve done. It’s building distrust in the person you are trying to build trust with, . . . making people distrust us when we are trying to build trust, have those conversations to build the trust, and then you have to turn around and kind of break it down.” *Id.* at 49:9-19. The disclaimer gives potential voters “pathways to not take the moment when you are talking to them and take advantage of that good energy and that communication. They could just put it off and do it later, and that’s – we are very concerned about that.” *Id.* at 48:5-17.

Plaintiffs have personally witnessed how the disclaimer can dissuade potential voters who would have otherwise registered with Plaintiffs’ help, making them unwilling to do so after reviewing the disclaimer. *Id.* at 50:15-51:12. And Supervisors agree that the disclaimer undermines and interferes with voter registration organizations’ work. Tr. Day 4, 1168:2-24 (Supervisor Scott: “[Y]ou’re telling people that you are conducting a voter registration drive and your whole intent is to help people in your community to get registered to vote, but now you are required to say to them that you might not turn in the form, that is – obviously that would, you know, erode trust.”); Tr. Day 9, 2668:10-15 (Supervisor Earley: to ask a voter to complete a form, then say, “You shouldn’t trust that I’m going to do the right things with it, that would not help my cause of registering voters”).



**C. The Registration Disclaimer Provision is not narrowly tailored.**

Defendants did not meet their burden to prove that the Registration Disclaimer Provision is narrowly tailored. *NIFLA*, 138 S. Ct. at 2371. To meet the narrow tailoring requirement, the challenged law must be “*necessary* to serve the asserted [compelling] interest.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992) (quoting *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality opinion)) (emphasis and alteration in original). “If a less restrictive alternative would serve the Government’s purpose, the legislature must use that alternative.” *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 804, 813 (2000).

Here, as in many compelled speech cases, a less-restrictive alternative is obvious: Florida could disseminate its desired message itself. As the Court explained in *Riley*, a law compelling speech is not narrowly tailored where “the State may itself publish” information via an advertising campaign instead of compelling private parties to speak, and thereby “communicate the desired information to the public without burdening a speaker with unwanted speech.” 487 U.S. at 800; *see also NIFLA*, 138 S. Ct. at 2376 (holding compelled disclosure unconstitutional even under intermediate scrutiny because rather than compelling speech, the state “could inform the women itself with a public-information campaign”).

Defendants, who have the burden, offered absolutely no evidence suggesting that Florida could not adequately serve whatever interests the Registration

Disclaimer Provision serves by speaking itself instead of compelling Plaintiffs to do so. Defendants in compelled speech cases often argue that an advertising campaign would be less effective than compelling others to carry their message, but that argument fails—even under intermediate scrutiny—without “evidence to that effect.” *NIFLA*, 138 S. Ct. at 2376; *see also Playboy Ent. Grp.*, 529 U.S. at 816 (“When a plausible, less restrictive alternative is offered to a content-based speech restriction, it is the Government’s obligation to prove that the alternative will be ineffective to achieve its goals.”). Defendants offered no evidence suggesting that advertising would not be a sufficient alternative to the Registration Disclaimer Provision. Defendants may think that requiring Third-Party Voter Registration Organizations to spread Florida’s message will work better, but Florida “cannot co-opt” private organizations “to deliver its message for it” even if they believe doing so would be more effective. *NIFLA*, 138 S. Ct. at 2376.

Nor did Defendants address another obvious less-restrictive alternative: including whatever disclaimers or information they desire on the voter registration form itself. The “most commonly” used voter registration form by Third-Party Voter Registration Organizations is a statewide form whose content is set by the Department of State’s Elections Division. Tr. Day 10, 2779:3-11, 2779:25-2780:4; *see also* Ex. 872, ECF No. 464-13. That form includes a full half page of instructions and information drafted by the Division, including detailed information about

“Where to Register,” the “Deadline to Register,” and “Identification (ID) Requirements” to register, along with warnings that it “is a 3rd degree felony to submit false information” and that much of the submitted information will become public record. Ex. 872, ECF No. 464-13. If Florida wanted to warn voters that Third-Party Voter Registration Organizations may not turn in their forms on time and inform them of other ways to register, such as online (which the form does not mention), Florida could have added that information to the form itself, alongside the existing information and warnings. Defendants—who have the burden—offered no explanation for why that alternative would not suffice.

Finally, to the extent that Defendants believe the Registration Disclaimer Provision is justified by concerns about Third-Party Voter Registration Organizations’ late return of registration forms, they also failed to prove that the less-restrictive alternative of simply “vigorously enforce[ing]” the prior laws requiring timely return was inadequate. *See Riley*, 487 U.S. at 800. The Secretary has long had the authority to fine organizations that do not timely return voter-registration forms, and to refer such organizations to the Attorney General for civil enforcement. Fla. Stat. § 97.0575(3)(a)(1), (4); Tr. Day 10, 2768:15-24. Yet, reflecting the fact that late return of voter registration forms by third parties is not actually a serious problem in Florida, *see infra* Part II.D, those enforcement mechanisms have been rarely utilized. The Secretary has often waived fines it could

impose, even on the very few organizations that have repeatedly turned in forms beyond the ten (now fourteen) day deadline to which such organizations are subject. Tr. Day 10, 2769:16-20; Ex. 783, ECF No. 608-94; Ex. 134, ECF No. 608-34; Ex. 1546, ECF No. 608-110; Ex. 1547, ECF Nos. 608-111 and -112. The Attorney General has pursued no enforcement actions against Third-Party Voter Registration Organizations since 2012, ECF No. 402, at 31 ¶ 17 (stipulation), and the Attorney General's office is not "aware of any instances in which the AG has pursued injunctive relief" or "any restraining orders" against Third-Party Voter Registration Organizations, ECF No. 549-1 at 69:9-15.

Defendants offered no explanation of why, if they were really concerned about late-submitted voter registration forms, they could not have addressed the issue within this existing legal framework, rather than forcing *all* Third-Party Voter Registration Organizations to express a misleading disclaimer with which they disagree, and which undermines their work. Indeed, Attorney General Moody's office did not even "have a view on whether the enforcement mechanisms applicable to third-party voter registration organizations were adequate before the enactment of Senate Bill 90." ECF No. 549-1, at 44:1-8.

**D. The Registration Disclaimer Provision does not serve a compelling public interest.**

The Registration Disclaimer Provision also does not serve any compelling public interest. Defendants have the burden to show such an interest. *NIFLA*, 138 S.

Ct. at 2371. The sole evidence they put forward on the subject was Director Matthews' testimony that the provision's purpose is to "let[] the voter know that . . . their voter registration may not make it in time . . . for them to either be registered, if they are a new registrant, or for a change to their voter application to make it in time, so that they have options" and know about other ways to register. Tr. Day 13, 3417:7-21. This interest is not a compelling public interest for at least four reasons.

*First*, there is no evidence the Legislature was actually motivated by the interest Director Matthews described. Laws "cannot withstand strict scrutiny based upon speculation about what 'may have motivated' the legislature." *Shaw v. Hunt*, 517 U.S. 899, 908 n.4 (1996). For something "[t]o be a compelling interest, the State must show that the alleged objective was the legislature's 'actual purpose'" for the challenged law. *Id.* (quoting *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 730 & n.16 (1982)). Thus, "after-the-fact explanations cannot help a law survive strict scrutiny" under the First Amendment. *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 190 (D. Mass. 2015); *see also Bourgeois v. Peters*, 387 F.3d 1303, 1323 (11th Cir. 2004) (rejecting defendant's effort "to engage in *post hoc* rationalizations of its policy" in the context of a First Amendment challenge). And the legislative record is devoid of any indication of what may have motivated the Legislature in enacting the Registration Disclaimer Provision—the Legislature simply did not discuss it.

*Second*, as a matter of law, “[t]he simple interest in providing voters with additional relevant information does not justify a state requirement that a [speaker] make statements or disclosures she would otherwise omit.” *McIntyre*, 514 U.S. at 348; *see also Riley*, 487 U.S. at 798 (holding “the State’s interest in full disclosure” of the portion of charitable solicitations that a fundraiser actually gives to a charity “is not as weighty as the State asserts”).

*Third*, there is no evidence of any significant problems in Florida caused by Third-Party Voter Registration Organizations’ untimely return of registration forms.<sup>5</sup> Supervisor White, in charge of Florida’s largest county, testified that she is not “aware of any incidents since [she] became Supervisor in 2015 in which a voter in Miami-Dade was prevented from voting because a third-party voter registration organization turned in their voter registration form late.” Tr. Day 5, 1343:7-12. No voter has “ever complained to [Supervisor White’s] office about late-delivered voter registration forms from a third-party voter registration organization.” *Id.* at 1343:13-16. Similarly, Supervisor Scott, who is in charge of elections in Florida’s second-

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<sup>5</sup> There are two senses in which forms may be returned “late,” and only one of them carries even the potential for negative consequences. No one is even potentially harmed if a Third-Party Voter Registration Organization turns in a form after the fourteen-day (previously ten-day) deadline, so long as the form is turned in before book closing. *See, e.g.,* Tr. Day 10, 2766:7-9 (Director Matthews acknowledging that “[i]f a form is turned in after the 10 or now 14-day deadline, but before book closing, the voter can still vote”). And even in the *exceedingly* rare instance where a form is turned in after book closing, at least one Supervisor testified that he would count that voter’s ballot. Tr. Day 9 at 2669:10-18 (Supervisor Earley).

largest county, is not “aware of any issues or problems with third-party voter registration organizations in Broward County,” does not “have any pending complaints or pending problems with such organizations in Broward County,” and is not “aware of any issues from 2018 or 2016 with third-party voter registration organizations in Broward County.” Tr. Day 4, 1162:24-1163:10; *see also* ECF No. 549-2, at 129:4-8 (similar testimony from Supervisor Hays). The Secretary’s history of waiving fines for late-returned forms, and the failure of the Attorney General to pursue injunctive relief or restraining orders, *supra* Part II.C, confirms that Florida simply did not have any serious problem with late-returned registration form.

*Finally*, there is no evidence that potential voters are not already aware of the information that the Registration Disclaimer conveys. *See Riley*, 487 U.S. at 799 (explaining charitable donors were “undoubtedly aware that solicitations incur costs, to which part of their donation might apply”). The registration form itself already informs voters that they may “register to vote by completing this application and delivering it in person or by mail to any supervisor of elections’ office, office that issues driver’s licenses, or voter registration agency . . . or the Division of Elections.” Ex. 872, ECF No. 464-13. The form even provides the mailing address for every Supervisor’s office in the state. *See id.* Absent evidence that voters “do not already know” the information that the Registration Disclaimer seeks to convey, there can be no adequate justification for the warning requirement. *NIFLA*, 138 S.

Ct. at 2377; *see also Hargett*, 420 F. Supp. 3d at 730 (holding that “disclaimer requirements serve no compelling state interests” where there were “hypothetical situations in which individuals might be harmed by their confusion” absent the disclaimer, but “no evidence that such situations are likely or common”).

### **III. The Solicitation Definition violates the First and Fourteenth Amendments.**

The Solicitation Definition regulates expression, including Plaintiffs’ line warming activities, not mere conduct. The Solicitation Definition is unconstitutional for three reasons: it is vague, it is overbroad, and it is unconstitutional as applied to Plaintiffs’ line warming activities. Appendix 4 contains tables quoting key testimony regarding invalidity of the Solicitation Definition.

#### **A. The Solicitation Definition regulates expression, not mere conduct.**

##### **1. Legal Standard**

“Constitutional protection for freedom of speech ‘does not end at the spoken or written word.’” *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1240 (11th Cir. 2018) (*Food Not Bombs I*) (quoting *Texas v. Johnson*, 491 U.S. 397, 404 (1989)). The First Amendment also encompasses a right to engage in “expressive conduct.” *Id.* (quoting *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1270 (11th Cir. 2004)).

To determine whether conduct is expressive, the Court must ask two questions: “(1) whether an intent to convey a particularized message was present,



and (2) whether the likelihood was great that the message would be understood by those who viewed it.” *Burns v. Town of Palm Beach*, 999 F.3d 1317, 1336 (11th Cir. 2021), *petition for cert. filed* (No. 21-677) (cleaned up) (quoting *Johnson*, 491 U.S. at 404). In considering the second question, the Court considers “whether the reasonable person would interpret” the conduct as conveying “some sort of message, not whether an observer would necessarily infer a specific message.” *Food Not Bombs I*, 901 F.3d at 1240 (quoting *Holloman*, 370 F.3d at 1270) (cleaned up). Courts consider five factors, among others: (1) whether the plaintiff intends to distribute literature or hang banners in connection with the expressive activity, (2) whether the activity will be open to all, (3) whether the activity takes place in a traditional public forum, (4) whether the activity addresses an issue of public concern, and (5) whether the activity “has been understood to convey a message over the millennia.” *Burns*, 999 F.3d at 1344–45.

**2. Plaintiffs’ line-warming activities are intended to convey a particularized message.**

Testimony from Plaintiffs and others demonstrates that the line-warming activities that organizations conduct in the buffer zone outside Florida polling places, and that are regulated by the Solicitation Definition, are intended to convey a particularized message. Plaintiff and League President Cecile Scoon testified that the League’s line-warming activities are intended to “provid[e] a little bit of a shield and a vitamin so they feel that, you know, their voice is going to be heard; they’re

going to be given every consideration. And for those people I think it's education for them and it's also emotional support." Tr. Day 1, 61:10-24. Executive Director Cliff Albright testified that Plaintiff Black Voters Matter's "voter comfort" activities are directed to "sending a message about celebrating the voting experience. . . . [P]art of the purpose is to communicate to voters that they matter, even as they are waiting in long lines." Tr. Day 7, 1981:1-1982:5, 1984:18-25, 1991:14-1992:8. A representative of the NAACP testified that the organization engages in line-warming activities to "to show [voters] the importance of staying in line to cast their most precious and priceless right, and that's their vote." Tr. Day 2, 517:4-11. There was no contrary evidence.

**3. Reasonable viewers would understand that a message was being conveyed.**

Evidence before the Court also makes clear that a reasonable person would interpret Plaintiffs' line-warming activities as expressing a message, and that reasonable people have indeed done so. *Food Not Bombs I*, 901 F.3d at 1240. Ms. Scoon testified that voters have responded to her line-warming activities by being "[s]o grateful, just like, I am so glad you're here. . . . I'm so glad you're here. Thank you. I was really nervous about this, and I feel much better"—a response that reflects an understanding of the League's message of support, not merely its concrete assistance. Tr. Day 1, 61:25-62:6. Mr. Albright testified that he "heard directly from voters saying, you know, that [Black Voters Matters' voter comfort activities] helped

them to be able to stay in line or – or, if not even in necessarily helping them to stay in line, *encouraging* them to stay in line.” Tr. Day 7, 1984:12-17 (emphasis added). This reaction from voters, too, directly confirms that they understood the message that these activities were meant to convey.

Plaintiffs also presented evidence addressing the *Burns* factors. Plaintiffs testified that their activities are accompanied by a banner and educational materials. Tr. Day 1, 57:1-19. Their activities at the polling places are open to all, and they strive to help anyone who seems to be having difficulty. *Id.* at 59:2-22. Their activities take place on public sidewalks, a traditional public forum. *See Burson v. Freeman*, 504 U.S. 191, 196 (1992) (plurality op.). They address voting, a central issue of public concern. And public demonstrations and celebrations have, indeed, long been used to convey a message.

## **B. The Solicitation Definition is unconstitutionally vague.**

### **1. Legal Standard**

“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). A law is impermissibly vague in violation of the Due Process Clause “if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits,” or “if it authorizes or even encourages arbitrary and discriminatory enforcement.” *Wollschlaeger*, 848 F.3d at 1319

(quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)). This analysis is conducted with a particularly skeptical eye when a law “abut[s] upon sensitive areas of basic First Amendment freedoms.” *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964). The “Constitution demands a high level of clarity from a law if it threatens to inhibit the exercise of a constitutionally protected right, such as the right of free speech.” *Konikov v. Orange Cnty.*, 410 F.3d 1317, 1329 (11th Cir. 2005) (citing *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982)).

## 2. Evidence and Analysis

The Solicitation Definition is unconstitutionally vague as a matter of law. It criminalizes conduct based on third parties’ subjective reactions to it, making it impossible for anyone to know when they might be violating the law. It prohibits not only activities carried out with an intent to influence voters, but also activities that have the “effect of influencing a voter,” regardless of the actor’s intent. Fla. Stat. § 102.031(4)(b) (emphasis added). Its focus on others’ reactions to conduct resembles the law invalidated by the Supreme Court in *Coates v. City of Cincinnati*, 402 U.S. 611 (1971). There, the Court held that a law making it unlawful for individuals to assemble on public property and engage in conduct that was “annoying to persons passing by” was unconstitutionally vague, explaining that because “[c]onduct that annoys some people does not annoy others,” it was impossible for someone to determine whether they were violating the law. *Id.* at 612,

614. Likewise here, where the law prohibits conduct based on its subjective effect on potentially any voter who witnesses it, Plaintiffs have no way of determining whether their activities will be considered “solicitation.” Moreover, the law criminalizes conduct based on whether it is intended to or does “influenc[e] a voter,” but does not define what is meant by “influenc[e] a voter.” Fla. Stat. § 102.031(4)(b). The text leaves open the possibility, if not the likelihood, that it prohibits “influencing a voter” to stay in line, “influencing a voter” to cast a ballot, and “influencing a voter” to participate in democracy.

Testimony from the officials tasked with enforcing the Solicitation Definition confirms it is unworkably vague. Supervisor White testified that “in Miami-Dade . . . it can be impossible to discern what is solicitation, what is not solicitation. . . . [I]t is so impossible with the volume of sites and the volume of people that we are dealing with out there to discern who is engaging in activity to influence, who is not, you know, who is providing nonpartisan assistance, who is not.” Tr. Day 5, 1376:8-1377:11. “[T]o put this type of interpretation on my essential poll workers who have . . . been to training for less than a day I think is something that can be handled wildly inconsistent in those locations.” *Id.* Supervisor Earley’s staff’s immediate reaction to the new definition was that it “is very vague. What does ‘intent to influence’ mean?” Ex. 748, ECF No. 634-20. Supervisor Earley himself “would tend it agree it’s somewhat vague.” Tr. Day 13, 3512:24-3513:3. And Director Matthews testified

that “it’s very hard to distinguish” solicitation from other contact with voters, and that whether conduct such as a non-partisan group distributing water would constitute solicitation would depend on the “facts and circumstances” so that you “can’t draw, you know, a straight line on that.” Tr. Day 10, 2813:18-24, 2184:11-20. That analysis, Director Matthews acknowledged, must be performed by usually temporary employees at more than 6,000 polling places, reporting to 67 different Supervisors. *Id.* at 2815:12-23.

Given this testimony from those tasked with enforcing and interpreting the Solicitation Definition, it is no surprise that Plaintiffs and other groups are highly uncertain about what the Solicitation Definition does and does not prohibit. Ms. Scoon testified that in her experience, “the understanding of the individual deputies, Supervisors of Elections of what the law requires and the paperwork that needs to be done varies fairly significantly.” Tr. Day 1, 63:9-64:23. This, she explained, creates an unacceptable risk that “someone says you’re doing something wrong, and then there could be a disagreement or . . . you’re called out, and that would be very negative for our League members and very hurtful, just very scary. And it’s possible that a Supervisor of Elections person could call the law enforcement.” *Id.* To avoid that problem, “[w]e’re just not going to do” line warming within the buffer zone anymore. *Id.*; *see also, e.g.*, Tr. Day 3, 746:10-25 (Hispanic Federation does not know what is allowed under the new definition, and as a result, it has “veteran

canvassers that have been with us a long time that have already said that they are fearful of being sent to do line-warming activities.”). As Mr. Albright explained, Black Voters Matter has previously experienced arbitrary and unjustified interpretations of the law by poll workers, who have objected to their shirts, which “say Black Voters Matter” and “have said, Oh, you can’t wear that shirt and engage and interact with people in line because that’s partisan activity, when, in fact, there is nothing partisan about just the simple statement that Black Voters Matter.” Tr. Day 7, 1987:11-17.

In the face of the vague Solicitation Definition, some Supervisors have resorted to overbroad enforcement, prohibiting *all* contact with voters in the buffer-zone. Director Matthews explained that, while under the Solicitation Definition, “a nonpartisan group can encourage voters to stay in line without discussing any candidate or issue as long as they are not harassing or soliciting the voter,” “[t]he problem is enforcement and people following it.” Tr. Day 10, 2813:18-24. She explained that “most Supervisors take a very hard line because it’s very hard to distinguish, and voters don’t like to be disturbed while they are in line.” *Id.* Supervisor White confirmed that “the reason or part of the reason why [she] prohibit[s] any activity within the 150 feet is that [the Solicitation Definition] would be so difficult to apply consistently to individual incidents.” Tr. Day 5, 1377:12-16 (“Yes, I can agree with that.”); *see also id.* at 1378:4-13 (“I don’t know if I would

agree with that the definition is hard to interpret, but I think it's hard to administer. It is difficult for my staff to know what exactly it is that you are doing, what your intentions are to be able to apply it consistently.”). Similarly, Supervisor Latimer acknowledged that he does not believe the Solicitation Definition prohibits giving food or water to voters in line, but he still would prohibit a nonpartisan volunteer from doing so, because ““I don’t have any idea what that person is talking to the voter about.” ECF No. 549-3 at 47:11-20, 169:10-23, 170:9-22, 190:5-12.

Some Supervisors’ prohibition of all contact with voters in the buffer zone may be an understandable response to the difficulties in applying such a vague provision, but it is contrary to Florida law. In justifying her blanket prohibition, Supervisor White pointed—in addition to the Solicitation Definition—to her authority to “maintain order” at the polls. Tr. Day 5, 1373:19-24 (“There’s two pieces of – two provisions within the statute that we rely on. It’s the no solicitation allowed within that zone. And then there is another statute that I cannot tell you number off the top of my head, but it also a – it provides us the ability to maintain order – the responsibility, rather, to maintain order outside the polls.”).

There are two provisions in Florida law that allow a Supervisor to maintain order at the polls, but neither supports a flat prohibition on all contact with voters in the buffer zone. First, Fla. Stat. § 102.031(1) provides that “[e]ach election board shall possess full authority to maintain order at the polls and enforce obedience to



its lawful commands during an election and the canvass of the votes.” Fla. Stat. § 102.031(1). Second, Fla. Stat. § 102.031(4)(c) provides that “[t]he supervisor or the clerk may take any reasonable action necessary to ensure order at the polling places, including, but not limited to, having disruptive and unruly persons removed by law enforcement officers from the polling room or place or from the 150-foot zone surrounding the polling place.” *Id.* § 102.031(4)(c).

Those general provisions must be construed in the context of the more specific provision in the very same statutory section providing that “[n]o 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,” and defining solicitation in the Solicitation Definition that follows. *Id.* § 102.031(4)(a). If the Legislature’s intention was to ban *all* contact with voters in the buffer zone, it could easily have said so, rather than crafting the Solicitation Definition. And if the maintain-order provisions allowed a complete ban on all contact with voters, then the Solicitation Definition and Provision would be surplusage. Rather than justifying a complete, prophylactic ban on all contact with voters, the maintain-order provisions are properly read to allow Supervisors to address actual “disruptive and unruly” behavior should it occur.<sup>6</sup>

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<sup>6</sup> A separate provision, Fla. Stat. § 101.051(1), was also referenced at trial. That provision specifically addresses assistance to a voter “in *casting* his or her vote,”

The factual record thus confirms what was already clear as a matter of law: the Solicitation Definition is a vague provision that provides too little notice of what is and is not prohibited. The Supervisors tasked with enforcing it find it impossible to apply consistently, and the Director of the Elections Division of the Department of State is unable to say what types of conduct are and are not permitted under it. The Solicitation Definition thus “permits and encourages an arbitrary and discriminatory enforcement of the law”—precisely what the vagueness doctrine prohibits. *Papachristou v. City of Jacksonville*, 405 U.S. 159, 170 (1972).

### **C. The Solicitation Definition is unconstitutionally overbroad.**

#### **1. Legal Standard**

The overbreadth doctrine is premised on the notion that free-speech “freedoms need breathing space to survive,” because “persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of

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including involvement in the voting process itself, specifically reading “without suggestion or interference, the titles of the offices to be filled and the candidates therefor and the issues on the ballot,” and “retir[ing] to the voting booth for the purpose of casting the elector’s vote according to the elector’s choice.” *Id.* Section 101.051 also prohibits “solicit[ing] any elector in an effort to provide” that particular form of assistance in casting a vote. *Id.* § 101.051(2). This provision addresses with “extreme particularity” assistance in the actual casting of a vote, an act “of such personal character that [it] may not be delegated” absent specific authority. *Wakulla Cnty. Absentee Voter Intervenor v. Flack*, 419 So. 2d 1124, 1126-27 (Fla. 1982). The assistance Plaintiffs would provide but for the Solicitation Definition is not of that character, and none of the Supervisors who testified relied upon § 101.051 in justifying their prohibitions on contact with voters outside polling places.

criminal sanctions provided by a statute susceptible of application to protected expression.” *Gooding v. Wilson*, 405 U.S. 518, 521-22 (1972) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)). As a result, the “government may regulate in the area only with narrow specificity,” and speech regulations must “be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression.” *Id.* at 522. “[T]he overbreadth doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when ‘judged in relation to the statute’s plainly legitimate sweep.’” *City of Chi. v. Morales*, 527 U.S. 41, 52 (1999) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 612-15 (1973)).

## **2. Evidence and Analysis**

Evidence before the Court demonstrates that Plaintiffs’ own activities near polling places are expressive conduct entitled to First Amendment protection. *Supra* Part III.A. But regardless, the Solicitation Definition facially prohibits a great deal expressive conduct near polling places, by prohibiting any conduct that has the intent or effect of “influencing a voter,” without limitation or explanation of what kind of influence is impermissible. Fla. Stat. § 102.031(4). The Solicitation Definition therefore also “threatens others not before the court—those who desire to engage in legally protected expression but who may refrain from doing so rather than risk

prosecution or undertake to have the law declared partially invalid.” *Bd. of Airport Comm’rs of City of L.A. v. Jews for Jesus, Inc.*, 482 U.S. 569, 574 (1987) (quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985)). The scope of the Solicitation Definition’s prohibition is not limited to conduct like the Plaintiffs’, but extends to any activity within 150-feet of a polling place that might be seen as intended or actually influencing voters in any way—a scope that necessarily includes a great deal of protected expressive activity.

There is no adequate justification for the Solicitation Definition’s broad prohibition. Rather, as Director Matthews explained, the concerns it was intended to address are far narrower: complaints “about harassment, not just an abstraction but a harassment in terms of people – loud noises, being approached, that sort of thing.” Tr. Day 13, 3474:8-17. Harassment, however, was already separately addressed, including by the provision allowing for the removal of “disruptive and unruly persons” from the areas around polling places. Fla. Stat. § 102.031(4)(c). The Solicitation Definition is therefore overbroad because it nearly “reaches the universe of expressive activity” rather than “merely regulat[ing] expressive activity . . . that might create problems.” *Bd. of Airport Comm’rs*, 482 U.S. at 574.

**D. The Solicitation Definition is unconstitutional as applied to Plaintiffs' line warming activities.**

**1. Legal Standard**

In evaluating an as-applied challenge under the First Amendment, the Court “must first decide whether the [challenged law] is content neutral or content based, for a content-neutral regulation of expressive conduct is subject to intermediate scrutiny, while a regulation based on the content of the expression must withstand the additional rigors of strict scrutiny. *Food Not Bombs II*, 11 F.4th at 1291. A law is content based whenever it “applies to particular speech because of the topic discussed or the idea or message expressed,” or “draws distinctions based on the message a speaker conveys.” *Reed*, 576 U.S. at 163. Thus, if the restrictions a law imposes “depend entirely on the communicative content of the” expression, it is content based. *Id.* at 164. “A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.” *Id.* at 165 (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 401, 429 (2015)). And “a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.” *Id.* at 169.

In general, where a law imposes content-based restrictions on speech, it “can stand only if [it] survive[s] strict scrutiny, ‘which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve

that interest.” *Id.* at 171 (quoting *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011)). This standard also applies to content-based laws that restrict speech in “traditional public forums”—“parks, streets, sidewalks, and the like”—and “designated public forms,” which the government has intentionally opened up for expression. *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018). In contrast, in a “nonpublic forum,” that is, “a space that ‘is not by tradition or designation a forum for public communication,’” a restriction is lawful if it is reasonable and viewpoint neutral. *Id.* (quoting *Perry Ed. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983)).

## 2. Evidence and Analysis

The Solicitation Definition is a content-based regulation of Plaintiffs’ expressive conduct, because it prohibits activities depending on whether they are engaged in “with the intent to influence or effect of influence a voter,” Fla. Stat. § 102.031(4)(b), a determination that depends on the content of the message expressed.

Moreover, the Solicitation Definition regulates Plaintiffs’ conduct in a traditional public forum: the public streets and sidewalks outside polling places. *Mansky* makes clear that “parks, streets, sidewalks, and the like” are classic examples of a public forum. 138 S. Ct. at 1885. And a plurality of the Supreme Court held in *Burson v. Freeman*, 504 U.S. 191, 196 (1992), that a regulation of expressive

activity outside polling places “bars speech in quintessential public forums.” *Mansky* did nothing to change this, because it held only that the *inside* of a polling place “qualifies as a nonpublic forum” because it is “government-controlled property set aside for the sole purpose of voting. 138 S. Ct. at 1886. In so holding, *Mansky* expressly distinguished “the interior of the polling place” from “its environs,” and reasoned that the government had “an interest more significant, not less, *within*” the polling place than outside it. *Id.* at 1887.

Thus, the Solicitation Definition’s regulation of Plaintiffs’ expressive conduct is subject to strict scrutiny, which it cannot survive. The sole state interest offered by Defendants to justify the Solicitation Definition is concern “about harassment, not just an abstraction but a harassment in terms of people – loud noises, being approached, that sort of thing.” Tr. Day 13, 3474:8-17. But as explained above, the Solicitation Definition is not narrowly tailored to address that concern, because poll workers already had separate authority to remove “disruptive and unruly persons” from the areas around polling places. Fla. Stat. § 102.031(4)(c).

Even if the area around a polling place were a nonpublic forum, the Solicitation Definition would still be unconstitutional as an unreasonable restriction. *See Mansky*, 138 S. Ct. at 1888. While “there is no requirement of narrow tailoring in a nonpublic forum, the State must be able to articulate some sensible basis for distinguishing what may come in from what must stay out.” *Id.* In *Mansky*, the Court

invalidated as unreasonable a prohibition on expressive apparel in polling places that provided insufficient guidance as to what was and was not prohibited. *Id.* at 1888-92. That same problem is present here: as explained above, *supra* Part III.B, the Solicitation Definition provides no meaningful guidance as to what sort of expressive conduct is or is not permitted in the buffer zone. Moreover, while *Mansky* did state that a sufficiently clear regulation to prohibit “partisan discord” within polling places would survive scrutiny, *id.* at 1891, the Solicitation Definition extends far more broadly in both space and subject matter, governing not only the polling place but the area around it, and prohibiting not only partisan speech but also nonpartisan speech that might influence a voter in any respect.

Nothing in *Mansky* or any other case suggests that such a broad prohibition constitutes a “reasonable” restriction on speech, even in a nonpublic forum. The Court heard ample testimony about the importance of Plaintiffs’ expression and the fact that voters appreciate and are grateful for it. *See, e.g.*, Tr. Day 1, 61:10-62:6; Tr. Day 7, 1981:1-1982:5, 1984:22-24, 1991:14-1992:8. Any concerns about harassment or intimidation were already addressed by existing, narrower prohibitions. *See* Fla. Stat. §§ 102.031(4)(c), 104.0615(2). The Solicitation Definition is therefore unconstitutional as applied Plaintiffs’ line warming activities even if the areas around polling places are a nonpublic forum.



#### **IV. The Challenged Provisions unduly burden the right to vote.**

The Challenged Provisions unduly burden the right to vote under the *Anderson-Burdick* standard. An appendix with charts of key testimony addressing these claims is attached as Appendix 5.

##### **A. Legal Standard**

Under the *Anderson-Burdick* test, a court evaluating a claim that a state law burdens the right to vote must undertake a two-step process. At the first step, a court considers whether and to what extent a challenged law burdens the right to vote. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). A law may impose minimal burdens, serious or significant burdens, or severe burdens. Under controlling Supreme Court authority, *Anderson-Burdick* requires consideration of whether a statute “imposes ‘excessively burdensome requirements’ on *any class of voters*.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202 (2008) (controlling op.) (quoting *Storer v. Brown*, 415 U.S. 724, 738 (1974)) (emphasis added). In *Crawford* itself, for example, the “relevant” burdens were “those imposed on persons who are eligible to vote but do not possess a current photo identification” and that “[t]he fact that most voters already possess a valid driver’s license . . . would not save the statute.” *Id.* at 202 (controlling op.); *see also id.* at 199; *id.* at 212-14 (Souter, J., dissenting) (similar); *id.* at 239 (Breyer, J., dissenting) (similar).

Laws regulating the electoral process may also burden the right to vote by impairing the ability of individuals and organizations to engage in political expression. *See Buckley*, 525 U.S. at 191-97; *Meyer*, 486 U.S. at 422-23. Laws that limit “the number of voices who will convey [a] message and the hours they can speak and, therefore, limits the size of the audience” that an organization may reach impose a heavy burden on First Amendment rights, and “the burden that [a state] must overcome to justify” such a law is “well nigh insurmountable.” *Meyer*, 486 U.S. at 422-23, 425; *see also Buckley*, 525 U.S. at 191-92.<sup>7</sup>

Once a court determines the character and magnitude of the burden, the court should move onto step two: considering the strength of the state interests and whether they justify the burden at issue. The standard that the state must meet varies depending on the court’s determination at the first step of the magnitude of the burden that the law imposes on the relevant class or classes of voters. If the burden imposed is severe, the law is subject to strict scrutiny. *Norman v. Reed*, 502 U.S.

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<sup>7</sup> It is not entirely clear what standard the Supreme Court was applying in *Meyer* and *Buckley*. *Meyer* subjected the challenged law to “exacting scrutiny.” *Meyer*, 486 U.S. at 420, 425. *Buckley*, however, cited both *Meyer* and *Anderson* in striking down a similar law, holding that “the restrictions in question significantly inhibit communication with voters about proposed political change, and are not warranted by the state interests (administrative efficiency, fraud detection, informing voters) alleged to justify those restrictions.” *Buckley*, 525 U.S. at 192. Whether these cases are properly understood as applications of the *Anderson-Burdick* framework or as imposing exacting scrutiny under the First Amendment makes no concrete difference in this case: either way, as explained below, Defendants have failed to justify the burdens that the challenged laws impose.

279, 280 (1992); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019) (“A law that severely burdens the right to vote must be narrowly drawn to serve a compelling state interest.”). Burdens that are less than severe are subject to a sliding scale under which the court must “identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule,” and in so doing, consider both the “*legitimacy* and *strength* of each of those interests.” *Anderson*, 460 U.S. at 789 (1983) (emphasis added). “In passing judgment,” the court “also must consider the extent to which those interests *make it necessary* to burden the plaintiff’s rights. *Id.*” (emphasis added).

The upshot is that even laws that have less than severe burdens must be justified by state “interest[s] *sufficiently weighty* to justify the limitation.” *Norman*, 502 U.S. at 288–89 (emphasis added); *see also Crawford*, 553 U.S. at 191 (controlling op.) (“However slight” the burden on voting may appear, it still “must be justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’”). Some courts have conceived of this requirement as one of “fit,” under which the law must actually advance the state interests in question. *See, e.g., Soltysik v. Padilla*, 910 F.3d 438, 448 (9th Cir. 2018). Under no circumstances are burdens on the right to vote evaluated under a traditional rational basis standard, which simply asks if the law is conceivably rationally related to the state’s purported interest.

*Anderson* and *Burdick* are themselves instructive in how to evaluate and weigh burdens and the corresponding state interests. In *Anderson*, the Court considered an Ohio statute that required all candidates for President, including major party candidates and independent candidates, to file a statement of candidacy and nominating petition by late March to appear on the ballot in November. 460 U.S. at 799. The plaintiff argued this deadline made it more difficult in practice for independent candidates to successfully access the ballot. *Id.* at 790.

At step one, the Court found the law imposed a burden on “identifiable segment” of voters and candidates. *Id.* at 792. While it did *not preclude* independent candidates from accessing the ballot, the burden was meaningful simply because it made ballot access more difficult: “When the primary campaigns are far in the future and the election itself is even more remote, the obstacles facing an independent candidate’s organizing efforts are compounded. Volunteers are more difficult to recruit and retain, media publicity and campaign contributions are more difficult to secure, and voters are less interested in the campaign.” *Id.*

The Court then embarked on a detailed examination of each of the proffered state interests for the law at step two. The state claimed three interests: (1) increasing voter education, (2) treating partisan and independent candidates equally, and (3) ensuring political stability. The Court took the first interest—voter education—and asked:

- **Is voter education a legitimate interest? Yes.** “There can be no question about the legitimacy of the State’s interest in fostering informed and educated expressions of the popular will in a general election.” *Id.* at 796.

But the Court did not stop there. It then asked:

- **Does anything undermine this state interest? Yes.** “The validity of this asserted interest is undermined by the State’s willingness to place major-party nominees on the November ballot even if they never campaigned in Ohio.” *Id.* at 798.
- **Does the law actually promote voter education? No.** “It is also by no means self-evident that the interest in voter education is served at all by a requirement that independent candidates must declare their candidacy before the end of March in order to be eligible for a place on the ballot in November.” *Id.*
- **Is this law necessary to have informed voters? No.** “In the modern world it is somewhat unrealistic to suggest that it takes more than seven months to inform the electorate about the qualifications of a particular candidate.” *Id.* at 797.

The Court then turned to the second proffered state interest: treating independent and major party candidates equally. The Court leapfrogged the inquiry into whether the state interest was a legitimate one, and asked:

- **Does law serve the interest of treating candidates equally? Does this law put candidates on equal footing? No.** We “find no merit in the State’s claim that the early filing deadline serves the interest of treating all candidates alike . . . the reasons for requiring early filing for a primary candidate are inapplicable to independent candidates in the general election.” *Id.* at 799.

The Court then moved onto the third interest: ensuring political stability. It asked:

- **Is this interest a legitimate one? No.** The Court explained the state has an interest in preventing unrestrained factionalism, but it does not have an interest in suppressing political competition against the major parties. *Id.* at 802-04.

- **Does the deadline actually serve the interest of ensuring political stability? No.** “If the deadline is designed to keep intraparty competition within the party structure, its coverage is both too broad and too narrow. . . . Moreover, the early deadline for filing as an independent may actually impair the State's interest in preserving party harmony.” *Id.* at 805.

*Anderson* demonstrates that, when faced with even a non-severe burden on the right to vote, the court must ask whether (1) the state interest proffered for the law is a legitimate state goal, and if so, (2) whether the law actually serves that interest, and (3) whether the law is necessary to accomplish that interest.

Similarly, the *Burdick* Court, which found only a “slight” burden on the right to vote from a ban on write-in voting in Hawai’i, did not apply rational basis review; again, it applied the balancing test: “Because we have already concluded that the burden is slight, the State need not establish a compelling interest to tip the constitutional scales in its direction.” 504 U.S. at 439. But the Court still took a close look at the law and evidence before it, before concluding that, in that case, the state’s specific interest in “averting divisive sore-loser candidacies,” was a legitimate state goal and that “[t]he prohibition on write-in voting is a *legitimate means* of” accomplishing that goal; and that, in that particular case, “the State’s interests *outweigh* petitioner’s *limited interest* in waiting until the eleventh hour to choose his preferred candidate.” *Id.* (emphasis added). The Court further found that the prohibition was a necessary component of that state’s larger election system, emphasizing that: “Hawaii further promotes the two-stage, primary-general election

process of winnowing out candidates[] by permitting the unopposed victors in certain primaries to be designated office-holders. This focuses the attention of voters upon contested races in the general election. *This would not be possible, absent the write-in voting ban.*” 504 U.S. at 439 (emphasis added). Thus, although the burden was slight, the Court still considered whether the ban was necessary to further the state’s interests.

*Crawford* did not change this analysis. While *Crawford* finds that deterring voter fraud is a legitimate state interest, it does *not* hold that voter fraud is a sufficiently weighty state interest to justify all voting restrictions, or that courts never need to require evidence of voter fraud, evidence of how the law will prevent voter fraud, or whether the law is necessary to prevent voter fraud. *See, e.g., Fish v. Schwab*, 957 F.3d 1105, 1126 (10th Cir. 2020), *cert. denied*, 141 S. Ct. 965 (2020) (cleaned up) (holding that while interests in “protecting the integrity of the electoral process” or “safeguarding voter confidence” are “legitimate [interests] in the abstract,” there is “no concrete evidence that those interests make it necessary to burden the plaintiff’s rights in this case”).<sup>8</sup>

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<sup>8</sup> In *Crawford*, the Court was not presented with concrete evidence of the relevant burdens, and “on the basis of the evidence in the record it [was] not possible to quantify either the magnitude of the burden” “or the portion of the burden imposed on them that is fully justified.” 553 U.S. at 201.

Moreover, in *Anderson-Burdick* cases, “[t]he existence of a state interest . . . is a matter of proof.” *Duke v. Cleland*, 5 F.3d 1399, 1405 n.6 (11th Cir. 1993). It is not enough for state officials to assert in briefing that a law is justified—they must offer “record . . . evidence as to the state’s interests in promulgating” the challenged law. *Id.* at 1405. As other circuits have explained, courts need not accept a state’s justifications at face value, particularly where those justifications are “speculative,” otherwise it “would convert *Anderson-Burdick* . . . into ordinary rational-basis review wherever the burden a challenged regulation imposes is less than severe.” *Soltysik*, 910 F.3d at 448–49 (citing *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1024–25 (9th Cir. 2016) (en banc)).

Finally, that other states may employ similar laws in their election schemes cannot sufficiently justify any law at issue here. *Anderson-Burdick* requires an individualized assessment of the specific state’s law in question and the burdens it imposes. Consistent with the Supreme Court’s directive that challenges to laws under this framework “cannot be resolved by any ‘litmus-paper test’ that will separate valid from invalid restrictions,” *Anderson*, 460 U.S. at 789, courts recognize that states’ election laws are not fungible. State voter identification laws, for example, are not universally constitutional or unconstitutional—rather, an individual assessment of each state’s law and the burdens it imposes is required. *See, e.g., Ohio State Conf. of N.A.A.C.P. v. Husted (Husted III)*, 768 F.3d 524, 547 n.7 (6th Cir.



2014) (explaining, “we do not find that other states’ electoral laws and practices are relevant to our assessment of the constitutionality or legality” of Ohio law), *vacated on other grounds*, No. 14-3877, 2014 WL 10384647 (6th Cir. Oct. 1, 2014).

**B. The Registration Disclaimer Provision imposes an undue burden on the right to vote.**

**1. Third-Party Voter Registration Organizations have been critical in registering voters in Florida that other means of registration have been unable to reach.**

Third-Party Voter Registration Organizations have successfully registered voters in Florida for many years. Since 2012, over 6.7 million individuals registered to vote in Florida. Tr. Day 8, 2300:22-24. Of those, records demonstrate that at least 7.36 percent or 500,000 of those voter registrations were achieved via Third-Party Voter Registration Organizations. However, that number does not “fully capture the total number of times the voter has relied on a” Third-Party Voter Registration Organization. *Id.* at 2302:5-24 (Dr. Herron testifying that “[i]f an individual who is already registered moves or updates his or her registration, that person will get a new form of registration . . . [I]t won’t include [Third-Party Voter Registration Organization] because that will have been superseded. So that means the total number of interactions that registered voters have had with [Third-Party Voter Registration Organizations] is greater than 491,000.”).

And while voters of all races and party affiliations register to vote through Third-Party Voter Registration Organizations, the evidence demonstrates that Black

and Hispanic voters register through these organizations at significantly higher rates than white voters. *Id.* at 2303:16-23. As of August 2021, 15 percent of Black voters and over 11 percent of Hispanic voters registered to vote through Third-Party Voter Registration Organizations after January 2012 as compared to approximately 3 percent of white voters. *Id.* at 2304:5-11. Democratic voters also register through Third-Party Voter Registration Organizations at higher rates than Republican voters – 10.48 percent as compared to 3.9 percent, respectively. *Id.* at 2306:16-22.

## **2. The Registration Disclaimer Provision burdens the right to vote**

SB90's Registration Disclaimer Provision requires that Third-Party Voter Registration Organizations inform applicants at the time that the application is collected that (1) the organization "might not deliver" the registration form on time and, (2) there are other means of voter registration available that do not involve the organization. Fla. Stat. § 97.0575 (3)(a) (2021). The Registration Disclaimer Provision has and will continue to deter potential voters from registering with Third-Party Voter Registration Organizations. Black, Hispanic, and Democratic voters will be disproportionately burdened, Tr. Day 8, 2313:2-8, with some number not registering to vote at all as a result. *See* Tr. Day 6, 1779:18-1780:5 (Dr. Kousser testifying the Registration Disclaimer Provision "could be expected to decrease the registration of people of color in Florida").

**a. The Registration Disclaimer Provision has and will deter voters from registering with Third-Party Voter Registration Organizations.**

The burdens imposed by the Registration Disclaimer Provision are not hypothetical. Since SB90 was enacted, voters have declined to register to vote upon hearing the Disclaimer. For example, during a recent event, Ms. Scoon attempted to register an individual to vote. As Ms. Scoon explained, the young man was “all ready to register to vote; and after he read the warning, he kind of got a little quizzical look on his face and was, like, withdrawing from me. And he says, [y]ou know what[,] I’m going to do it later. . . He did not register.” Tr. Day 1, 50:15-51:2; *see also* Tr. Day 5, 1237:3-11 (Supervisor Scott testifying he has received feedback from Third-Party Voter Registration Organizations that, upon delivering the Disclaimer, potential voters have declined to register with the organization by saying they will register online). In other words, there is already evidence that the Registration Disclaimer Provision is working precisely as Plaintiffs feared – it is “send[ing] a message to the potential registrant that [registering through the Third-Party Voter Registration Organization] is a risky proposition.” Tr. Day 8, 2332:24-2333:7.

And while voters who decline to register upon hearing the Disclaimer may say they will register later, the data suggests they are unlikely to do so. Dr. Herron and Dr. Smith conducted a study on how a prior law, HB 1355, which imposed restrictions on Third-Party Voter Registration Organizations, affected overall voter

registration in Florida by analyzing voter registration rates pre- and post-HB1355. Tr. Day 8, 2295:13-21. The study found a decline in *overall* voter registration. *Id.* at 2296: 3-15. In other words, the “individuals who [were] affected by HB 1355’s restrictions on did not simply switch to another form of voter registration . . . they basically didn’t register to vote.” *Id.* There is no reason to think that the effects of SB90 will be any different, especially given that Third-Party Voter Registration Organizations often direct their outreach to individuals who would otherwise face barriers to registering to vote on their own and those unlikely to be reached by Supervisors. *See, e.g.*, Tr. Day 4, 1162:12-19 (Supervisor Scott); Tr. Day 9, 2665:23-2666:11 (Supervisor Earley); Tr. Day 5, 1343:3-6 (Supervisor White); Tr. Day 1, 213:18-23 (Mr. Garces); *Id.* 262:1-17 (Ms. McCoy)

**b. Minority and low-income voters often face barriers when registering to vote online, in person, and by mail.**

Third-Party Voter Registration Organizations are often local, grassroots organizations comprised of “volunteers from the community who [are] more trust[ed] than government agencies.” Tr. Day 4, 1162:12-19 (Supervisor Scott). As a result, they are often “able to reach potential voters that . . . may not be able to be reached by government agencies.” *Id.* As Supervisor Earley testified, Third-Party Voter Registration Organizations “absolutely” provide valuable assistance to voters and reach voters that his office does not. Tr. Day 9, 2666:8-11 (“I just got a report from staff that we are getting roughly 100 or so [voter registration applications] from

[Third-Party Voter Registration Organizations] [] that we are missing” in our “outreach efforts.”); *see also* Tr. Day 5, 1343:3-6 (Supervisor White acknowledging that Third-Party Voter Registration Organizations can “help to reach potential voters who otherwise might not register to vote”). To effectively reach low-income minority voters, Third-Party Voter Registration Organizations often conduct outreach in high-density areas with high foot-traffic, such as supermarkets, libraries, convenience stores, laundromats, bus stations, and concerts. *See, e.g.*, Tr. Day 7, 2035:22-2036:8 (Ms. Mercado); Tr. Day 5, 1409:6-10 (Mr. Nordlund); Tr. Day 1, 195:7-16 (Mr. Garces); Tr. Day 1, 260:7-8 (Ms. McCoy).

Many Third-Party Voter Registration Organizations focus their efforts on registering low-income, Black, and Hispanic Floridians who would otherwise experience barriers to registering to vote online, in person, or by mail. Registering to vote online can be a barrier for voters who lack access to the internet or a computer. Tr. Day 1, 262:1-17; *see also* Tr. Day 1, 272:19-273:2 (Ms. McCoy of Harriet Tubman Freedom Fighters explaining that, but for SB90, she would not tell voters how to register online “because of the population that we work with, and the population we work with are mainly low income, and many low-income people, you know, might – that could be a barrier”). This is the case for tens of thousands of Black and Hispanic Floridians. As Mr. Cooper testified, 19 percent of Black households and 15 percent of Hispanic households do not have broadband internet

at home, Tr. Day 2, 623:14-20, a metric used to denote socioeconomic status, *id.* at 623:24-624:7. And 10 percent of Black households and 5 percent of Hispanic households do not have a computer, smartphone, or tablet. Ex. 10, ECF No. 608-16 at 62. Floridians with disabilities may also find it difficult to register online due to challenges navigating the voter registration form. *See* Tr. Day 2, 449:10-14 (Disability Rights Florida); Tr. Day 4, 1100:13-1101:8 (Ms. Rogers, a legally blind voter, describing how the Pinellas Supervisor’s website is “not that adaptable for the visually impaired”).

Likewise, registering to vote in person can be a barrier for the 114,000 Black and 126,000 Hispanic households without access to a vehicle. Tr. Day 2, 629:17-19. As can using the mail to register to vote, for those who lack access to a printer to print the voter registration form. *See* Tr. Day 4, 1101:9-1102:1. And even if a voter is able to get a hard copy of the registration form, the cost to purchase an envelope or a stamp to mail it in may be a barrier. *See, e.g.,* Tr. Day 1, 262:1-17 (Ms. McCoy); Tr. Day 2, 621:9-16 (Mr. Cooper testifying that in 2019 Black unemployment rate averaged 7.2%); Ex. 10, ECF No. 608-16 at 9 (“For working age (18-64) Floridians, 9.7% of Whites live in poverty, compared to 16.3% of African Americans and 12.6% of Latinos.”).

For minority and low-income voters, Third-Party Voter Registration Organizations may be their only viable option to register to vote. If they are deterred

from registering with those Organizations’ assistance because of the Registration Disclaimer Provision, they may be foreclosed from registering all together. Ultimately, the restrictions on Third-Party Voter Registration Organizations will severely burden minority and low-income voters who, but for Third-Party Voter Registration Organizations, may be unable to register to vote.

**c. The Registration Disclaimer reduces the effectiveness of Third-Party Voter Registration Organizations’ efforts.**

The Registration Disclaimer Provision will also reduce the effectiveness of Third-Party Voter Registration Organizations because individuals will be less willing to associate with them to volunteer to register voters. The Provision therefore “decreases the pool of potential” voter registration volunteers, and thus “cut[s] down ‘the size of the audience’” that Third-Party Voter Registration Organizations can reach. *Buckley*, 525 U.S. 194-95 (quoting *Meyer*, 486 U.S. at 422-23). And, for those that do still register voters, the Provision will require more time to explain the disclaimer and answer voter questions, decreasing their reach. The likely consequence will be that fewer Floridians—particularly Black and Hispanic and low-income Floridians—are registered to vote.

For many people, registering voters is a way to serve their communities. Tr. Day 4, 1164:20-1165:13. But now, because of SB90, less people are willing to engage in that service. *See e.g.*, Tr. Day 4, 1131:1-1131:14; Tr. Day 4, 1164:20-1165:13; Tr. Day 1, 52:3-14. Moreover, the Registration Disclaimer Provision will

require volunteers and canvassers to spend more time with each applicant to explain the Disclaimer and answer questions. As a result, they will not be able to register as many voters. Mr. Nordland testified, “Having to tell a voter a disclaimer, plus also probably hav[ing] to explain a disclaimer in plain English or Spanish” will take more time to complete the registration “and their production rates would probably become lower than what they were before [SB90].” Tr. Day 5, 1423:14-19. This is not mere speculation. Third-Party Voter Registration Organizations are already experiencing the impact. Ms. Mercado of Florida Rising Together testified, “We have seen a decrease in the number of forms. So prior to SB90, on average a voter registration canvasser would collect around 300 forms a week. They work 29 hours a week. And since the passage of SB90, they’re collecting more like an average of 100 forms a week. So we are seeing just the number of voter registration forms that they typically collect in an hour has gone down significantly.” Tr. Day 7, 2039:11-17.

In practice, this means that each week 200 fewer people are being registered to vote just from one Third-Party Voter Registration Organization. This will impact not only Black and Hispanic voters, but also Democratic voters who register through Third-Party Voter Registration Organizations at rates that far exceed Republican voters. *See* Ex. 5, ECF No. 608-1 at 101-02 (Dr. Herron explaining among post-January 2012 voter registrations in the August 2021 statewide voter file, the Democratic third-party voter registration rate was 10.48 percent as compared to



Republican rate of 3.97 percent). Dr. Herron analyzed third-party voter registration lists produced by 20 Florida counties in discovery. Taking Leon County as an example, Dr. Herron found “Democratic affiliates make up 52.8 percent of registered voters but 64.6 percent of such voters who registered via [Third-Party Voter Registration Organizations]. In contrast, in every Florida county in the table, Republican affiliates are disproportionately unrepresented among [third-party registrants]. Again consulting Leon County, [Republican voters] make up 26.1 percent of registered voters but only 8.8 percent of [third-party] registered voters.” *Id.* at 107. Because individuals who affiliate with the Democratic party register at high rates with Third-Party Voter Registration Organizations, Democratic voters will be disproportionately burdened by the Registration Disclaimer Provision.

**3. The Registration Disclaimer Provision is not adequately supported by a sufficiently weight state interest.**

To justify the Registration Disclaimer Provision, the State claimed an interest in informing applicants of the risks of registering through a Third-Party Voter Registration Organization and providing information on the other ways a voter can register on their own, thereby instilling voter confidence in the process. Neither of these interests can justify the burdens imposed on voters as a result of the Provision.

**a. There is no evidence widespread problems with registration forms being delivered late, much less after book closing.**

Director Matthews stated that the purpose of the Registration Disclaimer Provision is to inform applicants that, by registering through a Third-Party Voter Registration Organization, they risk their form not being delivered on time to vote, and to provide the applicant with information on other ways to register that do not involve the organization. The implication being that Third-Party Voter Registration Organizations frequently return registration forms past book closing, thus preventing voters from voting. But, in reality, the evidence shows it is incredibly rare for a voter to be unable to vote because a registration form was delivered past book closing.

In 2020, 59,805 voters registered or updated their registration through a Third-Party Voter Registration Organization. Ex. 5, ECF No. 608-1 at 94. Of the 67 Supervisors, 64 are unaware of *any* voter in their county who was unable to vote in 2020 because a Third-Party Voter Registration Organization returned a registration form past book closing (or not at all). *See* Ex. 546, ECF No. 462-47 through Ex. 612, ECF No. 463-13. Supervisors also testified to this fact. Supervisor Latimer stated he is not aware of any voters who were not registered in time to vote in an election in 2016, 2018, or 2020 because of a Third-Party Voter Registration Organization. ECF No. 549-3 at 56:6-16.; *see also* Tr. Day 5, 1343:7-12 (Supervisor White testifying that since becoming supervisor in 2015 she is unaware of any instance of a voter being unable to vote because a Third-Party Voter Registration Organization returned

an application after book closing); ECF No. 549-2 at 129:4-8 (Supervisor Hays explaining he is unaware of “any incident in Lake County where a voter was prevented from voting because of a third-party voter registration organization turning in a registration application late”). Simply put, it is exceedingly rare for a Third-Party Voter Registration Organization to return a registration form past book closing. The overwhelming majority return forms on time, and it is incredibly misleading to suggest to voters otherwise.

**b. The Registration Disclaimer Provision undermines overall voter registration which cannot possibly achieve the state’s purpose.**

Director Matthews testified that voters should be informed that if they do not “feel comfortable” having a Third-Party Voter Registration Organization return their form, they can deliver it themselves “and ensure also that it gets in timely.” Tr. Day 13, 3417:7-21. But, as discussed, many voters who register through Third-Party Voter Registration Organizations would otherwise not register or would experience barriers to registering on their own, including the act of returning a registration form. *See supra* at Part IV.B.2.b. Thus, some voters who are deterred from registering with a Third-Party Voter Registration Organization will not be able to register at all. *See id.* Ms. Rosemary McCoy knows this well—she directs Harriet Tubman Freedom Fighters’ voter registration efforts, which target low-income Floridians who would otherwise face barriers to registering. Tr. Day 1, 262:1-17. She testified that if you

give someone a registration form to turn in, there is “zero” chance they will. Tr. Day 1, 276:21-277:6. “[V]oter registration is not on the forefront of people[’s] minds. That’s why they haven’t registered to vote.” *Id.*; *see also id.* at 49:20-50:1 (Ms. Scoon testifying that when you are trying to convince someone to register to vote and you give the disclaimer, “they may say in their head they are going to do it later, but they haven’t done it up until then, so the chances of them doing it go way down”). Consistent with this, the data shows that when restrictions are placed on Third-Party Voter Registration Organizations, overall voter registration decreases. *See* Tr. Day 8, 2295:13-21, 2296:3-15. In other words, there is no reason to believe that a potential voter who is dissuaded by the Disclaimer will register using another method; it is just as and perhaps more likely that they will fail to register entirely.

The other ways to register to vote that SB90 requires Third-Party Voter Registration Organizations to advise potential voters about are methods that impose substantial burdens for many of the very populations that those organizations are so successful at registering, almost certainly because those other methods can be so problematic for those voters. For example, Mr. Nordlund of Unidos testified, “when the state launched their online website, we got a lot of complaints from voters that couldn’t navigate that website and were turned away from wanting to vote – registering to vote.” Tr. Day 5, 1494:16-22. And those methods have their own reliability issues. For example, Director Matthews acknowledged that the State’s

online voter registration system has malfunctioned on the final night prior to book closing in the 2018 *and* 2020 general elections. Tr. Day 10, 2780:11-24; *see also id.* at 2803:5-10. Yet SB90 does not direct that *that* information be shared with voters.

In sum, there is no evidence that warning prospective voters that registering with a Third-Party Voter Registration Organization and implicitly encouraging them to register using another method will actually help ensure Floridians successfully register to vote. There *is* ample evidence, however, that the Registration Disclaimer Provision not only impedes Third-Party Voter Registration Organizations in their efforts to register voters, but also will operate to depress registration among precisely the Floridians that are least likely to be registered by other means.

**c. The Registration Disclaimer Provision will not instill voter confidence in the voting process.**

The state has a legitimate interest in instilling voter confidence in the voting process. But the record demonstrates that voters do not lack confidence in the voting process or in Third-Party Voter Registration Organizations. Within the last 10 years, over 500,000 voters have registered with the help of Third-Party Voter Registration Organizations. Tr. Day 8, 2301:5-8. And in 2018 and 2019 alone, over 159,000 voters registered to vote that way, amounting to over 10 percent of all Florida voter registrations in that period. Ex. 5, ECF No. 608-1 at 94. This “revealed behavior” makes clear that tens of thousands of Floridians value Third-Party Voter Registration Organizations and have confidence in the system. *See* Tr. Day 8, 2333:14-16.

One reason Third-Party Voter Registration Organizations are valuable is because they make registering to vote easier, thus lowering the cost of voting. *Id.* at 2295:2-6. And when the costs of voting are lower, turnout is higher. *Id.* at 2227:1-4. High voter turnout is certainly a sign of confidence in the system. However, the Registration Disclaimer Provision erodes trust and confidence by painting a misleading picture of Third-Party Voter Registration Organizations that discourages voters from registering through the organizations. *See, e.g.*, Tr. Day 4, 1168:2-24 (Supervisor Scott testifying that Third-Party Voter Registration Organizations register voters with the “whole intent . . . to help people in your community to get registered to vote, but now you are required to say to them that you might not turn in the form, that is – obviously that would, you know, erode trust”); Tr. Day 1, 49:9-19 (Ms. Scoon testifying that the Registration Disclaimer Provision “invalidate[s] all the work that [the League has] done. It’s building distrust in the person you are trying to build trust with”). When that happens, potential voters must either find a new way to register or not register at all. That makes the entire registration process more costly, and when the process is more costly, voter turnout decreases. Tr. Day 8, 2226:19-22. It simply cannot be the case that the Registration Disclaimer Provision can deter voters from registering with Third-Party Voter Registration Organizations while also instilling voter confidence in the process. Nor is there any evidence in the record that would justify a finding to the contrary.

**C. The Vote-By-Mail Request Provision imposes an undue burden on the right to vote.**

As discussed above, *supra* Background Part I, in Florida's 2020 elections Black and Democratic voters substantially increased their use of mail ballots, with significantly more Democratic voters casting mail ballots than Republicans for the first time in Florida's modern history. Ex. 5 at 38 tbl. 8, ECF No. 608-1 (Dr. Herron Rep.). This reversal had significant consequences for future elections: Before SB90, once a voter made a VBM ballot request, that request was deemed a standing request for a VBM ballot, valid through the end of the calendar year of the second-ensuing general election. Fla. Stat. § 101.62 (2020).<sup>9</sup> This system had been in place for the past decade, *see* Ex. 383, ECF No. 608-75, enabling Florida voters to carry their request for a VBM ballot from one general election to the next seamlessly.

Following the 2020 general election, registered Democratic voters in Florida had an "800,000 vote lead over Republicans" in terms of standing VBM requests "because [Democrats] had voted by mail in such numbers in the 2020 election. . . ." Tr. Day 6, 1768:10-15 (Dr. Kousser). It is widely acknowledged that voters on the standing list are "far more likely to vote" than those who are not. Tr. Day 4, 1211:17-1212:3 (Supervisor Scott); *see also* Tr. Day 9, 2492:12-2493:7 (Dr. Smith testifying

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<sup>9</sup> Voters could opt out of the standing request and limit their request for a VBM ballot for a single election only. Fla Stat. § 101.62(a). And even if a voter had a standing request for a VBM ballot, they were free to choose to vote in person instead in any given election. Tr. Day 9, 2621:12-24 (Supervisor Earley).

to the increased turnout effects of being on such a standing list). The effects of this were already clear by the 2021 municipal elections. As Supervisor Scott explained, “we’ve seen directly that there was an increase in voter participation in [the 2021] municipal elections as a result of more people requesting vote-by-mail ballots for the 2020 cycle.” Tr. Day 4, 1211:17-1212:3. Thus, coming out of the 2020 election, Democratic voters in Florida were positioned to continue to outpace Republican voters in VBM ballot returns in future elections.

Under SB90, however, all of Florida’s standing VBM requests will be deleted from the system on January 1, 2023. *See, e.g.*, Tr. Day 4, 1187:2-6 (Supervisor Scott describing how “the list of people that we have built up now will get completely wiped away”). This is not a flaw but a feature of the bill as designed. SB90’s sponsor, Senator Baxley, proclaimed that Florida needed a “fresh start” on the VBM list. Ex. 6, ECF No. 608-5 at 27 (Dr. Burch Rep.). Senator Gruters, the Chairman of the Republican Party of Florida, Tr. Day 11, 3132:11-15, was even more honest in his assessment about the reason of the need for this “reset”: in a text that he sent to the sponsor of SB90’s counterpart HB 7041, Representative Ingoglia, in late April 2021, the Senator stated, “[Republicans] cannot make up that ground” in VBM requests, and that failing to “reset” the VBM list would be “devastating” for Republicans, particularly in down ballot and local races, “put[ting] at risk all Republican nonpartisan candidates.” Ex. 874, ECF No. 468-2.



Although Senator Gruters hoped to wipe out the list immediately, SB90 provides the reset he and his fellow Republicans sought, beginning on January 1, 2023, and after every general election thereafter. As discussed further below, the impact, particularly for off year and local elections, is likely to be severe.

**1. The Vote-By-Mail Request Provision burdens the right to vote.**

SB90's new VBM request scheme will be devastating for Florida's voters. It will retroactively invalidate likely hundreds of thousands of pre-existing requests for VBM ballots for the 2024 general election cycle. For millions of other voters who have relied on Florida's standing request system for the past decade—and would have otherwise automatically received a VBM ballot for future elections in 2023 and onward—the new system will require each voter to remember to renew their request to VBM about two months after every general election to continue receiving VBM ballots. As multiple Supervisors (and voters) testified, many Floridians are unlikely to realize their request has been invalidated, or that they need to affirmatively make a new request when they do, until it is too late.

SB90 also now requires that every single time a voter makes a VBM request, they must supply an identification number for the Supervisor's Office to verify, even though the Supervisors lack the ability to reliably verify such identification numbers for *three million* Florida voters, jeopardizing those voters' ability to request a VBM ballot at all. This directly affects hundreds of thousands of senior voters, many of

whom have mobility issues that make access to VBM voting critical to ensure they can exercise the franchise. The system is lawless, chaotic, and overwhelmingly likely to result in disenfranchisement.

While these burdens will be felt on all Florida VBM voters (of which there were 4.8 million in 2020, *see* Ex. 5 tbl. 5, ECF No. 608-1 (Dr. Herron Rep.)), the burdens will be severe for voters who depend on VBM to cast their ballots, including millions of senior voters and voters with disabilities. Finally, because this law has severe partisan effects (by disproportionately and quantifiably harming Democratic voters), this law is not the kind that can be described as reasonable and nondiscriminatory.

**a. The Vote-By-Mail Request Provision retroactively invalidates hundreds of thousands of VBM requests.**

By invalidating all requests for VBM ballots at the end of the 2022 calendar year, SB90 retroactively invalidated what were likely hundreds of thousands of pre-existing requests Florida voters had already made to receive a VBM ballot for the 2024 general election cycle. In the 2020 general election, Florida voters made a record number of VBM ballot requests. Ex. 5 at 25, ECF No. 608-1 (Dr. Herron Rep.). Supervisor Mark Earley testified that, in just Leon County, 67,000 voters returned a VBM ballot in that election, and of those voters, “90 -- 85 percent roughly,” checked a box on their ballot return envelope requesting that they receive a VBM ballot for the next two election cycles. Tr. Day 9, 2624:14-2625:5. But for

SB90, those requests would have been good through the 2024 election cycle. But SB90 “prevents” the Supervisors from honoring those requests, and in Supervisor Earley’s words, “cancels a request that I think many [voters] were expecting to be on record and honored in the 2024 cycle.” Tr. Day 9, 2325:19-2327-11. Supervisor Earley confirmed that those voters were “already essentially promised” that they “would get those” ballots. *Id.* Because of SB90, all of those requests will now become invalid as of January 1, 2023. Voters who had expected ballots after that date based on requests they made prior to SB90 will not receive them.

Many other Florida counties used the same checkbox request system in the 2020 general election, allowing voters to request a VBM ballot for 2022 and 2024 when they returned their 2020 general election ballot. For example:

Citation	Witness	Testimony
Tr. Day 4, 1285:18-1286:9	Supervisor Corley	<p>“Q. And before SB90, were voters in Pasco County able to renew a request for a vote-by-mail ballot by checking a box on the envelope when they returned their ballot?</p> <p>A. Yes, sir, on the return certificate envelope. Yes, sir.</p> <p>Q. Was that a popular method in Pasco County?</p> <p>A. Yes, I would say so.</p> <p>Q. Did many voters use that method?</p> <p>A. Yes, sir.”</p>
ECF No. 549-3, 59:25-60:5, 83:22-84:10, 135:12-	Supervisor Latimer	Hillsborough County used to have the checkbox method for requesting a VBM ballot. Many of the county’s voters used that option before SB90.

14, 137:7-12		
Tr. Day 5, 1590:8-13	Catherine Teti (Hillsborough County)	Hillsborough voter explaining, “when you get the vote-by-mail ballot, there’s a little box on the envelope that says, Please send me a mail ballot for next election. And I just check it, and I get the ballot for the next session -- the next election.”

Even in counties that did not utilize a checkbox method for requesting ballots in the 2020 general election, there are still voters who will have their VBM request retroactively invalidated under SB90. In counties like Miami-Dade, which held municipal elections in the spring of 2021, there were voters who requested VBM ballots before SB90 was enacted. As Supervisor White explained, at the time those requests were made, they were valid “[t]hrough the end of 2024,” but because of SB90 they “will be inactivated as of January 1, 2023,” “two years earlier.” Tr. Day 5, 1350:9-1351:3.

As Supervisor Earley confirmed, Florida’s Supervisors were uniformly opposed to the retroactive invalidation of voters’ existing VBM ballot requests, a position they made “abundantly clear” to the Legislature. Tr. Day 9, 2628:16-23; *see also* ECF No. 549-3, 110:11-25 (Supervisor Latimer explaining that “wip[ing] out all of the request for vote by mail [that are on file]” is an “extremely onerous” thing to do). It is not hard to see why the Supervisors opposed this change. As Supervisor Earley explained, when you retroactively invalidate requests for VBM ballots, “the biggest concern is the potential and likely disenfranchisement of voters who, in their

mind, they have their request in; they are going to get their ballot like they have previously . . . and they have got a history of doing that, and now that would not be honored.” Tr. Day 9, 2327:15-2328:9. This retroactive invalidation of voters’ VBM ballot requests poses a severe burden on the right to vote.

**b. The Vote-By-Mail Request Provision is likely to cause massive confusion and disenfranchisement among voters.**

Even among Florida voters who will not have their VBM ballot requests retroactively invalidated, Supervisors agree that SB90 is likely to cause both massive confusion, and will, in some cases, result in disenfranchisement.

As Supervisor White explained, “when vote-by-mail ballot[] [requests] lasted for two general election cycles, . . . a voter who requested a vote-by-mail ballot in a presidential election cycle would also get a vote-by-mail ballot for the next midterm election cycle automatically.” Tr. Day 5, 1348:20-1349:20. That system was so seamless, that, as Supervisor Doyle explained, “[s]ome people think” their vote-by-mail request “is permanent.” Tr. Day 12, 3214:18-19. Under SB90, however, “if a voter requested a mail ballot in the lead-up to a presidential election, they would not get mail ballots for subsequent elections anymore.” Tr. Day 5, 1348:20-1349:20 (Supervisor White).

While most Supervisors intend to try to educate voters about the change, they know they cannot possibly be able to reach all of their voters. Broward County Supervisor Scott, for example, will do “[e]verything we can” to inform voters that

their VBM requests will are set to newly expire, but “none of these types of communication are very effective,” and there is “not a chance” that his office can reach all affected voters. Tr. Day 4, 1187:7-1190:2. Supervisor White, too, plans to do an education campaign, but knows she won’t reach all of her voters and fully expects to get calls from voters asking, “Where’s my ballot?” when they do not get a ballot they were expecting. Tr. Day 5, 1353:12-1354:23. As Supervisor White explained, “hopefully” those voters realize their request has now expired before the deadline for requesting VBM ballots, which is ten days prior to the election, has passed. Tr. Day 5, 1353:12-1354:23. Supervisor Earley, too, expects that in many cases voters won’t “notice [their ballot] hasn’t shown up until all the hoopla surround[ing] election day,” at which point it may be too late to request a VBM ballot. Tr. Day 9, 2327:15-2328:9.

For voters who “can’t get out to use -- to the polls, which is generally why they request a vote-by-mail [ballot]” in the first place, the situation is untenable. Tr. Day 9, 2627:15-2628:9 (Supervisor Earley). This includes the “[e]lderly, infirm, people with disabilities, people that have to work multiple jobs or long hours, people that are out of our county, obviously -- that's the original genesis of vote-by-mail.” *Id.* at 2633:20-2634:6 (Supervisor Earley). Supervisor White, too, expects the change will “have grave impacts on voting accessibility,” and voters who miss the deadline to request “may lose their opportunity to vote. The elderly, voters with

disabilities and our overseas military would be most affected. . . .” Ex. 383, ECF No. 608-75. Florida is home to a substantial senior voter population, many of whom are “creatures of habit” who will be “slow to react” to this change. Tr. Day 5, 1623:5-17 (FLARA President, William Sauers). And the older a voter is, the more likely they are to rely on VBM ballots. Ex. 5 at 40, ECF No. 608-1 (Herron Rep.).

The Court heard from many voters who depend on VBM ballots to vote. They include Susan Rogers (Day 4), Catherine Teti (Day 5), Robert Brigham (Day 5), Naomi Slaughter (Day 7), and Amy Zukeran (Day 7). They are only a representative sample of the 2.7 million Floridians with disabilities who need access to VBM ballots to vote. Tr. Day 2, 598:25-599:2 (Dr. Cooper); *see also* Tr. Day 1, 457:15-458:6 (Mr. DePalma, Disability Rights Florida, describing barriers to in-person voting for Floridians with disabilities). Particularly for these classes of voters, this provision imposes a severe burden on the right to vote.

Notably, even if voters *do* realize that they will not receive an anticipated mail ballot, Supervisors anticipate many will not “discover that [until] late in the game” because of the “expectation that they’ve already requested one” and thus not request a VBM ballot until right before—if not after—the 10-day pre-election deadline to do so. *See* Tr. Day 9, 2633:1-11, 2630:25-2631:21 (Supervisor Earley). This is a meaningful change. Before SB90, every voter who had a standing request for a VBM ballot would be sent one no later than 33 days before the election, Fla. Stat. §

101.62(4)(b), giving them weeks to return their ballot. But voters can and do request VBM ballots up to ten days before the election for all kinds of reasons, and voters who receive ballots closer to the election can quickly find themselves in a difficult—or even impossible—situation. USPS cannot guarantee that it will deliver ballots in less than five days, and Supervisors recommend voters allow for “at least a week” of mail time for their ballot to be delivered back to the Supervisor’s Office. Tr. Day 9, 2633:1-11, 2630:25-2631:21 (Supervisor Earley). The voters most at risk of having a late ballot are voters who are “out of state or a long geographic distance away from [their] county”—in other words, voters who could not vote in-person at the polls, even if they wanted to. Tr. Day 9, 2632:10-24 (Supervisor Earley).

**c. The Vote-By-Mail Request Provision makes requesting a VBM ballot needlessly difficult.**

Even for voters who hear their Supervisor’s plea to submit a new request for a VBM ballot, doing so will be significantly more difficult than it has been in the past. Before SB90, many Florida counties used the checkbox system to allow voters to request future VBM ballots, where voters returning VBM ballots would simply “check the box” on their ballot’s return envelope to continue their standing request for VBM ballots. As Supervisor Earley testified, the checkbox system was “absolutely” secure: “[W]e only honored that request if we approved the ballot for tabulation. So if we’re going to count the ballot because the signature matches and all the safeguards are in place for making sure that was a valid ballot, certainly it



seemed like a good way to request ballots.” Tr. Day 9, 2623:23-2624:4, 2625:11-18. As a result of SB90, Supervisors can no longer offer that option. *See, e.g.*, Tr. Day 4, 1285:18-1286:9 (Supervisor Corley eliminating his check box option).

Particularly for voters with disabilities, requesting a VBM ballot via the checkbox was a “very simple” way to continue their request. Tr. Day 4, 1095:15-17, 1095:19-23 (Susan Rogers). While requesting a VBM ballot online or by telephone many not impose substantial burdens on all voters), those methods can be severely burdensome for many of Florida’s disabled voters. *See, e.g.*, Tr. Day 4, 1096:14-1100:12, 1100:13-1101:8, 1101:9-1102:1 (Ms. Rogers, a voter who is legally blind, describing severe challenges with having to make such a request online or by phone); Tr. Day 7, 2083:3-2084:3 (Ms. Slaughter, a voter with several mental health challenges, describing the difficulties of the same).

**d. The Vote-By-Mail Request Provision’s identification requirement sets up voters for failure.**

SB90 also imposes a new identification requirement that threatens to prevent hundreds of thousands of voters from being able to successfully request a VBM ballot. While SB90 requires Supervisors to match a voter’s identification number (a driver’s license, state identification, or last four digits of a Social Security number) to a number that the Supervisors have on file for the voter, the Supervisors do not have *any* of those numbers on file for nearly 500,000 Florida voters, most of whom registered to vote before 2006, before any of those numbers were requested on a

voter registration form. Tr. Day 10, 2785:6-16 (Director Matthews). In Leon County alone, there are “over 13,000 voters” who do not have any of these numbers on file with the Supervisor’s Office. Many are older voters “who registered before those [numbers] were required.” And “a little over half of those 13,000, 7,000 and some, are frequent vote-by-mail voters.” *Id.* at 2649:17-2650:10. There are similarly 22,000 such voters in Miami-Dade County who do not have any identification number on file with the Supervisors’ Office and thus could not successfully request a VBM ballot under SB 90. Tr. Day 5, 1364:21-1365:1-6 (Supervisor White).

There are an additional *three million* Florida voters who have only one of those identification numbers on file with the Supervisor’s Office. Tr. Day 9, 2516:13-19 (Dr. Smith). Those voters “would have to remember what they used when they registered to vote.” If they guess incorrectly, the Supervisors’ offices are “not be able to process” the voters’ request for a mail ballot. Tr. Day 4, 1174:21-1175:6 (Supervisor Scott). Voters, too, often do not know which identification numbers are on file with their Supervisor’s Office. *See, e.g.*, Tr. Day 5, 1590:2-5 (when asked what identification number she used to register to vote, Ms. Teti responded, “I don’t remember. That was in 1980.”). Supervisor Earley testified that he would not know the answer for his *own* voter registration information if he did not have the capability to look up his own voter file in his own database. Tr. Day 9, 2650:18-24. In sum, under the shortened lifespans of VBM requests under SB90,

voters must remember or otherwise divine what number their Supervisor has on file for them each time they request a VBM ballot. Ultimately, the shortened duration of those requests and the new identification requirement work together in dangerous ways to make Florida's VBM system one that is designed to fail voters. *See infra* at Part IV(F).

**2. The Vote-By-Mail Request Provision is not supported by a sufficiently weighty state interest.**

The interests that the state has put forward to justify the VBM Request Provision range from the ludicrous (expanding voter's choices) to others that fall apart upon a brief inspection (preventing fraud). In addition, the VBM Request Provision also imposes significantly more work and more expense on Florida's Supervisors, who opposed this law for the reasons explained above, and for the havoc it will wreak on their offices.

**a. The Vote-By-Mail Request Provision does not promote the state's interest in expanding voter's choices.**

In support of the VBM Request Provision, SB90's sponsor, Senator Baxley, stated again and again that its purpose was to expand voter's choices in how they could vote, implying that having a standing request for a VBM ballot meant that a person could not vote in person if they wanted to:

Citation	Witness	Testimony
Ex. 6, ECF No. 608-5 at 38	Dr. Burch (Report)	When pressed on this provision, Senator Baxley stated: "I truly believe we will have a more secure process when people can decide each year what manner in which they

		would like to vote... <b>You can choose every year how you want to vote....</b> If you want to vote the same way you can, or you have all the other options of how to vote.”
Ex. 6, ECF No. 608-5 at 39	Dr. Burch (Report)	Senator Baxley: The problem with the current law is that “[y]ou’re <b>stuck with that choice. Everybody should be able to choose</b> each year how they want to vote as far as I’m concerned.”
Ex. 6, ECF No. 608-5 at 27	Dr. Burch (Report)	Senator Stewart: “Regarding your section 7, regarding your urgency to retroactively invalidate a voter’s request for a vote by mail ballot... what was your position on putting this into the bill?”  Senator Baxley: “That’s <b>really about just fresh start.</b> Fresh start, everybody gets to choose and will get it on a pattern.”

Expanding voter’s choices for how to vote is a legitimate state interest. But the VBM Request Provision does not advance it. As Secretary Lee explained to the Senate Ethics and Elections Committee prior to SB90’s enactment, “even if you’ve requested that vote by mail ballot and have it in hand, you can still vote in person.” Ex. 6 at 39, ECF No. 608-5 (Dr. Burch Rep.). Supervisor Earley testified to the same point: Prior to SB90, if a voter requested to receive a VBM ballot for several elections, they could always cancel the request, or they could change their mind about voting with a VBM ballot in a given election and vote in person. Tr. Day 9, 2621:12-24. In other words, as Supervisor Earley stated at trial, this articulated state interest is “nonsense.” “How does making it harder to vote by mail improve your options?” Tr. Day 9, 2643:24-2644:7.

**b. The Vote-By-Mail Request Provision is not necessary to prevent fraud.**

The second articulated state interest offered for the VBM Request Provision is to ensure that VBM ballots are not sent to outdated addresses after a voter has moved or died. This was the explanation offered by Director Matthews at trial. Tr. Day 13, 3431:21-3432:14. The implication is that those ballots might end up in the hands of new residents who live at that location, who may then try to vote them. But although Florida has over 14 million voters, millions of whom have had standing requests for VBM ballots for years, there is *no* evidence that this was a problem prior to SB90. And this purported state interest is further directly undermined by the fact that, while SB90 was on the floor, sponsors rejected amendments that would have made it easier for Supervisors to keep voters' address up to date, such as automatically synching the Department of Motor Vehicles' databases with the Supervisors' database. Instead of accepting those amendments, which may have *actually* addressed concerns about any gaps in the system, the Legislature took a hatchet to voters' existing VBM requests.

*First*, Director Matthews' concern about ballots going to outdated addresses is, in the words of Supervisor White, "very overblown." Tr. Day 12, 3188:19-3189:9. While the Director expresses concern that a voter (and particularly a college student) may move and not "let their Supervisor of Elections know that they've moved," Florida's election system does not depend on college students keeping their

Supervisors up-to-date on their latest move. Florida's election system is much smarter than that.

As Supervisor White described, there are various interlocking methods to make sure that the Supervisors have current information about their voters, none of which depend on a voter letting their Supervisor know that they have moved. They include "the national change of address" or NCOA process, "which compares the voter registration system addresses to the addresses that the post office has on file." Tr. Day 5, 1363:8-23. As a result, "[a]nytime a voter makes a change with their office, not necessarily [with the Supervisors themselves, they will] be notified about that from the post office." Tr. Day 5, 1363:8-23. Similarly, if a voter updates their address with the Department of Motor Vehicles, the Supervisors are notified and can update their system. Tr. Day 5, 1363:8-23. If a voter goes to serve on jury service and notifies the court that they've changed their address, that comes to the Supervisors. Tr. Day 5, 1363:8-23.

Florida is also now part of the ERIC system, which helps keep information up to date even with people that have left the state. Tr. Day 5, 1363:8-23. As Supervisor White testified, "the list maintenance activities in the state of Florida have come a very long way and, you know, the voter rolls have never been more accurate and up to date." *Id.* at Day 5, 1362:12-23. Other Supervisors agree that there are extensive

procedures in place to make sure that VBM ballots are delivered to the correct address. *See* Tr. Day 9, 2640: 2-10, 2643:7-12, 2642:9-19 (Supervisor Earley).

Even if a Supervisor is unaware that a voter has moved and tries to send a ballot to their old address, USPS will return the ballot to the Supervisor as undeliverable, and the Supervisor will “invalidate the [standing] request” to vote-by-mail at that address, both for that election and “for the future.” *Id.* at Day 9, 2640: 2-10 (Supervisor Earley). Notably, under Florida law ballots also cannot be forwarded to a voter’s new address, even if a voter has otherwise requested that USPS forward their mail. Tr. Day 9, 2643:3-6 (Supervisor Earley); Fla. Stat. § 101.62(4)(c)(1).

It is also not credible to suggest that Supervisors are sending ballots to voters who have died. As Supervisor Scott explained, his office receives death notifications for his county’s voters “within a week or two.” Tr. Day 4, 1243:12-22. He discounted this explanation for the VBM Request Provision, which effectively implies that Supervisors would send dead voters ballots “for four years, [which] just sounds like a wacky conspiracy theory and not something that would actually happen. . . . We would not allow ballots to continue to go out to somebody who has passed away.” Tr. Day 4, 1243:12-22; *see also* Tr. Day 9, 2641:18-2642:8 (Supervisor Earley similarly explaining Supervisors receive regular reports of voters who have died, and they “absolutely” remove those voters from the rolls and cancel any standing

request the voter may have had for a VBM ballot); Tr. Day 5, 1364:10-16 (Supervisor White explaining her office removes deceased voters “from their voter registration system within seven days of being notified” of their death).<sup>10</sup>

*Second*, and relatedly, there is no evidence that Florida has an issue with individuals illegally voting ballots that show up to an incorrect address. Secretary Lee testified to the Florida State Senate Committee on Ethics and Elections in February 2021 that she was not personally aware of any instance of voter fraud in which someone received a ballot that was not intended for them and voted it anyway. Tr. Day 10, 2763:1-9. Nor is there an epidemic of college students voting their classmates’ ballots after they have moved. Supervisor White, for one, is not “aware of any problem of college students in Miami-Dade voting other college students’ vote-by-mail ballots because they received them at their dorm room.” As far as she knows, “that’s never happened.” Tr. Day 12, 3183:3-12. Supervisor Earley, too, whose county is home to a large student population, has never had to submit a fraud complaint related to VBM voting of any sort. Tr. Day 13, 3506:10-23.

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<sup>10</sup> While Director Matthews suggested that matching voter registration records and death records is not a “flawless” system because women might “fudge” their birth date on their voter registration form because they are worried about “getting older,” there is absolutely no basis to suggest that voters regularly, or ever, “shave a couple years off” their birth date on their voter registration form to appear younger. Tr. Day 13, 3448:7-3449:3. To do so would be a crime. Fla. Stat. § 104.011(b).



*Even if* a ballot were delivered to an outdated address, something that happens very infrequently, there is no evidence those ballots are then voted. Instead, when it happens, new residents tend to call the Supervisors office to advise them of the issue. As Supervisor White testified, the reality is that VBM ballots being delivered to addresses once a voter no longer lives there, “doesn’t happen all that often. I think that these circumstances of this occurring are very overblown, but the few that I know of that have, you know, called our office, have understood and, you know, we give them the instruction that we will start the address confirmation process.” Tr. Day 12, 3188:19-3189:9. But even if a new resident *did* receive such a ballot and decide that this was their chance to commit voter fraud, there are multiple security measures in place to keep that ballot from being counted. They include signature verification procedures that have “proven very effective,” Tr. Day 9, 2643:12-23 (Supervisor Earley); Day 5, 1371:14-16 (Supervisor White); ECF No. 549-2, at 60:2-7 (Supervisor Hays); they include all of the notification procedures that operate to alert Supervisors when a voter has moved or died; and for a voter who has moved, they also include the likelihood that the fraudulent voter would be discovered when the actual voter attempts to vote themselves. *See* Tr. Day 9, 2622:2-15 (Supervisor Earley discussing system which keeps track of each voter who has voted, and how they voted).

In the end, no Supervisor testified that they understood how the VBM Request Provision would prevent fraud or otherwise improve the system. To the contrary:

Citation	Witness	Testimony
Day 4, 1272:6-11, 1273:14-20 & Ex. 110	Supervisor Corley	“I’m <b>literally befuddled</b> as to why we would tweak a system that performed exceedingly well. The current Vote By Mail (VBM) statutes (e.g. policies and procedures) ... worked extremely well in Pasco County and to my knowledge, all of Florida. The provision that voids all vote by mail requests will not only <b>impact millions of Florida voters</b> but will cause an <b>unfunded mandate of millions of dollars</b> to the taxpayers of our great state. As such, <b>I can think of no legitimate reason to make the sweeping and arbitrary changes contained in SB90!</b> ”
ECF No. 549-2, at 150:12-21, 150:24-151:22	Supervisor Hays	Supervisor Hays is not “aware of any instance of voter fraud that would have been prevented had people had to renew their requests for ballots every election cycle.” Supervisor Hays also has “several different safeguards” to “ensure that voters who move are no longer able to vote from their previous address.”  “Q: And in your opinion are those safeguards sufficient to prevent against fraud that might be caused by somebody moving? A: Well, <b>I’ve not seen any instances of fraud</b> , so I guess one could conclude that they probably are.”
Day 12 3256:20-3257:15	Supervisor Doyle	“Q. Before SB90, a vote-by-mail request, as you said earlier, was good for two election cycles; correct? A. Yes. Q. And that system worked well? A. Yes. ...

		<p><b>Q. And you would agree with me that SB90's change to the vote-by-mail request period from two election cycles to one election cycle was unnecessary; correct?</b></p> <p><b>A. Yes, sir."</b></p>
ECF 549-3, 139:21-24, 168:9-18, 188:14-189:5.	Supervisor Latimer	<p>Supervisor Latimer does not agree that it increases the security of elections. "[SOEs] really didn't want it to go to one, we wanted it to stay at two. And <b>there was no logic to do that</b>, to take it to one."</p>

*Third*, and finally, the state's assertion that this provision was aimed at making sure that Supervisors had voters' correct and current information on file is directly undermined by the fact that SB90's sponsors rejected amendments to the bill that would have made it even easier for Supervisors to keep voters' addresses updated and would have actually furthered that purpose. In one instance, for example, Senator Brandes (a Republican who opposed SB90), suggested an amendment that would update a voter's addresses in the voter database *automatically* after the voter changed their address on their driver's license (rather than simply notifying the Supervisors, as is current practice). As Dr. Burch explained in her expert report, that amendment failed, as did four others that were aimed at making it easier for the Supervisors to update voters' addresses. Ex. 6 at 37-38, ECF No. 608-5. If this was the problem the Legislature was actually trying to solve, it is illogical that they rejected these amendments.

**c. The Vote-By-Mail Request Provision makes elections much harder to administer for Florida’s Supervisors.**

The VBM Request Provision will also strain Florida’s Supervisors, making it harder for them to administer elections. The Legislature was fully aware of this: at the time it was considering this provision of SB90, the association of Florida Supervisors of Elections wrote: “Lawmakers should [] be aware that this would come at significant cost to taxpayers, as Supervisors will be required to send mailings to millions of voters to let them know that their request is no longer valid. In addition, requiring voters to renew their request for mail ballots every election cycle, instead of every two election cycles, also has financial impact, resulting in twice as much clerical work to process the requests.” Tr. Day 9, 2634:7-2636:2. A year later, the Supervisors have stood by that assertion:

Citation	Witness	Testimony
Tr. Day 4, 1188:3-13, 1190:6-1191:6	Supervisor Scott (Broward County)	The VBM Request Provision “could also <b>cause us to get a flood of late requests</b> as we’re approaching an election, and when we get within a couple of weeks of an election, we could end up getting flooded with requests that would be – there’s a number of <b>different logistical challenges</b> that we could face...” Rather than “improve the administration of elections in Broward County,” the VBM Request Provision “ <b>hurts the process.</b> ” The new provision is “going to require the office to take <b>excessive administrative steps and to expend a lot of resources</b> in order to allow people to continue voting by mail.”
ECF 549-3, 74:13-21,	Supervisor Latimer	The VBM Request Provision will put “a <b>tremendous administrative burden</b> on our

142:2-7, 167:16-21	(Hillsborough County)	office with just having to process these things every cycle, as opposed to every two cycles, and the additional information that's required that we have to verify, so it will cause an administrative burden." The Hillsborough SOE is going to have "to <b>hire additional people</b> to keep up with the workload, additional temporary employees" to re-process those requests.
Tr. Day 9, 2636:19- 2338:12	Supervisor Earley (Leon County)	The VBM Request Provision makes it harder for Supervisors to plan for elections. Prior to SB90, Supervisors knew the universe of the "standing set of requests" to vote-by-mail and could plan accordingly. Supervisor Earley has " <b>spent decades making these formulaic election plans where you look at the turnout in various methodologies</b> " and <b>adjusting resources accordingly</b> . But if "we don't have a request for vote-by-mail for this upcoming election cycle, we have to assume they may go vote early or in person election day" and have enough resources in place for that contingency. " <b>[W]e're going to have to have bigger buffers to account for much more error in our formulas in our planning</b> . So a lot more resources – more resources will definitely have to be devoted to the different areas, but, you know, likely more ballots -- I mean, more envelopes even ordered because we don't know where the impact might be. We don't want to be short."
Tr. Day 5, 1353:12- 1354:23	Supervisor White (Miami-Dade County)	The VBM Request Provision "puts us at a major disadvantage. . . . <b>It hinders our ability to plan.</b> . . . So if I know now that I have 400,000 people on the vote-by-mail list, then, you know, I can plan for close to that .... But when that gets cut off, and we're back to zero, and I have to rely on these voters replying back and getting back onto the list, <b>it puts us at a disadvantage because how many ballots am I printing, envelopes, instructions, postage [] on the meter with the post office? What do I plan for? Am I going</b>

		<p><b>to plan for all of those people actually, you know, getting the notification and replying?</b></p> <p>. . . And then the other thing is here comes 2024; right? And people are starting to think about the election. They're getting campaign material in the mail. You know, Oh, okay, election's coming up. Where's my ballot? They didn't get their ballot. They were expecting their ballot. So then they call our office, and we explain to them that the law changed; you're no longer on the list, and at that point they request one, which hopefully they do it in time because it's ten days prior to the election. That's the deadline to request. But just <b>taking that type of volume and shifting it so close to the election is certainly something that I'm concerned about.</b>"</p>
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In the end, all the VBM Request Provision does is decimate Florida's VBM system. Ultimately, the Supervisors expect that this change will "without a doubt" reduce turnout in off-year and municipal elections. *See, e.g.*, Tr. Day 4, 1211:17-1212:3 (Supervisor Scott); Tr. Day 5, 1349:21-8 (Supervisor White); Tr. Day 9, 2647:14-2648:23 (Supervisor Earley testifying to the downstream effects on turnout). In other words, this provision does exactly what Senator Gruters wanted it to do: reduce turnout in the local elections where Republicans were "at risk" because of the ground they had lost in VBM requests.

While partisan motivations in itself may not doom a law, *see* ECF No. 646, they do shed light on the Legislature's true purpose, particularly when the law works exactly as the majority party expected: to harm the minority party. Because neutral

justifications do not sufficiently justify the law for all the reasons stated above, this Court should find it imposes an undue burden on the right to vote.

**D. The Drop Box Provisions impose an undue burden on the right to vote.**

**1. Drop boxes have long been used in Florida with great success.**

For over a decade, long before Florida law *required* the use of drop boxes, counties throughout the state provided drop boxes for voters to return their VBM ballots. In 2008, then Pinellas County Supervisor of Elections Debra Clark installed the first ballot drop box in Florida. Tr. Day 6, 1745:18-24. One year later, Hillsborough County began using drop boxes. ECF No. 549-3 at 35:14-22. By 2012, Pinellas County had 14 drop boxes and many counties soon followed its lead. Tr. Day 6, 1745:18-24; *see also* Tr. Day 1, 77:5-7 (Ms. Scoon explaining that for the past five to ten years, she has “primarily used the [Bay County] drop box for my ballot and it would be after hours”). In 2020, there were approximately 488 drop boxes in Florida, with approximately 65 drop boxes across 48 counties available 24 hours per day. Tr. Day 8, 2290:23-2291:13. In many cases, Supervisors made drop boxes available from the first day VBM ballots were mailed to voters through election night. *See, e.g.*, ECF No. 549-2 at 65:4-18; Ex. 234 at 4, ECF No. 608-61 (Palm Beach County Supervisor Wendy Link offered four 24-hour drop boxes from September 19, 2020 through November 3, 2020).

Drop boxes were exceedingly popular with Florida voters: In 2020, at least 1.3 million ballots were cast via drop box. Tr. Day 8, 2158:25-2159:8 (Dr. Herron explaining “that’s approximately 31 percent of all vote-by-mail ballots in the 46 counties for which I have data”); *see also* Tr. Day 9, 2616:6-7 (Leon County Supervisor Mark Earley testifying that voters “love the ability to use [drop boxes] as a method for returning a vote by mail ballot”); ECF No. 549-3 at 104:21-105:4 (Supervisor Latimer testifying that nearly half of voters who used VBM in Hillsborough County used drop boxes); Ex. 234 at 3, ECF No. 608-61 (Supervisor Link explaining her “office received an overwhelming amount of positive feedback from voters who used our secure drop boxes”). This was also true for 24-hour drop boxes. Lee County Supervisor Tommy Doyle, for example, testified that for “one weekend during the 2020 election [Lee County] had an overnight drop box.” Tr. Day 12, 3203:3-5, 3203:21-22. The drop box was installed on Friday and on Sunday when Supervisor Doyle checked the drop box, “it was very full.” *Id.*

Drop boxes were especially popular with Black and Democratic voters. As Dr. Herron testified, “the evidence that I have suggests that [ ] Black voters are more likely to use drop boxes than White voters; that Democratic affiliates are more likely to use drop boxes than Republican affiliates; and that young voters are more likely to use drop boxes than older voters.” Tr. Day 8, 2282:17-21, 2283:5-9; *see also* Ex. 5, ECF No. 608-1 at 58 (Dr. Herron explaining his analysis shows “Republican



[vote-by-mail] voters . . . tend to use drop boxes less than Democratic [vote-by-mail] voters.”).

Not only are drop boxes popular with voters, they are also popular with Supervisors:

Citation	Witness	Testimony
Tr. Day 5, 1251:23-1252:1	Supervisor Scott	“Q. Would you have more drop boxes were it not for Senate Bill 90? A. Absolutely. I would have gone for 40 drop boxes if it weren’t for Senate Bill 90.”
Tr. Day 9, 2655:23-2656:5, 2659:17-20	Supervisor Earley	Drop boxes help ensure that a VBM ballot arrives in time to be counted: “I would much rather have a vote-by-mail ballot put in one of our drop boxes than in the U.S. Mail system.”
ECF No. 549-2, at 78:24-79:13	Supervisor Hays	Lake County had a 24-hour drop box before SB 90 “[b]ecause one of our goals when I took office was to do everything that we could do to enhance the election day experience for everyone, whether it be the voter, whether it be the election worker or whether it be my full-time staff or my temporary staff. And by providing that convenience of 24-hour access that is secure, we felt like that was the right thing to do. And I had consulted with supervisors in other counties who had very successfully used it, and so we decided to install one here and used it very successfully.”
Ex. 234, ECF No. 608-61 at 3	Supervisor Link	Palm Beach County offered 46 drop boxes during the 2020 general election and four were available 24 hours a day. “[Supervisor Link’s] office offered secured drop boxes to its voters in order to make voting as accessible and convenient as possible.”
Ex. 213, ECF No. 608-48	Supervisor Latimer	“We should be looking for cost-effective ways to expand [drop box] use, including the use of secure 24-hour drop boxes with camera surveillance[.]”

Despite the widespread success of drop boxes, SB90 places severe restrictions on their use. Under SB90, drop boxes must be continuously monitored, in person by an employee of the Supervisor. Fla. Stat. § 101.69(2)(a) (2021). If a drop box is left unattended, the Supervisor is subject to a fine of \$25,000. *Id.* at § 101.69(3). SB90 also restricts when and where drop boxes may be located—“Except for secure drop boxes at an office of the supervisor, a secure drop box may only be used during the county’s early voting hours of operation.” *Id.* at Fla. Stat. § 101.69(2)(a). Early voting begins on the tenth day before a statewide or federal election and ends the third day before the election and Supervisors have the option to offer early voting beginning the fifteenth day before a statewide or federal election or the second day before an election. *Id.* at § 101.657(1)(d). Early voting hours may be no less than eight hours and no more than twelve hours per day. *Id.* As a result of SB90’s drop box restrictions, there will be a significant reduction in drop box availability for voters in Florida and that reduction will burden voting rights for countless voters who depend on drop boxes to successfully vote. These restrictions are not supported by sufficiently weighty state interests that can justify the burdens they impose on the right to vote.

The State has suggested that Florida law prior to SB90 already required that all drop boxes be physically monitored. But the plain text of the pre-SB90 provision

did not require physical staffing of drop boxes at Supervisor offices or early voting sites. This provision of the statute states in full:

The supervisor shall allow an elector who has received a vote-by-mail ballot to physically return a voted vote-by-mail ballot to the supervisor by placing the envelope containing his or her marked ballot in a secure drop box. Secure drop boxes shall be placed at the main office of the supervisor, at each branch office of the supervisor, and at each early voting site. Secure drop boxes may also be placed at any other site that would otherwise qualify as an early voting site under s. 101.657(1); provided, however, that any such site must be staffed during the county's early voting hours of operation by an employee of the supervisor's office or a sworn law enforcement officer.

Fla. Stat. § 101.69(2) (2020). The statute contemplated four locations for drop boxes: (1) the main office of the supervisor, (2) the branch office of the supervisor, (3) early voting sites, and (4) “any other site that would otherwise qualify as an early voting site” under Fla. Stat. § 101.657(1). This fourth category includes sites that would be eligible to be an early voting site, such as a library or courthouse, but were not ultimately chosen as sites for early voting.

Under a plain reading of the statute, the first three locations—the main office, a branch office, or an early voting site—need only have a “[s]ecure drop box.” Fla. Stat. § 101.69(2). It was only at the fourth category of sites, where “[s]ecure drop boxes may also be placed . . . provided, however, that any such site must be staffed during the county's early voting hours of operation by an employee of the supervisor's office or a sworn law enforcement officer.” *Id.* In other words, the

statute by its plain language treated drop boxes at Supervisors' offices and early voting sites differently than drop boxes placed at other sites. In the former category, drop boxes needed only be secure, while the latter category, should the county choose to operate drop boxes at those sites, required both that the drop boxes be secure and that they be staffed by a county employee or law enforcement.

While the Legislature did not define what it means for a drop box to be "secure," the statute communicates that a drop box could be "secure" without staffing by an employee or law enforcement. If those terms were meant to be synonymous, the Legislature would not have written that "[s]ecure drop boxes may also be placed at [otherwise eligible early voting sites]; provided, however, that any such site must be staffed during the county's early voting hours of operation by an employee of the supervisor's office or a sworn law enforcement officer." *Id.* Reading "secure" to mean "physically staffed" would render the last provision of the statute superfluous. But "[s]tatutory interpretations that render statutory provisions superfluous are, and should be, disfavored." *Hawkins v. Ford Motor Co.*, 748 So. 2d 993, 1000 (Fla. 1999) (quotation and citation omitted).

The pre-SB90 statute also plainly permitted drop boxes at eligible early voting sites outside of early voting hours. The only statutory restriction on such sites was the requirement that they be "staffed during the county's early voting hours of

operation”—a requirement that did not preclude them from being made available at other times, as well. *See* Fla. Stat § 101.69(2) (2020).

However, just a few days before early voting was scheduled to begin in the 2020 general election, counsel Brad McVay sent a letter to the Supervisors stating that the Department of State now interpreted Fla. Stat. § 101.69 to require physical staffing was for *all* drop boxes, no matter their location. Ex. 278, ECF No. 608-66. Mr. McVay’s letter also told the Supervisors for the first time that they could not offer drop boxes outside of early voting hours except at their own offices. *Id.*

Some Supervisors declined to follow the guidance because they did not believe it was a reasonable interpretation of Florida law. *See* Tr. Day 10, 2800:5-7 (“[Q.] There were Supervisors who, despite [the drop box Q &A letter] monitored their drop boxes by video; correct? A. Yes.”); *see also id.* at 2811:20-2812:17 (Director Matthews testifying that “some Supervisors did offer drop boxes other than at their offices outside of early voting days and hours during the 2020 election,” including “offering such drop boxes on the day before the election”). Supervisor Link made a request for an advisory opinion regarding 24-hour drop box monitoring to the Division of Elections but ultimately decided to withdraw the request “although [she] continue[d] to believe there is no legal authority for such a rule.” Tr. Day 10, 2805:17-21; *see also* Ex. 869, ECF No. 608-98.

## **2. The Drop Box Provisions burden the right to vote.**

SB90's restrictions on drop boxes have led to significant reductions in drop box hours and locations, unduly burdening the right to vote for the over 1.3 million voters who voted via drop box in 2020. Tr. Day 8, 2158:25-2159:15 (explaining "any restrictions on drop box voting [will] affect" the 1.3 million voters who cast their vote-by-mail ballot via drop box in 2020). And the restrictions will disproportionately burden Black, Democratic, young, and disabled voters.

### **a. The monitoring requirement reduces drop box availability and threatens to chill voter turnout.**

SB90's monitoring provision has had a chilling effect on many Supervisors. To avoid the risk of being fined \$25,000 for leaving a drop box unattended, some are staffing drop boxes with more than one employee; others are limiting the hours of drop box availability or reducing drop box locations all together. These changes have and will continue to unduly burden voting rights for over one million Floridians.

In Broward County, Supervisor Scott will staff his drop boxes "would have to be at least two people at all times because we have to be prepared for somebody to go and, you know, relieve themselves if they need to." Tr. Day 4, 1204:18-1205:22. Similarly, Supervisor Earley testified that "in many instances" he has to staff two employees at each drop box "because Senate Bill 90 requires – well, penalizes Supervisors potentially [with] a \$25,000 fine, which is just unbelievable, if we don't

maintain that continuous monitoring or staffing of the drop box.” Tr. Day 9, 2660:1-11. To staff these drop boxes, Supervisors must expend significant resources that would otherwise go to expanding access to voting for more Floridians.

Supervisor Scott testified he would like to offer 40 drop boxes on the day before and on election day, Tr. Day 4, 1251:15-22, but he is unable to because of SB90. As Supervisor of one of the most populous counties in Florida, Supervisor Scott is able to reallocate funds to double staff his drop boxes, but others are unable to do so, including those who previously staffed drop boxes in their counties using grant funds, which are now separately prohibited by SB90. In Palm Beach County for example, Supervisor Link used grant funds in 2020 to “implement and staff 25 drop boxes throughout the county during early voting, and or drive-through drop boxes at the Main Supervisor of Election’s Office on the day before Election Day and on Election Day.” Ex. 234, 608-61 at 6. Moving forward, however, Supervisor Link will no longer make drop boxes available 24 hours a day at her main offices because of the expense required to do so by SB90’s Drop Box Provisions. *Id.*

For many smaller counties, 24-hour drop box monitoring is simply not an option. Take, for example, Bradford County: Supervisor Amanda Seyfang explained that “I could not give up one of my staff members to just sit at our drop box all day long, nor could I afford with my budget to hire another staff member just to do that.” Ex. 214, ECF No. 608-49 at 5. “There’s no way a county my size could afford it.”

*Id.* As Supervisors have made clear, reductions in drop box availability, as a result of SB90's monitoring requirement, will reduce opportunities for voters to vote. *See* Ex. 234, ECF. No 608-61 at 6 (Supervisor Link). "This will particularly burden voters with mobility limitations, other voters with disabilities, and voters who are immunocompromised." *Id.*

Drop box monitoring also threatens to have a chilling effect for many voters who view this form of monitoring as an uncomfortable, and in some cases, intimidating, experience. This is particularly true of Black or Hispanic voters, many of whom have experienced mistreatment and harassment from government officials, including while attempting to exercise their right to vote. As Mr. Velez Burgos of Hispanic Federation testified, "[Y]ou're asking voters to go up to a ballot box with someone that's there standing and looking at them, and to some voters that might look like voter intimidation, especially when we're talking about Latino communities. You're talking about people that will probably be wearing some type of security outfit just in front of the mailbox, and I think that can be a dissuasion." Tr. Day 3, 821:24-822:6; *see also* Tr. Day 7, 2049:13 (Ms. Mercado testifying that "some member[s] have expressed frustration and dismay [with the Drop Box Provisions]"); Tr. Day 7, 1997:20-21 (Mr. Albright testifying that in person monitoring will have a "chilling effect" on Black voters).



The in-person monitoring also threatens to intimidate voters with mental health issues, such as severe anxiety. *See* Tr. Day 7, 2097:12-2098:12, 2099:6-8. Other voters, as well, are likely to find the experience troubling. *See, e.g.*, Tr. Day 3, 698:1-7 (Plaintiff Alan Madison describing the experience of handing his VBM ballot to a staffer as “[d]isconcerting. I felt uncomfortable handing my ballot to someone else . . . . [E]ven during [in person voting] when you go in, nobody takes your ballot once you fill it out; you put it yourself in a machine.”).

**b. The reduction in drop box hours will make it more difficult for voters to cast their ballots.**

Because of the requirement that drop boxes be continuously physically monitored, many Supervisors across Florida – in large and small, rural and urban counties – will no longer offer 24-hour drop boxes. *See* Tr. Day 8, 2291:14-20, 2292:14-17. Dr. Herron testified that at the time of his report, 14 counties indicated that they were reducing drop box hours as a result of SB90. *See, e.g.*, Tr. Day 13, 3500:24-3501:2 (Supervisor Earley explaining “there’s some talk from Supervisors about potentially getting rid of those drop boxes because it’s just not worth the threat to them. It’s kind of unprecedented from our perspective.”); Ex. 221, ECF No. 549-3 at 119:4-20 (Supervisor Latimer explaining that he does not plan to offer a 24-7 drop box in 2022 because of the cost to “have somebody physically monitor it” as now required by SB90); Tr. Day 12, 3180:1-8 (Supervisor White explaining she will have two less drop boxes on the Monday before and on election day because of

SB90). After Dr. Herron submitted his report, four additional counties indicated they will no longer offer 24-hour drop boxes. *See* Ex. 1597, ECF No. 480-70; *see also* Ex. 1598, ECF No. 480-71; Ex. 1600, ECF No. 480-73; Ex. 1602, ECF No. 480-75. And an additional twelve supervisors who previously offered at least one 24-hour drop box indicated that while they have not made a final decision regarding the final hours or availability of drop boxes in their county for future elections, they do not currently plan to make any drop box available for the deposit of ballots on a 24/7 basis. *See* Ex. 892, ECF No. 464-24 at 6; *see also* Ex. 893, ECF No. 464-25 at 5; Ex. 894, ECF No. 464-26 at 5; Ex. 895, ECF No. 464-27 at 5; Ex. 899, ECF No. 464-31 at 5; Ex. 904, ECF No. 464-36 at 5; Ex. 930, ECF No. 464-62 at 5; Ex. 935, ECF No. 464-67 at 5; Ex. 942, ECF No. 464-74 at 5; Ex. 943, ECF No. 464-75 at 5; Ex. 946, ECF No. 464-78 at 5; Ex. 948, ECF No. 464-80 at 5. In total, 41 counties no longer plan to offer 24-hour drop boxes in the future.

In the 2020 general election over 21 percent of ballots (over 109,000 ballots) were cast via drop box before early voting began. Tr. Day 8, 2287:2-24 (Dr. Herron noting that “the true number is of course larger than that, and that’s because I only have data on [27] counties”). Because of drop box reductions, many voters who deposited their ballots before early voting began in 2020 will no longer have that option moving forward.

These reductions threaten to burden nearly any voter who voted by drop box in 2020 – or who would use a drop box to vote in the future. *See* Tr. Day 8, 2158:25-2159:8. But minority voters, Democratic voters, and voters with disabilities will be disproportionately impacted by these reductions. Many Black and Hispanic voters work in the hospitality and service industries where they have little flexibility in their schedules and often work second and third shifts. As Mr. Velez Burgos explained, many Hispanic voters “especially in Florida, have odd hours in terms of work. They have late hours. They work, for example, in the airport industry or they work in the service industry at Disney at night in hotels. We also have a lot of people that have two jobs.” Tr. Day 2, 735:17-736:3. Because of their nontraditional hours, “a lot of people [ ] would actually vote at night on their way ... to work, or sometimes they are coming back from work in the morning and they are able to drop off the ballot.” *Id.* Similarly, Representative Smith explained that many within his working-class constituency, one third of whom are Hispanic or Latino, Tr. Day 7, 1867:22, “work in the hospitality industry [and] due to low wages and low benefits, they have multiple jobs, and they work weeknights; they work weekends,” *id.* at 1877:23-1878:11. This is also the case for many voters in Indian River County’s rural migrant-farm community who often work 12-hour shifts, 5-7 days per week. Tr. Day 1, 527:2-16; *see also* Tr. Day 9 2476:14-25 (explaining that “there are a lot of

migrant farm workers [in Indian River County]. And I suspect there are a lot of people who have difficulty dropping off a ballot during normal business hours.”).

Because of rigid work schedules, many Black and Hispanic voters are unable to return their ballot to a drop box during normal business hours. For these voters, having access to a 24-hour drop box is critical to ensuring they are able to successfully cast their ballot. As Mr. Albright, Executive Director of Black Voters Matter explained, after-hour drop box access is crucial for Black voters who work shift jobs and may not have the ability to access a drop box during business hours. Tr. Day 7, 1994:18-1995:13; *see also* Tr. Day 1, 216:20-217:5 (Mr. Garces of Poder Latinx testifying that many members of the Latinx community work for Disney, Universal, and the airport and many work late hours, so having a drop box available 24/7 allows them to deliver their ballot when they get off from work – sometimes at 3 a.m.); Tr. Day 1, 71:6-12 (Plaintiff Scoon noting that “many people have obligations during the day that make it really difficult [to vote] during regular business hours,” such as “people that do shift work”). For voters who have a lack of flexibility in their schedules, SB90’s restrictions on drop box hours “means that individuals who might want to use a drop box at a point that is no longer permitted by SB90 will be burdened, and they will be disproportionately burdened compared to the regular drop box users.” Tr. Day 8, 2294:9-17; Tr. Day 7, 2049:4-7 (Ms. Mercado of Florida Rising Together explaining restrictions on drop box hours

impacts their members because they can no longer “drop off [their ballot] after their third shift at work.”); *see also* ECF No. 549-3 at 111:16-112:3 (Supervisor Latimer recognizing that the Drop Box Provisions “makes [returning VBM ballots] harder because it starts to limit the hours that you can have drop boxes available to just the early voting hours instead of outside those hours”).

These restrictions will also burden those who have familial obligations that make it difficult to access a drop box during normal business hours. For example, Plaintiff Alan Madison, who lives in Indian River County, votes by mail using a drop box because his father-in-law has extensive health issues and Mr. Madison travels to care for him regularly, often with no advance notice. Tr. Day 3, 695:13-24, 695:25-696:5, 696:9-18. During the 2020 general election, Mr. Madison deposited his ballot in the 24-hour drop box at the Supervisor’s Office before the office opened. In his county’s 2021 local election, which took place after SB90, the 24-hour drop box was no longer available and he had to wait for the office to open before he could deliver his ballot. Tr. Day 3, 699:6-15, Ex. 911, ECF No. 464-43. Because of the change in drop box hours, if Mr. Madison had a family emergency, his ability to cast his ballot would be impacted. *Id.*

**c. The reduction in drop box locations imposes undue burdens on low-income, minority voters in particular.**

In addition to requiring that drop boxes be staffed, the Drop Box Provisions sharply restrict where they may be offered outside of early voting days and hours, including on the day before and on election day itself. These restrictions impose a significant burden on Florida voters. In fact, since SB90 was enacted, twelve counties have already reduced drop box locations. Tr. Day 8, 2291:14-20; *see also* Ex. 1599, ECF No. 480-72. Because SB90 prohibits drop boxes outside of early voting hours of operations unless they are located at an office of the supervisor, some Supervisors must remove drop boxes previously available on the Monday before and on election day. This restriction, in combination with the restrictions on drop box hours, will severely burden the right to vote for thousands of Floridians, especially in the last week before the election when it is too late to mail a ballot.

Simply put, “the fewer [the drop box] locations, the more that some people have to travel” to access a drop box. Tr. Day 8, 2293:22-2294:5. This is especially true for Black VBM voters who are more likely to use a drop box than white VBM voters, Tr. Day 8, 2268:16-25, and are also less likely to have access to a vehicle, Tr. Day 2, 629:3-8. As Dr. Cooper testified, 10.4 percent of Black households and 7.3 percent of Latino households in Florida do not have access to a vehicle as compared to 4.8 percent of White households. *Id.* That amounts to approximately 114,000 Black households and 126,000 Latino households without access to a

vehicle. *Id.* For these voters – and individuals who have fewer resources, individuals who have disabilities, individuals who are blind, individuals who are older and less mobile – having to travel greater distances to access a drop box imposes an undue burden on their right to vote. Tr. Day 8, 2231:7-16.

This is especially true for “individuals who vote with drop boxes on [ ] the Monday before election day” who will be “disproportionately burdened[.]” Tr. Day 8 2285:19-25. Take Miami-Dade County as an example. In the 2020 general election, it offered four drop boxes on the Monday before and on election day – two at the Supervisor’s offices and two at local libraries in other parts of the county. Tr. Day 5, 1366:5-1367:8. As a result of SB90, Supervisor White is no longer able to offer drop boxes on those days at any location that is not a permanent Supervisor Office. Therefore, Miami-Dade County will have two fewer drop boxes on the Monday before and on election day. Tr. Day 5, 1367:9-12. Miami-Dade is the most populous county in Florida with 1.5 million registered voters. Ex. 5, ECF No. 608-1 at 73:195. It is also one of the most racially heterogenous counties in Florida. Tr. Day 8, 2289:18-20, 2290:5-11. Given its size, the “ratio of voters to potential drop box location[s] is high” and VBM voters in Miami-Dade are “particularly burdened” by SB90’s drop box restrictions, Tr. Day 8, 2289:18-20, 2290:5-11, as it will mean an even greater number of voters at each drop box location.

A reduction in drop boxes right before election day is particularly troublesome because Florida law requires that all VBM ballots be received by 7 p.m. on election day to be counted. Fla. Stat. § 101.6103(2) (2021). USPS guidelines state that ballots should be placed in the mail at least one week before election day. However, under Florida law, the last day to request a VBM ballot is the tenth day before an election, and the deadline for the Supervisor to mail VBM ballots is eight days before an election. Fla Stat. § 101.62(2).

In practice, “[a]ny voter who received a ballot within a week of an election, even if the voter were to turn around and fill it out immediately, could not return the ballot via mail and still be compliant with Postal Service guidelines.” Tr. Day 8, 2248:3-10. Similarly, “[i]f a voter has a vote-by-mail ballot and chooses to wait to vote until close to election day in order to gain information about the candidates and other issues on the election,” that voter could not place the ballot in the mail and still comply with USPS guidelines. Tr. Day 8, 2248:13-18.

In 2020, approximately 29.07 percent of all drop box submissions (over 150,000 ballots) were cast within a week of election day. Tr. Day 8, 2287:2-24. If voters were to mail their ballot during that last week, there is a great risk it would not be received in time to be counted. *See* Ex. 5, ECF No.608-1 at 70. Supervisor White recognized the risk that poses: “[A]s of Thursday, Friday [before election



day], we are telling [voters] it's not worth the risk [of mailing their ballot] and to bring it in." Tr. Day 5, 1369:14-22.

Even voters who follow USPS Guidelines risk their ballot arriving late due to issues with the postal service. Tr. Day 8, 2250:2-19; *see* Tr. Day 3, 702:21-22 (Mr. Madison explaining he did not receive his VBM ballot until very late last election cycle). Given the ongoing issues with USPS, many voters are simply not willing to risk placing their ballot in the mail. *See, e.g.*, Tr. Day 5, 1603:10-20 (Dr. Brigham testifying he uses drop boxes because of issues he has had with his mail, including having "mailed in my property tax and it [ ] never got there"); Tr. Day Tr. 3 at 700:15-19 (Mr. Madison testifying to his poor experiences with the mail, including having "things that I've mailed to others including a thousand dollar bond go missing. I've had packages and letters delivered to me that belong to other people. So I don't trust the Postal Service like I used to."); Tr. Day 1, 84:8-85:11 (Ms. Scoon testifying she has "a lot of concern to use the Postal Service. I'm not comfortable putting my ballot in the mail..."). This mistrust of the mail is especially true for Black voters. As Dr. Smith testified, "[W]e know that African-Americans are more distrustful of the U.S. Postal Service, and there's good reason here in Florida to understand why with respect to mail delivery rates and the timing that the U.S. Postal Service suggests – takes to both request and deliver mail" especially when "you,

yourself, may not regularly be getting your mail through the U.S. Postal Service.”

Tr. Day 8, 2412:14-2413:8.

Issues with USPS delivering ballots after election day is an ongoing issue that Supervisors recognize. Supervisor Earley testified that there are “a lot of failure points” with the USPS. Tr. Day 9, 2655:23-2656:5, 2659:17-20. Even in 2020, Supervisor Earley’s office would receive ballots from USPS that were from the 2018 general election. *Id.* In Leon County, the most common reason a ballot is rejected is because it arrived too late to be counted. Tr. Day 9, 2659:13-16. In fact, in “[e]very election [in Florida] there are thousands of ballots” that are rejected for arriving after 7 p.m. on election day. Tr. Day 8, 2249:2-6; *see also* Ex. 7, ECF No. 608-6 at 91:135 (“Scholars have shown that thousands of late [vote-by-mail] ballots are rejected by [supervisors] because they arrive in the mail after the state’s deadline, including in Florida.”). This is especially true for minority voters – studies show “rejected [VBM] ballots are disproportionately higher among minority voters than white voters in Florida.” Ex. 7, ECF No. 608-6 at 91:135. Data also shows that Black voters are more likely than White voters to return their VBM ballots to a drop box before and after early voting. Tr. Day 9, 2479:11-2480:2.

Because of the concern about late delivery, Supervisor Earley “would much rather have a vote-by-mail ballot put in one of our drop boxes than in the U.S. Mail system.” Tr. Day 9, 2655:23-2656:5; *see also* ECF No. 549-2 at 97:2-18 (Lake

County Supervisor Hays explaining that “the U.S. Postal Service is notorious for tardy deliveries.”); *id.* at 103:18-104:1 (“It would be my opinion that the USPS box is subjecting those ballots to an unnecessary chance of being misplaced or disfigured or destroyed or lost or anything else that would preclude those votes from being counted.”). In contrast, voters are “guaranteed on-time delivery” when they deposit their ballot into a drop box. Tr. Day 8, 2247:3-9, 2248:13-18; *see also* ECF No. 549-2 at 79:14-21 (“[I]f a vote-by-mail ballot is placed in a drop box on the day before election day, that ballot will be counted.”). That is not the case for ballots placed in the mail. *See* Tr. Day 8, 2247:16-22 (Dr. Herron testifying, “[A] vote-by-mail ballot in the mail is subject to Postal Service delivery schedules, and I would say there are two points here: One is . . . that the voter can no longer control delivery because the Postal Service has the ballot; and, in addition, Postal Service can be late, and so there is a risk of a late ballot anytime you put a ballot in the postal system”); *see also* ECF No. 549-2 at 79:14-21 (Supervisor Hays cannot be sure that “a vote-by-mail ballot that is placed in a mailbox on the day before election day will be counted.”); Tr. Day 4, 1202:22-1203:10 (Broward County Supervisor Scott testifying he would not recommend that a voter place their ballot in the mail on the day before election day or on election day; “the only way to know that the ballot is going to reach us those last two days would be to deposit it in a drop box”).

While the risks of placing a ballot in the mail are known by voters and Supervisors alike, many voters, especially those with inflexible work schedules and transportation issues, have few choices. This is especially true when drop box locations are cut on the Monday before election day, as is the case in Miami-Dade, and when drop box hours are significantly reduced, as is the case throughout Florida. Some voters simply will not be able to get to a drop box because of the further distances and reduced hours.

**d. Voters with disabilities are severely burdened when outdoor drop boxes are no longer available.**

The requirement to staff drop boxes at all times has also led some Supervisors to eliminate outdoor drop boxes outside their offices. ECF No. 549-2 at 90:9-21, 91:7-12. When outdoor drop boxes are no longer available, all drop box voters are impacted, but elderly voters and voters with disabilities are severely burdened.

Approximately 2.7 million Floridians have disabilities, amounting to 16 percent of all voting age Floridians. Tr. Day 2, 598:25-599:2, 632:19-22. In 2020, many individuals with disabilities and physical ailments were able to cast their ballot via outdoor drop boxes, in some cases without having to leave their car because of the availability of drive-through drop boxes. Tr. Day 9, 2462:21-2463:7. Take for example, Dr. Brigham: Dr. Brigham is 87 years old and votes by mail because of incontinence caused by rectal surgery. Tr. Day 5, 1596:10-22, 1597:21-1598:2. In the 2020 general election, Dr. Brigham cast his ballot via an outdoor drive through

drop box in Orange County. *Id.* at 1599:10-1600:5. For the 2021 municipal election, the outdoor drop box was no longer available, and Dr. Brigham had to vote inside of the Supervisor's office. Tr. Day 5, 1598:13-1599:8. To vote, Dr. Brigham had to park in a lot that was "relatively small" and in a parking space "was very difficult to maneuver" before walking inside to deposit his ballot. Tr. Day 5, 1601:18-1602:5. The act of walking inside of the Supervisor's Office increased the risk that Dr. Brigham would have an onset of his condition. Tr. Day 5, 1601:18-1602:5 ("[M]y situation gets worse when I do physical actions as opposed to sitting [in] the car[.]"). While Dr. Brigham did not face lines in 2021, that is unlikely to be the case in the future if elections are even close to as busy as they were in 2020. *See* Tr. Day 5, 1600: 9-15, 1601:18-1602:5 (Dr. Brigham explaining in the 2020 general election, there was a line of cars of voters waiting to deposit mail ballots into the drop box. If the drop box were indoors for an election as busy as the 2020 general election, "each of the cars would have to park before me and that would take extra time" before walking inside of the Supervisor's Office and waiting in line to deposit his ballot).

When a county only provides an indoor drop box, voters with disabilities, who face barriers delivering their ballot in person, including "inaccessible parking sites and drop off locations at in-person polling places, so in terms of the number of spaces offered or the specifications and dimensions of those spaces," Tr. Day 2, 457:15-458:6, are severely burdened. *See also* Ex. 234, ECF No. 608-61 at 6 (Supervisor

Link explaining “if some or all of the outdoor drop boxes are moved indoors, votes with mobility limitations will have more difficulty accessing the indoor drop boxes”).

**3. The Drop Box Provisions are not adequately supported by a sufficiently weighty state interest**

State Defendants assert three interests for the Drop Box Provisions: (1) to ensure that drop boxes are secure; (2) to ensure that the law is uniformly applied; and (3) to have someone at the drop box in case a voter has a question. None justify the burdens placed on Floridians’ right to vote.

**a. The Drop Box Provisions are not necessary to secure drop boxes: prior to SB90, drop boxes were already secure.**

Director Matthews stated that the purpose of the Drop Box Provisions are to ensure drop boxes are secure and monitored and to prevent bad actors from vandalizing the drop boxes. Ensuring the security of drop boxes is a legitimate state interest, but there is no evidence that the Drop Box Provisions actually serve that interest, or are necessary to achieve that interest. Before SB90, some Supervisors secured drop boxes using video surveillance, some used in person monitoring, and others used a combination of both. Ex. 5, ECF No. 608-1 at 78:205. The evidence proves that those forms of monitoring worked. When Supervisors were asked in discovery to produce evidence of security issues related to drop boxes, they had none. *Id.* at 78:206. That is because there were no security issues related to drop

boxes in Florida despite the differing forms of drop box monitoring. During trial, Supervisor after Supervisor testified to this:

Citation	Witness	Testimony
Tr. Day 4, 1204:6-17	Supervisor Scott	Broward County “didn’t have any problems” at its video-monitored drop boxes. “[T]here wasn’t any kind of vandalism or any kind of, you know, issues that were reported to us. And so it seemed to work very, very well.”
Tr. Day 5, 1334:25- 1335:4, 1368:6-8	Supervisor White	Supervisor White is not “aware of any problems with voter fraud in Miami-Dade . . . that specifically involved drop boxes in 2020.”  Miami-Dade did not “have any problems with vandalism or attempted vandalism” of drop boxes in 2020.
ECF No. 549-3, 30:11-14; 42:25-43:6	Supervisor Latimer	Drop boxes were secure before SB 90: Hillsborough “utilize[d] a large, probably two, two and a half foot by two and a half foot box with a lock on it and a seal, has a slit in the top to be able to put return vote-by-mail ballots in.”  Hillsborough County not aware of any violations of election law or instances of vandalism at drop boxes in 2020
Tr. Day 9, 2664:8-13, 2655:15-22	Supervisor Earley	Supervisor Earley is not aware of any vandalism or tampering with drop boxes occurring in his county or anywhere else in Florida.  The idea that drop boxes can’t be trusted is a “misinformation campaign that's always been inflamed by partisan interest.”
ECF No. 549-2, at 70:16-22	Supervisor Hays	“Q. . . . To your knowledge, from 2017 until you hired an independent security firm, during the time when the drop box was only monitored via video surveillance, was there any suspicion of activity such as destruction of the box or stealing of the ballots inside the box? A None whatsoever.”

Tr. Day 12, 3259:13- 3260:10	Supervisor Doyle	Supervisor Doyle is unaware of vandalism, theft, or fraud related to any drop box in Lee County in 2020. He also did not receive any complaints from voters who had submitted their ballot in the drop box saying that their ballot had not been counted.
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When asked, Director Matthews was also unable to identify a single incident regarding drop box tampering or vandalism in the 2020 election in Florida. Tr. Day 10, 2806:5-2808:18, 2810:9-13; Ex. 775, ECF No. 608-93. The *only* incident Director Matthews was able to recall in her attempts to support the state’s position involved a USPS mailbox. *Id.* And as Director Matthews acknowledged, “Senate Bill 90 does not provide for the staffing of mailboxes.” *Id.*

There is also no evidence that monitoring drop boxes would in fact reduce tampering or vandalism, as compared to video monitoring. As Supervisor Scott explained, the people who will staff Broward County’s drop boxes “are generally not people who would violently confront somebody if somebody wanted to do harm to the drop box. The people that we hire are not the type of people that would be prepared to take on a violent confrontation.” Tr. Day 4, 1206:2-1207:9. Supervisor Scott went on to say, if someone attacked the drop box, “we would want to protect the life of the employee first and we would ask the – you know, we would advise our employees to stay safe and to, you know, not to put themselves in any – in any physical jeopardy.” *Id.* The person would be “told to call the police” in the event of an attack, just as someone monitoring by video would. *Id.* Similarly, Supervisor



Latimer explained that having drop boxes physically monitored does not prevent tampering; monitors do not necessarily “have had time to respond” to keep someone from causing harm to the box. ECF No. 549-3 at 192:21-193:18.

Director Matthews also argued that the Drop Box Provisions achieve the interest of ensuring voter confidence. But voters do not lack confidence in drop box voting. The fact that 1.3 million voters cast ballots via drop box makes that apparent, as does the “repeated position feedback” Supervisors received from voters about drop boxes. *See* Ex. 234, ECF No. 608-61 at 3; *see also* Tr. Day 9, 2616:6-7. Even Senator Baxley who sponsored SB90, said “we had excellent, excellent conducted election and very high credibility.” Ex. 453, ECF 461-62, at 6:10-14. And while voters do not lack confidence in drop box voting, the massive changes caused by SB90 may in fact spur a wave of distrust in the system. As Supervisor Latimer noted, “making a lot of changes all at once has the potential to create voter confusion. . . and worst of all, an erosion of the confidence we’ve worked so hard to earn.” Ex. 216 at []. Ultimately, as Supervisor Earley explained, the concern about distrust in drop boxes is nothing more than “misinformation campaign that’s always been inflamed by partisan interest.” Tr. Day 9, 2655:15-22. This, of course, cannot be a legitimate basis to burden voting rights. Otherwise, legislatures and partisan actors hoping to restrict voting rights could simply manufacture a basis to do so.

Finally, during the legislative hearings on SB90, sponsor Senator Baxley was asked to point to an incident of drop box tampering and he too could not name a single one. Instead, he claimed that “there’s a responsibility for chain of responsibility for handling these ballots and whatever gets put in that box.” Ex. 428, ECF No. 461-36 at 108. But there were safeguards in place to protect ballots deposited in drop boxes before SB90. Those safeguards are the same safeguards used when ballots are returned via the mail. Tr. Day 5, 1397:17-20. As Supervisor Scott explained, “Once the ballot gets to us, whether it comes through the Postal Service or if it comes from a drop box, when it reaches our office it goes through the same process where we – where we scan the envelope and capture the voter’s signature.” Tr. Day 4, 1208:21-24. And those safeguards worked. Even Defendants’ own witness, Supervisor White, testified that she is “confident that” the signature matching “process works.” Tr. Day 5, 1371:14-16.

**b. The Drop Box Provisions are not necessary to ensure the law is applied uniformly.**

The second state interest articulated by the State is that the Drop Box Provisions ensure that Florida law is applied uniformly. But there is no reason that the means of offering and securing drop boxes must be the same across Florida. Florida consists of 67 counties that differ in geography, size, and population density. And, as a result, the way that the different counties manage their elections are necessarily different in a multitude of ways: one size does not necessarily fit all, and

the state provides no basis for concluding that, in the case of drop boxes, there is a reason why every county must provide for them in precisely the same way.

For example, Miami-Dade County has over 1.5 million registered voters whereas Bradford County has just over 18,000 registered voters. Ex. 5, ECF No. 608-1 at 72. In 2020, Miami-Dade was able to offer 33 drop boxes all monitored in person. *Id.* at 80. Bradford County had only one drop box that was monitored by video surveillance. *Id.* What works in one county may not work in another county. *See* Tr. Day 12, 3262:1-4 (Supervisor Doyle agreeing that “in-person drop box monitoring and its costs might affect different counties differently”). It is because of these differences that Supervisors did not uniformly monitor drop boxes in-person 2020. But every Supervisor ensured that their drop boxes were secure. And there were no issues with drop box tampering or vandalism, despite some monitoring in person and others via video surveillance. Thus, while the monitoring may have been different, the results were the same.

In any event, the Drop Box Provisions do not actually promote uniformity in any meaningful way. True, the Drop Box Provisions require that all drop boxes be staffed at all times that they are open, and they limit where and when drop boxes may be offered other than at Supervisors’ own offices. But the Drop Box Provisions do not provide uniformity with respect to when and where drop boxes will be offered. Each Supervisor still may individually decide whether to place drop boxes

at sites that could be, but are not, early voting sites, and for what hours to make drop boxes available at their office or offices. *See* Fla. Stat. § 101.69(2)(a). The only thing that the Drop Box Provisions make uniform are the requirement that they be staffed at all times, and the limitation on where they may be offered outside of early voting hours. And that requirement will cause inequities in drop box access because, while larger counties, such as Broward County, have the resources to provide in person monitoring, smaller counties simply do not. *See e.g.* Ex. 214, ECF No. 608-49 (Bradford County Supervisor Seyfang explaining “there’s no way a county my size could afford [all day drop box monitoring]”); Tr. Day 12 at 3262:1-4 (Supervisor Doyle acknowledging that in person drop box monitoring costs may affect different counties differently).

**c. The Drop Box Provisions are not necessary to answer voter questions or ensure that ballots are signed and sealed.**

The third articulated state interest for the Drop Box Provisions is to provide voters with an opportunity to have an employee available to answer questions about their ballot and to ensure that ballots are signed and sealed.

Again, the Drop Box Provisions are simply not necessary to achieve that goal. As Supervisor Scott testified, having a staff member at the drop box to remind voters to sign and seal their ballot is “not the most efficient way to do that.” “[O]ur drop boxes do have a sign on them and it does have it painted on the box for a reminder. We also have signs and flags that we place around the drop box to remind people to

sign and make sure that their envelope is signed and sealed before they drop it in the drop box. So it's not – that's not the way. If I had a choice, that's not the way I would chose to use those resources. I wouldn't choose to use the resources to have two people standing there to tell a voter to sign and seal their envelope.” Tr. Day 4, 1206:19-1207:9. Indeed, the State could achieve its purpose of ensuring ballots are signed and sealed without imposing restraints on drop box access, thus burdening the right to vote for thousands of Floridians.

While the Secretary has previously claimed that in-person monitoring at drop boxes is responsible for the decreased rate of VBM ballot rejection in 2020, that decrease is instead likely attributable to the new requirement that Supervisors offer the voter a chance to cure their signature or prove their identity if the ballot is missing a signature. *See Democratic Exec. Comm. of Fla. v. Detzner*, 347 F. Supp. 3d 1017, 1022 (N.D. Fla. 2018).

**E. The Solicitation Definition unduly burdens the right to vote.**

The Solicitation Provision, which functionally restricts assistance that voters can receive at the polls from nonpartisan groups, threatens to burden any of Florida's voters at the polls, but imposes a particularly severe burden on senior Florida voters and voters with disabilities, who depend on this assistance. It also imposes a disproportionately severe burden on Black and Hispanic voters, who are substantially more likely to have to stand in a long line to vote in Florida as compared

to their white counterparts. Nor are the burdens imposed sufficiently justified by the state's asserted interest in preventing intimidation and harassment at the polls.

**1. The Solicitation Definition burdens the right to vote.**

Florida has a history of long lines at the polls. As Supervisor White testified, “historically there have sometimes been very long lines to vote in person in Miami-Dade,” with voters “waiting for many hours to vote in some instances.” Tr. Day 5, 1371:20-1372:5. And the last time that the Legislature moved to restrict voting in any remotely analogous way to SB90, “in the 2012 election [which immediately followed], there were some precincts in Miami-Dade that did not close until after 1 a.m. on the day after election day.” Tr. Day 5, 1371:20-1372:5. While Florida has not recently seen lines as dramatic as they were in 2012, “long lines have continued to be very common, especially in major election cycles.” Day 7, 1917:14-1918:6 (Rep. Eskamani). And the burdens that SB90 now places on VBM voting, including through the VBM Request and Drop Box Provisions, will drive more voters to the polls, making it more likely that more Florida voters will once again encounter burdensome long lines. *See infra* Part IV.F.

Compared to white voters, Black and Hispanic voters are more likely to encounter long lines—and to have to wait in the longest lines—in order to vote. Tr. Day 9, 2565: 3-12 (Dr. Smith explaining, we “know that those lines are not equally distributed across different groups of voters. Racial and ethnic voters, particularly

Black and Hispanic voters, face longer wait times at their polling locations.”); Ex. 12 ¶ 74 (Dr. Austin articulating same). This trend has also persisted across elections. Tr. Day 9, 2541:3-11, 2542:12-24 (Dr. Smith). Voter assistance organizations are also acutely aware of this fact. Black Voters Matter, for example, targets its voter comfort activities specifically to “polling places that tend to have longer lines” which tend to be more likely in Black communities rather than white communities. Tr. Day 7, 1982:6-1983:9. “You know, very often in a White community, you’re able to just walk right in and walk right on out. But in our communities, in Black communities, for your voters, we often see these lines, again, whether it’s 30 minutes or an hour long, or in, you know, worst-case scenarios, four-, five-hour long lines.” Tr. Day 7, 1982:6-1983:9.

Unsurprisingly, many voters are deterred from voting entirely when the lines become unsustainable. Ex. 12 ¶ 73 (Dr. Austin). In academic terms, this is called “balking” which is when a voter does not join a line “because of other time commitments [voters] don’t want to bear that cost.” Tr. Day 9, 2537: 2-9 (Dr. Smith). Voters may also leave a line due to excessive wait times, which is known as “reneging.” Tr. Day 9, 2537:3-11 (Dr. Smith). Excessive wait times also render voters less likely to vote in future elections. Tr. Day 9, 2544:15-24 (Dr. Smith). And certain voters are more likely to find it difficult to wait in longer lines to vote. This includes older voters and voters with disabilities, both of whom are most likely to

need or benefit from assistance at the polls when they encounter such a line. As the President of FLARA explained, Florida seniors often need assistance at the polls, whether because of physical limitations, or the risk of dehydration: “[I]f a retiree had to wait [without assistance], it would be very easy for them to be dehydrated and disoriented.” Tr. Day 5, 1628:7-20 (William Sauers). There are also 2.7 million disabled persons in Florida, Tr. Day 2 598:25-599:2 (Dr. Cooper), many of whom need assistance at the polls, Tr. Day 10, 2744:4-13 (Disability Rights Florida).

Assistance within the 150-foot buffer zone is critical, particularly when voters encounter long lines. First, voters can get caught inside the buffer zone for extended periods when machines stop working or when poll workers run out of ballots. But separately, from the perspective of “the person that’s within that buffer zone . . . when they first showed up, and the line was outside the zone . . . their stomach was already full with food and water or their phones were fully charged. But now . . . they’ve gotten inside the buffer zone, maybe an hour, maybe two hours, maybe three hours later, and now it’s more important that they get that support. . . . [I]t’s just as important that we be able to provide the support to folks inside that buffer zone as much as outside the buffer zone.” Tr. Day 7, 1993:3-1994:12 (Cliff Albright, Black Voters Matter).

Historically, Florida’s civic and nonpartisan organizations have provided precisely that kind of assistance to voters, including when and where they have



needed it most. *See, e.g.*, Tr. Day 1, 59:2-61:1 (League providing nonpartisan assistance to voters within buffer zone); Tr. Day 7, 1985:7-24, 1986:3-8 (Black Voters Matter doing same); Tr. Day 3, 810:18-25 (Hispanic Federation doing same). As the League's President, Ms. Scoon, described, there are times when voters get caught in the buffer zone waiting to vote in very hot weather, and the League has offered water and other support to those voters to help them sustain and stay in line to vote. *See* Tr. Day 1, 60:19-61:1.

These efforts are widespread across Florida, as Florida's elected officials have recognized. *See, e.g.*, Tr. Day 5, 1565:15-18 (Senator Farmer describing how "minority interest groups often staffed highly populated polling places where they knew long lines would exist and they would be there to hand out water and typically energy bars to voters."); Tr. Day 5, 1468:21-1469:6 (Rep. Thompson describing how "[d]uring the primaries in August when it's very, very hot, there were nonprofit organizations who would give people umbrellas to protect them from the Florida sun"). In Florida in particular, this work has become crucial to making sure voters are able to successfully exercise their right to vote. "[W]hen a volunteer is there to offer a bottle of water in the heat or an umbrella in the rain, you know, sometimes that can be the encouragement that someone needs to stick it out and stay in line until they cast their vote." Tr. Day 7, 2045:21-2046:10 (Andrea Mercado).

Under SB90, these nonpartisan groups no longer plan to provide this type of assistance to voters. *See, e.g.*, Tr. Day 1, 63:3-8 (League no longer plans to provide assistance because of SB90's Solicitation Definition); Tr. Day 7, 1986:9-23 (similar, Black Voters Matter). As a consequence, "[t]here will inevitably be some people who aren't able to get these services who will, in fact, wind up leaving the line because of [Plaintiffs'] inability and the inability of others to provide these services." Tr. Day 7, 1986:20-23 (Black Voters Matter).

The evidence demonstrates that the Supervisors or their staff will not adequately fill this gap. *See, e.g.*, Tr. Day 5, 1379:9-11 (Supervisor White's poll workers "do not" "hand out water to voters waiting in line to vote"); ECF 549-3, 48:3-13 (Hillsborough Supervisor's Office does not distribute food, water, umbrellas, or anything of the sort to voters waiting in line to vote). This is consistent with Florida voters' experiences: In instances where voters with disabilities have received assistance at the polls, it is typically from "civic engagement organizations that were posted outside" – not from employees of the Supervisors' Offices. Tr. Day 10, 2744:18-2745:1 (Olivia Babis). Even if Supervisors *want* to provide such assistance, they are not well equipped to do so. Many lack resources or time to assist voters who need it, a reality that has motivated Plaintiffs to provide that necessary support. *See, e.g.*, Tr. Day 7 1990:3-1991:13 (Black Voters Matter describing, how in past years, they have "provided water to poll workers because they were unable

to get such support” for themselves); Tr. Day 5, 1468:21-1469:6 (Rep. Thompson explaining how this requirement is “giving the Supervisor’s staff more work to do during the elections when they are very, very busy”). The League’s President, Ms. Scoon, explained why she fears Supervisors cannot realistically fill this gap:

[M]y experience has been things can get very, very busy for Supervisors of Elections. . . . I’ve not seen that they have the ability to just post someone there to look and make things smoother and give water ... They’re busy inside calling, things happen, the machine needs to be checked, you know, whatever activities are going on inside. I don’t see an easy capacity for the busy Supervisors of Elections on a busy day, which is voting day -- any of the voting days, I don’t see them designating someone to just do that easily. I think it’s not going to work very well. And in many places it won’t happen at all because their primary goal, I imagine, is get people in and get people out, get them voted.

Tr. Day 1, 66:24-67:13.

**2. The Solicitation Definition is not adequately supported by a sufficiently weighty state interest.**

Defendants’ sole articulated interest in the Solicitation Definition is to prevent harassment or intimidation at the polls. Tr. Day 13, at 3474:8-17 (Director Matthews). The *League* Plaintiffs do not dispute this is a legitimate state interest, but the Solicitation Definition is not remotely necessary to achieve that end. *See Anderson*, 460 U.S. at 789 (“In passing judgment,” the court “also must consider the extent to which those interests *make it necessary* to burden the plaintiff’s rights.) (emphasis added).

Despite the fact that line warming has a long history in Florida, there is *no* evidence that nonpartisan groups in Florida have harassed or intimidated voters while providing food, water, and general assistance to the polls. When asked, Director Matthews could not recall any complaints about nonpartisan groups distributing resources at the polls. Tr. Day 13, 3474:8-17. Similarly, when asked about this provision on the House Floor, Representative Ingoglia admitted, “[w]e’ve never said that any non-profit organization is trying to influence votes.” Ex. 530 at 30, ECF No. 462-31. The line warming restrictions were also not something the Supervisors had asked the Legislature to address. Tr. Day 11, 3131:17-3132:2 (David Ramba).

Most importantly, however, the state already has clear tools to deal with harassment at the polls. Poll workers already have separate authority to remove “disruptive and unruly persons” from the areas around polling places. Fla. Stat. § 102.031(4)(c). And Florida law separately prohibits voter intimidation. *Id.* § 104.0615(2). Under these circumstances, the Solicitation Definition, which acts as a broad and blanket ban on general polling place assistance, unduly burdens the right to vote.

**F. The Challenged Provisions together impose an undue burden on the right to vote.**

In considering the burden imposed by the Challenged Provisions, the Court must consider their combined effects, and not merely evaluate each in isolation. *See*

*Williams v. Rhodes*, 393 U.S. 23, 24-25 (1968) (invalidating “series of election laws” that “[t]ogether . . . make it virtually impossible for any party to qualify on the [presidential election] ballot except the Republican and Democratic Parties”); *see also* ECF No. 558 at 5-7 (citing additional cases). The Challenged Provisions work together – from registration to the ballot box – to make the entire process of voting more difficult and burdensome, particularly for minority, disabled, and elderly voters. The burdens begin at the start of the voting process—registration—where SB90 begins “siphoning off people who could potentially become a registered voter.” Tr. Day 4, 1215:12-22. It then continues like a “domino effect” systemically making it more and more difficult for voters to cast their ballot. Tr. Day 3, 738:6-15. As Dr. Kousser testified, “[T]he whole is greater than the sum of the parts. If you simply take – pull apart a law and do it provision by provision, you underestimate the total effect of the law.” Tr. Day 6, 1694:22-1695:9.

The burdens begin with the Registration Disclaimer Provision’s misleading warning, which will deter some voters from registering with Third-Party Voter Registration Organizations. *Supra* Part IV.B.2.a. The voters most impacted by this provision are those who experience barriers registering using other methods and those who are less likely to be reached by Supervisors, or to reach out for help. *See* Tr. Day 4, 1253:1-10 (Supervisor Scott: “You know, the people who are most likely to get caught up by this are also the same people who probably, you know, would be

maybe too intimidated to reach out and ask for help.”). As a result, some voters will be unable to register to vote.

SB90 then makes it more difficult to request a VBM ballot by retroactively invalidating *all* pre-existing requests Florida voters already made for the 2024 general election cycle; requiring that voters request a VBM ballot twice as often as previously; and requiring voters provide an identification number to receive a VBM ballot. *Supra* Part IV.C.1. These provisions work in tandem to raise the cost of voting by mail. But the cost is not felt equally by all voters. For some voters—particularly those who are disabled—voting by mail is the only realistic option they have to cast their ballot. *See, e.g., supra* Parts I.B.1.d (Susan Rogers), I.B.2.a (Catherine Teti). If, as a result of SB90, they forget to do so, they may be disenfranchised.

For those voters who are able to overcome the roadblocks to request a VBM ballot, the Drop Box Provisions will make it harder for some to return their ballots. This is because, as a result of SB90, there are fewer drop boxes available and many that are still available will be open for less hours, giving voters fewer options to return their ballots. *Supra* Part IV.D.2; Tr. Day 4, 1216:5-18. Some impacted voters will be disenfranchised, some will choose not to vote, and others will choose to vote in person.

SB90, however, also will make voting in person more burdensome. Florida’s current system simply cannot handle an influx of voters voting in person. In the past,

when in-person voting made up a larger share of total votes cast, Florida notoriously saw extremely long lines. As Supervisor White testified, “[H]istorically there have sometimes been very long lines to vote in person in Miami-Dade,” with voters “waiting for many hours to vote in some instances.” Tr. Day 5, 1371:20-1372:5. The last time the Legislature revised its election laws to anywhere near the extent it has done so with SB90, the result was absurdly long lines, with “some precincts that did not close until after 1 a.m. on the day after election day.” *Id.*; *see also supra* at Part IV.E.1. And the Supervisors “warned” the Legislature SB90 could cause this to happen again. Tr. Day 13, 3507:16-3508:7 (Supervisor Earley). Even Director Matthews acknowledged Florida’s history of long lines at polling places. Tr. Day 13, 3463:22-3464:5.

As Dr. Herron explained, the restrictions on vote-by-mail voting, to the extent it burdens vote-by-mail voters and causes some of them to vote in person, will also burden individuals who vote in ways other than vote-by-mail, i.e., in person. That’s because if vote-by-mail voters vote in person, then they risk causing congestion in polling places.” Tr. Day 8, 2151:6-22. And as supervisor after supervisor testified, in order to keep lines short at polling places, voters need to vote by mail. *See e.g.*, Tr. Day 4, 1210:10-17 (Supervisor Scott testifying, in the “most recent elections . . . a lot more people voting by mail[.] [That caused a] great reduction in how many people are coming to our early voting sites as well as voting

on election day, and we have not had those complaints of long lines in the recent election[.]”); Tr. Day 5, 1372:8-13 (Supervisor White testifying that she is “sure” that “lines have been shorter more recently” “in part because more voters are voting by mail instead of in person.” “[E]very voter who votes by mail potentially one fewer person in line on election day.”); Ex. 216, ECF No. 608-51 at 1 (Supervisor Latimer explaining that “encouraging vote by mail is one of the ways we avoid lines at in-person voting”); Tr. Day 13, 3507:4-15 (Supervisor Earley explaining that if 100 percent of voters voted on election day “[t]hat would be a bad thing. We saw a very small version of that in 2012, and we just don’t have the capacity, and it would be tough to get the capacity to handle that....So it would be a huge change. There would be lines. There would be a lot of angry voters”).

The Solicitation Definition, which prevents organizations from providing assistance within 150 feet of a polling place, will then make it more difficult for voters to withstand the long lines. *Supra* Part IV.E.1. When that happens, some voters will likely decide to leave the polling place without casting a ballot.

Ultimately, each of the Challenged Provisions does not operate in a vacuum. Rather, they work together to make the entire voting system more difficult and burdensome for all Florida voters, particularly those most marginalized.



**V. Injunctive relief is appropriate and will not disrupt election administration.**

As testimony at trial established—and as common sense demonstrates given the nature of the provisions at issue—granting the injunction that the *League* seeks would not disrupt the state’s election administration process for the 2022 elections occurring later this summer and fall.<sup>11</sup>

**The Registration Disclaimer:** By its own nature, the Registration Disclaimer has its greatest effect not on election administrators, but on Third-Party Voter Registration Organizations, who must deliver the warning. While an injunction against the Disclaimer would prevent the Secretary and Attorney General from pursuing enforcement actions against such organizations for not delivering the warning, such an injunction is hardly disruptive to the State. The Supervisors, for their part, believe an injunction against the Disclaimer “wouldn’t impact us either way.” Tr. Day 13, 3501:7-15 (Supervisor Earley); Tr. Day 12, 3165:21-3166:6 (Supervisor White agreeing, “I don’t see how that would impact our work one way or the other”). Supervisor Earley, however, did believe that such an injunction would help Third-Party Voter Registration Organizations, “and we value that partnership.” Tr. Day 13, 3501:7-15.

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<sup>11</sup> Out of deference to the Supervisors, who are conducting municipal elections in March and early April, the *League* Plaintiffs recommend the Court enter an injunction that takes effect April 15, 2022.

**The Vote-by-Mail Request Provision:** Because the VBM standing list remains honored through the end of calendar year 2022, an injunction against the VBM Request Provision would have little to no effect on the 2022 elections. Tr. Day 13, 3498:10-3499:4 (Supervisor Earley explaining an injunction would have a “minimal impact” for 2022). While Supervisor Earley’s office has already taken 2024 VBM requests out of his system, “it would be a fairly straightforward process to put those back on . . . It would certainly be easier than trying to reach out to the voters after the 2022 general election and ask them again if they would like all that – you know, they would like ballots for that election because I think most of them still think they have that request standing.” Tr. Day 13, 3498:10-3499:4. Separately, an injunction against the identification requirements would have only a “[m]inimal impact” Supervisors’ operations; at present, it would only require them to take down a form requesting identification information from voters. Tr. Day 13, 3497:8-3498:2 (Supervisor Earley).

**The Drop Box Provisions:** An injunction against the Drop Box Provisions would not only *not* harm the Supervisors’ Offices, it “would have a pretty significant impact in a positive way.” Tr. Day 13, 3499:17-3501:2 (Supervisor Earley). As Supervisor Earley described, removing the \$25,000 fine “would make it less problematic or less likely for me to have to try and find staffing to have double staffing so that if one person left, we could have somebody there for that brief

interval. So that would be a help.” *Id.* at 3495:25-3496:19. Supervisor Earley also has a small post office box that functions like a drop box that “I’d prefer not to have to take that down because we do get some correspondence in there.... [I]t would be nice not to have to take it down.” *Id.* at 3496:12-19, 3497:7.

**The Solicitation Definition:** An injunction against the Solicitation Definition would have “negligible impact” on Supervisor Offices. Tr. Day 13, 3499:5-16. This makes sense in light of the evidentiary record that nonpartisan groups have never harassed or intimidated voters at the polls. *See supra* at Part IV.E.

Overall, an injunction prohibiting enforcement of the Challenged Provisions will improve, rather than disrupting, election administration. As Supervisor White testified at trial, if she had the “option to administer future elections under the law that was in effect prior to Senate Bill 90,” she would do so. Tr. Day 5, 1381:6-9.

## CONCLUSION

For the above reasons, the Court should hold each of the Challenged Provisions unconstitutional, and enter a permanent injunction prohibiting Defendants from enforcing them.

Respectfully submitted this 26th day of February, 2022.

/s/ Frederick S. Wermuth  
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I HEREBY CERTIFY that on February 26, 2022 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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# ***League* Plaintiffs' Post-Trial Brief: Appendix 1**

## **Key Testimony Regarding SB90's Background, Passage, and Justifications**

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Citation	Witness	Evidence
Tr. Day 4, 1263:1-3	Supervisor Brian Corley (Pasco Cty.)	“Q. Do you have confidence that the results of that election were correctly determined?” “A. Highly – beyond highly confident.”
Tr. Day 4, 1268:12-23  Ex. 109, ECF No. 608-27	Supervisor Brian Corley (Pasco Cty.)	“While I believe allegations of voter fraud should always be investigated, I’ve learned through research and speaking to my colleagues that true voter fraud is isolated and infrequent.”
Tr. Day 4, 1272:6-11, 1273:14-20  Ex. 110, ECF No. 608-28 at 2	Supervisor Brian Corley (Pasco Cty.)	“I’m literally befuddled as to why we would tweak a system that performed exceedingly well. . . . I can think of no legitimate reason to make the sweeping and arbitrary changes contained in SB 90.”
Tr. Day 4, 1300:6-9	Supervisor Brian Corley (Pasco Cty.)	Concerns about organizations sending voters pre-filled forms are “not something that was changed, prefilled-in forms, as part of SB 90,” and “[t]o my knowledge, it’s in no way related to SB 90.”
Ex. 388, ECF No. 608-78, Ex. 389, ECF No. 608-79, Ex. 390, ECF No. 608-80	Supervisor Christina White (Miami-Dade Cty.)	Each of the 2020 elections in Miami-Dade was successful and secure.
Tr. Day 5, 1333:18- 1334:3	Supervisor Christina White (Miami-Dade Cty.)	The 2020 elections in Miami-Dade County were successful, because “the integrity of the election was upheld throughout the entire process; that voting was made accessible and convenient to our voters; that all of our policies and procedures were carried out accurately; that the results were tabulated accurately, reported to the state on time, certified on time; that our postelection audit was accurate; and that, generally, our voters had a pleasant experience.”

Tr. Day 5, 1381:6- 1382:5	Supervisor Christina White (Miami-Dade Cty.)	If Supervisor White “had the option to administer future elections under the law that was in effect prior to Senate Bill 90,” she would do so. “Our state, my county, was revered as having a near flawless election cycle; record voter turnout; no irregularities, as we’ve talked about; results substantiated, submitted on time. It was all around a very well run election. Voters were pleased, particularly in the era of COVID where voters were unsure about whether they should go vote in person or they should vote by mail. All of that was administered flawlessly. So to have that election cycle then conclude with an election reform bill, you know, with all of these various provisions, I think was something that took all of us as administrators off guard. . . . So, in the end of the day, I just don’t think that any of it was necessary.”
Tr. Day 5, 1447:9-17	Rep. Geraldine Thompson	“With SB 90, the Supervisors of Elections were opposed to the legislation. They did not ask for any of the provisions that are a part of the legislation. And unlike most times when things are from the bottom up, this was from the top down. And so there was very little regard for the Supervisors’ opinions and positions.”
Tr. Day 5, 1456:9-20	Rep. Geraldine Thompson	“Q. Representative Thompson, did the -- did the statement that SB 90 was intended to keep our elections safe and secure make any sense to you? A. No, it did not make sense because the Supervisors of Elections had reported no problem with the security of the voting process. They had no concerns with regard to the integrity of the process. So to say that the goal was to ensure security and integrity made no sense to me. Q. Had any other evidence of voter fraud been presented to the legislature? A. At the time we considered SB 90, there was no evidence of voter fraud.”

Tr. Day 5, 1515:20-24	Sen. Gary Farmer	The Supervisors are the “subject matter experts” on elections “because they are the ones that actually conduct the elections and deal with this stuff on a day-to-day basis”
Tr. Day 5, 1517:23- 1518:2	Sen. Gary Farmer	“Q. What evidence do you recall being presented during the debates over SB 90 that indicated that voter fraud was a significant problem in Florida? A. None. There was no evidence whatsoever presented of any voter fraud problems in the 2020 election.”
Tr. Day 5, 1521:4-11, 1521:17-21	Sen. Gary Farmer	The Supervisors “were unanimous in their opposition to SB 90, which I found to be extremely significant. Florida is an incredibly diverse state. We have vast differences between, you know, the Panhandle and South Florida and, you know, middle of the state and the Jacksonville area. I mean, it’s a very diverse, very varied state. I’ve never seen 67 different counties’ elected officials agree on anything in my time in the Florida Senate...”  “Q. In your experience -- I just want to make sure the record is clear. In your experience, that unified opposition from elected officials in all 67 of Florida’s counties was unique? A. Extremely. I cannot recall any other instance in my career in the Florida legislature where I’ve seen that.”
Tr. Day 6, 1728:15- 1729:2; 1730:12- 1731:2.	Dr. Morgan Kousser	After the Obama campaign in 2008 “particularly emphasized early in-person voting,” and “Democrats cast 52 percent of EIP ballots and Republicans cast 30 percent,” Florida passed HB 1355, which “limited early in-person voting, decreased the number of days of EIP voting from 12 to 14, depending upon the county, to 8. It banned voting on Sunday before election day. Black churches had used it in 2008 and even before 2008 in so-called Souls to the Polls organized voting. It capped the number of hours

		that EIP sites could be open to 96. It prevented any future governor from extending them to 120 or extending them at all past 96. So EIP voting had been used by Democrats, and particularly by Blacks, in 2008. In 2011, before the 2012 election, the state legislature in a bill authored by Representative Dennis Baxley cracked down on EIP voting.”
Tr. Day 6, 1739:8- 1740:6	Dr. Morgan Kousser	After HB 1355, “voters stood in line for as long as six to eight hours for EIP or election day voting in Florida during the 2012 election. The long lines helped to reduce EIP voting by 225,000, election day voting by 250,000 between 2008 and 2012. This was in the newspapers. There are pictures, screenshots in the newspapers of what was in television – on television, so it was widely understood, even if you weren’t standing in the line during that period of time, just how bad the lines were.”
Tr. Day 8, 2178:24- 2179:12, 2180:19- 2181:8, 2181:13- 2182:1  Ex. 5, ECF No. 608-1 at 35	Dr. Michael Herron	<p>Table 5: Turnout and VBM voting in recent Florida statewide elections</p> <p>Between 2014 and 2020, “roughly 51 million” ballots were cast in Florida. Of those, approximately 20 million were vote by mail ballots. In other words, approximately 39 percent of ballots cast between 2014 and 2020 were vote by mail ballots.</p> <p>In 2014, 2016 and 2018 primary elections, vote by mail rates hovered around 40 percent and in 2020 it jumped to approximately 60 percent.</p> <p>For general elections prior to 2020, “I would say that they hovered around 30 percent slightly over, slightly under, and then slightly over ... And we can see that in 2020, the rate jumped to, say, the low 40s. So that's about, you know, a 10 percent -- more than -- greater than a 10 percent</p>

		jump -- 10 percentage point jump in vote-by-mail rates.”
Tr. Day 8, 2182:14-19, 2183:10- 2184:5, 2185:6-18  Ex. 5, ECF No. 608-1 at 36	Dr. Michael Herron	<p>Table 6: VBM rates by race in recent Florida statewide elections</p> <p>“Black voter vote-by-mail rates in these primary elections. Again, they hover right around 30, perhaps a bit lower, one might say, but you can go with 30. And then they jump in 2020 to over 50 percent. The precise figure is 52 percent there. So that's a jump in around 20 percentage points.”</p> <p>Table 6 shows “the Black-White gap shrunk between 2018, 2020. So, in other words, prior to 2021, there was a gap of maybe, you could say, 15 percentage points roughly. And then it shrunk in terms of the two -- the 2020 primary where the difference is, you know, on the range of around 9 or 8 points -- 8 percentage points.”</p>
Tr. Day 8, 2186:11- 2187:9	Dr. Michael Herron	<p>“Q. So focusing on the Black voters specifically now, what can you conclude about the relative use of vote-by-mail by Black voters as compared to White voters over time?</p> <p>A. ....And that means that in those elections, what we see is that the Black vote-by-mail rate was around, say -- I'm just summarizing generally -- 65 percent of the White rate.” “Now, if I look at the 2020 primary and general, I see that those rates change, and I would say dramatically.” “It was 85 percent of the White rate in the primary and 89 percent in the general.”</p>
Tr. Day 8, 2190:21- 2191:5  Ex. 5, ECF No. 608-1 at 38	Dr. Michael Herron	<p>Table 8: VBM rates by party affiliation in recent Florida statewide elections</p> <p>“[P]rior to 2020, Republicans used vote-by-mail rating -- vote-by-mail voting at greater rates than Democrats... However, this -- as I mentioned earlier, this relationship flipped dramatically in 2020... Democratic rate of vote-by-mail voting</p>



		vastly exceeded the Republican rate in the 2020 primary.”
Tr. Day 8, 2207:3-5, 2213:6-12, 2214:3-11; 2214:12- 2215:6; 2215:7- 2216:20	Dr. Michael Herron	<p>“[N]o one’s found systematic voter fraud remotely consistent with the claims that were made in the aftermath of the 2020 election.”...</p> <p>“[T]he reliability of the methodology for studying voter fraud more generally is enhanced by the fact that there are multiple methodologies used to study this phenomenon or used to try to understand if there is evidence of this phenomenon. This is called triangulation where multiple approaches or multiple methods are used to study a single question.”</p> <p>Each of the methodologies studied shows that voter fraud is rare.</p>
Tr. Day 8, 2215:20- 2216:16	Dr. Michael Herron	<p>“[T]here is very little evidence that there is systematic issues with double voting. Moreover, they conclude that measurement error in voter registration records may explain what they say some -- may explain a large portion, if not all, of the double voting cases that they note. And that -- yeah. And the reason they find this -- or the reason that they comment on measurement error is because one of the -- one sort of -- one feature of voting records that sometimes looks like double voting is when individuals with the same name and birthday live in different states, and it can look like someone voted twice when actually these are two different people. The United States is very large. There are hundreds of millions of voters, and so there are repeated names and birthdays. Even though it might seem that would be unusual, it’s not true. So if -- when they’re -- when there’s -- when names and birthdays are subject to minor errors and when names are compared across jurisdictions, cases of what appears to be voter fraud appear. But upon further investigation, it looks like these are errors</p>

		of some sort or just an example of common names.”
Tr. Day 8, 2216:21- 2217:12	Dr. Michael Herron	Dr. Herron coauthored a paper regarding the existence of voter fraud in the 2016 general election. “Our findings -- we specifically looked at several allegations of voter fraud made in the aftermath and actually prior also to the 2016 general election. We found no evidence in the data we examined consistent with those allegations.” Similarly, a study by Eggers, et al. analyzed “some of the claims made in 2020 -- in the aftermath of the 2020 general election. That study finds, like my coauthored study of the 2016 general election, that in 2020 there is no evidence consistent with the allegations that have been widely publicized.”
Tr. Day 8, 2217:17- 2218:10	Dr. Michael Herron	Peer reviewed literature finds that voter fraud in elections is rare. In the aftermath of the 2016 general election, there was a presidential commission to study voter fraud. It was disbanded without finding evidence of systemic voter fraud. Overall the literature concludes that voter fraud is rare across the country and there is no evidence that Florida is an outlier.
Tr. Day 8, 2219:16- 2220:7, 2220:10-17, 2221:4-14	Dr. Michael Herron	The Heritage Foundation has an online database of voter fraud cases from 2003 to the present. The database includes 15 instances of potential fraud, and the earliest one is from 2003. From 2004 to 2020, approximately 108 million ballots were cast in Florida. However, that number “doesn’t include special elections. It doesn’t include municipal elections. It includes only the statewide elections. So it is a very conservative count of the number of ballots cast in Florida.” “[I]f I treat each incident as an actual case of voter fraud -- and I can’t be sure that that’s right, so I’ll be conservative and assume that all 15 incidents are, in fact, incidents ... what I get is a percentage that is .0000139. And that’s a conservative rate of voter fraud in Florida,

		and that's because, one, my count of ballots is too low and... because I assumed that every incident actually was an incident."
Tr. Day 8, 2222:18- 2224:13	Dr. Michael Herron	<p>Eleven counties responded to discovery requests regarding potential concerns of incidents of fraud.</p> <p>"The 56 counties to which you are alluding reported nothing in terms of the request for information about concerns about voter fraud." Of the eleven counties that reported potential incidents, the most common concern was "alleged double voting. That's a phenomenon that I had mentioned earlier where someone votes in multiple elections. That was the modal category, the most common category and their concerns." However, as stated previously, studies show double voting is rare, and that administrative errors can explain some or all of the double voting incidents.</p> <p>None of the alleged incidents involved drop boxes or would have been prevented by the drop box restrictions. And none of the alleged incidents would have been prevented by SB 90's VBM re-request provision. Dr. Herron is unaware of any evidence that leads him to believe that a fraudulent vote was counted in 2020 that could have been prevented by SB 90.</p>
Tr. Day 8, 2396:7-12, 2396:20- 2397:2	Dr. Daniel Smith	<p>"Q. To provide some basic historical context, Dr. Smith, when did drop boxes first become available to voters in Florida?</p> <p>A. That's a difficult question to isolate and answer because there was a lot of variability and experimentation going on by Supervisors. The best I can identify is certainly by the mid to late-2000s."</p> <p>"Q. And when first -- when drop boxes first began to be used in the 2000s by some Florida</p>

		<p>SOEs, did -- were there any state laws in Florida directly regulating or restricting their use?</p> <p>A. No.</p> <p>Q. And from the time that drop boxes first began to be adopted in the -- over the last 10 to 15 years, did the availability of drop boxes generally increase or decrease?</p> <p>A. Increase.”</p>
Tr. Day 8, 2404:2-3	Dr. Daniel Smith	From 2016 general election to 2020 general election, VBM rates increased over 50%, from 28.7 to 43.6 percent of all ballots cast being VBM ballots.
Tr. Day 9, 2606:24- 2607:12	Supervisor Mark Earley (Leon Cty.)	Supervisors believe the vote-by-mail process was secure before SB 90.
Tr. Day 9, 2608:2-21	Supervisor Mark Earley (Leon Cty.)	Supervisors believe that vote-by-mail fraud is “very rare,” “very isolated,” and a “one-off” when it does occur.
Tr. Day 9, 2609:25- 2610:9	Supervisor Mark Earley (Leon Cty.)	The FSE will advocate against legislation “if we see something that can adversely affect our voters, cause disruptions in our ability [to run elections].”
Tr. Day 9, 2611:16-19, 2616:12-22	Supervisor Mark Earley (Leon Cty.)	Florida’s Supervisors were not consulted before SB 90 or HB 7041 were introduced, which was unusual from prior elections legislation. The Supervisors felt there was “reticence about even hearing what we had to say.”
Tr. Day 9, 2613:2-24  Ex. 149, ECF No. 608-35 at 1	Supervisor Mark Earley (Leon Cty.)	SB 90’s passage was “very partisan” in that it “mirrored” the dialogue from one party that there were reasons to “doubt the 2020 election” and to doubt “vote-by-mail” voting.
Tr. Day 9, 2614:1-10  Ex. 149, ECF No. 608-35 at 1	Supervisor Mark Earley (Leon Cty.)	Supervisors believed that “very little of the true reasoning behind the bill was actually stated.” “When some of the sponsors of the bill and other people supporting the bill were asked pretty difficult questions about why certain measures

		were in the bill, their answers didn't really make much sense. And so the true reasoning -- if that was the reasoning, their answers reflected the true reasoning, then it was, frankly, nonsense.”
Tr. Day 9, 2670:20- 2671:1	Supervisor Mark Earley (Leon Cty.)	The FSE never put out a statement in support of SB 90. “I don't think we've ever made a statement as an association, certainly, that it was a necessary change in statute or necessary bill, just the opposite. I think we said repeatedly it was not.”
Tr. Day 13, 3504:8-13	Supervisor Mark Earley (Leon Cty.)	“Q. The FSE did oppose certain provisions of SB 90 in its final form; correct? A. I think that’s very much true, yes. Q. Did the FSE think there was a need for the legislation overall? A. I think we’ve been very clear there was not.”
Tr. Day 10, 2758:20-21	DOE Director Maria Matthews	All three 2020 elections were successful.
Tr. Day 10, 2759:2-8	DOE Director Maria Matthews	“Q. But, Director Matthews, all Florida voters could be confident in the integrity of the election system and the security of their vote in the 2020 elections; correct? A. Yes, they should be. Q. And that’s true no matter how those voters chose to cast their ballots; correct? A. Yes.”
Tr. Day 10, 2759:9-14	DOE Director Maria Matthews	The Elections Division “did not draft Senate Bill 90,” and “the Secretary of State did not publicly take a position in favor of Senate Bill 90.”
Tr. Day 11, 3119:10- 3120:18, 3121:8-23	David Ramba	The only two of the FSE’s priorities in Senate Bill 90 were the requirement that voter registration forms be delivered to the voter’s home county, and a change to the no-solicitation zone to make it 150 feet, neither of which the <i>League</i> plaintiffs challenge.

Tr. Day 11, 3123:14-15	David Ramba	“A lot of Senate Bill 90, as it ultimately ended up, or 7041 were not priorities” of the FSE.
Tr. Day 11, 3124:21- 3125:4	David Ramba	Part of Mr. Ramba’s “job as a lobbyist is to help [his] clients pick achievable goals,” because “[i]f you ask for impossibilities, you might get nothing.” Here, Mr. Ramba on behalf of the FSE asked for “a series of tweaks to Senate Bill 90.”
Tr. Day 11, 3125:19- 3128:17  Ex. 215, ECF No. 608-50, Ex. 728, ECF No. 634-19	David Ramba	The FSE put out a series of statements that it “does not support” Senate Bill 90.
Tr. Day 11, 3127:8- 3128:17  Ex. 213, ECF No. 608-48	David Ramba	The President of the FSE put out a statement after Senate Bill 90 was passed that stated “We should be looking for cost-effective ways to expand their use, including the use of secure 24-hour drop boxes with camera surveillance. Instead, the new legislation prohibits that,” and that “this legislation still makes requesting vote-by-mail ballots and returning those ballots harder.”
Tr. Day 11, 3129:14-16	David Ramba	“[T]he FSE never issued a single statement supporting Senate Bill 90.”
Tr. Day 12, 3228:23- 3229:5	Supervisor Tommy Doyle (Lee Cty.)	The 2020 election in Lee County was successful and the 2020 election in Florida was also successful.
Tr. Day 12, 3229:6-12	Supervisor Tommy Doyle (Lee Cty.)	Supervisor Doyle has confidence in the integrity of the 2020 election and is unaware of widespread voter fraud in the 2020 election in Lee County.
Tr. Day 12, 3233:20-25	Supervisor Tommy Doyle (Lee Cty.)	“Q. ... Did anyone in the legislature ever consult you about SB 90 before it was introduced into the legislature? A. No.

		<p>Q. How about while it was passing through the legislature? Did anybody from the legislature reach out to you?</p> <p>A. No.”</p>
Tr. Day 12, 3240:5-7	Supervisor Tommy Doyle (Lee Cty.)	<p>“[The] 150-foot no-solicitation zone around drop boxes. I didn’t agree with that.”</p>
Tr. Day 12, 3241:25-3242: 3	Supervisor Tommy Doyle (Lee Cty.)	<p>“Q. And you would agree with me that third-party voter registration organizations play an important role in registering voters in Lee County?</p> <p>A. Yes.”</p>
Tr. Day 12, 3245:4-7	Supervisor Tommy Doyle (Lee Cty.)	<p>3PVROs rarely submit late voter registration applications to the Lee County Supervisor’s office.</p>
Tr. Day 12, 3247:20-24	Supervisor Tommy Doyle (Lee Cty.)	<p>Supervisor Doyle is unaware of a voter who was unable to vote in the 2020 election as a result of a 3PVRO returning a voter registration application late.</p>
Tr. Day 12, 3249:8-11	Supervisor Tommy Doyle (Lee Cty.)	<p>It is not required that an eligible voter provide a social security number, FL driver’s license number or FL identification number to register to vote.</p>
<p>Tr. Day 12, 3255:25-3256:12</p> <p>Ex. 136, ECF No. 634-9 at 2</p>	Supervisor Tommy Doyle (Lee Cty.)	<p>“Q. And you -- in your summer 2020 newsletter, you also stated that fraudulent activity is rare because of the rigorous procedures put in place to safeguard the integrity of the election; correct?</p> <p>A. That’s correct.</p> <p>Q. And it’s true, Supervisor Doyle, that before – before SB 90 was put in place, it was difficult to commit fraud in Florida’s elections; correct?</p> <p>A. Yes.</p> <p>Q. And it’s also true that perceived fraud in an election is often just a mistake by a voter or a mistake by an election worker; correct?</p> <p>A. That’s correct.”</p>



Ex. 126, ECF No. 634-7 at 1	Supervisor Tommy Doyle (Lee Cty.)	Supervisor Doyle sent an email to a group of legislatures from Lee County asking that they vote against SB 90. Regarding the proposed elimination of drop boxes, Supervisor Doyle said, "If we have those 95,000 voters showing up at the polls, you can expect very long lines and wait times."
Ex. 6, ECF No. 608-5 at 26	Dr. Burch (Report)	<p>Senator Stewart: "Thank you chair and Senator Baxley. Just a few months ago back in November the Governor held Florida's election as a model for the rest of the country and I agreed with him on that. I thought we did a really good job with how we handled the election so my question is, have we ever had any widespread issues with voter fraud on the vote-by-mail ballots?"</p> <p>Senator Baxley: "The vote-by-mail ballots on this broad scale where we're just practically sending the entire voter file that wants it by mail ballots was really a new experience and I think we're very comfortable that they did extremely well administering it. And I don't know of widespread complaints. But I'm not a person that likes to wait for a big problem."</p>
Ex. 6, ECF No. 608-5 at 28	Dr. Burch (Report)	When asked if he knew of any specific instances of "ballot harvesting" from the 2020 election, Representative Ingoglia replied, "I don't know but I'm sure it was going on."
ECF No. 549-1 at 30:9-14	Elizabeth Guzzo, Office of Attorney General	<p>"Q. If the Secretary of State's office concluded that the 2020 elections were successful, safe, and secure, is there any reason that the Office of Attorney General would disagree?</p> <p>A No. We base it off of what elections officials in the state say."</p>
ECF No. 549-1 at 31:2-5	Elizabeth Guzzo, Office of Attorney General	The Office of Attorney General did not "have any role in shaping Senate Bill 90 as it was considered by the Florida legislature."



ECF No. 549-2, at 38:3-20	Supervisor Alan Hays (Lake Cty.)	The 2020 elections in Lake County were “[a]bsolutely” a success “[b]ecause we had very few hiccups, the results came in on time and our audits proved that we were accurate. “[A]nd we have received many, many, many compliments from the citizens of Lake County on how smooth the elections ran. Our election workers have commented several times about how fulfilled they are to be a part of the team, how pleased they are with our training, the efficiency of it, the fact that we didn’t have any long lines, no waiting periods, no power failures, I could go on and on and on. But the 2020 elections in Lake County were an astounding success.”
ECF No. 549-2, at 40:21-23	Supervisor Alan Hays (Lake Cty.)	The 2020 elections in Lake County were “[a]bsolutely” secure.
ECF No. 549-2, at 43:12-19	Supervisor Alan Hays (Lake Cty.)	The FSE took an official position on SB 90, “I apologize, I don’t know exactly what stage, it was near the end of it, but we put out a letter that stated that in its present form, we did not support it.”
ECF No. 549-2, at 46:14-16	Supervisor Alan Hays (Lake Cty.)	“As a matter of fact, [SB90] did not include any of [FSE’s] top 10 priorities.”
ECF No. 549-2, at 47:13-18	Supervisor Alan Hays (Lake Cty.)	When, “near the end, the FSE released a statement stating their official position on SB 90 and that they did not support SB 90,” that statement also represented Senator Hays’ views at least at the time.
ECF No. 549-2 at 48:9-50:11	Supervisor Alan Hays (Lake Cty.)	Before Senate Bill 90, “We also had a drop box in the front of our office in the edge of the parking lot there that had three security cameras trained on it 24 hours a day. And the opening of that box, I had it custom tailored so that you could only put two or three envelopes in there at a time. It’s a very narrow -- I am trying to look at the camera here to see. The opening is only

		probably a half to three-quarters of an inch wide or high so that you can't put a whole stack of envelopes in there. The big thing, too, is you can't pour a cup full of liquid in there either."
ECF 549-3, 98:17-24	Supervisor Craig Latimer (Hillsborough Cty.)	"The Governor and Secretary of State and others came out and said what a fantastic election we had run. As a matter of fact, I think the Governor said we should be a model for the country, and then turned right around and all of a sudden we need election reform."
Ex. 212, ECF No. 608-47	Hillsborough Cty.	Hillsborough SOE: "[W]e already had strong laws in that enabled us to run our 2020 election with accessibility and integrity."
Ex. 214, ECF No. 608-49 at 3-4	Hillsborough Cty.	Hillsborough County SOE: "To me, this bill in no way, shape or form can do anything to curb any voter fraud that may be occurring."
ECF 549-3, 105:18-106:5	Supervisor Craig Latimer (Hillsborough Cty.)	VBM was secure before SB 90: "[T]o get a vote by mail ballot, you first off have to be a registered voter. When you register to vote, you are supplying identification and information that the State is able to make a match to verify you are who you say you are. You then have to request that ballot. When we get that ballot back, you had to have signed the oath on the outside of the envelope, and we physically compare that signature to the signatures that we have on file."
Ex. 216, ECF No. 608-51	Hillsborough Cty.	Hillsborough SOE: "[S]weeping election reform was not needed or requested by Supervisors of Elections. And making a lot of changes all at once has the potential to create voter confusion, more cumbersome administration and bureaucracy, and worst of all, an erosion of the confidence we've worked so hard to earn."
ECF 549-3, 91:19-24	Supervisor Craig Latimer (Hillsborough Cty.)	The FSE is a "total bipartisan group" of Supervisors who are "advocates" for their voters.

Ex. 215, ECF No. 608-50, Ex. 160, ECF No. 608-36	FSE	April 23, 2021 FSE Statement: “Florida Supervisors of Elections (FSE) does not support SB90 or HB7041 in their current form.”
ECF 549-3, 108:8-109:2	Supervisor Craig Latimer	On April 23, 2021 FSE statement: “At the time we put it out, this was obviously before it was finalized, we were opposed to both forms of the House bill and the Senate bill.”
ECF 549-3, 111:4-6	Supervisor Craig Latimer	FSE never issued a statement in support of SB 90.

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***League* Plaintiffs' Post-Trial Brief: Appendix 2**  
**Master Chart of *League* Plaintiffs' Standing**

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<b>LEAGUE PLAINTIFFS' STANDING</b>				
<b>Plaintiff/Claim</b>	<b>Registration Disclaimer</b>	<b>Drop Box Provisions</b>	<b>VBM Request Provision</b>	<b>Solicitation Definition</b>
<b>League of Women Voters of Florida, Inc. and League of Women Voters of Florida Education Fund, Inc. (League)</b>  <u>Witnesses:</u> Cecile Scoon, Leah Nash, Robert Brigham, Catherine Teti	Injury to members ( <i>testifying members: Cecile Scoon, Leah Nash</i> )  Diversion of resources injury  Injury to League ( <i>compelled speech, effectiveness of voter registration, reputation</i> )	Injury to members ( <i>testifying members: Cecile Scoon, Robert Brigham</i> )  Diversion of resources injury	Injury to members ( <i>testifying members: Cecile Scoon, Catherine Teti, Robert Brigham</i> )  Diversion of resources injury	Injury to members ( <i>testifying members: Cecile Scoon, Leah Nash</i> )  Diversion of resources injury  Injury to League ( <i>self-censorship/ability to provide polling place assistance</i> )
<b>Florida Alliance for Retired Americans (FLARA)</b>  <u>Witness:</u> William Sauers	x	Injury to members ( <i>testifying member: William Sauers</i> )  Diversion of resources injury	Injury to members ( <i>testifying member: William Sauers</i> )  Diversion of resources injury	Injury to members ( <i>testifying member: William Sauers</i> )  Diversion of resources injury
<b>Black Voters Matter (BVM)</b>  <u>Witness:</u> Cliff Albright	x	Diversion of resources injury	Diversion of resources injury	Diversion of resources injury  Injury to BVM ( <i>self-censorship/ability to provide polling place assistance</i> )
<b>Cecile Scoon</b>	Individual Injury ( <i>compelled speech, ability to effectively conduct voter registration</i> )	Individual Injury ( <i>impact on use of drop box</i> )	Individual Injury ( <i>impact on ability to receive VBM ballots</i> )	Individual Injury ( <i>self-censorship/ability to provide assistance at polls</i> )
<b>Alan Madison</b>	Individual Injury ( <i>compelled speech, ability to effectively conduct voter registration</i> )	Individual Injury ( <i>impact on use of drop box</i> )	Individual Injury ( <i>impact on ability to receive VBM ballots</i> )	x
<b>Susan Rogers</b>	x	x	Individual Injury ( <i>impact on ability to receive VBM ballots</i> )	x
<b>Robert Brigham</b>	x	Individual Injury ( <i>impact on use of drop box</i> )	Individual Injury ( <i>impact on ability to receive VBM ballots</i> )	x

***League* Plaintiffs' Post-Trial Brief: Appendix 3**  
**Key Testimony Regarding Standing**

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## League Appendix 3 – Key Standing Testimony

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**I. Cecile Scoon****A. Cecile Scoon's Standing to Challenge the Registration Disclaimer Provision**

<b>Citation</b>	<b>Evidence</b>
Tr. Day 1, 36:14-16	Ms. Scoon has been “personally registering voters” for “about 35, 36 years.”
Tr. Day 1, 38:20-40:14	To convince reluctant people to register to vote, Ms. Scoon must develop a relationship with them and persuade them that voting matters.
Tr. Day 1, 40:15-41:2	Some potential voters “feel like it doesn’t matter, that it’s fake, that people are, you know, corrupt. And those type of people, you really have to invest some time. You have to listen; you have to be patient and not judgmental, have a conversation, and let them kind of know who you are. Sometimes I have to say, you know, what my job is or where I work. But you do have to build a connection and a relationship, and they kind of size you up, and they kind of go, Okay, I see your point, you know, like the young man, will often agree. But it can be a little touch and go sometimes.”
Tr. Day 1, 43:8-19	When Ms. Scoon registers voters she offers to deliver the voter registration form for the voter because she is “just very concerned that people are so busy. They’re out and about with often their family and children. You know, they can get distracted, and it could get in their purse or their backpack or in the car and never come back out. So we are so excited that people are having this opportunity and they’re entering into this realm of civic engagement. We want to be sure that, you know, the deal gets done and take it right in.”
Tr. Day 1, 45:23-46:2	When Ms. Scoon collects forms or receives forms collected by other League members, “It was my practice to pretty much turn them in the very next day no matter what. I would just go and turn them in.”
Tr. Day 1, 48:5-17	The Registration Disclaimer Provision requires Ms. Scoon to “communicate or say or point to the sign that they read . . . that we may not turn the voter registration application in on time. We also have to let them know that they can register

	other ways; they don't have to do it with us right then. They can do it online or go to the Supervisor of Elections' Office. You are kind of giving them pathways to not take the moment when you are talking to them and take advantage of that good energy and that communication. They could just put it off and do it later, and that's -- we are very concerned about that."
Tr. Day 1, 49:9-19	The required disclaimer is "invalidating all the work that we've done. It's building distrust in the person you are trying to build trust with, . . . making people distrust us when we are trying to build trust, have those conversations to build the trust, and then you have to turn around and kind of break it down."
Tr. Day 1, 49:20-50:1	"The other thing is, frankly, people are busy; they are busy. And if you convince them and talk to them and have that conversation how voting is important, especially for our new voters, who some of them have never registered before, and you point out that, Oh, you can do it later, they may say in their head they are going to do it later, but they haven't done it up until then so the chances of them doing it go way down."
Tr. Day 1, 50:15-51:2	"I have experienced people's response when I direct their attention to the warning, and it's -- it's oftentimes very negative. I recently was registering voters at the library, and a young man came up and I was explaining it to him. And he was like, Oh, okay. That sounds good. And I said, Sir, would you please read this warning here? And he was all ready to register to vote; and after he read the warning, he kind of got a little quizzical look on his face and was, like, withdrawing from me. And he says, You know what? I'm going to do it later. I don't -- I'm not going to do it now. And he walked away. He did not register."
Tr. Day 1, 51:3-16	Giving the warning is "going counter to everything you're doing. You're giving up your Saturday gardening morning to sit there and be a service to the community, and you're doing your best to make it happen and give people these opportunities, and then you have this thing going roundabout in the opposite direction right beside you. It's frustrating and it's upsetting, and, frankly, I feel a little bit sick to my stomach personally every time I say, Sir or ma'am, would you please look at this sign? I literally feel sick to my stomach."

Tr. Day 1, 51:17-52:2	“I do not think that warning that I may not turn in the voter registration application on time is accurate or fair. I would never make that statement, but the law is forcing me to do this.”
Tr. Day 1, 52:3-14	Ms. Scoon and the League cannot “register voters as effectively as [they] could before SB 90.” “It has made life a lot harder, and some people have said they don’t want to do voter registration anymore because it’s too embarrassing.”

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**B. Cecile Scoon's Standing to Challenge the Drop Box Provisions**

Citation	Evidence
Tr. Day 1, 77:2-19	<p>"I'd say pretty consistently the last five to ten years [I] have primarily used the drop box for my ballot, and it would be after hours. I would go -- you know, it might be 8 o'clock, 9 o'clock, whatever. You text your husband, Hey, I'm coming home. But I would zip by the Supervisor of Elections' office first and just put it in there. It's been a godsend for me because I've been a busy lady with family obligations, work, and then legal obligations. I am traveling quite a bit. So just to know that I saw with my own eyes I put it in the drop box myself, I have a tremendous sense of satisfaction. I'm not comfortable putting it in the mail because the mail has been slowed down so much. I want to see it myself go in the box, and then I check a couple of days later to make sure my vote - - you know, I go online and check to make sure my vote has been counted."</p>
Tr. Day 1, 77:24-78:2	<p>When Ms. Scoon has used the drop box, it was never being personally monitored. "Never, never ever."</p>
Tr. Day 1, 82:12-19	<p>"[O]ur Supervisor of Elections announced to the entire community that he was taking down our drop box, which he did. He did, I think, the day before and the day the law was signed into law by the Governor. It is no longer there. I was just there a few days ago, and it's not there."</p>
Ex.701, ECF No. 608-84	<p>May 21, 2021 news release from Bay County Supervisor of Elections: "The Vote By Mail Drop Box outside of the Supervisor of Elections office has been removed. Due to Florida Senate Bill 90 expected to be signed by the Governor, the office will no longer be allowed to have the Vote By Mail Drop Box except during Early Voting Hours. Vote by mail ballots can be delivered inside the Supervisor of Election office during business hours."</p>
Tr. Day 1, 84:8-85:11	<p>Ms. Scoon has "a lot of concern to use the Postal Service. I'm not comfortable putting my ballot in the mail. I would actually be sick to do it. It would make me sick to do that, to trust something that important to that."</p>
Tr. Day 1, 86:11-86:20	<p>"I do not vote early. I'm one of the later voters. . . . I've noted that sometimes candidates mature and evolve during the</p>

	<p>process. Sometimes they evolve in a way that I go, Oh, I like that. I wasn't going to vote for them, but maybe I will, you know. And sometimes people that I might have thought I was going to vote for, Uh, I don't like that answer. That just was not right. And then they lost my vote. So I wait."</p>
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**C. Cecile Scoon's Standing to Challenge the Vote-By-Mail Request Provision**

Citation	Evidence
Tr. Day 1, 87:13-16	Ms. Scoon does not remember whether she listed her Driver's License number or Social Security Number when she registered to vote.
Tr. Day 1, 87:17-23	Before Senate Bill 90, "I had a standing request [for mail ballots], which was quite comforting. It lasted for four years, and I believe that our Supervisor of Election had put up on the envelope where your ballot would go and a little place to check and say, I would like to continue getting my vote-by-mail ballot."
Tr. Day 1, 87:24-88:3	That system worked "Extremely well. Between it lasting the four years, where I didn't have to remember every election cycle, it was also an additional benefit to have the little place on the envelope to check."
Tr. Day 1, 89:10-18	The reduced validity period of vote-by-mail requests after Senate Bill 90 is "just another thing to remember and/or forget that you have to, you know, ask again every election cycle to get the vote-by-mail ballot. It's doubling the burden of requesting it. And, frankly, there are just so many things that need doing, I'm concerned that I could forget and not request in time, and then I would be -- have a difficult time voting where I would normally do."

**D. Cecile Scoon's Standing to Challenge the Solicitation Definition**

Citation	Evidence
Tr. Day 1, 57:1-19	Ms. Scoon and other League members will set up at polling places: "we have our sign; we have our banner; we have all our educational materials."
Tr. Day 1, 58:3-12	They are "usually set up outside the 150-foot buffer zone."
Tr. Day 1, 59:2-22	They will cross into the buffer zone "if we see someone is having any difficulty getting up the steps, opening the door, if they're sweating, or just, you know -- if it's a small community, you might actually know the person going in. And if you know that they generally need help, you would usually walk up to them and say, Mrs. Smith, I see -- you know, can I open the door for you? or How are you doing? And then she might say, you know, I had to wait for my ride, and I couldn't get my meal and my blood sugar is dropping. You know, they would say things like that because the elderly coming in, someone had to bring them. . . . So you just inquire, and you might get an answer, I'm feeling a little bit light-headed. So then you would say, Can I get you a cookie or a candy? You know, it would be wrapped, and you would bring it to them. They'd say yes, and you might bring it to them."
Tr. Day 1, 59:23-60:4	"Sometimes people are going in and they come to a table, and they say, I'm not comfortable going in. I went and talked to them yesterday, and I don't like how they talked to me. They were talking down to me. I was upset. Can you double-check and make sure I get treated properly? So there are different things that you might be pulled into in that zone and help the person in some way."
Tr. Day 1, 60:19-61:1	"And there are times when people -- there have been times if there's a problem with a machine or something, some little delay, you know, they can back up. The line can back up. And sometimes it's really hot. The sun is really out and there's no shade in a lot of these places, and so you would then see the person and you would say, Wow, it's hot. Would you like some water? And we have a cooler with little baby

	waters in there and there's ice and everything. So I've done that."
Tr. Day 1, 61:2-9	"I know, like, if people are upset and they feel like they have been mistreated by the Deputy Supervisor of Elections and they don't want to vote provisionally or something like that, they often come to our table and they say, I don't feel like I'm being treated properly, you know. I'm upset. Can you come in with me and talk with them -- with me to the person in charge? And you'd always say yes and go in and have that conversation and support them."
Tr. Day 1, 61:10-24	When Ms. Scoon goes to polling places, "A good portion is physical support, and then others are emotional support. The fact of the matter is that for many persons of color -- I said Black people -- they have not had a lot of good experiences with the government. The government has often been the police. It's often been somebody in authority who is challenging them: Why are you here? What are you doing? making them feel uncomfortable and often disrespected. So our presence there and when they ask for our help, we're just providing a little bit of a shield and a vitamin so they feel that, you know, their voice is going to be heard; they're going to be given every consideration. And for those people I think it's education for them and it's also emotional support."
Tr. Day 1, 61:25-62:6	Voters who Ms. Scoon helps are "So grateful, just like, I am so glad you're here. You hear that, and you feel really good. Again, you're volunteering your time, and it's really powerful to hear an individual voter say, I'm so glad you're here. Thank you. I was really nervous about this, and I feel much better."
Tr. Day 1, 62:16-63:2	Even when Ms. Scoon is unable to resolve an issue, "even those people, even though they still maybe have to vote provisionally, or a few times they couldn't vote at all, just to know that a nonpartisan, unbiased organization stood with them through that process is powerful."
Tr. Day 1, 63:3-8	After Senate Bill 90, Ms. Scoon and the League are "absolutely not going to [assist voters in the buffer zone] anymore because the interpretation of what the law means and providing assistance is so broad."



Tr. Day 1, 63:13-64:22	<p>Under Senate Bill 90, “it could easily happen that someone says you’re doing something wrong, and then there could be a disagreement or, you know, you’re called out, and that would be very negative for our League members and very hurtful, just very scary. And it’s possible that a Supervisor of Elections person could call the law enforcement and -- because you’re doing something that they think is, you know, a big problem. . . . So rather than go down that negative trail and to expose our members, to expose the potential voter who was trying to vote, and to also not cause distress to the Supervisor of Elections’ office trying to discern, What are you doing? Are you interfering in some illegal way? We’re just not going to do it.”</p>
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## II. Dr. Robert Brigham

### A. Dr. Brigham's Standing to Challenge the Drop Box Provisions

Citation	Evidence
Tr. Day 5, 1597:14-20	"[I]n the primary election last year, I voted by mail. And then in the presidential election and the municipal election this year, I voted using a drop box."
Tr. Day 5, 1597:21-1598:2	Dr. Brigham stopped voting in person because "I had rectal cancer and had surgery, which I believe saved my life but also left me with a problem where I just cannot control myself. And so I try very much not to go to places where there are -- where I have to spend time away from bathrooms."
Tr. Day 5, 1598:3-8	Dr. Brigham's condition is unpredictable: "I often walk my dog around the block. That's maybe a 15- to 20-minute walk, and I lose control in that. Other times I can go an hour, hour and a half. But there is no warning. It just happens."
Tr. Day 5, 1598:9-12	When Dr. Brigham has an episode, "I try to get back home, clean up, and say maybe it will be better next time, which it isn't."
Tr. Day 5, 1603:10-20	Dr. Brigham uses drop boxes because he has had bad experiences with the mail: "I've had several letters delivered to me that go to people that are even two blocks away and several to other neighbors. I've had neighbors come up to me and bring me mail that was -- they received of mine. I don't know how much I missed because of the neighbors who didn't bring it. And then there was one case that stands out very much in my mind. I mailed in my property tax and it -- it never got there. And as far as I know, it was never found. I didn't discover this until much later and then I had to pay a penalty for paying my property tax later."
Tr. Day 5, 1599:10-1600:5, 1600:9-12	The drop box Dr. Brigham used for the 2020 general election "was not in the Supervisor's office; it was across the street. It was out of doors but covered by a tent . . . and it was a drive through and there were signs pointing the way and all." That drop box was "busy." "There was a line of cars, and we joined that line and eventually made our way."

Tr. Day 5, 1598:13-1599:8	The drop box Dr. Brigham used for the 2021 municipal election was inside the office. “We had to park the car and go in and physically drop it in the box.” Parking was “very difficult,” the lot is “relatively small. And maybe some spaces are easy to get into, but the ones we did, it was very difficult to maneuver the car into the spaces.”
Tr. Day 5, 1601:18-1602:5	If the drop box were indoors for an election as busy as the 2020 general election, “Each of the cars would have to park before me and that would take extra time. To me time is a really important thing. It would take extra time. Then, of course, you’d have to go out and get in -- walk into the Supervisor’s office, and then I don’t know how long it would take to drop ballots when there was a line there, but I’d have to join that line. And my situation gets worse when I do physical actions as opposed to sitting the car, so it would have been more difficult for me, definitely.”
Tr. Day 5, 1602:6-9	When Dr. Brigham confronts a situation like that, “I try not to be embarrassed too much and head for home.”
Tr. Day 5, 1606:7-14	Regarding the Drop Box Provisions, “I think anything that restricts my options impacts me because the more options I have, the more likely I will be to get through the voting process. So when you restrict the boxes, I don’t know if that would mean longer lines -- I think it will -- and, again, that bothers me.”
Tr. Day 5, 1607:6-13	If Dr. Brigham had an onset of his condition while voting, “I would go home. Stop what I was doing and go home and then hope I could get back another day.”

**B. Dr. Brigham's Standing to Challenge the Vote-By-Mail Request Provision**

Citation	Evidence
Tr. Day 5, 1604:20-1605:6	Using a vote-by-mail ballot “allow[s] me to actually fill out the ballot at home. The early voting, you fill out the ballot when you are there. And in a complicated ballot, and we have some pretty complicated ballots, it takes a while in order to do that. And I think there’s just more danger, for one thing, for trying to do it quickly in a spot or else taking forever to be there. And, again, the fact that I have extra time there that I wouldn’t need -- I mean, I’d be home near a bathroom when I’m home filling out the ballot, but I’m not there.”
Tr. Day 5, 1605:14-21	Since last voting in-person in early 2020, “I’ve had some health problems. I feel creakier. I find I misplace things more. I forget some things. It’s – it’s all the things you read about happening to older people that I never thought would happen, but they do. And I’m experiencing some of that.”
Tr. Day 5, 1607:22-1608:8	Supplying a Social Security Number or Driver’s License Number to request a vote-by-mail ballot is “a big deal to me. I wouldn’t have wanted to do that.” Dr. Brigham supplies such information online “very, very rarely,” because “I have heard so much about the hacking that goes on. Several times I’ve been informed that my information has been compromised, and I just don’t trust doing things like that.”
Tr. Day 5, 1608:13-20	The change to the effective period for a vote-by-mail request affects Dr. Brigham because “it means that I have to remember to do things twice as often,” and “my memory is not as good as it used to be. And it just seems obvious that if you are required to do something every two years, it’s more work than if you have to do it every four years.”
Tr. Day 5, 1608:21-1609:9	If Dr. Brigham did not receive a vote-by-mail ballot, “I might think I’ve requested it, but, whatever, I didn’t request it, and I’d become more aware of that situation as I got closer to the election and more information was coming on the news and everything about the election.”
Tr. Day 5, 1609:10-25	It’s “hard to say” whether Dr. Brigham would manage to vote if he forgot to request a ballot. “I think it would be -- you know, I’d have to get the ballot somehow or another. That

	would take time. Then I'd have to fill out the ballot, which, depending on the election, is either a small job or a huge job . . . . I would be very worried about – about physically pushing myself to do things to get it back in time.”
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### III. Alan Madison

#### A. Alan Madison's Standing to Challenge the Registration Disclaimer Provision

Citation	Evidence
Tr. Day 3, 703:3-10	"In Florida, I volunteered with the Indivisible of Indian River County. My wife and I both, we went to the public library in Sebastian and assisted folks to register to vote there. We took their registrations and gave them to the representative from the Indivisible group, and they'd returned them to the appropriate authorities."
Tr. Day 3, 703:18-704:4	While registering voters, Mr. Madison has encountered "reluctant voters." "You know, especially if you're doing, like, what -- partisan voting, not just here in Florida, but others. They are challenged: Are you going to return my [registration form]? And you have to assure the individual you are going to return their [registration form] on time, and you are not going to -- just because they -- they may be Republican, but you just want them to register to vote even if you are a Democrat."
Tr. Day 3, 704:10-18	Regarding the Registration Disclaimer Provision, "I felt it was insulting I felt -- obviously, it's not my intent not to return it on time. I also felt the people would be much more reluctant to give me their registration or register with me, so I had not planned to do anymore for a while until just recently. My wife convinced me that it was something I really felt important to do, so I should do it anyway. So I took some training last week to get ready to do it."
Tr. Day 3, 704:19-25	"If you're telling somebody you can't guarantee that you're going to get their registration on time so that they can vote, why would they want to give it to you? In conversations with friends and family, I mean, they are all pretty much in agreement that that -- that would be a turnoff for them."
Tr. Day 3, 705:1-6	Mr. Madison still plans to register voters in the future, and he "think[s] that having to give the disclaimer warning will impact [his] ability to do so," but "I'll just have to deal with it, I guess."

**B. Alan Madison's Standing to Challenge the Drop Box Provisions**

Citation	Evidence
Tr. Day 3, 695:5-8	In the 2020 general election, Mr. Madison voted by mail, and “put my ballot in the drop box.”
Tr. Day 3, 695:9-12	In the 2020 primary, Mr. Madison also voted “by mail ballot and dropped it in the drop box.”
Tr. Day 3, 695:13-24	Voting by mail is important to Mr. Madison because “[m]y father-in-law right now is medically and mentally very challenged. We have him down in Boynton Beach, but it requires us periodically, in fact frequently, to go down and help out . . . . But I also volunteer for AARP as a smart driver instructor. I volunteer for the U.S. Force Service Advisory Council and I do some volunteer work sometimes for the National Eagle Scout Association.”
Tr. Day 3, 696:6-18	Mr. Madison's father-in-law is “[a]bout an hour and a half” away. Mr. Madison must visit him “weekly, sometimes more often,” and sometimes with no advance notice.
Tr. Day 3, 696:19-697:6	In the 2020 general election, Mr. Madison used a drop box at “the Supervisor of Elections’ office. There was a drop slot on the wall outside on the building.” He dropped off his ballot “right around 7 o’clock in the morning. I was on my way to another appointment.” There was no one monitoring it; “I don’t even think the office was open.”
Tr. Day 3, 697:10-25	Mr. Madison also voted by drop box in a 2021 local election after Senate Bill 90 was enacted. The drop box he used in 2020 “was not available. I had to go inside. I had to wait for the office to open. So I had to do it later in the day when – because, again, I wasn’t able to do it in the morning. And it was – I had to hand my ballot to someone to get them to review it, and they put it in a drop box because the drop box was on the other side of the room.”
Tr. Day 3, 698:1-7	Mr. Madison found the experience of handing his ballot to a staff member in 2021 “[d]isconcerting. I felt uncomfortable handing my ballot to someone else. You know, even during the regular election when you go in, nobody takes your ballot once you fill it out; you put it yourself in a machine. So it was disconcerting. It was an uncomfortable feeling.”

Tr. Day 3, 699:4-15	The drop box Mr. Madison had used in 2020 was not available in 2021, so “I couldn’t drop it off when I had planned to, so I had to wait for the Supervisor of Elections office to open before I could go in and actually hand by ballot in.”
Tr. Day 3, 699:16-23	This change in drop box availability “makes it much less convenient. I mean, before I could have dropped it off anytime of day or night. If I had an emergency, I could do it at 10 o’clock at night and take care of what was happening the following morning. But now I have to wait for the Supervisor of Elections’ office to be open.”
Tr. Day 3, 699:24-700:3	Mr. Madison used a drop box because “I’ve had significantly poor experience with the U.S. Postal Service delivering my mail on time, delivering my mail appropriately.”
Tr. Day 3, 700:15-19	“As I said, I’ve had poor experience with the Postal Service. I’ve had things that I’ve mailed to others including a thousand dollar bond go missing. I’ve had packages and letters delivered to me that belong to other people. So I don’t trust the Postal Service like I used to.”
Tr. Day 3, 702:21-22	Mr. Madison “didn’t receive [his mail ballot] until very late the last time.”



**C. Alan Madison's Standing to Challenge the Vote-By-Mail Request Provision**

In addition to the testimony in Part II.A, above:

Citation	Evidence
Tr. Day 3, 702:5-15	The change in validity period for vote-by-mail requests affects Mr. Madison because “there’s a lot of stuff going on in my life, including my father-in-law, and it’s just one more thing I have to worry about: Will I remember to do it? Will I pay attention to any notifications that I may or may not receive and do it in time so I can exercise my right to vote? . . . . Not that I have a lot of memory issues, but when you get busy doing thing[s], yes, sometimes you forget.”

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#### IV. Susan Rogers

##### A. Susan Rogers' Standing to Challenge the Vote-By-Mail Request Provision

Citation	Evidence
Tr. Day 4, 1089:7-18	<p>"I have no central vision, which is your focusing vision, so to try to understand perhaps that -- how I see, if you put a Band-Aid on your glasses, a circle Band-Aid or a strip Band-Aid, and cover the entire central part of your vision, a little bit to the peripheral and perhaps also spread Vaseline all over your glasses and tried to see things that way, that's how I see. I have to magnify things or have things read to me. I'm not mobile. I don't drive, obviously. And I have to pretty much stay in my familiar world."</p>
Tr. Day 4, 1091:3-17	<p>"I voted by mail since -- well, I voted by mail previously in Colorado. And then in Florida, after the 2012 election, I voted early there, and since then I've voted in 13 elections by mail." That included in the 2020 general election and a municipal election in 2021.</p>
Tr. Day 4, 1091:19-1092:3	<p>Voting by mail is important to Ms. Rogers because of "[my] vision, my mobility. I have difficulty. Obviously, I have to arrange for transportation and pay for transportation to go to the polling place, and then I'm a little lost anytime I leave my home in terms of navigating and getting around. And then reading, I can't read the ballot. So I have to use devices or have someone assist me in reading it and in filling parts of it out."</p>
Tr. Day 4, 1092:24-1094:17	<p>Ms. Rogers last voted in person in 2012, and her vision has gotten worse since then. "[P]hysically it's difficult because you can't see. I mean, I -- to see a word, let's say, a four-letter word 'four.' I can pick up the F-O and the U-R, and then maybe put them together, so -- but I can't see anything. And I'm a little disoriented, in a fog, because I know people may be looking at me because I have to take off my glasses, which correct my nearsightedness, and I have three different prescriptions for what I call distance, walking vision, maybe 6 feet and then 3 feet and then 1 feet. So I take off my glasses, and I have to put things right to my face. So if I sign something, I would have to put it right up to my face to do it,</p>

	and so it's a little bit daunting. And then physically it may be painful to -- eyestrain and that sort of thing, get headaches."
Tr. Day 4, 1094:18-20	It would be more difficult for Ms. Rogers to vote in person now than it was in 2012.
Tr. Day 4, 1095:4-9	To request mail ballots in the past, "I have checked a box on the ballot that you return. It's on every ballot where you get -- provide your signature and address, and it states, Do you want to continue to vote-by-mail? And I would check that box."
Tr. Day 4, 1095:15-17	The check-box method is "Gleeful. It's very simple, and I thought it was requesting a ballot universally forever, that I would never have to worry about remembering to do anything again."
Tr. Day 4, 1095:25-1096:9	If Ms. Rogers can no longer use the check-box method, "I don't know for certain [how I will request a ballot]. I have heard, and I have tried to do a little research -- excuse me -- knowing that, you know, perhaps I can go online or fill out the form that I initially filled out when I registered to vote, which is a printed form that I would have to print, or make a phone call and provide information. But it's not real clear to me what I do need to do to do that in the future."
Tr. Day 4, 1096:14-1100:12	Requesting a ballot by phone is an extremely involved and difficult process because Ms. Rogers' vision impairment makes it difficult for her to look up a phone number and use her phone.
Tr. Day 4, 1100:13-1101:8	Requesting a ballot online is extremely difficult for similar reasons.
Tr. Day 4, 1101:9-1102:1	Requesting a ballot with a written request would require a printer, which Ms. Rogers does not have. And even if she was able to have the application printed, it would be extremely difficult to complete because of her visual impairment.
Tr. Day 4, 1102:2-11	The Vote By Mail Request Provision "imposes on me a requirement to remember to request a ballot again and then to go through whatever procedures I have to to request a mail ballot."
Tr. Day 4, 1102:12-1103:5	Ms. Rogers worries she may forget to request a ballot. "As I get older, I'm more forgetful. My vision also impacts my memory. . . . I used to be able to sort of take a snapshot of something. I have a photographic memory of things. And now that I can't see as well, that doesn't happen as well." And "in

	<p>order to make notes or use a calendar, I have a very large calendar that takes up about half the wall. I have to write things on there with Magic Marker to remind me of things, and that takes a lot of extra work. And I have to always switch my glasses so that I can read what I'm writing and/or put it in notes or do some other task to write down what it is I'm supposed to do. And then I have to be able to find it and have it read to me with VoiceOver or what have you. And it's just one more task in my daily life that isn't necessary given the way it was such a simple system before that you could just request your ballot every year by checking a box."</p>
<p>Tr. Day 4, 1103:6-16</p>	<p>Reminder notices in the mail would not help Ms. Rogers, because "I really can't read any of my mail that I get at the mailbox. I have to – it's a daunting process when I get mail because I can't even spot read as I could maybe even two years ago what it might pertain to, so I have to go through the whole process of putting whatever mail I have behind a Magnifier, a canopy reader, or take a picture of it or something to try to figure out what it is. So if it's so simple they can send us a reminder to vote, I don't know why they can't send out all the ballots for people to vote."</p>

## V. The League's Standing

### A. The League's Associational Standing

In addition to the testimony in Parts I and II, above:

Citation	Evidence
Tr. Day 5, 1587:8-20	Ms. Teti is a 76-year-old retired attorney who lives in Tampa, in Hillsborough County.
Tr. Day 5, 1587:21-25	"I've been a member of the League of [Women] Voters practically the whole time I've lived in Florida, first in Pinellas and then in Hillsborough."
Tr. Day 5, 1588:24-1589:6	Ms. Teti voted by mail in the 2020 general election; "I've been doing it for several years. I'm not sure exactly how long."
Tr. Day 5, 1589:7-15	"I have mobility issues, and it's hard for me to vote in person. So the mail-in is much more convenient. And I like the mail-in because it gives me a chance to study the ballot. If you just go to the polling place, then you only have minutes to look at the ballot, where when I vote, I can study it and – especially when there's a primary, to tell everybody apart."
Tr. Day 5, 1590:2-5	Ms. Teti does not remember what form of identification she used to register to vote. "That was in 1980. But I would assume it was a driver's license."
Tr. Day 5, 1590:8-13	In the past, "when you get the vote-by-mail ballot, there's a little box on the envelope that says, Please send me a mail ballot for next election. And I just check it, and I get the ballot for the next session -- the next election."
Tr. Day 5, 1590:21-24	Ms. Teti did not previously know that vote-by-mail ballot requests expired. "I thought they said if I kept checking it, it would go on forever."
Tr. Day 5, 1590:25-1591:13	Without the check-box method, "however you do it will be much more complicated than that, I'm sure. . . . I don't know quite how they're going to require you to do it. . . . I don't know how I would request it otherwise, when you have to do it, where you have to do it, how you have to do it. I guess we'll find out."
Tr. Day 5, 1591:14-21	Ms. Teti is worried she might forget to request her vote-by-mail ballot. "Because I will have thought I requested it by

	checking the box, but I -- and if there was no box to check there, I probably wouldn't remember that; I was accustomed to it."
Tr. Day 5, 1591:22-1593:4	It would be very difficult for Ms. Teti to vote in person if she forgot to request a mail ballot, because of her mobility issues.

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## B. The League's Organizational Standing

### 1. The League's Diversion of Resources

Citation	Witness	Evidence
Tr. Day 1, 52:10-14	Cecile Scoon	"[W]e spent weeks working it out, trying to figure out how -- the ways to train our members so that they can interact with citizens. It has made life a lot harder, and some people have said they don't want to do voter registration anymore because it's too embarrassing."
Tr. Day 1, 91:25-92:18	Cecile Scoon	<p>"Q. Ms. Scoon, as League president, have you personally spent time ensuring that League members know what changes SB 90 made and how to comply with the law?</p> <p>A. Yes, many, many, many hours, researching the law, writing up information, guidelines, writing PowerPoints, revising the PowerPoints, having talks on our lunch-and-learn, which we do every two weeks. We also hosted, I think, two- or three-hour long webinars where hundreds of our League members would sign up and listen. Different times we would try to do one during the day for those who might be retired and then do after hours, you know, 6 o'clock or so for those who are working and just fielded literally hundreds of questions, many times verbally, by email. We would have a Q&amp;A session after all the trainings, and we couldn't cover all the questions during the, you know, 20 minutes you had allotted for them. It might cover 20 percent. So then we had a policy that we would write answers to every question and send it out to everybody. So a tremendous amount of time has been spent and continued to be spent to bring people up to date."</p>
Tr. Day 1, 107:19-108:7	Cecile Scoon	"Q. Well, every time a new law is enacted, one of the things that your organization undertakes is to educate voters about the provisions of the new law; correct?

		<p>A. If it matters. We don't tell people about de minimis changes, nor do we drill down -- like, we continually -- I just gave a talk a couple of days ago. The many -- there are many changes in the law where we might note it, but there is no need for us to build up a whole department, so to speak, on Senate Bill 90. We don't do that with every change in the law. There's changes every year. We've never done that before.</p> <p>Q. Well, but the point is you have every year had to make some changes to your education program and educate voters about the current state of the law; correct?</p> <p>A. No, that is not accurate."</p>
Tr. Day 1, 130:18-25	Cecile Scoon	<p>"Q. Okay. Is it true that since the enactment of Senate Bill 90, the League is continuing to educate voters on how to request vote-by-mail ballots?</p> <p>A. I would say 'continuing' is sort of a funny word. I would say that we've put triple-time effort into the process because there's many more questions that come from -- with the changes with Senate Bill 90. So it's not really continuing the same. It's different in quantity and quality."</p>
Tr. Day 4, 1122:12-21	Leah Nash	<p>After SB 90 passed, the League "had to move very, very quickly" to respond to the law because "there were changes in the law that affected our operations and how [we did] the things we regularly did."</p>
Tr. Day 4, 1125:20-21, 1128:8-15	Leah Nash	<p>The League has "received tons of all calls and emails about SB 90" from its members that the League's staff and leadership must answer.</p>
Tr. Day 4, 1125:8- 1126:4  1128:8-21	Leah Nash	<p>The League has given several educational presentations to its members on how to comply with the VBM Request Provision, Drop Box Provision, and Solicitation Definition, and will continue to do so moving forward.</p>



Ex. 740, ECF No. 608-86		
Tr. Day 4, 1126:6- 1127:7  Ex. 744, ECF No. 608-88	Leah Nash	The League put “hours and hours” into creating informational materials for League members to understand the changes to the vote-by-mail process and polling place assistance laws.
Tr. Day 4, 1129:4-18  Ex. 741, ECF 608-87 at 7	Leah Nash	In response to the Disclaimer Provision, the League updated its voter registration policies, including updating a voter registration quiz that each League member must take before they can register voters. The League asked each member to re-take the quiz to ensure those members knew how to comply with the Disclaimer Provision.
Tr. Day 4, 1132:19- 1133:19  Ex. 745, ECF No. 608-89	Leah Nash	The League created notices of the Disclaimer Provision, in multiple languages, for League members to display and explain when registering voters: “We asked them to show this notice wherever they are registering people to vote” and “directed our members to tell them about it.”
Tr. Day 4, 1134:21- 1135:6  Ex. 741, ECF No. 608-87 at 6	Leah Nash	The League has hosted numerous trainings on how to comply with the Disclaimer Provision and will continue to do so as the League ramps up its voter registration activities across this election cycle. This is not an easy change for the League: “[S]ome of these people have been registering voters for decades, so [it’s] not easy to change something you’ve been doing for 20, 30 years.”
Tr. Day 4, 1135:7-11	Leah Nash	The League’s Executive Director has personally put “hundreds of hours” of time into the League’s SB 90 compliance and education efforts.

Tr. Day 4, 1135:7- 1136:2	Leah Nash	The League's staff, volunteer, and leadership team (including its President, Cecile Scoon) have also diverted their time to SB 90 compliance and education.
Tr. Day 4, 1140:23- 1141:7	Leah Nash	The League does not typically need to dedicate the volume of resources and time to informing its members about election-related changes as SB 90 required: "[W]e did so much more planning, development and execution than we would have done with any other law."

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## 2. The League's Activities From Which Resources Were Diverted

Citation	Witness	Evidence
Tr. Day 1, 93:5- 94:1	Cecile Scoon	<p>“Q. And this time that you’ve spent doing SB 90 education, has that time taken away from other League activities or priorities that you would have otherwise focused on?</p> <p>A. Yes. I’m still the action chair for our efforts on Amendment 4, Restoration of Voting Rights for Persons with Felony Convictions that are completed. And we have a program where we created some continuing legal education programs where lawyers can get trained. Well, I’m still the action chair for that. I have wonderful, wonderful volunteers, but -- and we also have interns with -- that we’ve hired part time to help us on these programs. And we had hoped to be able to hire a full-time lawyer to kind of help us run the program, but have not received grant funding to do that. So, basically, working on Senate Bill 90 and all the trainings took directly -- basically slowed me down from doing the work and the training on Amendment 4 with many of the people that I work with, the volunteers, our interns, and many of our pro bono lawyers who seek additional advice, Hey, I’ve doctored the petition to get the modification. Is this right? So it slows me down in responding to those things. That’s been a direct hit, and many other topics that we want to work on.”</p>
Tr. Day 1, 94:20-25	Cecile Scoon	<p>“Q. And, Ms. Scoon, if these laws stay on the books, will you continue dedicating time to ensure that League members know how to comply with SB 90?</p> <p>A. Absolutely, absolutely. We want to make sure that we do everything properly under the law. Even though we’re not happy with the law, we still want to abide by the law.”</p>

Tr. Day 4, 1136:3-18, 1137:7- 1138-4	Leah Nash	The League has diverted time and resources away from its fundraising efforts because of SB 90. The League does not “have as many grants this year as we have [had] in the past” which the League Executive Director “attributes [] to the work I did on SB 90” instead.
Tr. Day 4, 1136:19- 1137:6, 1138:5- 1139:3	Leah Nash	The League has diverted time and resources away from its Florida redistricting campaign because of SB 90.
Tr. Day 4, 1139:12- 1140:11	Leah Nash	The League has diverted time and resources away from its Amendment 4 returning citizens campaign because of SB 90. The League’s President, Cecile Scoon, leads that project, and “[w]hen Cecile’s not available, like, physically not available because she’s working on SB 90, the returning citizens project/Amendment 4 stuff suffered.”
Tr. Day 4, 1140:12-20	Leah Nash	These activities will continue to suffer moving forward as the League continues to work on its SB 90 education and compliance efforts

#### 4. The League's Compelled Speech

Citation	Witness	Evidence
Tr. Day 1, 46:3-47:24	Cecile Scoon	The disclaimer is misleading because out of the thousands and thousands of forms that the League has turned in for Florida voters over the past ten years, the League has turned in only six forms late, none of which were submitted past book closing.
Tr. Day 1, 49:14-15	Cecile Scoon	League members consider this requirement “being forced to say something that was not true and inaccurate.”
Tr. Day 1, 51:17-52:2	Cecile Scoon	But for the Disclaimer Provision, the League would not deliver such a disclaimer; it would instead assure the voter that the League will take care to turn in their form (League President explaining “I would never make that statement, but the law is forcing me to do this.”).
Tr. Day 1, 96:16-20	Cecile Scoon	“It’s been very burdensome in so many ways, the extra work, the extra learning, the extra steps, the sense of heaviness when you put that little sign beside you. You are sitting at the table, and you are trying to row the boat this way, and the sign is going the opposite direction.”
Tr. Day 1, 183:23-184:5	Cecile Scoon	The League must deliver a disclaimer that it believes to be false, or at least misleading, when it does voter registration—namely that the League may not turn in that voter’s registration form on time or by book closing.

### 5. Reduction in the Effectiveness and Amount of the League's Speech

Citation	Witness	Evidence
Tr. Day 1, 50:12-51-1	Cecile Scoon	Individuals have refused to register with the League after hearing the disclaimer.
Tr. Day 1, 52:12-14	Cecile Scoon	Some League members have refused “to do registration anymore because it’s too embarrassing.”
Tr. Day 1, 52:3-53:14	Cecile Scoon	Because of the Disclaimer Provision, the League’s voter registration activities under SB 90 are much less effective, take longer, and effectively lead to fewer registrations.
Tr. Day 4, 1131:1-1131:14	Leah Nash	The League has fewer members who are willing to do voter registration because the disclaimer and warning that they must deliver to voters.
Tr. Day 4, 1131:15-1132:18	Leah Nash	Fewer League members who are registering voters because of SB 90 means that the League will have fewer conversations with voters about the importance of voter registration and voting.
Tr. Day 4, 1168:2-24	Supervisor Joe Scott	Supervisors of Elections believe the disclaimer will “erode trust” between voters and third-party voter registration groups.

## 6. Harm to the League's Reputation

Citation	Witness	Evidence
Tr. Day 1, 49:1-19	Cecile Scoon	The League is a “trusted” brand in Florida for voter registration and it’s “very harmful for [the League] to have to give those kinds of warnings.”
Tr. Day 1, 52:15-18	Cecile Scoon	League President opining that the disclaimer will “absolutely” have an effect on the League’s reputation

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## 7. The League's Self-Censorship

Citation	Witness	Evidence
Tr. Day 1, 59:2-61:1	Cecile Scoon	Prior to SB 90, the League previously engaged in direct assistance at Florida polling places within the buffer zone.
Tr. Day 1, 61:12-24	Cecile Scoon	While some of the League's assistance at the polls has been physical in nature (providing water, for example), much of it has been to act as a "shield" to voters who are nervous about the voting experience.
Tr. Day 1, 63:3-8	Cecile Scoon	Because of the Solicitation Definition, that the League will self-censor and will not provide assistance within the 150-foot zone (League President explaining, "[w]e are absolutely not going to do it anymore because the [broad nature of the law]").
Tr. Day 1, 63:9-16	Cecile Scoon	"[F]rom prior years of experience, and I'm talking over 20 years of experience, the understanding of the individual deputies, Supervisors of Elections of what the law requires and the paperwork that needs to be done varies fairly significantly. So it could easily happen that someone says you're doing something wrong, and then there could be a disagreement or, you know, you're called out, and that would be very negative for our League members and very hurtful, just very scary."
Tr. Day 1, 65:23-66:1	Cecile Scoon	"[W]e don't want it to be within the discretion of any particular person to say, It means this, it means that in the moment. You know, only safe thing to do is withdraw that whole experience."



## VI. Black Voters Matter

### A. Black Voters Matter's Diversion of Resources

Citation	Witness	Evidence
Tr. Day 7, 1989:5-12	Cliff Albright	BVM has begun educating its partner organizations to make sure everyone understands the new Solicitation Definition and what it prohibits.
Tr. Day 7, 1999:5-9	Cliff Albright	BVM has begun education on the Drop Box Provisions through virtual town halls and informational materials.
Tr. Day 7, 2002:7-25	Cliff Albright	BVM has begun education on the VBM Request Provisions through informational materials and will need to do a significant amount of education around the VBM Request Provision changes and help voters navigate the changes and requirements.
Ex.703, ECF No. 608-85	--	Informational flyer BVM has created to begin informing voters and partner organizations to explain the changes of SB 90.
Tr. Day 7, 1989:13-1990:2, 2002:16-2004:9	Cliff Albright	SB 90 will require nuanced communication and education to voters because of the complexity of the law: It will include training, "texting and emailing, and social media messaging, radio advertisements... just a range of communication tactics in order to communicate what's fairly complex in some cases, these provisions that have changes, and for some people it's a change in the way that they've been doing things for years, if not decades. And so all of that requires a significant voter education effort which requires [] time and energy and financial resources that we otherwise would not have to expend and which puts a burden on us as an organization." This kind of education is also more expensive to do than traditional voter outreach because the messages are longer and they require more frequency.

Tr. Day 7, 2010:1-12	Cliff Albright	BVM anticipates spending more money on voter education in 2022 than it did even in 2020 (a presidential election year) because of SB 90.
Tr. Day 7, 2010:18- 2011:8	Cliff Albright	BVM has hired two additional staff members to assist with voter education in Florida because of SB 90.
Tr. Day 7, 2019:14-23, 2020:20-21	Cliff Albright	While BVM previously did do some voter education on the mechanics of voting, “the nature of that communication is significantly Different [under SB 90]. There is a substantive difference between saying, ... don’t forget, you know, you can drop off your ballot via drop box and saying, Hey, you know, you can drop it off, but keep in mind that the locations are less than before and the hours are different. You can’t go, you know, after work or in nontraditional hours. Oh, and by the way, there might be somebody there monitoring you. You know, it’s night and day between the type of communication that we had to do before and what we’ll have to do now.” “SB 90 creates a whole other mega universe of changes that have to be communicated.”

**B. Black Voters Matter’s Activities From Which Resources Were Diverted**

Citation	Witness	Evidence
Tr. Day 7, 2011:15-20	Cliff Albright	Increased staffing in Florida because of SB 90 meant that BVM could not hire staff for the state of Tennessee, leaving that state “shorthanded.”
Tr. Day 7, 2012:23-2014:3	Cliff Albright	The voter education work that BVM does on SB 90 takes away from BVM’s issue advocacy work in Florida, including organizing around environmental justice and police accountability. “[I]t’s a frustrating situation to have to divert resources from the other work that we could be doing in order to deal with provisions that are wholly unnecessary and which are going to have a negative impact on Black voters and Black voter turnout.”

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**C. Black Voters Matters' First Amendment Injury**

<b>Citation</b>	<b>Witness</b>	<b>Evidence</b>
Tr. Day 7, 1981:1-1982:5, 1983:10-16, 1984:3-11.	Cliff Albright	Prior to SB 90, BVM engaged in “voter comfort” activities (also known as line warming), including providing water, food, cell phone chargers and encouragement to voters. They did this in Florida, as well as other states.
Tr. Day 7, 1985:7-24, 1986:3-8	Cliff Albright	BVM staff members, including Executive Director Cliff Albright, have previously engaged with and provided assistance to Florida voters within the 150 ft buffer zone.
Tr. Day 7, 1981:1-1982:5, 1984:18-25, 1991:14-1992:8	Cliff Albright	BVM’s “voter comfort” or line warming activities “have an impact in helping people to stay in line, to engage in the process of voting.” Providing this support is also about “sending a message about celebrating the voting experience.” “Part of the purpose is to communicate to voters that they matter, even as they are waiting in long line.” Even if poll workers were to provide the same kind of assistance, it would not communicate the same message to voters as when BVM does it directly.
Tr. Day 7, 1986:9-23	Cliff Albright	As a result of SB 90, BVM will not allow staff or its volunteers to provide assistance to voters within the 150 ft zone.
Tr. Day 7, 1986:24-1988:25	Cliff Albright	BVM is concerned about the potential for arbitrary enforcement of the Solicitation Definition because of its expansive language. BVM has previously experienced arbitrary enforcement of prior solicitation laws: Florida Supervisors previously prohibited them from interacting with voters simply because their shirts say “Black Voters Matter,” which they have interpreted as a partisan statement, even though BVM is nonpartisan.
Tr. Day 7, 1992:9-12	Cliff Albright	If SB 90 were not the law, BVM would continue providing assistance to voters within 150 ft zone.

## VII. The Florida Alliance of Retired Americans' Standing

### A. FLARA's Associational Standing

Citation	Witness	Evidence
Tr. Day 5, 1616:8-10	William Sauers	Mr. Sauers lives in St. Lucie County.
Tr. Day 5, 1616:13-24	William Sauers	Mr. Sauers registered to vote in Florida approximately 26 years ago and cannot remember whether he provided a license number or SSN when he registered to vote.
Tr. Day 5, 1618:23-24	William Sauers	Mr. Sauers is a FLARA member.
Tr. Day 5, 1620:17-18	William Sauers	Mr. Sauers traditionally votes with a vote-by-mail ballot.
Tr. Day 5, 1623:18-23	William Sauers	Mr. Sauers previously had a standing VBM request and will need to make new requests in the future under SB 90.
Tr. Day 5, 1625:6-11	William Sauers	Mr. Sauers has historically used drop boxes.
Tr. Day 5, 1625:21-22	William Sauers	Mr. Sauers wishes to use drop boxes in the future.
Ex. 5, ECF No. 608-1, Tbl. 24	Herron Report	St. Lucie County is reducing both drop box locations and hours under SB90.
Tr. Day 5, 1627:19-1628: 6	William Sauers	Mr. Sauers is likely to need assistance at the polls given his health conditions if he needed to vote in person.

## B. FLARA's Organizational Standing

### 1. FLARA's Diversion of Resources

Citation	Witness	Evidence
Tr. Day 5, 1624:7-16	William Sauers	FLARA will educate its members about new VBM Request Provision so that members receive their VBM ballot.
Tr. Day 5, 1627: 5-13	William Sauers	FLARA will educate its members about new Drop Box Provisions.
Tr. Day 5, 1629:12-17	William Sauers	FLARA will educate its members about the need to shift to VBM if the Solicitation Definition stands.

### 2. FLARA's Activities From Which Resources Will Be Diverted

Citation	Witness	Evidence
Tr. Day 5, 1618:3-6	William Sauers	FLARA's core mission is advocacy work on behalf of retirees and informing elected officials of their views.
Tr. Day 5, 1629:18-1631:11	William Sauers	When FLARA educates its members about the mechanics of voting, FLARA has to spend less time on its core advocacy and lobbying efforts.
Tr. Day 5, 1630:7-22	William Sauers	FLARA must make choices about what it asks its members and volunteers to spend their time on.
Tr. Day 5, 1637:21-1638:7	William Sauers	FLARA does not traditionally spend its time on teaching its members <i>how</i> to vote.

***League* Plaintiffs' Post-Trial Brief: Appendix 4**  
**Key Testimony Regarding First Amendment**

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**League Appendix 4 – Key First Amendment Testimony**

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## I. The Registration Disclaimer Provision

### A. The Registration Disclaimer Provision constitutes compelled speech.

Citation	Witness	Evidence
Tr. Day 1, 49:9-19	Cecile Scoon	The required disclaimer is “invalidating all the work that we’ve done. It’s building distrust in the person you are trying to build trust with, . . . making people distrust us when we are trying to build trust, have those conversations to build the trust, and then you have to turn around and kind of break it down.”
Tr. Day 1, 51:3-16	Cecile Scoon	Giving the warning is “going counter to everything you’re doing. You’re giving up your Saturday gardening morning to sit there and be a service to the community, and you’re doing your best to make it happen and give people these opportunities, and then you have this thing going roundabout in the opposite direction right beside you. It’s frustrating and it’s upsetting, and, frankly, I feel a little bit sick to my stomach personally every time I say, Sir or ma’am, would you please look at this sign? I literally feel sick to my stomach.”
Tr. Day 1, 51:24 - 52:5	Cecile Scoon	“I do not think that warning that I may not turn in the voter registration application on time is accurate or fair. I would never make that statement, but the law is forcing me to do this.”
Tr. Day 1, 96:16-20	Cecile Scoon	“It’s been very burdensome in so many ways, the extra work, the extra learning, the extra steps, the sense of heaviness when you put that little sign beside you. You are sitting at the table, and you are trying to row the boat this way, and the sign is going the opposite direction.”
Tr. Day 1, 102:16-22	Cecile Scoon	“Q. But you would agree with me that telling them, for example, you can register online; you can pick up a registration form at the Supervisor of Elections, there’s nothing wrong with that; correct?”

		A. The way that we are forced to give it when we are in person talking to someone implies that they shouldn't register with us. So, no, in that event, no, it's not helpful."
Tr. Day 1, 271:21- 272:1	Rosemary McCoy	"I would never tell an individual that I might not do what I am required to do by law. I would never tell anyone that. That's a contradiction. It's a – it's a – makes a person feel as though they can't trust you. It's unworthy for me to even say to a person. I would never do that."
Tr. Day 1, 272:19- 273:2	Rosemary McCoy	<p>"Q. Thinking about the part of the disclaimer that requires Harriet Tubman Freedom Fighters to tell people how to register online with the division, is that something you would say to potential voters without SB 90?</p> <p>A. No, we wouldn't.</p> <p>Q. Why not?</p> <p>A. Well, because of the population that we work with, and the population we work with are mainly low income, and many low-income people, you know, might – that could be a barrier."</p>

**B. The Registration Disclaimer Provision interferes with political speech.**

Citation	Witness	Evidence
Tr. Day 1, 38:20-40:14	Cecile Scoon	To convince reluctant people to register to vote, Ms. Scoon must develop a relationship with them and persuade them that voting matters.
Tr. Day 1, 40:15-41:2	Cecile Scoon	Some potential voters “feel like [voting] doesn’t matter, that it’s fake, that people are, you know, corrupt. And those type of people, you really have to invest some time. You have to listen; you have to be patient and not judgmental, have a conversation, and let them kind of know who you are. Sometimes I have to say, you know, what my job is or where I work. But you do have to build a connection and a relationship, and they kind of size you up, and they kind of go, Okay, I see your point, you know, like the young man, will often agree. But it can be a little touch and go sometimes.”
Tr. Day 1, 43:8-19	Cecile Scoon	When Ms. Scoon registers voters she offers to deliver the voter registration form for the voter because she is “just very concerned that people are so busy. They’re out and about with often their family and children. You know, they can get distracted, and it could get in their purse or their backpack or in the car and never come back out. So we are so excited that people are having this opportunity and they’re entering into this realm of civic engagement. We want to be sure that, you know, the deal gets done and take it right in.”
Tr. Day 1, 45:23-46:2	Cecile Scoon	When Ms. Scoon collects forms or receives forms collected by other League members, “It was my practice to pretty much turn them in the very next day no matter what. I would just go and turn them in.”
Tr. Day 1, 48:5-17	Cecile Scoon	The Registration Disclaimer Provision requires Ms. Scoon to “communicate or say or point to the sign that they read . . . that we may not turn the

		voter registration application in on time. We also have to let them know that they can register other ways; they don't have to do it with us right then. They can do it online or go to the Supervisor of Elections' Office. You are kind of giving them pathways to not take the moment when you are talking to them and take advantage of that good energy and that communication. They could just put it off and do it later, and that's -- we are very concerned about that."
Tr. Day 1, 49:9-19	Cecile Scoon	The required disclaimer is "invalidating all the work that we've done. It's building distrust in the person you are trying to build trust with, . . . making people distrust us when we are trying to build trust, have those conversations to build the trust, and then you have to turn around and kind of break it down."
Tr. Day 1, 49:20-50:1	Cecile Scoon	"The other thing is, frankly, people are busy; they are busy. And if you convince them and talk to them and have that conversation how voting is important, especially for our new voters, who some of them have never registered before, and you point out that, Oh, you can do it later, they may say in their head they are going to do it later, but they haven't done it up until then so the chances of them doing it go way down."
Tr. Day 1, 50:15-51:2	Cecile Scoon	"I have experienced people's response when I direct their attention to the warning, and it's -- it's oftentimes very negative. I recently was registering voters at the library, and a young man came up and I was explaining it to him. And he was like, Oh, okay. That sounds good. And I said, Sir, would you please read this warning here? And he was all ready to register to vote; and after he read the warning, he kind of got a little quizzical look on his face and was, like, withdrawing from me. And he says, You know what? I'm going to do it later. I don't -- I'm not going to do it now. And he walked away. He did not register."

Tr. Day 1, 51:3-16	Cecile Scoon	Giving the warning is “going counter to everything you’re doing. You’re giving up your Saturday gardening morning to sit there and be a service to the community, and you’re doing your best to make it happen and give people these opportunities, and then you have this thing going roundabout in the opposite direction right beside you. It’s frustrating and it’s upsetting, and, frankly, I feel a little bit sick to my stomach personally every time I say, Sir or ma’am, would you please look at this sign? I literally feel sick to my stomach.”
Tr. Day 1, 51:17-52:2	Cecile Scoon	“I do not think that warning that I may not turn in the voter registration application on time is accurate or fair. I would never make that statement, but the law is forcing me to do this.”
Tr. Day 1, 52:3-14	Cecile Scoon	Ms. Scoon and the League cannot “register voters as effectively as [they] could before SB 90.” “It has made life a lot harder, and some people have said they don’t want to do voter registration anymore because it’s too embarrassing.”
Tr. Day 1, 261:4-7	Rosemary McCoy	When engaging in voter registration efforts, “we try to build a conversation with them and usually we start out trying to find out what concerns they would have in their communities. So we build a rapport. We try to build trust there with them.”
Tr. Day 1, 267:25-268-9	Rosemary McCoy	The Disclaimer Provision affects the interactions canvassers have with potential voters. Once the potential voter completes the application, the canvasser is required to inform the potential voter that they might not return the application in 14 days. “[T]he look on their faces, they’re looking at me like, I don’t understand this. So we go back – it’s almost like a seesaw. First we’re telling you you can trust us. We’re going to promise we are going to do this and we are going to do that and then we’re telling you that we might not file it. So, it’s a seesaw. So we have to go back – and this is what take a little longer. We have to go back and build back up that trust.”

Tr. Day 3, 703:18- 704:4	Alan Madison	While registering voters, Mr. Madison has encountered “reluctant voters.” “You know, especially if you’re doing, like, what -- partisan voting, not just here in Florida, but others. They are challenged: Are you going to return my [registration form]? And you have to assure the individual you are going to return their [registration form] on time, and you are not going to -- just because they -- they may be Republican, but you just want them to register to vote even if you are a Democrat.”
Tr. Day 3, 704:10-18	Alan Madison	Regarding the Registration Disclaimer Provision, “I felt it was insulting. I felt -- obviously, it’s not my intent not to return it on time. I also felt the people would be much more reluctant to give me their registration or register with me, so I had not planned to do anymore for a while until just recently. My wife convinced me that it was something I really felt important to do, so I should do it anyway. So I took some training last week to get ready to do it.”  Mr. Madison still plans to register voters in the future, and he “think[s] that having to give the disclaimer warning will impact [his] ability to do so,” but “I’ll just have to deal with it, I guess.”
Tr. Day 3, 704:19-25	Alan Madison	“If you’re telling somebody you can’t guarantee that you’re going to get their registration on time so that they can vote, why would they want to give it to you? In conversations with friends and family, I mean, they are all pretty much in agreement that that -- that would be a turnoff for them.”
Tr. Day 3, 768:10- 769:2	Velez Burgos	Hispanic Federation believes the disclaimer is “misleading” and will make it harder to register voters. Voters will reasonably ask, “[H]ow can I trust you if you’re starting by telling me that you may or may not deliver this?”

Tr. Day 4, 1131:1-14	Leah Nash	The League has fewer members who are willing to do voter registration because the disclaimer and warning that they must deliver to voters.
Tr. Day 4, 1131:15- 1132:17	Leah Nash	Fewer League members who are registering voters because of SB 90 means that the League will have fewer conversations with voters about the importance of voter registration and voting.
Tr. Day 4, 1164:20- 1165:13	Supervisor Joe Scott	As a result of the Disclaimer Provision, “people just are far less likely to volunteer and spend a Saturday doing something that could potentially get them into trouble.” “[A]s more and more gets added into the law around what these voter registration drives – what the people in the voter registration drives are allowed to do, it makes – it makes a lot of people just decide to step away and decide not to do it at all. You know, they’ll find some other way to volunteer and serve their community other than voter registration because they are worried that voter registration will get them into trouble.”
Tr. Day 4, 1168:2-24	Supervisor Joe Scott	“You know, if you’re – you’re telling people that you are conducting a voter registration drive and your whole intent is to help people in your community to get registered to vote, but now you are required to say to them that you might not turn in the form, that is – obviously that would, you know, erode trust. . . . So there is a huge service being done by these organizations. And to have them go out there and try to do this service to try to do something positive and good in their community and then to have to be told by law that they have to erode that trust while they are conducting their public service, I would say that it feels like a very wrong thing to require people to do.”
Tr. Day 9, 2666:17-25	Supervisor Mark Earley	When Supervisor Earley heard about the Disclaimer Provision, “I guess I thought it was almost like a joke. Of course, it wasn’t. It was in the bill. But I was pretty astonished.”

Tr. Day 9, 2668:10-15	Supervisor Mark Earley	Supervisor Earley expects the Disclaimer Provision to make it harder to register voters. To ask a voter to complete a form, “then [to] say, You shouldn’t trust that I’m going to do the right things with it, that would not help my cause of registering voters.”
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**C. The Registration Disclaimer Provision is not narrowly tailored.**

<b>Citation</b>	<b>Witness</b>	<b>Evidence</b>
Tr. Day 10, 2766:10-14	Director Maria Matthews	“[I]f a third-party voter registration organization misses [the] deadlines [to turn in registration forms], [the Elections] Division has authority to fine that organization.”
Tr. Day 10 2769:4-9	Director Maria Matthews	Director Matthews “can’t recall any [3PVROs] that have been referred to the Attorney General.”
Tr. Day 10 2769:16-20	Director Maria Matthews	“[T]he Department of State has waived fines even when it could impose them.” “Based on whether they’re first-time offenders or repeat offenders or the egregiousness of the circumstances that delayed the delivery of the applications.”
ECF No. 402, at 31 ¶ 17.	Pretrial Stipulation	“The Attorney General has pursued no enforcement actions against 3PRVOs since 2012.”
Tr. Day 10 2770:14-23  Ex. 783, ECF No. 608-94	Director Maria Matthews	The Secretary waived a \$400 fine against a Third-Party Voter Registration Organization for eight late voter registration forms.
Tr. Day 10 2771:16-23  Ex. 134, ECF No. 608-34	Director Maria Matthews	The Secretary waived a \$1000 fine against a Third-Party Voter Registration Organization for twenty-three late voter registration forms.
Tr. Day 10 2772:17-2773:17	Director Maria Matthews	The General Counsel’s office recommended no action against a Third-Party Voter Registration Organization for three late voter registration forms.

Ex. 1546, ECF No. 608-110		
Tr. Day 10 2773:23- 2774:21  Ex. 1547, ECF No. 608-111 and -112	Director Maria Matthews	The General Counsel's office recommended no action against a Third Party Voter Registration Organization for forty-three late voter registration forms.
ECF No. 549-1 at 44:1-8	Elizabeth Guzzo	The Office of Attorney General does not "have a view on whether the enforcement mechanisms applicable to third-party voter registration organizations were adequate before the enactment of Senate Bill 90."
ECF No. 549-1, at 44:10-13	Elizabeth Guzzo	"The Office of Attorney General did not request any changes to the regulation of third-party voter registration organizations."
ECF No. 549-1, at 44:14-23	Elizabeth Guzzo	The Office of Attorney General does not "have a view on what state interests, if any, are served by Senate Bill 90's changes to the rules governing third-party voter registration organizations."
ECF No. 549-1 at 69:9-15	Elizabeth Guzzo	The Office of Attorney General is not "aware of any instances in which the AG has pursued injunctive relief" or "any restraining orders" against Third Party Voter Registration Organizations.

**D. The Registration Disclaimer Provision does not serve a compelling public interest.**

<b>Citation</b>	<b>Witness</b>	<b>Evidence</b>
Tr. Day 1, 46:25-47:24	Cecile Scoon	The disclaimer is misleading because out of the thousands and thousands of forms that the League has turned in for Florida voters over the past ten years, the League has turned in only six forms late, none of which were submitted past book closing
Tr. Day 3, 732:2-19	Velez Burgos	Of the tens of thousands of voter registration forms that it has delivered, Hispanic Federation is aware of only one form that was delivered after the 10-day deadline; Hispanic Federation contacted the voter and ensured he was registered before book closing.
Tr. Day 4, 1162:24- 1163:10	Supervisor Joe Scott	Supervisor Scott is not “aware of any issues or problems with third-party voter registration organizations in Broward County,” does not “have any pending complaints or pending problems with such organizations in Broward County,” and is not “aware of any issues from 2018 or 2016 with third-party voter registration organizations in Broward County.”
Tr. Day 4, 1163:11-14	Supervisor Joe Scott	Supervisor Scott is not “aware of anyone who was unable to vote in Broward County because . . . third-party voter registration organizations turned in their registration form late”
Tr. Day 4, 1163:14-18	Supervisor Joe Scott	Supervisor Scott is not “aware of any complaints or any problems at all with how voter registration was conducted in Broward County before Senate Bill 90 was passed”
Tr. Day 5, 1343:7-12	Supervisor Christina White	Supervisor White is not “aware of any incidents since [she] became Supervisor in 2015 in which a voter in Miami-Dade was prevented from voting because a third-party voter registration organization turned in their voter registration form late.”

Tr. Day 5, 1343:13-16	Supervisor Christina White	No voter has “ever complained to [Supervisor White’s] office about late-delivered voter registration forms from a third-party voter registration organization.”
Tr. Day 9, 2666:12-16	Supervisor Mark Earley	The “vast majority” of voter registration forms are received on time in Leon County.
Tr. Day 9, 2668:16- 2669:9	Supervisor Mark Earley	If a form is received “late,” but before book closing, that voter is still registered to vote. And if a voter shows up at the polls and records show the voter is not registered, they will still be given a provisional ballot, and if the office determines there was a form “turned in after book closing that we didn’t get on the record...we would then count that provisional ballot.”
Tr. Day 10, 2766:7-9	Director Maria Matthews	If a Third Party Voter Registration Organization turns in a form “after the 10 or 14-day deadline, but before book closing, the voter can still vote.”
Tr. Day 10, 2780:11-24	Director Maria Matthews	<p>“Q. Florida’s online voter registration system malfunctioned in 2020 on the final night prior to book closing for the general election; correct?</p> <p>A. It had some challenges.</p> <p>Q. And many voters were unable to access it on that last night; right?</p> <p>A. I would have to go back and look at what our statistics show. It’s not uncommon that there are a lot of people who will try to vote – try to register at the last minute.</p> <p>Q. And that wasn’t the first time that there were issues with Florida’s online voter registration form at the end of the voter registration period; right?</p> <p>A. The system has had prior challenges. The Secretary did do an extended period of time for people to be able to register.”</p>
Tr. Day 10, 2803:5-10	Director Maria Matthews	<p>“You’re aware that that system also crashed right before book closing in the 2018 general election; right?</p> <p>A. It had some challenges.</p> <p>Q. And there were voters who were unable to access it right before book closing in 2018; correct?</p>

		A. Yes.”
ECF No. 549-2, at 129:4-8	Supervisor Alan Hays	Supervisor Hays did not “have any problems in the 2020 election cycle related to third-party voter registration organizations turning in applications late,” is not “aware of any complaints from voters about third-party voter registration organizations turning in voter applications late in Lake County,” and is not “aware of any incident in Lake County where a voter was prevented from voting because of a third-party voter registration organization turning in a registration application late.”

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## II. The Solicitation Definition

### A. The Solicitation Definition is unconstitutionally vague.

Citation	Witness	Evidence
Tr. Day 1, 63:9-64:22	Cecile Scoon	<p>“[F]rom prior years of experience, and I’m talking over 20 years of experience, the understanding of the individual deputies, Supervisors of Elections of what the law requires and the paperwork that needs to be done varies fairly significantly. So it could easily happen that someone says you’re doing something wrong, and then there could be a disagreement or, you know, you’re called out, and that would be very negative for our League members and very hurtful, just very scary. And it’s possible that a Supervisor of Elections person could call the law enforcement and -- because you’re doing something that they think is, you know, a big problem. . . . So rather than go down that negative trail and to expose our members, to expose the potential voter who was trying to vote, and to also not cause distress to the Supervisor of Elections’ office trying to discern, What are you doing? Are you interfering in some illegal way? We’re just not going to do it.”</p>
Tr. Day 3, 746:10-19	Velez Burgos	<p>Hispanic Federation does not understand what the new Solicitation Definition prohibits or allows. “So one example that we use is if someone is about to leave the line and we give them a bottle of water, right, and they stay in line, is that an attempt to influence a voter, right? So those are the things that we don’t know. We don’t know if a driver drops off someone within the 150 feet, if that’s -- if that’s also not allowed.”</p>
Tr. Day 3, 746:22-25	Velez Burgos	<p>Hispanic Federation has “veteran canvassers that have been with us a long time that have already said that they are fearful of being sent to do line-warming activities.”</p>

Tr. Day 5, 1376:8- 1377:11	Supervisor Christina White	“I would represent to you that in Miami-Dade, anyway, it can be impossible to discern what is solicitation, what is not solicitation. . . . [I]t is so impossible with the volume of sites and the volume of people that we are dealing with out there to discern who is engaging in activity to influence, who is not, you know, who is providing nonpartisan assistance, who is not. And so, you know, a good policy is one that is easy to understand, is easy to administer, and is easy to enforce. And so, you know, to put this type of interpretation on my essential poll workers who have, you know, been to training for less than a day I think is something that can be handled wildly inconsistent in those locations. So, again, to keep our voters safe, we ask everybody to conduct all activity outside of the 150 feet.”
Tr. Day 5, 1377:12-16	Supervisor Christina White	“Q. To make sure I’m understanding you correctly, the reason or part of the reason why you prohibit any activity within the 150 feet is that this definition would be so difficult to apply consistently to individual incidents; is that right? A. Yes, I can agree with that.”
Tr. Day 5, 1378:4-13	Supervisor Christina White	“Q. Yes. My understanding from what you’ve said is that part of the reason why you prohibit any activity within the 150-foot buffer zone is that this definition would be so difficult to consistently apply on the ground to individual incidents; is that right? Do you agree with that? A. I don’t know if I would agree with that the definition is hard to interpret, but I think it’s hard to administer. It is difficult for my staff to know what exactly it is that you are doing, what your intentions are to be able to apply it consistently.”
Tr, Day 10 at 2812:25- 2813:17	Director Maria Matthews	Florida Statutes 102.031 “does not prohibit all contact with voters within the buffer zone.”

Tr. Day 10, 2813:18-24	Director Maria Matthews	Under the Solicitation Definition, “a nonpartisan group can encourage voters to stay in line without discussing any candidate or issue as long as they are not harassing or soliciting the voter.” But “[t]he problem is enforcement and people following it. I think most Supervisors take a very hard line because it’s very hard to distinguish, and voters don’t like to be disturbed while they are in line.”
Tr. Day 10, 2814:11-20	Director Maria Matthews	“Q. What about a nonpartisan group that wanted to give water or food to voters in line to vote? Does the solicitation definition prohibit that, in your view? A. I think have you to look at the facts and circumstances. Is it a bottled water that has some signage on it or label on it that promotes a particular issue or group that is associated with – that may be nonpartisan but it’s typically associated with a particular party, a picture of someone? Those are facts and circumstances that you can’t draw, you know, a straight line on that.”
Tr. Day 10, 2815:12-23	Director Maria Matthews	There are 67 Supervisors of Elections with more than 6,000 polling places staffed by many different people, many of them temporary employees.
Tr. Day 13, 3512:24- 3513:3.	Supervisor Mark Earley	SOE Earley on the Solicitation Definition: “I would tend to agree it’s somewhat vague.”
Ex.748, ECF No. 634-20	--	Leon County Supervisor of Elections staff member on the new Solicitation Definition: “New language is very vague. What does ‘intent to influence’ mean?”
ECF 549- 3,47:11-20, 169:10-23, 170:9-22, 190:5-12	Supervisor Craig Latimer	Supervisor Latimer explained that while he does not believe that SB 90 prohibits giving food or water to voters in line to vote, that he would not allow a nonpartisan volunteer to distribute water within the zone because “I don’t have any idea what that person is talking to the voter about.”



		<p>He acknowledged that solicitation is defined as “trying to encourage somebody to vote for a person or for or against a referendum” and that it would “depend on the situation” to know whether or not contact in the zone constituted solicitation. He agreed that there is an aspect of judgment involved in enforcing the non-solicitation provision.</p> <p>He separately explained that the 150 ft buffer zone “mean[s] that you shouldn’t be having any contact with someone’s that’s in the line.”</p>
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**B. The Solicitation Definition interferes with political expression**

Citation	Witness	Evidence
Tr. Day 1, 58:17-20	Cecile Scoon	We often go places where maybe voters in that particular community, they may have more questions or they may have more fears or more concerns about the whole voting process. So we look for those kind of precincts
Tr. Day 1, 61:10-24	Cecile Scoon	When Ms. Scoon goes to polling places, “A good portion is physical support, and then others are emotional support. The fact of the matter is that for many persons of color -- I said Black people -- they have not had a lot of good experiences with the government. The government has often been the police. It’s often been somebody in authority who is challenging them: Why are you here? What are you doing? making them feel uncomfortable and often disrespected. So our presence there and when they ask for our help, we’re just providing a little bit of a shield and a vitamin so they feel that, you know, their voice is going to be heard; they’re going to be given every consideration. And for those people I think it’s education for them and it’s also emotional support.”
Tr. Day 1, 61:20-24	Cecile Scoon	So our presence there and when they ask for our help, we’re just providing a little bit of a shield and a vitamin so they feel that, you know, their voice is going to be heard; they’re going to be given every consideration. And for those people I think it’s education for them and it’s also emotional support.
Tr. Day 1, 61:25-62:6	Cecile Scoon	Voters who Ms. Scoon helps are “So grateful, just like, I am so glad you’re here. You hear that, and you feel really good. Again, you’re volunteering your time, and it’s really powerful to hear an individual voter say, I’m so glad you’re here. Thank you. I was really nervous about this, and I feel much better.”

Tr. Day 1, 62:16-63:2	Cecile Scoon	Even when Ms. Scoon is unable to resolve an issue, “even those people, even though they still maybe have to vote provisionally, or a few times they couldn’t vote at all, just to know that a nonpartisan, unbiased organization stood with them through that process is powerful.”
Tr. Day 1, 63:3-8	Cecile Scoon	After Senate Bill 90, Ms. Scoon and the League are “absolutely not going to [assist voters in the buffer zone] anymore because the interpretation of what the law means and providing assistance is so broad.”
Tr. Day 1, 398:7-17	Jasmine Burney-Clark	SB 90 “does require that there is a 150-foot parameter, and the presence of a drop box at a site of our choosing is no longer an option. It is also not an option for us to be within 150 feet of that drop box if we were to host an event at the site where that drop box took place. And so, again, the absence of a drop box, the tool that we need to use to mobilize voters to be able to submit their ballots, has been limited in our reach, and so if we can’t access it, then we aren’t able to provide that to folks, and so that’s why we have chosen not to go the route of, again, the tradition of providing Souls to the Polls to the community.”
Tr. Day 2, 517:4-10	Anthony Brown	NAACP branches engage in line-warming activities “to show [voters] the importance of staying in line to cast their most precious and priceless right, and that’s their vote, and so that we can help them achieve that by making it less strenuous on them and that they would be there and withstand whatever’s necessary to cast their vote.”
Tr. Day 2, 529:4-10	Anthony Brown	NAACP Florida State Conference does not intend to continue line-warming because they “consider [SB 90] too confusing, and [they] don’t want [their] people to get prosecuted and be criminalized from doing and enhancing what [they] feel is [their] community’s most precious and priceless right, and that’s their right to vote.”

Tr. Day 7, 1981:1- 1982:5, 1984:22-24, 1991:14- 1992:8	Cliff Albright	BVM's "voter comfort" or line warming activities "have an impact in helping people to stay in line, to engage in the process of voting." Providing this support is also about "sending a message about celebrating the voting experience." "Part of the purpose is to communicate to voters that they matter, even as they are waiting in long line." Even if poll workers were to provide the same kind of assistance, it would not communicate the same message to voters as when BVM does it directly.
Tr. Day 7, 1986:9-23	Cliff Albright	As a result of SB 90, BVM will not allow staff or its volunteers to provide assistance to voters within the 150 ft zone.
Tr. Day 13, 3474:8-17	Director Maria Matthews	"Q. Director Matthews, you were asked about some complaints about solicitation at polling place. Do you recall that? A. Yes. Q. Were those complaints about nonpartisan organizations handing out water to voters? A. I don't recall that being the case, no. I think it was more about harassment, not just an abstraction but a harassment in terms of people – loud noises, being approached, that sort of thing."

***League* Plaintiffs' Post-Trial Brief: Appendix 5**  
**Key Testimony Regarding *Anderson-Burdick***

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## League Appendix 5 – Key *Anderson-Burdick* Testimony

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## I. The Registration Disclaimer Provision

### A. The Registration Disclaimer Provision imposes an undue burden on the right to vote.

Citation	Witness	Evidence
Tr. Day 1, 43:8-19	Cecile Scoon	When Ms. Scoon registers voters she offers to deliver the voter registration form for the voter because she is “just very concerned that people are so busy. They’re out and about with often their family and children. You know, they can get distracted, and it could get in their purse or their backpack or in the car and never come back out. So we are so excited that people are having this opportunity and they’re entering into this realm of civic engagement. We want to be sure that, you know, the deal gets done and take it right in.”
Tr. Day 1, 45:23-46:2	Cecile Scoon	When Ms. Scoon collects forms or receives forms collected by other League members, “It was my practice to pretty much turn them in the very next day no matter what. I would just go and turn them in.”
Tr. Day 1, 49:9-19	Cecile Scoon	The required disclaimer is “invalidating all the work that we’ve done. It’s building distrust in the person you are trying to build trust with . . . making people distrust us when we are trying to build trust, have those conversations to build the trust, and then you have to turn around and kind of break it down.”
Tr. Day 1, 49:20-50:1	Cecile Scoon	“The other thing is, frankly, people are busy; they are busy. And if you convince them and talk to them and have that conversation how voting is important, especially for our new voters, who some of them have never registered before, and you point out that, Oh, you can do it later, they may say in their head they are going to do it later, but they haven’t done it up until then so the chances of them doing it go way down.”

Tr. Day 1, 50:15-51:2	Cecile Scoon	“I have experienced people’s response when I direct their attention to the warning, and it’s – it’s oftentimes very negative. I recently was registering voters at the library, and a young man came up and I was explaining it to him. And he was like, Oh, okay. That sounds good. And I said, Sir, would you please read this warning here? And he was all ready to register to vote; and after he read the warning, he kind of got a little quizzical look on his face and was, like, withdrawing from me. And he says, You know what? I’m going to do it later. I don’t – I’m not going to do it now. And he walked away. He did not register.”
Tr. Day 1, 52:3-14	Cecile Scoon	“Q. Do you feel like you can register voters as effectively as you could before SB 90? A.No we cannot...and some people have said they don’t want to do voter registration anymore because it’s too embarrassing.”
Tr. Day 1, 192:7-8	Esteban Garces	Poder Latinx is often the very first interaction many voters have with American democracy.
Tr. Day 1, 195:7-16	Esteban Garces	Poder Latinx registers voters in high-density areas and areas with high foot-traffic such as supermarkets, libraries, and concerts.
Tr. Day 1, 213:18-23	Esteban Garces	Poder Latinx intentionally focuses its outreach efforts to “low propensity Latinx voters...who don’t traditionally participate in elections for one reason or another.”
Tr. Day 1, 260:7-8	Rosemary McCoy	The Harriet Tubman Freedom Fighters conducts voter registration activities at laundromats, bus stations, the courthouse, and convenience stores.
Tr. Day 1, 262:1-17	Rosemary McCoy	The Harriet Tubman Freedom Fighters focuses its voter registration outreach to low-income Floridians who might not have access to a computer or the internet to register to vote online; those who may lack transportation to deliver their voter registration application to the Supervisor’s office; or the funds to purchase a stamp to mail their voter registration application.



Tr. Day 1, 272:19- 273:2	Rosemary McCoy	Registering to vote online can be a barrier for many low- income people.
Tr. Day 1, 276:21- 277:6	Rosemary McCoy	If you give someone a registration form to turn in, there is zero chance they will . “[V]oter registration is not on the forefront of people[’s] minds. That’s why they haven’t registered to vote.”
Tr. Day 2, 449:10-14	Anthony DePalma	“Q. What are some of the barriers people with disabilities face registering to vote? A.Sure. So Disability Rights Florida believes that some of these barriers include inaccessible websites in seeking to become registered to vote.”
Tr. Day 2, 621:13	William Cooper	“African-American unemployment rate averaged 7.2 percent.”
Tr. Day 2, 623:14-20	William Cooper	“You can see that Black households trail most Latinos and nonHispanic White households in terms of having a computer or a smartphone or a tablet, and the same holds true for broadband Internet where 80.1 percent of African-American households have broadband Internet, 84.7 percent of Latino households have broadband Internet versus 88.8 percent of the nonHispanic White households.”
Tr. Day 2, 623:24- 624:1	William Cooper	Broadband Internet access is a socioeconomic metric.
Ex. 10 at 9, ECF No. 608-16	William Cooper	“For working age (18-64) Floridians, 9.7% of Whites live in poverty, compared to 16.3% of African Americans and 12.6% of Latinos.”
Ex. 10 at 62, ECF No. 608-16	William Cooper	“10 percent of Black households and 5 percent of Latino households do not have a computer, smartphone, or tablet.”
Tr. Day 2, 629:17-19	William Cooper	“I believe it works out to about 114,000 households that are African-American that do not have a vehicle and around 126,000 Latino households.”

Tr. Day 4, 1131:1- 1131:14	Leah Nash	The League has fewer members who are willing to do voter registration because the disclaimer and warning that they must deliver to voters
Tr. Day 4, 1162:12-19	Supervisor Joe Scott	<p>“Q. Do you think that third-party voter registration organizations can help to reach voters who might otherwise not register to vote?</p> <p>A. Absolutely. You know, a lot of times these are grassroots groups so they are regular people, volunteers from the community who have more trust than government agencies do, and that’s why they’re able to reach potential voters that other – you know, that may not be able to be reached by government agencies.”</p>
Tr. Day 4, 1164:20- 1165:13	Supervisor Joe Scott	As a result of the Disclaimer Provision, “people just are far less likely to volunteer and spend a Saturday doing something that could potentially get them into trouble.” “[A]s more and more gets added into the law around what these voter registration drives – what the people in the voter registration drives are allowed to do, it makes – it makes a lot of people just decide to step away and decide not to do it at all. You know, they’ll find some other way to volunteer and serve their community other than voter registration because they are worried that voter registration will get them into trouble.”
Tr. Day 4, 1168:2-24	Supervisor Joe Scott	“You know, if you’re – you’re telling people that you are conducting a voter registration drive and your whole intent is to help people in your community to get registered to vote, but now you are required to say to them that you might not turn in the form, that is – obviously that would, you know, erode trust. . . . So there is a huge service being done by these organizations. And to have them go out there and try to do this service to try to do something positive and good in their community and then to have to be told by law that they have to erode that trust while they are conducting their public service, I would say that it

		feels like a very wrong thing to require people to do.”
Tr. Day 5, 1236:13-18	Supervisor Joe Scott	<p>“Q. You’re not aware – my question is just simply this: You’re not aware of any voters who declined to register to vote after hearing the disclosures required by Senate Bill 90 in Broward County; is that correct?</p> <p>A. I am very much aware that that happens. So, yes, I am aware that that has happened.”</p>
Tr. Day 5, 1237:3-11	Supervisor Joe Scott	<p>“[T]here have been . . . numerous reports of people. People who are doing their voter registration drives and are, you know, doing their best to comply with SB 90, and when they do say that to people, people, you know – they’ll say, Okay. I’ll do it online, or something like that and they walk away. That is a very common occurrence that I get in terms of feedback from people who are out in the field conducting voter registration drives.”</p>
Tr. Day 5, 1238:6-10	Supervisor Joe Scott	<p>Because of the Registration Disclaimer, “[t]hey’re just less effective than they would be as a voter registration organization, so that means that there are people who would have been registered to vote were it not for Senate Bill 90; because of Senate Bill 90 they’re not registered to vote today.”</p>
Tr. Day 5, 1343:3-6	Supervisor Christina White	<p>White agrees that Third-Party Voter Registration Organizations can “help to reach potential voters who otherwise might not register to vote.”</p>
Tr. Day 5, 1343:7-12	Supervisor Christina White	<p>Since becoming supervisor in 2015, Supervisor White is unaware of any instance of a voter unable to vote because a Third-Party Voter Registration Organization returned an application after book closing.</p>
Tr. Day 5, 1409:6-10	Jared Nordlund	<p>Unidos conducts voter registration in “high-traffic commercial areas, typically in densely Hispanic precincts” where canvassers “ask people to register to vote while they are out shopping or dining. We also – we also would do it at events, so if there are community events happening, we also would do it there.”</p>

Tr. Day 5, 1423:14-19	Jared Nordlund	“Having to tell a voter a disclaimer, plus also probably have to explain a disclaimer in plain English or Spanish, that they’ll take more time for a voter registration to be completed by the canvasser and their production rates would probably become lower than what they were before SB 90.”
Tr. Day 5, 1494:16-22	Jared Nordlund	“We prefer to have people vote – register to vote in person where we can guide them through the form. When the State launched their online website, we got a lot of complaints from voters that couldn’t navigate that website and were turned away from wanting to vote – registering to vote. And so we provided a service to the community by doing it in person where we can walk them through the form.”
Tr. Day 6, 1779:18- 1780:5	Dr. Morgan Kousser	“It should be noted in this regard that these groups focused on voter registration and participation by minority voters and other disadvantaged people. I quoted the earlier figure for the 2008 election, I think, where studies showed that they were twice as likely to register minority voters as White voters. By 2020, they were five times more likely to register White voters than – than – I’m sorry – voters of color than White voters. So this was – these were organizations which increasingly aimed at increasing the registration of voters of color. There are more of those organizations that exist now, if you look at the websites, than there were before. And this, to the extent that it undermined the organizations, could be expected to decrease the registration of people of color in Florida.”
Tr. Day 7, 2035:22- 2036:8	Andrea Mercado	Florida Rising Together registers voters “us[ing] a combination of methods, but sometimes they’re going door to door registering potential voters at their homes, but oftentimes they’re going to sites we call, like, high density, so laundromats, bus stops, carnivals, Department of Motor Vehicles, like anyplace where we may see a concentration of eligible voters and specifically targeting

		underrepresented populations, so African-American and Latino communities.”
Tr. Day 7, 2039:11-17	Andrea Mercado	“We have seen a decrease in the number of forms. So prior to SB 90, on average a voter registration canvasser would collect around 300 forms a week. They work 29 hours a week. And since the passage of SB 90, they’re collecting more like an average of 100 forms a week. So we are seeing just the number of voter registration forms that they typically collect in an hour has gone down significantly.”
Tr. Day 8, 2226:19-22	Dr. Michael Herron	“A. So there’s been empirical work studying cost of voting and turnout, and what the literature shows is that where you have states that have higher costs of voting, they have lower turnout, all things equal.”
Tr. Day 8, 2227:1-4	Dr. Michael Herron	“[A] natural corollary to what I said is if you have states where the cost of voting decreases, according to this empirical literature, one would expect to see a greater turnout, all things equal.”
Tr. Day 8, 2295:2-6	Dr. Michael Herron	“3Pvro’s lower the cost of voting, and that’s because they lower the cost of voter registration . . . [I]n Florida registration is required to vote. So for anything that lowers the cost of registration, it also lowers the cost of vote.”
Tr. Day 8, 2295:13-21, 2296: 3-15	Dr. Michael Herron	Dr. Herron and Dr. Smith previously studied the effects that Florida HB 1355’s restrictions on 3Pvro’s had on overall voter registration in Florida. “[T]he question we explored in our paper was whether [HB 1355] had demonstrable consequences for voter registration in Florida, and what we -- we analyzed, effectively, the pre-HB 1355 period and the post-HB 1355 period, and we noted that there were drops in registrations.” “[W]e found drops [in overall voter registration], and that would suggest -- that would imply, I would say, that individuals who are affected by HB 1355’s restrictions on 3Pvro’s did not simply switch to another form of voter registration. Had they done that, we would have observed no effect.

		We would have observed restrictions on HB 1355 and no consequences for registrations. And that's not what we found. We found consequences. So that means that some individuals who registered with 3PVROs, when that was difficult, they basically didn't register to vote."
Tr. Day 8, 2300:22-24, 2301:5-8, 2302:9-21	Dr. Michael Herron	Table 30 is a breakdown of voter registration methods in the August 2021 voter file. The table shows "that there were roughly 6.7 million voter registrations in the post-January 2012 period." Of those, approximately 500,000 voter registrations or "7.36 percent of all voter registrations that were tracked in [the August 2021 voter file] were through 3PVROs." However, that number does not fully capture the total number of times a voter has relied on a 3PVRO for voter registration. "The reason is that the way Florida registration works, when an individual registers to vote for the first time because, say, he or she turned 18 or moved to Florida, that person gets a registration method in the voter file maintained by the Department of State. If an individual who is already registered moves or updates his or her registration, that person will get a new form of registration . . . it won't include 3PVRO because that will have been superseded."
Tr. Day 8, 2303:16-23	Dr. Michael Herron	Black voters register through 3PVROs at greater rates than White voters. Table 21 shows that post-January 2012 15.37 percent of Black voters registered through a 3PVRO as compared to 2.79 percent of White voters.
Tr. Day 8, 2304:5-11	Dr. Michael Herron	"So what this shows is that Black voters and Hispanic voters and other race voters, for that matter, use 3PVRO registration much more often than White voters. I can see that from looking at the four numbers in the 3PVRO row, roughly 15 percent, 11 percent for Black and Hispanic voters, respectively. About 3 percent for White, and then around 13 percent for other race voters."



Tr. Day 8, 2305:16-21	Dr. Michael Herron	Dr. Herron also analyzed voter registration methods by race and by county. Figure 10 shows “that across counties almost everywhere has Black 3PVRO rates greater than White 3PVRO rates. There are only four counties that go against this trend, three of them have effectively zero 3PVRO registrations for anyone. So what this shows is consistency across Florida and the Black-White gap in 3PVRO registrations.”
Tr. Day 8, 2306:16-22	Dr. Michael Herron	“So I observe the Democratic rate of 10.48. That means that of Democrats, 10.48 were registered with 3PVROs. If I then continue to the right, I see Republicans, 3.9 – we’ll call it 4 percent, are registered by 3PVROs. And then there are figures for NPA and Other. And what we can observe here is that the Democratic 3PVRO rate is much greater than the Republican rate of about 10 percent versus 4 percent.”
Tr. Day 8, 2306:16-22, 2307:13-14	Dr. Michael Herron	Table 33 is a breakdown of voter registration by party affiliation using the August 2021 voter file. The table shows that “Democratic 3PVRO rate is much greater than the Republican rate of about 10 percent versus 4 percent” in the post-January 2012 period. Dr. Herron’s analysis of voter registration methods by party affiliation and by county shows that “Democratic and Republican 3PVRO usage in Florida overall is consistent across Florida counties as well.”
Tr. Day 8, 2308:22-24, 2310:16-18	Dr. Michael Herron	Table 35 shows the “20 counties that produced lists of 3PVRO registrants in response to the request for discovery on these lists.” “I conclude that in Florida 3PVRO registration is used disproportionately often by Black voters and Hispanic voters as well, in other words, nonWhite voters.”
Tr. Day 8, 2312:16-18	Dr. Michael Herron	“[U]sing county-supplied lists of 3PVRO registrants, [I conclude] that Democratic voters are disproportionately heavy users of 3PVRO registration.”

Tr. Day 8, 2313:2-8	Dr. Michael Herron	<p>“Q. So looking collectively at your different analyses regarding 3PVRO reliance using these different data sources, what conclusions do you draw about the impact of SB 90’s restrictions on 3PVROs?</p> <p>A. I conclude that the restrictions will disproportionately burden minority voters, in particular, Black and Hispanic voters, and Democratic affiliates.”</p>
Tr. Day 8, 2332:24- 2333:7	Dr. Michael Herron	<p>The Registration Disclaimer “would serve to send a message to the potential registrant that this is a risky proposition -- in fact, that’s clear in the first message -- there are other ways to register to vote. And, relatively speaking, if we think about the value that any voter thinks about different registration methods, what those messages will do is relatively push down the value of 3PVRO registration and raise the value, relatively speaking, of the others in the eyes of the voter.”</p>
Tr. Day 8, 2333:14-16	Dr. Michael Herron	<p>“I can tell from the data that many use 3PVRO registration, so they must value it in its pre-SB 90 form. I can infer that from revealed behavior.”</p>
Ex. 5 at 94, ECF No. 608-1	Dr. Michael Herron	<p>In 2018 and 2019, over 159,000 voters registered to vote through Third-Party Voter Registration Organizations, amounting to over 10 percent of all Florida voter registrations in that period.</p>
Ex. 5 at 94, ECF No. 608-1	Dr. Michael Herron	<p>59,805 voters registered or updated their registration through a Third-Party Voter Registration Organization.</p>
Ex. 5 at 101, ECF No. 608-1	Dr. Michael Herron	<p>Dr. Herron explaining among post-January 2012 voter registrations in the August 2021 statewide voter file, the Democratic third-party vote registration rate was 10.48 percent as compared to Republican rate of 3.97 percent.</p>
Ex. 5 at 107, ECF No. 608-1	Dr. Michael Herron	<p>“Democratic affiliates make up 52.8 percent of registered voters but 64.6 percent of such voters who registered via 3PVRO. In contrast, in every Florida county in the table, Republican affiliates are disproportionately unrepresented among 3PVRO. Again consulting Leon County, these</p>



		individuals make up 26.1 percent of registered voters but only 8.8 percent of 3PVRO-registered voters.”
Tr. Day 9, 2665:23- 2666:11	Supervisor Mark Earley	SOE Earley believes that third-party voter registration organizations “absolutely” provide valuable assistance to voters and reach voters that his office does not. “I know I just got a report from staff that we are getting roughly 100 or so every week from 3PVROs [] that we are missing” in our “outreach efforts.”

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**B. The Registration Disclaimer Provision is not adequately supported by a sufficiently weighty state interest.**

Citation	Witness	Evidence
Ex. 5 at 94, ECF No. 608-1	Dr. Michael Herron	In 2020 59,805 voters registered or updated their registration through a Third-Party Voter Registration Organization.  In 2018 and 2019 alone over 159,000 voters registered through Third-Party Voter Registration Organizations.
Tr. Day 1, 49:9-19	Cecile Scoon	The Registration Disclaimer Provision “invalidate[s] all the work that [the League has] done. It’s building distrust in the person you are trying to build trust with.”
Tr. Day 4, 1168:2-24	Supervisor Joe Scott	Third-Party Voter Registration Organizations register voters with the “whole intent to help people in your community to get registered to vote, but now you are required to say to them that you might not turn in the form, that is – obviously that would, you know, erode trust.”
Tr. Day 5, 1343:7-12	Supervisor Christina White	Since becoming supervisor in 2015, Supervisor White is unaware of any instance of a voter unable to vote because a Third-Party Voter Registration Organization returned an application after book closing.
Tr. Day 8, 2226:19-22	Dr. Michael Herron	“A. So there’s been empirical work studying cost of voting and turnout, and what the literature shows is that where you have states that have higher costs of voting, they have lower turnout, all things equal.”
Tr. Day 8, 2227:1-4	Dr. Michael Herron	“[A] natural corollary to what I said is if you have states where the cost of voting decreases, according to this empirical literature, one would expect to see a greater turnout, all things equal.”
Tr. Day 8, 2295:2-6	Dr. Michael Herron	“3PVROs lower the cost of voting, and that's because they lower the cost of voter registration . . . [I]n Florida registration is required to vote. So for

		anything that lowers the cost of registration, it also lowers the cost of vote.”
Tr. Day 10, 2780:11-24	Director Maria Matthews	<p>“Q. Florida’s online voter registration system malfunctioned in 2020 on the final night prior to book closing for the general election; correct?</p> <p>A. It had some challenges.</p> <p>Q. And many voters were unable to access it on that last night; right?</p> <p>A. I would have to go back and look at what our statistics show. It’s not uncommon that there are a lot of people who will try to vote – try to register at the last minute.</p> <p>Q. And that wasn’t the first time that there were issues with Florida’s online voter registration form at the end of the voter registration period; right?</p> <p>A. The system has had prior challenges. The Secretary did do an extended period of time for people to be able to register.”</p>
Tr. Day 10, 2803:5-10	Director Maria Matthews	<p>“You’re aware that that system also crashed right before book closing in the 2018 general election; right?</p> <p>A. It had some challenges.</p> <p>Q. And there were voters who were unable to access it right before book closing in 2018; correct?</p> <p>A. Yes.”</p>
Tr. Day 13, 3417:7-21	Director Maria Matthews	<p>Director Matthews testified that the purpose served by the Registration Disclaimer “is just like – I analogize it to informed consent by a doctor. You are just letting the voter know that they – that something may not – that their voter registration may not make it in time to the – for them to either be registered, if they are a new registrant, or for a change to their voter application to make it in time, so that they have options. If they don’t feel comfortable handing the voting registration back to the individual, they can deliver it themselves and ensure also that it gets in timely, or that they can go online and register, which is real-time</p>

		registration, and/or change to their voter application form, and, moreover, that they can – that they have a means to be able to track the status of their voter registration application. All of that contributes to the voter confidence in the process.”
Ex. 546, ECF No. 462-47 through Ex. 612, ECF No. 463-13	Supervisors of Elections	Supervisors of Elections’ responses to the League’s Requests for Admissions.  Of the 67 Supervisors, 64 are unaware of <i>any</i> voter in their county who was unable to vote in 2020 because a Third-Party Voter Registration Organization returned a registration form past book closing or not at all
ECF No. 549-2 at 129:4-8	Supervisor Alan Hays	Supervisor Hays did not “have any problems in the 2020 election cycle related to third-party voter registration organizations turning in applications late,” is not “aware of any complaints from voters about third-party voter registration organizations turning in voter applications late in Lake County,” and is not “aware of any incident in Lake County where a voter was prevented from voting because of a third-party voter registration organization turning in a registration application late.”
ECF No. 549-3 at 56:6-16	Supervisor Craig Latimer	The Hillsborough SOE is not aware of any voters who were not registered in time to vote in the election because of a third-party organization in 2020, 2018, or 2016.

## II. The Vote-By-Mail Request Provision

### A. The Vote-By-Mail Request Provision imposes an undue burden on the right to vote.

Citation	Witness	Evidence
Tr. Day 1, 90:11-14	Cecile Scoon	“I think it’s quite possible that people might think that they’ve already asked for their vote-by-mail ballot, thinking of the old cycle that used to be four years, and get confused and not request it.”
Tr. Day 1, 450:1-8	Anthony DePalma	Voters with disabilities “experience voter ID difficulties” because not every voter with a disability “has a driver’s license or a state-issued identification card” and some “might also not wish to provide aspects of their own social security number.”
Tr. Day 1, 450:15-17	Anthony DePalma	“Individuals with disabilities experience technological or digital divide more acutely than their nondisabled peers.”
Tr. Day 1, 454:10-25	Anthony DePalma	Supervisors of Elections’ websites often present a range of accessibility barriers for voters with disabilities to request a vote by mail ballot online.
Tr. Day 1, 457:15-458:6	Anthony DePalma	Voters with disabilities face barriers to accessing polling places and casting their ballots in person. Those barriers include inaccessible parking sites and drop-off locations, limited numbers of parking spaces and the specifications and dimensions of those spaces. Other barriers include path-of-travel such as areas that are not wide enough to traverse and issues with the turning radius inside of doorways.
Tr. Day 2, 528: 3-14	Anthony Brown	“Q: [D]o the changes to vote-by-mail request applications impact the Florida State Conference’s members? A: ... [W]e have elderly people who have gotten used to the two cycles, and I’ve been and my membership have been asked, Well, would y’all help us remember that we have to do it every year

		now so that we don't lose our precious and priceless right to vote?"
Tr. Day 2, 598:25-599:2	William Cooper	There are 2.7 million disabled persons in Florida.
Tr. Day 2, 623:14-20	William Cooper	19.2% of Black households, 15.3% of Latino households, and 11.2% of white households in Florida do not have broadband internet at home.
ECF No. 467- 10, p. 62	William Cooper	7.2% of Black households, 5.2% of Latino households, and 5.3% of white households in Florida do not have a computer, smartphone, or tablet.
Tr. Day 2, 629:3-8	William Cooper	10.4% of Black households, 7.3% of Latino households, and 4.8% of white households in Florida do not have access to a vehicle. That works out to about 114,000 Black households and 126,000 Latino households without a vehicle.
Tr. Day 2, 632:19-22	William Cooper	"10.1 percent of the 18 to 64 population has a disability, and 32.4 percent of the 65 and over population has a disability, and for the entire 18 and over population that averages out to 15.9 percent."
Tr. Day 2, 635:7-12	William Cooper	There are 799,988 voting-age Floridians with vision difficulties and 508,914 voting-age Floridians with hearing difficulty.
Tr. Day 3, 695:13-24, 695:25-696:5, 696:9-18	Alan Madison	Voting by mail is important to Mr. Madison because "[m]y father-in-law right now is medically and mentally very challenged. We have him down in Boynton Beach, but it requires us periodically, in fact frequently, to go down and help out." Mr. Madison's father-in-law lives "[a]bout an hour and a half" away. Mr. Madison must visit him "weekly, sometimes more often," and sometimes with no advance notice.
Tr. Day 3, 702:5-15	Alan Madison	The change in validity period for vote-by-mail requests affects Mr. Madison because "there's a lot of stuff going on in my life, including my father-in-law, and it's just one more thing I have to worry about: Will I remember to do it? Will I

		pay attention to any notifications that I may or may not receive and do it in time so I can exercise my right to vote? . . . . Not that I have a lot of memory issues, but when you get busy doing thing[s], yes, sometimes you forget.”
Tr. Day 4, 1174:2-8	Supervisor Joe Scott	Where a Supervisor does not have either a drivers’ license number or a Social Security Number, “then that person would actually have to submit a new voter registration form in order to provide us with that information first before they could actually request a vote-by-mail ballot, because we would have to have that information on file in order for them to request a vote-by-mail ballot.”
Tr. Day 4, 1174:21- 1175:6	Supervisor Joe Scott	To request a mail ballot, a voter “would have to remember what they used when they registered to vote. If they used their driver’s license number or did they use their last four, they have to remember that.” Otherwise, “[w]e would not be able to process it.”
Tr. Day 4, 1175:10-21	Supervisor Joe Scott	A mail ballot must be requested “ten days before” election day, and if a request was received on the deadline without the correct identification number, the Supervisor could send a mail ballot “[o]nly if we were able to get in touch with them in time.”
Tr. Day 4, 1175:22- 1176:10	Supervisor Joe Scott	As of last fall, “we had over 70,000 people in Broward County . . . who did not have either a driver’s license number or a last four of their social security number on file with us.” For those voters, “there’s no way for them to validly request a mail ballot without first separately updating their registration information.”
Tr. Day 4, 1187:2-6	Supervisor Joe Scott	“[S]tarting this year, 2022. . . the list of people that we have built up now will get completely wiped away, and we will have to re-key everybody in who wants to continue to receive vote-by-mail.”

Tr. Day 4, 1187:7- 1190:2	Supervisor Joe Scott	Supervisor Scott will do “[e]verything we can” to inform voters that their vote-by-mail requests expire, but “none of these types of communication are very effective,” and there is “not a chance” that everyone will be reached. “[W]e do everything that we can, but we won’t – we won’t reach everybody. There’s no – it’s a – I would say that’s impossible.”
Tr. Day 4, 1211:17- 1212:3	Supervisor Joe Scott	“[W]e’ve seen directly that there was an increase in voter participation in [the 2021] municipal elections as a result of more people requesting vote-by-mail ballots for the 2020 cycle.” But “Senate Bill 90’s change to the validity period of vote-by-mail ballots will reduce turnout in municipal elections . . . [w]ithout a doubt. Because when people receive those vote-by-mail ballots, they know it’s another way of notifying people that there is an election, and people are far more likely to vote if they receive a vote-by-mail ballot than if they do not.”
Tr. Day 4, 1285:18- 1286:9	Supervisor Brian Corley	<p>“Q. And before Senate Bill 90, were voters in Pasco County able to renew a request for a vote-by-mail ballot by checking a box on the envelope when they returned their ballot?</p> <p>A. Yes, sir, on the return certificate envelope. Yes, sir.</p> <p>Q. Was that a popular method in Pasco County?</p> <p>A. Yes, I would say so.</p> <p>Q. Did many voters use that method?</p> <p>A. Yes, sir.”</p> <p>...</p> <p>“Q. After Senate Bill 90 can you still allow voters to renew their vote-by-mail requests using a check box?</p> <p>A. No, sir.”</p>
Tr. Day 4, 1287:3-13	Supervisor Brian Corley	There are about 10 to 11,000 voters in Pasco County who don’t have an identification number on file, and those voters “would not be able to” request a vote-by-mail ballot “without updating their registration separately.”



Tr. Day 4, 1089:7-18	Susan Rogers	Ms. Rogers is visually impaired: “I have no central vision, which is your focusing vision, so to try to understand perhaps that -- how I see, if you put a Band-Aid on your glasses, a circle Band-Aid or a strip Band-Aid, and cover the entire central part of your vision, a little bit to the peripheral and perhaps also spread Vaseline all over your glasses and tried to see things that way, that’s how I see. I have to magnify things or have things read to me. I’m not mobile. I don’t drive, obviously. And I have to pretty much stay in my familiar world.”
Tr. Day 4, 1091: 3-17	Susan Rogers	Ms. Rogers regularly votes by mail. “I voted by mail since -- well, I voted by mail previously in Colorado. And then in Florida, after the 2012 election, I voted early there, and since then I’ve voted in 13 elections by mail.” That included in the 2020 general election and a municipal election in 2021.
Tr. Day 4, 1091:19- 1092: 3	Susan Rogers	Voting by mail is important to Ms. Rogers because of “[my] vision, my mobility. I have difficulty. Obviously, I have to arrange for transportation and pay for transportation to go to the polling place, and then I’m a little lost anytime I leave my home in terms of navigating and getting around. And then reading, I can’t read the ballot. So I have to use devices or have someone assist me in reading it and in filling parts of it out.”
Tr. Day 4, 1095:4-9	Susan Rogers	To request mail ballots in the past, “I have checked a box on the ballot that you return. It’s on every ballot where you get -- provide your signature and address, and it states, Do you want to continue to vote-by-mail? And I would check that box.”
Tr. Day 4, 1095:15-17, 1095:19-23	Susan Rogers	The check-box method makes Ms. Rogers “[g]leeful. It’s very simple, and I thought it was requesting a ballot universally forever, that I would never have to worry about remembering to do anything again.” It’s simple because “just a

		box you check and you say -- and you know that the next election that's coming up, whether it be - there were three in 2020, so each ballot I know would come to me, and I don't have to worry about filling out any forms or doing anything else."
Tr. Day 4, 1096:14- 1100:12	Susan Rogers	Requesting a ballot by phone is an extremely involved and difficult process because Ms. Rogers' vision impairment makes it difficult for her to look up a phone number and use her phone. Because Ms. Rogers is "disabled and indigent," a phone is provided to her but "it doesn't have a lot of adaptive features [or] accessibility features to it."
Tr. Day 4, 1100:13- 1101:8	Susan Rogers	Requesting a ballot online is also extremely difficult because "the Pinellas County website was not that adaptable for the visually impaired."
Tr. Day 4, 1101:9- 1102:1	Susan Rogers	Requesting a ballot with a written request would require a printer, which Ms. Rogers does not have. And even if she was able to have the application printed, it would be extremely difficult to complete because of her visual impairment.
Tr. Day 4, 1102:12- 1103:5	Susan Rogers	Ms. Rogers worries she may forget to request a ballot. "As I get older, I'm more forgetful. My vision also impacts my memory. . . . I used to be able to sort of take a snapshot of something. I have a photographic memory of things. And now that I can't see as well, that doesn't happen as well." "And it's just one more task in my daily life that isn't necessary given the way it was such a simple system before that you could just request your ballot every year by checking a box."
Tr. Day 5, 1348:20- 1349:20	Supervisor Christina White	"[W]hen vote-by-mail ballots lasted for two general election cycles, . . . a voter who requested a vote-by-mail ballot in a presidential election cycle would also get a vote-by-mail ballot for the next midterm election cycle automatically." That "increased turnout in municipal and local elections." Under Senate Bill 90, "if a voter

		requested a mail ballot in the lead-up to a presidential election, they would not get mail ballots for subsequent elections anymore.”
Tr. Day 5, 1349:21- 1350:8	Supervisor Christina White	Senate Bill 90’s “change in the validity period of the vote-by-mail request will affect the number of voters in Miami-Dade who vote by mail,” based on “years of many accounts of people telling us that they didn’t even know that they had a municipal election coming up; they weren’t aware that a special election was called in their area, that, Oh, the primary is here already. I didn’t know until I got my vote-by-mail ballot in the mail, right? And so I do think in many cases it is triggering people to understand that there is an election happening that they may not have otherwise been paying attention to.”
Tr. Day 5, 1350:9- 1351:3	Supervisor Christina White	There were voters in Miami-Dade who requested mail ballots in early 2021 for municipal elections, before Senate Bill was enacted. At the time of those requests, they would have been valid “[t]hrough the end of 2024,” but Senate Bill 90 means that they “will be inactivated as of January 1, 2023,” “two years earlier.”
Tr. Day 5, 1353:12- 1354:23	Supervisor Christina White	RETRIEVED FROM DEMOCRACY.ORG If voters “wait longer before requesting their mail ballots,” “It puts us at a major disadvantage. . . . It hinders our ability to plan. . . . So if I know now that I have 400,000 people on the vote-by-mail list, then, you know, I can plan for close to that in 2024, but when that – and, you know, growing from that, I’m quite sure. But when that gets cut off, and we’re back to zero, and I have to rely on these voters replying back and getting back onto the list, it puts us at a disadvantage because how many ballots am I printing, envelopes, instructions, postage in the – the postage in the – on the meter with the post office? What do I plan for? Am I going to plan for all of those people actually, you know, getting the notification and replying? . . . And then the other thing is here comes 2024; right? And people are

		starting to think about the election. They're getting campaign material in the mail. You know, Oh, okay, election's coming up. Where's my ballot? They didn't get their ballot. They were expecting their ballot. So then they call our office, and we explain to them that the law changed; you're no longer on the list, and at that point they request one, which hopefully they do it in time because it's ten days prior to the election. That's the deadline to request. But just taking that type of volume and shifting it so close to the election is certainly something that, you know, I'm concerned about."
Tr. Day 5, 1359:17-20	Supervisor Christina White	"So if you or somebody who requested in 2021, it is now valid through the end of 2022, where under the previous law it would have been valid through the end of 2024."
Tr. Day 5, 1360:22-1361:11  Ex. 383, ECF No. 608-75 at 2	Supervisor Christina White	"This bill also lessens the period for which a VBM request is valid. Voters will be required to re-enroll after any general election. We should be making it easier, not more difficult, for voters to vote from the safety of their homes, particularly during the COVID pandemic. This bill rolls back a law that has been in place for a decade without a cause, at a time when it would have grave impacts on voting accessibility."
Tr. Day 5, 1361:15-1362:4  Ex. 383, ECF No. 608-75 at 2	Supervisor Christina White	"This is a great disservice to voters and places an unnecessary burden on them to request a new VBM. Voters who do not re-enroll may lose their opportunity to vote. The elderly, voters with disabilities and our overseas military would be most affected, with potential limited access to re-enroll. In fact, of the 107,000 voters impacted in municipal elections as outlined above, more than 46,000 are over the age of 60."
Tr. Day 5, 1364:21-1365:1-6	Supervisor Christina White	There are "[a]bout 22,000" voters in Miami-Dade who do not have an identification number on file with Supervisor White's office. "As I understand the law, we are unable to mail a voter a vote-by-mail ballot unless we are able to verify that it is

		them through their social security or number through DMV.”
Tr. Day 5, 1484:16-20	Jared Nordlund	“Q: [I]s there a reason why vote-by-mail may suit some voters? A: Yeah. I mean, people in our community work second shifts, and so their availability to go to a poll might be very different from other workers.”
Tr. Day 5, 1486:11-16	Jared Nordlund	The Vote-By-Mail Request Provision will impact voters because “the voter would now need to include their ID number on there; and they may not know what ID they used to register to vote when they registered to vote. And so – and they also just might skip that because it’s never been required before, and so there probably would be a higher incomplete rate than there was before.”
Tr. Day 5, 1589:7-15	Catherine Teti	Mrs. Teti has been voting by mail for several years: “I have mobility issues, and it’s hard for me to vote in person. So the mail-in is much more convenient. And I like the mail-in because it gives me a chance to study the ballot. If you just go to the polling place, then you only have minutes to look at the ballot, where when I vote, I can study it and – especially when there’s a primary, to tell everybody apart.”
Tr. Day 5, 1589: 18-25, 1592:6-20,	Catherine Teti	Mrs. Teti has mobility issues and relies on the assistance of mobility aids. “I can’t walk without a cane. And I use a cane, a walker, and a scooter.” For Ms. Teti, voting in person would be difficult because of her mobility issues. So “[i]f I’m going someplace I’m not familiar with, I try to take the scooter because I can go miles in the scooter. My big problem with the scooter is you can’t handle curbs or stairs. And for things like voting, the handicap [parking] slots always seem to be full. So it’s much more convenient for me to do it by mail.”
Tr. Day 5, 1590:2-5	Catherine Teti	Mrs. Teti does not remember what form of identification she used to register to vote. “That was in 1980.”

Tr. Day 5, 1590:8-13	Catherine Teti	In the past, “when you get the vote-by-mail ballot, there’s a little box on the envelope that says, Please send me a mail ballot for next election. And I just check it, and I get the ballot for the next session -- the next election.”
Tr. Day 5, 1590:21-24	Catherine Teti	Mrs. Teti did not previously know that vote-by-mail ballot requests expired. “I thought they said if I kept checking it, it would go on forever.”
Tr. Day 5, 1591:14-21	Catherine Teti	Ms. Teti is worried she might forget to request her vote-by-mail ballot. “Because I will have thought I requested it by checking the box, but I - - and if there was no box to check there, I probably wouldn’t remember that; I was accustomed to it.”
Tr. Day 5, 1597:21- 1598:2, 1598: 3-8	Dr. Robert Brigham	<p>Dr. Brigham stopped voting in person because “I had rectal cancer and had surgery, which I believe saved my life but also left me with a problem where I just cannot control myself. And so I try very much not to go to places where there are -- where I have to spend time away from bathrooms.”</p> <p>Dr. Brigham’s condition is unpredictable: “I often walk my dog around the block. That’s maybe a 15- to 20-minute walk, and I lose control in that. Other times I can go an hour, hour and a half. But there is no warning. It just happens.”</p>
Tr. Day 5, 1604:20- 1605:6	Dr. Robert Brigham	Using a vote-by-mail ballot “allow[s] me to actually fill out the ballot at home. The early voting, you fill out the ballot when you are there. And in a complicated ballot, and we have some pretty complicated ballots, it takes a while in order to do that. And I think there’s just more danger, for one thing, for trying to do it quickly in a spot or else taking forever to be there. And, again, the fact that I have extra time there that I wouldn’t need -- I mean, I’d be home near a bathroom when I’m home filling out the ballot, but I’m not there.”



Tr. Day 5, 1605:14-21	Dr. Robert Brigham	Since last voting in-person in early 2020, “I’ve had some health problems. I feel creakier. I find I misplace things more. I forget some things. It’s – it’s all the things you read about happening to older people that I never thought would happen, but they do. And I’m experiencing some of that.”
Tr. Day 5, 1607:22- 1608:8	Dr. Robert Brigham	Supplying a Social Security Number or Drivers’ License Number to request a vote-by-mail ballot is “a big deal to me. I wouldn’t have wanted to do that.” Dr. Brigham supplies such information online “very, very rarely,” because “I have heard so much about the hacking that goes on. Several times I’ve been informed that my information has been compromised, and I just don’t trust doing things like that.”
Tr. Day 5, 1608:13-20	Dr. Robert Brigham	The change to the effective period for a vote-by-mail request affects Dr. Brigham because “it means that I have to remember to do things twice as often,” and “my memory is not as good as it used to be. And it just seems obvious that if you are required to do something every two years, it’s more work than if you have to do it every four years.”
Tr. Day 5, 1623:5-17	William Sauers	Florida’s seniors are “creatures of habit” who “don’t accept change well,” and who were used to checking a box and simply receiving their VBM ballots in the mail. These seniors will be “slow to react” and it “could affect whether or not they actually get their absentee ballot on time to be able to use it”
Tr. Day 7, 2049:21- 2050:1	Andrea Mercado	“[P]reviously if you registered to vote-by-mail, you would be able to vote-by-mail for, you know, many elections. Now vote-by-mail has to be renewed so often that, you know, we’re very concerned about that limiting somebody. Somebody may think that they’re going to get a ballot in the mail but it never comes; they forgot to renew their vote-by-mail.”
Tr. Day 7, 2050:14-19	Andrea Mercado	“Black and Latino communities in Florida are less likely to have a Florida driver’s license,

		social security number. And we did do an analysis of our members and found several who did not have access to those things.”
Tr. Day 7, 2079:1-8	Naomi Slaughter	“[I]n Hillsborough County, when you sign up for a mail-in ballot, you can make it automatic. And knowing that my [mental] illnesses are not curable, I knew I would always have a problem trying to cast my vote in person, so I just – I made the –the request to automatically receive my ballots every year or every election.”
Tr. Day 7, 2080:10-13	Naomi Slaughter	“I don’t like leaving my house. I rarely leave my house. Some days I don’t even go out to check my mail in the mailbox, so for me to go to the polls and try to vote, it’s literally an impossibility for me.”
Tr. Day 7, 2082:18- 2083:2	Naomi Slaughter	“Q: Do you know how you will request your ballots in the future? A. No, not really. It’s – it’s – I’ve worried – it’s, like, even since this – this bill was passed, you know, it’s, like, sometimes I forget things, you know, like, something simple, like just things like taking my medicine in the morning. Sometimes halfway through the day it’s, like, Oh, did I take my medication this morning? And – and – and I’m afraid that – that – that I’m gonna forget to – to – to reapply for another – for another mail in ballot.”
Tr. Day 7, 2083:3-12	Naomi Slaughter	“Q: And is the Supervisor of Elections’ office website difficult for you to navigate? A: Depending on the day, but, you know, it’s like – it’s like I said, ma’am, if it’s something that I’m comfortable with, I don’t have near as bad a problem. I don’t have near as bad a problem comprehending it. However, now when it comes to something that it’s not like an everyday thing for me, I – I – sometimes I get very confused, and I’m always afraid I’m going to mark the wrong box or something like that, and then – and get in trouble.”



Tr. Day 7, 2083:22- 2084:3	Naomi Slaughter	Requesting a vote-by-mail ballot by telephone will be difficult for Ms. Slaughter because of her mental illnesses.
Tr. Day 8, 2158:4-13	Dr. Michael Herron	Voters across the country are learning to vote in different ways. It would be correct to say “once [voters] find easier ways to vote,” “people continue and increased numbers take advantage of those easier ways to vote.”
Tr. Day 8, 2178:24- 2179:12, 2180:19- 2181:8, 2181:13- 2182:1  Ex. 5, ECF No. 608-1 at 35	Dr. Michael Herron	<p>Table 5: Turnout and VBM voting in recent Florida statewide elections</p> <p>Between 2014 and 2020, “roughly 51 million” ballots were cast in Florida. Of those, approximately 20 million were vote by mail ballots. In other words, approximately 39 percent of ballots cast between 2014 and 2020 were vote by mail ballots.</p> <p>In 2014, 2016 and 2018 primary elections, vote by mail rates hovered around 40 percent and in 2020 it jumped to approximately 60 percent.</p> <p>For general elections prior to 2020, “I would say that they hovered around 30 percent slightly over, slightly under, and then slightly over . . . And we can see that in 2020, the rate jumped to, say, the low 40s. So that’s about, you know, a 10 percent -- more than -- greater than a 10 percent jump -- 10 percentage point jump in vote-by-mail rates.”</p>
Tr. Day 8 at 2182:14-19, 2183:15- 2184:5  Ex. 5, ECF No. 608-1 at 36	Dr. Michael Herron	<p>Table 6: VBM rates by race in recent Florida statewide elections</p> <p>“Black voter vote-by-mail rates in these primary elections. Again, they hover right around 30, perhaps a bit lower, one might say, but you can go with 30. And then they jump in 2020 to over 50 percent. The precise figure is 52 percent there. So that’s a jump in around 20 percentage points.”</p>

		Table 6 shows “the Black-White gap shrunk between 2018, 2020. So, in other words, prior to 2021, there was a gap of maybe, you could say, 15 percentage points roughly. And then it shrunk in terms of the two -- the 2020 primary where the difference is, you know, on the range of around 9 or 8 points -- 8 percentage points.”
Tr. Day 8, 2204:8-25; 2205:12-21	Dr. Michael Herron	<p>“[T]he changes to vote-by-mail voting that SB 90 caused when it raised the cost . . . of voting by mail, and this will disproportionately impact people who vote by mail and, in particular, those who take advantage of vote-by-mail, of, like -- let me say it will disproportionately affect people whose circumstances make vote-by-mail particularly important. So you referred to people who have memory issues, and I would agree with you. Someone who has a memory issue would be disproportionately burdened by this sort of a requirement. There are also people, for example, who have -- who are blind, and they have difficulty interacting with forms and contacting government officials, independent of their ages I would argue, and these people are also disproportionately affected by this sort of change. So I would say there are lots of classes of individual; older and blind are two of them.”</p> <p>“I would say the particular group that you mentioned, people who are of lower socioeconomic status, who don’t have access to resources, may not be as familiar with interacting with government officials and don’t have the educational background of others, those people would be particularly disproportionately affected. And I agree, in general, with your statement that an individual’s circumstances really affects the nature of the burdens that SB 90 places on the individual via the repeated request provision.”</p>
Tr. Day 8, 2414:7-	Dr. Daniel Smith	“I think we can look historically in Florida to realize that, sure, the pandemic probably

<p>2415:25, 2415:6-17, 2416:9-15</p>		<p>incentivized many voters, including African-Americans, to shift from voting in person, which is their preference, to voting by mail, but we can see a parallel following the 2008 to 2012 general elections. In 2008, African-Americans voted in historic numbers early in person. We recall the phrase Souls to the Polls. What we also saw was in 2012, because there was known expectations about long lines, which proved to be true because of the shrinking from up to 14 days down to 8 days and eliminating that final Sunday of early voting which African-Americans used, that African-Americans actually shifted in that election to voting by mail for the first time. And we saw a pretty substantial increase from 2008 to 2012 in the usage of vote-by-mail by African-Americans. In fact, the Obama campaign, and its surrogates, blasted big vote-by-mail distributions to African-American areas because they knew there were going to be problems of early in-person voting and long lines in many of these communities.”</p> <p>It is correct that if there is a shift in voting patterns “where a group becomes comfortable with voting a in a particular way, they’re more likely to stick with that mode of voting because it worked.”</p> <p>“[Y]ou can see this pattern in a state like Colorado . . . that started out having vote-by-mail, no excuse, and then they started to allow mail ballots to be mailed out to all voters, and then have distribution centers where they could be returned, these voting convenience centers. And now, because voters like it, they’ve moved and shifted.”</p>
<p>Tr. Day 8, 2416:24- 2417:11</p>	<p>Dr. Daniel Smith</p>	<p>“I have a study with Michael Herron that shows that once you vote by mail, you’re actually less likely to have your vote-by-mail ballot rejected in</p>

		the future, because you've learned, you're experienced, and so I think there's a certain comfort that comes with shifting to those forms of voting. You become accustomed to being able to check off the box on the back of an envelope to have your vote-by-mail come in future elections. When that is altered, that may very well affect future behavior. We haven't talked about that with respect to SB 90 and the other types of things that might affect that, but you would think naturally that convenience would lead to repeated use of that form of voting."
Tr. Day 9, 2492:12-2493:7	Dr. Daniel Smith	"We have seen not only in this state, especially in the counties that were the innovators with respect to check-off boxes on the back of vote-by-mail ballot return envelopes to allow people to continually have their vote-by-mail ballots, that we have higher voter participation in those elections. We've seen that in other states, so much so that they have moved towards all, m-a-i-l, mail voting elections. And that's simply because if you're sent a vote-by-mail ballot in the mail, you're immediately prompted to think about an election, say, a municipal election. Where, unfortunately, in this state we have municipal elections with less than 10 percent turnout, this prompts people to think about it. It allows groups and parties to follow up and do mail ballot chasing, as it's called, to contact voters and say, Hey, we see you've received a vote-by-mail ballot. You might want to think about filling it out and returning it before election day. So it has a positive civic engagement effect. And we can see quite clearly that it leads to higher voter turnout in not only the general elections, but these municipal and special elections that do not typically have a lot of turnout because they are off cycle."
Tr. Day 9, 2493:8-15	Dr. Daniel Smith	Requiring voters to request a ballot more often "increases the cost of voting" and voters who

		face higher costs of voting “are less likely to engage with the system.”
Tr. Day 9, 2494:7-18	Dr. Daniel Smith	“[I]n the 2020 general election, if I recall from my report, I was able to look at the first snapshot in which Supervisors uploaded their data on ballots that had been requested and those that had standing requests for voters in the 2020 general election to have vote-by-mail ballots sent out to them. And I found that Black and Hispanic voters -- certainly Black voters, if I recall correctly, were more likely to have that standing request than White voters at that early snapshot.”
Tr. Day 9, 2503:8-2504:10, 2504:19-25	Dr. Daniel Smith	The VBM Identification Requirement will impact many voters. “[T]here are hundreds of thousands of individuals who are properly registered, who have had their identity verified by a Supervisor of Elections and Division of Elections, who do not have on file a driver’s license, a state ID or the last four of a social security number or a full social security number. There are also individuals who this provision is going to affect who have a form of ID on file that does not match what the voter may possess .... [I]t might mean that an individual has put on file a driver’s license, but no longer has that driver’s license and only has a social security number available to them to request a vote-by-mail ballot. The provision could affect those who have a form of ID that is on file when they register, but is incomplete or incorrect. Maybe there was a typo when it was entered, or maybe there was a scrivener’s error along the way in interpreting the form that was filed when the person correctly registered to vote. It could affect people who don’t remember if they provided a social security number or a driver’s licenses or a state ID and, as a result, do not have that on hand when they want to request a vote-by-mail ballot. And, of course, there are categories of people who may have registered to vote properly with a form of ID that they no

		longer have.” “Lastly, there’s a category of people who may be very reluctant. After all, they are registered voters -- they provided information, or they got registered without having to provide this personal information -- who don’t want to have to do it again and again and again with respect to simply requesting a vote-by-mail ballot, considering they never had to do that in the past[.]”“
Tr. Day 9, 2516:13-19	Dr. Daniel Smith	Over 3 million Florida voters have either a drivers’ license or last four digits of a social security number on file with the Supervisors but not both numbers.
Tr. Day 9, 2522:1-8	Dr. Daniel Smith	“14,448 Pinellas County voters with no ID on file successfully cast a vote-by-mail ballot in the 2020 general election. And as I conclude that photograph, under SB 90, none of those individuals would be able to request, much less cast, a vote-by-mail ballot in subsequent elections because they do not have the requisite data on file for the Pinellas County Supervisor to verify.”
Tr. Day 9, 2525:14-19, 2530:18-21  Ex. 7, ECF No. 608-6 at 61	Dr. Daniel Smith	Table 10 “has the breakdown by race of those individuals, post-2006 registrants; again, successfully registered but no driver’s license or social security number on file. And of those individuals, 30.21 percent are Black; 21.53 are Hispanic; 34.26 percent are Other racial/ethnic groups or Unknown; and 13.65 percent are White.”“  “Q. Professor Smith, just to be very clear for the record, do you believe the demographic trends that you’ve observed for the post-2006 registrants is likely to continue into the future? A. Yes.”
Tr. Day 9, 2617:12-14	Supervisor Mark Earley	There are “some significant parts of the bill that are troublesome, especially with regards to our voters and their confidence in being able to use vote-by-mail.”

Tr. Day 9, 2624:14- 2625:5	Supervisor Mark Earley	Leon County had a record number of VBM requests in the 2020 General Election, and of those 67,000 voters who returned a VBM ballot, “90 -- 85 percent roughly, essentially checked a box on the certificate, along with their signature, to have their vote-by-mail ballot tabulated that they wanted to request [to receive a VBM ballot] for the next two election cycles.”
Tr. Day 9, 2325:19- 2327-11	Supervisor Mark Earley	At the end of the 2020 General Election, Leon County had tens of thousands of valid requests to receive a VBM ballot through the 2022 and 2024 election cycle. But SB 90 “prevents” the SOEs from honoring those requests for the 2024 election cycle: “[I]t certainly cancels a request that I think many [voters] were expecting to be on record and honored in the 2024 cycle.” “That’s a problem in that we’d already essentially promised them they would get those.”
Tr. Day 9, 2327:15- 2328:9	Supervisor Mark Earley	When you retroactively invalidate a voter’s request to receive a VBM ballot, “the biggest concern is the potential and likely disenfranchisement of voters who, in their mind, they have their request in; they are going to get their ballot like they have previously, you know, at the mailing address on our record, and they have got a history of doing that, and now that would not be honored. And the kicker here is that, you know, many voters tend to forget, as much as we live elections, that there is going to be an election, and when the vote-by-mail ballot hits their mailbox, that’s when they get reminded, especially in, say, the primaries and some of the smaller elections. So if they don’t get that reminder and have their ballot in front of them, they don’t notice it hasn’t shown up until all the hoopla surrounds election day and we are tighter in and all the media is even more focused. And then if they can’t get out to use -- to the polls, which is generally why they request a vote-by-



		mail, they wouldn't have the ability to get a vote-by-mail ballot in time."
Tr. Day 9, 2628:16-23	Supervisor Mark Earley	Supervisors were "absolutely" uniformly opposed to the retroactive invalidation of voters' existing requests to vote-by-mail, a position they made "abundantly clear" to the Legislature.
Tr. Day 9, 2630:19-22	Supervisor Mark Earley	The change in the duration of a VBM request is "absolutely" a significant change in how voters previously requested VBM ballots.
Tr. Day 9, 2633:12-19	Supervisor Mark Earley	SOE Earley is concerned that because of this change, voters may miss the deadline to request a VBM ballot.
Tr. Day 9, 2633:1-11, 2630:25- 2631:21	Supervisor Mark Earley	SOE Earley is concerned that even among the voters who realize they are no longer getting a VBM ballot in the mail, they will "discover that late in the game" because of the "expectation that they've already requested one" and thus not request a VBM ballot right at the 10-day deadline to do so. Those voters have a narrow window to return their ballot successfully: The post office cannot guarantee that they will deliver ballots to voters in less than 5 days, and Supervisors recommend voters allow for "at least a week" of mail time for their ballot to be received back by the Supervisor's Office.
Tr. Day 9, 2632:10-24	Supervisor Mark Earley	The Leon County Supervisor is concerned about voters' ability to successfully return their VBM ballot even if they request by the 10-day deadline, particularly for voters who "are out of state or a long geographic distance away from Leon County."
Tr. Day 9, 2633:20- 2634:6	Supervisor Mark Earley	Supervisors agree there are voters in Florida who would have difficulty voting if they cannot vote by mail: "[P]eople that can't make it to the polls, either during early voting or election day that can't make it there in person. Those are the key folks, certainly. Elderly, infirm, people with disabilities, people that have to work multiple jobs or long hours, people that are out of our



		county, obviously -- that's the original genesis of vote-by-mail."
Tr. Day 9, 2649:17- 2650:10	Supervisor Mark Earley	There are "over 13,000 voters" in Leon County who do not have a driver's license, a state ID, or a social security number on file with the Supervisor's Office. Many of those voters are older voters "who registered before those [numbers] were required." And "a little over half of those 13,000, 7,000 and some, are frequent vote-by-mail voters."
Tr. Day 9, 2650:11-17	Supervisor Mark Earley	There are an additional 31,000 voters in Leon County who only have one of those numbers on file with the Supervisor's Office.
Tr. Day 9, 2650:18-24	Supervisor Mark Earley	Supervisors do not believe that voters know what identification they wrote down when they registered to vote. Supervisor Earley only knows what number he used because he was able to look his own registration up in his system.
Tr. Day 9, 2651:2-11	Supervisor Mark Earley	Under SB 90, even if the voter provides their correct identification number, "it may not be the one that we have in our records or any -- we may not have any in our records." And if "we can't validate the number," we can't send them a vote-by-mail ballot.
Tr. Day 10, 2784:18- 2785:2	Director Maria Matthews	At the time SB90 was enacted, "there were about 1.5 million voters who have only a social security number and no driver's license or ID number" in the voter registration system, and about "1.36 million voters who have only a driver's license number and not a social security number" in the voter registration system.
Tr. Day 10, 2785:6-16	Director Maria Matthews	As of the trial, there were "480-something thousand" voters with neither a driver's license number or a social security number in the voting records, "and most of those belong, actually, to voters who registered before 2006."
Tr. Day 10, 2785:19- 2786:9	Director Maria Matthews	Since SB90 was enacted, "what we're seeing is an increase -- it's probably about -- about a

		percent – 1.5 percent increase in the number of records that have DL and SSNs, both of those.”
Tr. Day 10, 2787:25- 2788:4	Director Maria Matthews	“Q. And when you say there are more records that have both a driver’s license and the last four of the social security number, that’s that 1.5 percent more figure you mentioned; correct? A. Yes.”
Tr. Day 10, 2788:10-17	Director Maria Matthews	“Q. A voter would not necessarily recall whether he or she provided a driver’s license number or a social security number at the time of registration; right? A. That is correct, but they can ask. Q. And depending on when the voter registered to vote, if it was before 2006, they may not have been required to provide either number; correct? A. That was the law at the time.”
Tr. Day 10, 2824:13-21	Director Maria Matthews	The reduction in the number of voters with neither a Social Security Number or a Driver’s License Number is “based on the outreach that the Supervisors have been doing for their voters.”
Tr. Day 12, 3181:6-25	Supervisor Christina White	While SB 90 “was amended so that it did not cancel vote-by-mail requests in 2021,” “it will cancel all vote-by-mail requests in 2023,” and 2025, and 2027, and “every general election thereafter.” In each case that will be “immediately before municipal elections occur[ing] the following spring.”
Tr. Day 12, 3346:2- 3348:6	Dr. Moreno	Dr. Moreno’s analysis of mail voting in Miami-Dade only addresses the effect of a restriction on volunteer ballot return, and not on any of the Challenged Provisions, because it looked at the effects of a Miami-Dade Ordinance that “didn’t deal with those restrictions.”
ECF No. 549- 2, at 125:6- 126:8	Supervisor Alan Hays	Supervisor Hays was going to start allowing voters to re-request mail ballots with a check box on the return envelope, but no longer will “because the way I interpret Senate Bill 90, the check box is no longer a valid way to do it.”

ECF No. 549-2, at 126:12-17	Supervisor Alan Hays	The check box “[o]f course” makes requesting vote-by-mail ballots easier, and makes it less likely that they’ll forget to request a vote-by-mail ballot.
Tr. Day 12, 3214:18-19	Supervisor Tommy Doyle	“Some people think [their vote by mail request] -- you know, it’s -- the request is permanent.”
Tr. Day 12, 3249:16-22	Supervisor Tommy Doyle	2,000 voters in Lee County do not have the last four digits of a social security number, FL identification number or FL driver’s license number on file with the Lee County supervisor of election.
Tr. Day 12, 3250:16-19	Supervisor Tommy Doyle	Some voters do not know what identification number they provided when they registered to vote.
ECF 549-3, 25:14-26:6	Supervisor Craig Latimer	On the VBM Request Provisions: “I think that it puts an undue burden on a voter specifically who vote by mail, where we have got somebody that’s registered to vote, had been verified by the State that they are who they say they are, they’ve made a request for vote by mail, and now they are going to have to turn around and rerequest that vote by mail, including additional information as far as a driver’s license or last four. And I think the example I would use is that most people know the last four of their Social, they don’t know their driver’s license number. And that probably we are going to have the driver’s license number on file and not the last four. So it’s going to lead to confusion.”
ECF 549-3, 103:21-104:3	Supervisor Craig Latimer	Hillsborough County had many first-time requests to vote-by-mail in 2020 who were newly added to the VBM list.
ECF 549-3, 110:11-25	Supervisor Craig Latimer	“[W]ip[ing] out all of the request for vote by mail [that are on file]” is an “extremely onerous” thing to do.
ECF 549-3, 137:23-138:1	Supervisor Craig Latimer	The VBM Request Provision change in the duration that VBM requests are good for will cause confusion for voters.

ECF 549-3, 59:25-60:5, 83:22-83:10, 135:12-14, 137:7-12	Supervisor Craig Latimer	Hillsborough County used to have the checkbox method for requesting a VBM ballot. Hillsborough County does not intend to offer that option moving forward. Many of his VBM voters used that option before SB 90, and it was a secure method of having voters request their VBM ballots.
Ex. 213, ECF No. (608-48)	--	Hillsborough SOE: SB 90 “makes requesting Vote By Mail ballots and returning those ballots harder.”

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**B. The Vote-By-Mail Provision is not adequately supported by a sufficiently weighty state interest.**

Citation	Witness	Evidence
Tr. Day 4, 1188:3-13	Supervisor Joe Scott	The VBM Request Provision “could also cause us to get a flood of late requests as we’re approaching an election, and when we get within a couple of weeks of an election, we could end up getting flooded with requests that would be – there’s a number of different logistical challenges that we could face if we don’t get the word out to the public very early in the cycle and try to get as many people to sign up for vote-by-mail before – before we get down to the last couple weeks of the election cycle.”
Tr. Day 4, 1190:6-1191:6	Supervisor Joe Scott	Rather than “improve the administration of elections in Broward County,” the VBM Request Provision “hurts the process.” The existing list maintenance “system works very well,” and the new provision is “going to require the office to take excessive administrative steps and to expend a lot of resources in order to allow people to continue voting by mail.”
Tr. Day 4, 1191:10-1192:5	Supervisor Joe Scott	If someone with a vote-by-mail request “move[s], and they don’t notify us that they moved, then the ballot would go to that address, and then it would be returned back to us. Some people when they move, they’ll put in a forwarding address, but the ballots do not get forwarded, so if they don’t live at the address anymore, the ballot gets returned to us.”
Tr. Day 4, 1193:9-17	Supervisor Joe Scott	Supervisor Scott’s office “receive[s] correspondence on a daily basis in terms of people who have passed away, people who have been convicted of a felony and have lost their right to vote or people who have been adjudicated as mentally, you know, ineligible to vote. So we get those notifications almost on a daily basis, and we update our voter rolls accordingly.”
Tr. Day 4, 1194:13-14	Supervisor Joe Scott	“Senate Bill 90 did not change the list maintenance process.”
Tr. Day 4, 1243:12-22	Supervisor Joe Scott	The re-request provision is not necessary to address voters who die. If a voter dies, “we get a notification

		that the person has passed away, you know, within a week or two. To say that something like this would go on for four years, that just sounds like a wacky conspiracy theory and not something that would actually happen... We would not allow ballots to continue to go out to someone who has passed away.”
Tr. Day 4, 1263:7-9	Supervisor Brian Corley	“Q. Did the vote-by-mail procedures that you had in place in 2020 work well? A. Yes, sir.”
Tr. Day 4, 1263:17-19	Supervisor Brian Corley	“Q. Are you personally aware of any widespread fraud relating to vote-by-mail ballots in Pasco County? A. Not to my knowledge, no sir.”
Tr. Day 4, 1286:19-23	Supervisor Brian Corley	“Q. Do you see any benefits to [the] change [to the Vote By Mail request validity period] that Senate Bill 90 made? A. I think my comments to it were the system is working, so based on that I probably – I don’t understand the change, I’ll say that.”
Tr. Day 5, 1335:5-8	Supervisor Christina White	Supervisor White is not “aware of any issues of voter fraud . . . in Miami-Dade in 2020 that specifically involved voting by mail.”
Tr. Day 5, 1362:12-23	Supervisor Christina White	“I believe the list maintenance activities in the state of Florida have come a very long way and, you know, the voter rolls have never been more accurate and up to date. We’ve put more and more into the process, and especially now with the use of the ERIC, which is a consortium with – which I believe 32 states are a part of, it’s gotten even better.”
Tr. Day 5, 1362:24- 1363:7	Supervisor Christina White	“[I]f we mail any voter any type of correspondence, regardless of what it is . . . if the voter is not associated with that address anymore, via the post office it will come back to us undeliverable. And then there is a very specific process outlined in Florida Statute that we have to go through to confirm the address and ultimately make them inactive and remove them from the voter rolls if it gets to that point. So there’s the undeliverable mail process.”

Tr. Day 5, 1363:8-21	Supervisor Christina White	“There’s the national change of address, NCOA, process which compares the voter registration system addresses to the addresses that the post office has on file. Anytime a voter makes a change with their office, not necessarily ours, we’re going to be notified about that from the post office. If an address is changed with the Department of Motor Vehicles, that comes to our office. If a voter goes to serve on jury service and notifies them that they’ve changed their address, that comes to us. And then, as I said, now that we are part of the ERIC system, we’re even doing that with people that are out of state. And so there’s a number of things that happen daily in all of our offices to make sure that the addresses that we have are the most up to date as they can be.”
Tr. Day 5, 1363:22- 1364:9	Supervisor Christina White	If a voter dies, “[t]he very, very large majority of them actually comes from the Division of Elections, and that’s because there’s data matching that’s occurring with the Florida voter registration system, you know – this is all of them; the DMV, Department of Vital Statistics in this particular case, social security, and so when a death occurs, the State is notified, and then that is then sent down to the applicable Supervisor of Elections to remove them.”
Tr. Day 5, 1364:10-16	Supervisor Christina White	“I can tell you that on our end we must remove that voter from the voter registration system within seven days of being notified” of their death.
Tr. Day 6, 1715:21- 1716:25	Dr. Morgan Kousser	After the 1997 scandal over mail voting in Miami Dade, “[t]he legislature tightened up the vote-by-mail requirements in 1998.” But “[a]fter the debacle of <i>Bush v. Gore</i> in Florida, there was a commission that Governor Bush appointed; and, among other things, they proposed a loosening of the 1998 law” to get rid of a witness requirement and “the requirement that you had to show that you would be out of town or sick or disabled.” “Soon after that, vote-by-mail became a major part of Republican campaign strategy, to a lesser extent of Democratic campaign strategy. . . . The Republican party and local candidates, particularly in Miami-Dade County,



		would send out tens of thousands of absentee ballot request forms. They would send them out to areas that they thought would be likely to vote Republican, and then when people sent them in, they would – political operatives would call them, knock on their doors, et cetera, trying to get them to return the absentee ballots. So it got baked into Republican – particularly Republican political strategy thereafter when they became votes by mail.”
Tr. Day 6, 1717:20- 1718:6	Dr. Morgan Kousser	After the 2012 Miami-Dade Grand Jury Report “issued recommendations to tighten up vote-by-mail,” “the Republicans only took small actions to regulate vote-by-mail in the period from 2012 to 2021.”
Tr. Day 6, 1768:10-15	Dr. Morgan Kousser	“It was noted at the time, and thought to be important, that registered Democrats had an 800,000 vote lead over Republicans in vote-by-mail requests from 2020, because they had voted by mail in such numbers in the 2020 election, and that would have allowed them to vote by mail without making a new vote-by-mail request in 2022.”
Tr. Day 8, 2200:20- 2201:14	Dr. Michael Herron	Rep. Ingoglia’s statement that there are almost no safeguards for vote by mail ballots is false. “[T]he most clear evident one is that in order to cast a vote-by-mail ballot in Florida, you have to be registered to vote. So any safeguard that addresses voter registration also represents vote-by-mail voting. In addition, vote-by-mail ballots -- Florida specifies a set of procedures that are necessary for a vote-by-mail ballot to be counted: First, a voter has to request such a ballot. Second, the ballot has to be deposited in a security envelope, signed. And it’s not as if a voter could simply take a ballot and hand it to an election official and say, Here’s my ballot. That’s not possible. That ballot wouldn’t count. So the whole vote-by-mail system, which -- the whole vote-by-mail system has safeguards built in, starting with voter registration.”
Tr. Day 8, 2201:25- 2202:6;	Dr. Michael Herron	There is no basis in political science literature to support Senator Baxley’s statement that “we will have a more secure process when people can decide



2202:24- 2203:2		each year what manner in which they would like to vote.”
Tr. Day 8, 2218:11- 2219:13	Dr. Michael Herron	There are states that conduct effectively fully vote by mail elections and those states do not see increased rates of vote by mail fraud. The 2020 primary in Montana was almost exclusively VBM because of the pandemic and they sent out unsolicited VBM ballots. There is “no evidence even in that state that there was unusual -- or really any sort of voter fraud associated with that switch to voting by mail.”
Tr. Day 9, 2621:12-24	Supervisor Mark Earley	Prior to SB 90, if a voter had initially requested to receive a VBM ballot for several elections, that voter could have contacted their SOE to cancel the request, or they could have changed their mind about voting with a VBM ballot and still voted in person.
Tr. Day 9, 2622:23- 2623:4	Supervisor Mark Earley	There are intra county-to-county protections in Florida that would stop any voter from voting twice in the State.
Tr. Day 9, 2623:19-22	Supervisor Mark Earley	The ERIC system helps Florida detect any instances of double voting that occur out-of-state, but even then those are “definitely” rare.
Tr. Day 9, 2623:23- 2624:4, 2625:11-18	Supervisor Mark Earley	The VBM Request system before SB 90 worked well and Leon County experiences no issues with it. The checkbox system for requesting ballots was “absolutely” a secure method: “[W]e only honored that request if we approved the ballot for tabulation. So if we’re going to count the ballot because the signature matches and all the safeguards are in place for making sure that was a valid ballot, certainly it seemed like a good way to request ballots.”
Tr. Day 9, 2634:7- 2636:2	Supervisor Mark Earley	FSE issued the following statement on the VBM Request provision: “Lawmakers should also be aware that this would come at significant cost to taxpayers, as Supervisors will be required to send mailings to millions of voters to let them know that their request is no longer valid. In addition, requiring voters to renew their request for mail ballots every election cycle, instead of every two election cycles, also has financial impact, resulting in twice as much clerical work to process the requests.”

Tr. Day 9, 2636:19- 2638:12	Supervisor Mark Earley	The VBM Request Provision makes it harder for Supervisors to plan for elections. Prior to SB 90, Supervisors knew the universe of the “standing set of requests” to vote-by-mail and could plan accordingly. Supervisor Earley has “spent decades making these formulaic election plans where you look at the turnout in various methodologies” and adjusting resources accordingly. But if “we don’t have a request for vote-by-mail for this upcoming election cycle, we have to assume they may go vote early or in person election day” and have enough resources in place for that contingency. “[W]e’re going to have to have bigger buffers to account for much more error in our formulas in our planning. So a lot more resources – more resources will definitely have to be devoted to the different areas, but, you know, likely more ballots -- I mean, more envelopes even ordered because we don’t know where the impact might be. We don’t want to be short.”
Tr. Day 9, 2638:13- 2640:1	Supervisor Mark Earley	It is difficult for Supervisors to receive a sudden influx of VBM requests and process them timely. And the anticipated “lack of understanding about [] when their requests expires... are going to result [] in people making later requests. So it’s harder to plan.”
Tr. Day 9, 2640:2-10	Supervisor Mark Earley	When the post office returns a ballot to the Supervisor’s Office because the voter has moved, the Supervisor will “invalidate the [standing] request” to vote-by-mail at that address, both for that election and “for the future.”
Tr. Day 9, 2640:2-10, 2643:7-12	Supervisor Mark Earley	Before SB 90, there were a lot procedures in place to make sure that VBM ballots are delivered to the correct and updated address, and that ballots are not delivered to an old address after a voter has moved.
Tr. Day 9, 2641:18- 2642:8	Supervisor Mark Earley	The Supervisors receive regular reports of voters who have become deceased, and when they do, they “absolutely” take the voter off the rolls and cancel their request to receive a VBM ballot.
Tr. Day 9, 2642:9-19	Supervisor Mark Earley	The Supervisors receive updates of address changes made at the DMV, and adjust a voter’s standing VBM requests accordingly.

Tr. Day 9, 2643:3-6	Supervisor Mark Earley	Ballots cannot be forwarded to a voter's new address if a voter has moved.
Tr. Day 9, 2643:13-23	Supervisor Mark Earley	Even if a ballot is delivered to the voter's old address and the new resident receives it, the signature verification procedures are in place to make sure it cannot be voted by that resident. Those procedures have "been proven very effective."
Tr. Day 9, 2643:24- 2644:7	Supervisor Mark Earley	Supervisor Earley believes it is "nonsense" that the State would consider shortening the duration of a voters' VBM request to expands voters' options and give them more choice. "How does making it harder to vote by mail improve your options?"
Tr. Day 9, 2647:14- 2648:7	Supervisor Mark Earley	When people begin to vote by mail, a "larg[e] percentage" stay on the vote-by-mail list and keep casting ballots. It especially encourages turnout in smaller, municipal elections: "[F]requently people don't know these smaller elections are in the works, and so the ballot serves as a dramatic reminder, showing up in their mail, that, hey, this election is going on; I should vote...A ballot in the mail, in somebody's hand, increases the turnout."
Tr. Day 9, 2648:8-23	Supervisor Mark Earley	Supervisor Earley agreed that while Senator Gruters did not get the reset that he wanted for the 2022 elections, he did get it starting in the 2024 election cycle, and that it will have a downstream effect in turnout for the elections that follow it.
Tr. Day 9, 2651:9-25, 2652:20- 2653:5	Supervisor Mark Earley	The DAVID system is not a good solution: "The DAVID system was not intended to be used for this. There's lots of auditing around that, so I can't have my regular contingent of staff, especially as the elections approach, which is a lot of temp workers, just check the voter rolls, our data, and validate the requests.... it's not a good workaround." The DAVID system also does not contain social security numbers, and the Supervisor's Office does not have access to the Social Security Administration database to look those numbers up.
Tr. Day 9, 2652:1-19	Supervisor Mark Earley	The identification requirement also poses privacy and security concerns: "I think it's going to be hard to do. I think voters are going to be concerned that this is

		not real, and it can potentially be used for identity theft. You know, why is the elections office asking me for my ID number, you know? How do I know it's the elections office?"
Tr. Day 9, 2654:11-14	Supervisor Mark Earley	"Q. Supervisor Earley, do you think this new identification -- this new identification requirement is necessary to ensure integrity? A. I don't."
Tr. Day 9, 2654:15-22	Supervisor Mark Earley	Supervisor Earley believes the identification requirement will "undermin[e] trust [in] elections by making it harder to vote by mail."
Tr. Day 10, 2760:3-5	Director Maria Matthews	Florida's participation in ERIC, which pre-dates SB 90, "lets [it] identify individuals who appear to be registered to vote in multiple states."
Tr. Day 10, 2760:9-22, 2761:13-14	Director Maria Matthews	Florida "has processes in place to identify voters who have died," which involves data from "the Florida Department of Health and the Social Security Administration," and occurs every 30 days. "Senate Bill 90 did not change those processes."
Tr. Day 10, 2762:6-25	Director Maria Matthews	Florida "use[s] a signature verification process to ensure that the ballot was signed by the individual who requested it." The Elections Division "offers training to Supervisors in how to use signature verification," which many Supervisors use, and it's "one means of secure process." "Senate Bill 90 did not change the signature verification process."
Tr. Day 10, 2763:1-9	Director Maria Matthews	"More than 4.8 million vote-by-mail ballots were cast in the 2020 Florida general election," and "in February of 2021, Secretary Lee testified to the Florida State Senate Committee on Ethics and Elections that she was not personally aware of any instance of voter fraud where people received the mailed ballot and voted even though it wasn't intended for them."
Tr. Day 12, 3172:1- 3174:1	Supervisor Christina White	The 2012 Grand Jury investigation found a computerized effort to fraudulently request mail ballots, but "this was caught, and we did not mail ballots to these voters.... They were not voted. It did

		<p>not impact the election. It was software that we have. And to not go into too much detail about security measures, but it was detected and, to my knowledge, prevented.”</p> <p>“THE COURT: As I understand it, it was a computer security measure that you had in place that worked, and it continues to work; is that correct?</p> <p>THE WITNESS: Yes, Your Honor, to my knowledge, yes.”</p>
Tr. Day 12, 3183:3-12	Supervisor Christina White	<p>Supervisor White is not “aware of any problem of college students in Miami-Dade voting other college students’ vote-by-mail ballots because they received them at their dorm room.” “I don’t have any knowledge of that. I can’t speak to those circumstances occurring.” As far as she knows, “that’s never happened.” “And, of course, we do have the signature verification process on the back end. Once that ballot comes into our office, we are going to verify it with the signature that we have on record.”</p>
Tr. Day 12, 3188:19-3189:9	Supervisor Christina White	<p>With respect to concerns about mail ballots being mailed to addresses where voters no longer live, “This doesn’t happen all that often. I think that these circumstances of this occurring are very overblown, but the few that I know of that have, you know, called our office, have understood and, you know, we give them the instruction that we will start the address confirmation process.”</p>
Tr. Day 12, 3229:15-3230:1	Supervisor Tommy Doyle	<p>Supervisor Doyle agrees that there was no widespread voter fraud in the 2020 election in Lee County. And in the 2020 general election, Lee County saw an increase in vote by mail. 53% of voters in Lee County voted by mail in the 2020 election – 75,000 more than vote by mail as compared to the 2016 general election.</p>
Tr. Day 12, 3230:2-9	Supervisor Tommy Doyle	<p>Supervisor Doyle is aware of one potentially fraudulent vote by mail incident in the 2016 election, which was in fact a mistake and not fraud.</p>
Tr. Day 12, 3232:21-24,	Supervisor Tommy Doyle	<p>Prior to SB 90, “Florida has some of the strictest election laws in the United States,” and “many states wanted to copy Florida’s election system.” In spring</p>

3233:3-5, 3233:9-15  Ex. 135, ECF No. 634-8 at 1		2019, vote by mail was the most popular way to vote in Lee County and Supervisor Doyle expected demand for vote by mail to increase.
Tr. Day 12, 3248:16-18	Supervisor Tommy Doyle	Before SB 90, there were provisions in place to keep mailed ballots safe and secure.
Tr. Day at 3252:6-9	Supervisor Tommy Doyle	“Q. Do you think that SB 90’s requirement that voters provide an identification number that matches their voter record when they request a vote-by-mail ballot was necessary? A. No.”
Tr. Day at 3252:10-13	Supervisor Tommy Doyle	“Q. And you would agree with me, would you not, that the more people who vote by mail, the shorter the lines will be on election day? A. I would agree with that.”
Tr. Day 12, 3255:16-24  Ex. 136, ECF No. 634-9 at 1	Supervisor Tommy Doyle	“Q. You told the recipients of your summer 2020 newsletter that the number of voters who choose to vote by mail increases every year; correct? A. That’s correct. Q. And to perfect a vote -- protect the vote in Lee County, you stated that Florida has strict laws that provide checks and balances that Supervisors must adhere to when processing vote-by-mail ballots; correct? A. That’s correct.”
Tr. Day 12, 3256:20- 3257:15	Supervisor Tommy Doyle	“Q. Before SB 90, a vote-by-mail request, as you said earlier, was good for two election cycles; correct? A. Yes. Q. And that system worked well? A. Yes. Q. Voters were familiar with the system; correct? A. Yes. Q. And, in fact, voters complained to you because they didn’t want to have to request their vote-by-mail every two election cycles; correct?



		<p>A. ... Yes, the vote – a lot of voters would like to have permanent requests on. And I’ve had people want to know why we couldn’t do that.</p> <p>Q. And you would agree with me that SB 90’s change to the vote-by-mail request period from two election cycles to one election cycle was unnecessary; correct?</p> <p>A. Yes, sir.”</p> <p>Supervisor Doyle agrees that the change to the vote by mail validity period does not provide any benefits to voters.</p>
Tr. Day 13, 3428:20- 3429:4	Director Maria Matthews	<p>The purpose of the ID requirement for a vote by mail request is that it “is one more piece of information that we took into effect that – and hope that only the voter has that will ensure that only the voter is the one that is asking for that vote-by-mail ballot to minimize any type of potential for voter fraud, either in requesting the ballot or picking up the ballot or voting the ballot.”</p>
Tr. Day 13, 3431:21- 3432:14	Director Maria Matthews	<p>The purpose of the shortening of the request validity period is to provide “more current information about a vote-by-mail ballot request that was made in terms of – particularly for a mobile policy such as military and overseas voters, students, seasonal service workers in Florida that move around a lot, and they – for example, a student may be going to school here at FSU or UF, University of Florida, and request a vote-by-mail ballot. They graduate; they move within the state to another county, or they even move across the country, and they don’t let their Supervisor of Elections know that they’ve moved, but meanwhile they’ve got a standing request that is good for – or was good for up to two general election cycles. So then the ballot ends up going out to that address for that student who is no longer there.”</p>
Tr. Day 13, 3437:13-25	Director Maria Matthews	<p>“Q. And so, Director Matthews, would Senate Bill 90 help with some of the complaints that you received?</p> <p>A. We believe so, yes. I believe so.</p> <p>Q. How so?</p> <p>A. Ensure that the ballot is only being – number one, that the period of time in which a vote-by-mail ballot</p>

		is good for is a shorter period of time, which makes – makes the voter provide more current information at the time – each time that they have to request a vote-by-mail ballot. Second is that only the person – we are trying to ensure through these layers of authenticity – authentication – excuse me – that only the voter is the one that is asking for those ballots and voting the ballot.”
Tr. Day 13, 3504:23-24	Supervisor Mark Earley	“I don’t see the provisions requiring the driver’s license to add any real security to the vote-by-mail request process.”
Tr. Day 13, 3506:10-23	Supervisor Mark Earley	A very large percentage of Leon County’s voters are college students who move frequently; even so, Supervisor Earley has never had to submit an elections fraud complaint related to vote-by-mail voting.
ECF 549-3, 168:9-18, 188:14-189:5.	Supervisor Craig Latimer	The Hillsborough SOE sees no benefit to shortening the validity of a VBM request and does not agree that it increases the security of elections. “[SOEs] really didn’t want it to go to one, we wanted it to stay at two. And there was no logic to do that, to take it to one.”
ECF 549-3, 74:13-21, 142:2-7, 167:16-21	Supervisor Craig Latimer	The VBM Request Provisions are “going to cause a tremendous administrative burden on our office with just having to process these things every cycle, as opposed to every two cycles, and the additional information that’s required that we have to verify, so it will cause an administrative burden.” The Hillsborough SOE is going to have “to hire additional people to keep up with the workload, additional temporary employees” to re-process those requests.
ECF 549-3, 75:1-21	Supervisor Craig Latimer	Ten years ago, the Florida Legislature reverted to a one cycle VBM request policy, which “wiped out everything we had on file at that point,” and took “a lot of effort and work to build that back up”
Ex. 874, ECF No. 468-2 at 1-2	--	Senator Gruters: <i>I just heard House caved on the reset. That is going to be devastating.</i> Representative Ingoglia: <i>Reset?</i>



		<p>Senator Gruters: <i>The absentee ballot request starting now rather than grandfathering everyone who has already requested.</i></p> <p>Representative Ingoglia: <i>We have always had that provision in our bill. Nothing has changed. We grandfather everyone in and then make the requests for one election cycle from now on.</i></p> <p>Senator Gruters: <i>Yes, we cannot make up that ground.</i></p> <p>Senator Gruters: <i>Putting at risk all Republican nonpartisan candidates. We had a race in Sarasota this year and got killed. Our school board member got killed last year because they have 20,000 more absentee voters. We spent 100,000 by ourselves to try to cut down the difference as a county. We cannot make up that ground. Trump campaign spent 10 million. Could not cut down lead.</i></p>
Ex. 6, ECF No. 608-5 at 38	Dr. Traci Burch (Report)	<p>As a second justification for making voters request mail ballots more frequently, Senator Baxley also argued that the vote-by-mail changes were designed to help people decide yearly how they wanted to vote, implying that automatic requests to vote-by-mail would prevent a person from voting in person:</p> <p>Senator Baxley: “With all due respect, I truly believe we will have a more secure process when people can decide each year what manner in which they would like to vote... You can choose every year how you want to vote.... If you want to vote the same way you can, or you have all the other options of how to vote”</p>
Ex. 6, ECF No. 608-5 at 39	Dr. Traci Burch (Report)	<p>Senator Baxley: “You’re stuck with that choice. Everybody should be able to choose each year how they want to vote as far as I’m concerned.”</p>
Ex. 6, ECF No. 608-5 at 39	Dr. Traci Burch (Report)	<p>Secretary Laurel Lee: “[E]ven if you’ve requested that vote by vote by mail ballot and have it in hand, you can still vote in person.”</p>
Ex. 6, ECF No. 608-5 at 37-38	Dr. Traci Burch (Report)	<p>“It is also worth noting that, despite their concern about the accuracy of addresses, the sponsors were against amendments to the bill that would update voters’ addresses automatically after changing</p>

		<p>it on their drivers' licenses. For instance, Senator Brandes proposed an amendment on the Senate floor:"</p> <p>"As you know many people go to the clerk's office or the Department of Highway Safety in order to update their driver's licenses when they move addresses. And so, this amendment simply establishes that when a person submits an address change to the Department of Highway Safety or Motor Vehicles, information is then sent to a state-wide voter registration system and updated accordingly. This is the most efficient and cost-effective way to keep our voters' roll clean and up to date, will solve an issue of ballots being mailed to residences that are no longer occupied by the owner, and frankly it's just good governance."</p> <p>"At least four amendments like this one that would make updating addresses easier failed"</p>
Ex. 6, ECF No. 608-5 at 27	Dr. Traci Burch (Report)	<p>Senator Stewart: "Regarding your section 7, regarding your urgency to retroactively invalidate a voter's request for a vote by mail ballot before 2022 election, what was your position on putting this into the bill?"</p> <p>Senator Baxley: "That's really about just fresh start. Fresh start, everybody gets to choose and will get it on a pattern. So, every year, just like you do some other things every year, like pay your property tax, you'll also choose your voting method and let the supervisor know your choice."</p>
Ex. 6, ECF No. 608-5 at 55-56	Dr. Traci Burch (Report)	Senator Baxley: "I don't always park in the same place, the same time the same way. I adapt to each year, what else is going on, what I have to do."
ECF No. 549-2 at 60:2-7	Supervisor Alan Hays	Supervisor Hays is "very, very comfortable in the security of the vote-by-mail process and the validation of signature matching."

ECF No. 549-2 at 60:8-13	Supervisor Alan Hays	Supervisor Hays was satisfied with the security of the vote-by-mail process in the 2020 elections in Lake County.
ECF No. 549-2 at 62:14-21	Supervisor Alan Hays	Supervisor Hays is not aware of any widespread voter fraud in Lake County or elsewhere in Florida in the 2020 elections related to vote-by-mail ballots.
ECF No. 549-2 at 121:16-122:1	Supervisor Alan Hays	<p>“Q. . . . Did any voter in Lake County tell you that they wished they could not request that a vote-by-mail ballot – that their vote-by-mail ballot request be good for two general election cycles?</p> <p>A. I hate to be slow here. Are you asking me did anybody complain because they could – did they say that they wished they could not request it for two election cycles?</p> <p>Q. Exactly.</p> <p>A. No. Nobody said that.”</p>
ECF No. 549-2 at 150:12-21	Supervisor Alan Hays	Supervisor Hays is not aware of any instance of voter fraud that would have been prevented had people had to renew their requests for ballots every election cycle.
ECF No. 549-2 at 150:24-151:22	Supervisor Alan Hays	<p>Supervisor Hays has “several different safeguards” to “ensure that voters who move are no longer able to vote from their previous address.” “Number 1, we try to encourage all voters, when they change address, to let us know. The postal service can let us know through a return mail-type thing. When the voters go to change their address at the DMV on their driver’s license, they can let us know. So there’s multiple opportunities for them to let us know. And thus we – plus we have – if the voter sends us – if they have – if they have a request on file, we send it to the address that is listed in that voter’s file. And if they have moved, then the post office does not forward that ballot, they send it back to us. All of our ballots are nonforwardable.”</p> <p>“Q And in your opinion are those safeguards sufficient to prevent against fraud that might be caused by somebody moving?</p>

		A Well, I've not seen any instances of fraud, so I guess one could conclude that they probably are."
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### III. The Drop Box Provision

#### A. The Drop Box Provisions impose an undue burden on the right to vote

Citation	Witness	Evidence
Tr. Day 1, 71:6-12	Cecile Scoon	“So many people have obligations during the day that make it really difficult [to vote] during regular business hours. We have people that do shift work. We have people that have children they have to get to school in the morning; then they go to work and they get off after regular business hours of the Supervisors of Elections’ offices.”
Tr. Day 1, 72:11-23	Cecile Scoon	“And, frankly, a lot of the people that have those kinds of limits on their time -- there could be low-wage said people -- many of them are Black and Brown. You know, that’s just where our state is in employment. That’s where the nation is in employment, that a lot of times those kind of jobs with those kind of restrictions, like, you get a 30-minute lunch entirely to eat, go to the bathroom and be back in place. They don’t get an hour and a half discretionary lunch. They don’t get to say, I’ll stay later an hour or so, like a lot of white collar workers can do. They have very stringent limited time when they can be off. So for that whole community, the drop box was a godsend because they could participate in the franchise, and they could do it themselves.”
Tr. Day 1, 77:5-7	Cecile Scoon	“Pretty consistently the last five to ten years [I] have primarily used the drop box for my ballot, and it would be after hours.”
Tr. Day 1, 79:2-7	Cecile Scoon	On Drop box monitoring: “I think it’s going to be another governmental intervention and, for many in the community, unwelcomed gatekeeper, someone who is going to say, You are not doing it right and make them feel

		unwelcomed and intimidated and uncomfortable. I don't think it's a benefit. I think it's going to be a harm to many, many people."
Tr. Day 1, 82:14-25	Cecile Scoon	"Our Supervisor of Elections announced to the entire community that he was taking down our drop box, which he did. He did, I think, the day before and the day the law was signed into law by the Governor. It is no longer there. I was just there a few days ago, and it's not there. And when I went inside to turn in the voter registration applications that I had gotten done, I asked one of the clerks, I said, Oh, where's the voter registration box? I thought it was going to be moved from outside to inside. There was no box anywhere. And she said, Oh, we don't use the box anymore. I said, Okay. So we don't have a drop box."
Tr. Day 1, 83:6-10	Cecile Scoon	"That's when the Supervisor of Election let us know that he was going to take down the box. People were outraged. But, on the other hand, we were kind of -- you could kind of see Mark's [point] -- Mark Andersen, our supervisor, he was afraid of getting that \$25,000 fine, so he just took it down."
Tr. Day 1, 216:20-217:5	Esteban Garces	Many members of the Latinx community work for Disney, Universal, and the airport and many Latinx voters work late hours. Having a drop box available 24/7 allows them to deliver their ballot when they get off from work – sometimes at 3am.
Tr. Day 1, 527:2-16	Anthony Brown	The Drop Box Provision burdens farm labor workers in Indian River County's "migrant farm-laden community" who often work 12-hour shifts, 5-7 days per week. Such workers would have difficulty accessing a drop box during business hours or early voting hours.
Tr. Day 2, 598:25-599:2	William Cooper	There are 2.7 million disabled persons in Florida.

Tr. Day 2, 629:3-8	William Cooper	10.4% of Black households, 7.3% of Latino households, and 4.8% of white households in Florida do not have access to a vehicle. That works out to about 114,000 Black households and 126,000 Latino households without a vehicle.
Tr. Day 2, 632:19-22	William Cooper	“10.1 percent of the 18 to 64 population has a disability, and 32.4 percent of the 65 and over population has a disability, and for the entire 18 and over population that averages out to 15.9 percent.”
Tr. Day 3, 696:19-697:6	Alan Madison	In the 2020 general election, Mr. Madison used a drop box at “the Supervisor of Elections’ office. There was a drop slot on the wall outside on the building.” He dropped off his ballot “right around 7 o’clock in the morning. I was on my way to another appointment.” There was no one monitoring it; “[I]t’s a slot in the wall. I don’t even think the office was open.”
Tr. Day 3, 697:10-25	Alan Madison	Mr. Madison also voted by drop box in a 2021 local election after Senate Bill 90 was enacted. The drop box he used in 2020 “was not available. I had to go inside. I had to wait for the office to open. So I had to do it later in the day when – because, again, I wasn’t able to do it in the morning. And it was – I had to hand my ballot to someone to get them to review it, and they put it in a drop box because the drop box was on the other side of the room.”
Tr. Day 3, 698:1-7	Alan Madison	Mr. Madison found the experience of handing his ballot to an employee in 2021 “[d]isconcerting. I felt uncomfortable handing my ballot to someone else. You know, even during the regular election when you go in, nobody takes your ballot once you fill it out; you put it yourself in a machine. So it was disconcerting. It was an uncomfortable feeling.”
Tr. Day 3, 699:6-15	Alan Madison	The drop box Mr. Madison had used in 2020 was not available in 2021, so “I couldn’t drop it off when I had planned to, so I had to wait for



		the Supervisor of Elections office to open before I could go in and actually hand by ballot in.”
Tr. Day 3, 699:16-23	Alan Madison	This change in drop box availability “makes it much less convenient. I mean, before I could have dropped it off anytime of day or night. If I had an emergency, I could do it at 10 o’clock at night and take care of what was happening the following morning. But now I have to wait for the Supervisor of Elections’ office to be open.”
Tr. Day 3, 699:24-700:3, 700:15-19, 702:21-22	Alan Madison	Mr. Madison used a drop box because “I’ve had significantly poor experience with the U.S. Postal Service delivering my mail on time, delivering my mail appropriately.” “I’ve had poor experience with the Postal Service. I’ve had things that I’ve mailed to others including a thousand dollar bond go missing. I’ve had packages and letters delivered to me that belong to other people. So I don’t trust the Postal Service like I used to.” Mr. Madison “didn’t receive [his mail ballot] until very late the last time.”
Tr. Day 3, 735:17-736:3	Frederick Velez Burgos	Many Latino voters, “especially in Florida, have odd hours in terms of work. They have late hours. They work, for example, in the airport industry or they work in the service industry at Disney at night in hotels. We also have a lot of people that have two jobs.” Drop box access during nontraditional hours is important for these voters; “[A] lot of people who would actually vote at night on their way, you know, to work, or sometimes they are coming back from work in the morning and they are able to drop off the ballot.”
Tr. Day 3, 821:24-822:6	Frederick Velez Burgos	“[Y]ou’re asking voters to go up to a ballot box with someone that’s there standing and looking at them, and to some voters that might look like voter intimidation, especially when we’re talking about Latino communities. You’re talking about people that will probably be



		wearing some type of security outfit just in front of the mailbox, and I think that can be a dissuasion.”
Tr. Day 4, 1196:2-9	Supervisor Joe Scott	“[T]here’s a 48-hour period of time from when early voting ends until the polls close, and during that time this massive county only had two locations [of drop boxes], so that’s the way it stood in 2020.”
Tr. Day 4, 1196:24-1197:5	Supervisor Joe Scott	“[E]specially as we get close to the election, [the Lauderhill Mall drop box is] a very, very busy location where you have a long line of cars waiting to pull up and for people to pull up and deposit their ballots. So the Lauderhill Mall location I would say is very convenient, but it’s insufficient for the – for the size of our – of our population.”
Tr. Day 4, 1199:2-4	Supervisor Joe Scott	Having two drop boxes in the last two days of the election is “[a]bsolutely not” sufficient.”
Tr. Day 4, 1199:5-16	Supervisor Joe Scott	In the 2020 general election, “we had numerous people, I would say hundreds of people, show up to the Miramar library because it was an early voting site and people were used to going there to drop off the ballots. But on the Monday and election day and the Monday before election day, they couldn’t do that and they still showed up there. When they were notified that they needed to go to Lauderhill Mall, very common, most of the people could not make that trip for various reasons and were not able to go and drop off their ballots.”
Tr. Day 4, 1199:17-1200:15	Supervisor Joe Scott	It “is a very common, very widespread problem on election day that we hear from clerks across the county from the actual polling places as well as people who work at those early voting sites which are often libraries and community centers” that people show up on election day with “not only their own ballot, but with the ballots for other people in the household as well to drop off at the neighborhood polling place, and that’s not allowed.”

Tr. Day 4, 1200:16- 1200:18	Supervisor Joe Scott	“Senate Bill 90 made it more difficult for us to solve [the] problem” of insufficient drop boxes on Election Day and the day before, by providing that drop boxes on those dates can only be at permanent offices.
Tr. Day 4, 1201:9-13	Supervisor Joe Scott	“And with the nature of elections and the fact that we may only need these locations for two days every other year, it is a massive waste of resources in some cases for us to have to continuously operate permanent offices simply to make it so that our citizens are able to vote when an election comes around.”
Tr. Day 4, 1202:22- 1203:10	Supervisor Joe Scott	<p>“Q. Could a voter return a ballot using the Postal Service on the day before election day?</p> <p>A. No.</p> <p>Q. Why not?</p> <p>A. The likelihood of that ballot reaching us is – I wouldn’t recommend it.”</p> <p>Q. And could a voter return a ballot using the Postal Service on election day?”</p> <p>A. No.</p> <p>Q. And that’s for the same reason?</p> <p>A. For the same reason, it’s – while it’s possible, it’s highly unlikely, and for that reason, I wouldn’t recommend it. The only way to know that the ballot is going to reach us those last two days would be to deposit it in a drop box.”</p>
Tr. Day 4, 1203:11-14	Supervisor Joe Scott	“We used a video surveillance system” to monitor 24 hour drop boxes during the 2020 general election. “And we had a person watching the drop boxes by the video surveillance system.”
Tr. Day 4, 1204:18- 1205:22	Supervisor Joe Scott	Because of Senate Bill 90, Broward will have to staff drop boxes with “at least two people at all times because we have to be prepared for somebody to go and, you know, relieve themselves if they need to.”

Tr. Day 4, 1207:23- 1208:8	Supervisor Joe Scott	Many voters prefer drop boxes because “it takes out the middleman, so basically they don’t have to rely on the postal system, which includes a postal worker taking it back to a local hub and then it going to a regional processing center and from the regional processing center to another local hub and then to our office. So there’s a lot of steps for a ballot to go through the Postal Service, whereas if they drop it in the drop box, it comes straight to us. So people like the idea that their ballot is coming straight to us, and they prefer that over using the Postal Service.”
Tr. Day 4, 1231:3-6	Supervisor Joe Scott	“Senate Bill 90 requires me to expend more resources in order to have drop boxes. So it does not directly stop me from having drop boxes. It just causes the cost of having drop boxes to be much, much higher.”
Tr. Day 5, 1235:12-20	Supervisor Joe Scott	“[M]y recollection of 2020 was that we did have – where I did see or hear about lines, it was at the drive-through [drop box] at Lauderhill Mall. It was a long line of cars towards the last – in the last hour, right before 7 o’clock, which, by the way, those people who were in line at 7 o’clock, if they’re in a car line – which is very confusing – they don’t get to cast their ballot after 7 o’clock, unlike a line at a polling place where they can. So that was – not only was it a line, but it was a very problematic line.”
Tr. Day 5, 1251:15-22	Supervisor Joe Scott	Scott will have eight drop boxes on the day before the election and the election day in 2022, but that is not enough. “I’d like to have at least 40. If I had 40, that would be one per city in Broward County. And for several of the city – several of our big cities, we would able to put two. Like a city like Fort Lauderdale maybe would have two drop boxes instead of one. So it would be a very reasonable number for us to have 40 of them instead of 8.”

Tr. Day 5, 1251:23- 1252:1	Supervisor Joe Scott	<p>“Q. Would you have more drop boxes were it not for Senate Bill 90?</p> <p>A. Absolutely. I would have gone for 40 drop boxes if it weren’t for Senate Bill 90.”</p>
Tr. Day 5, 1366:5- 1367:8	Supervisor Christina White	<p>In the 2020 general election, Miami had had four drop boxes on the Monday before Election Day and on Election Day: two at Supervisor White’s offices, and “two at locations that are not [her] offices.” “[B]efore Senate Bill 90, [she] could offer drop boxes at early voting sites when early voting was not happening.” But “Senate Bill 90 says that you can only have drop boxes at early voting locations during the days and hours of early voting and, in addition to that, you may have them at your permanent branch offices.”</p>
Tr. Day 5, 1367:9-12	Supervisor Christina White	<p>“As a result of Senate Bill 90’s change, . . . [Miami-Dade] will have two fewer boxes on Monday and Tuesday”—the day before Election Day and Election Day.</p>
Tr. Day 5, 1369:11-25	Supervisor Christina White	<p>“[B]y Thursday prior to the election we are already doing all of our media interviews and the groups that we’re talking to and, you know, all of our social media posts, and however and wherever we can say it, we’re telling them to bring it to us; right. There’s a chance that it’s still going to make it to our office because we work very, very close with the post office, and I know they make every effort to expedite ballots coming to us. But, you know, as of Thursday, Friday, we are telling them it’s not worth the risk and to bring it in.”</p>
Tr. Day 5, 1370:1-7	Supervisor Christina White	<p>“Q. And, in your experience, do a lot of voters return vote-by-mail ballots close to election day?</p> <p>A. Yes. I will tell you that the drop boxes have sort of shifted that. It was an interesting trend that people were actually turning them in a lot earlier than they have in the past, but certainly</p>

		we're having, you know, thousands of people deliver their ballots in those final days."
Tr. Day 5, 1597:21- 1598:2	Dr. Robert Brigham	Dr. Brigham stopped voting in person because "I had rectal cancer and had surgery, which I believe saved my life but also left me with a problem where I just cannot control myself. And so I try very much not to go to places where there are -- where I have to spend time away from bathrooms."
Tr. Day 5, 1598:13- 1599:8	Dr. Robert Brigham	The drop box Dr. Brigham used for the 2021 municipal election was inside the office. "We had to park the car and go in and physically drop it in the box." Parking was "very difficult," the lot is "relatively small. And maybe some spaces are easy to get into, but the ones we did, it was very difficult to maneuver the car into the spaces."
Tr. Day 5, 1599:10- 1600:5, 1600:9-15	Dr. Robert Brigham	The drop box Dr. Brigham used for the 2020 general election "was not in the Supervisor's office; it was across the street. It was out of doors but covered by a tent . . . and it was a drive through and there were signs pointing the way and all." That drop box was "busy." "There was a line of cars, and we joined that line and eventually made our way."
Tr. Day 5, 1601:18- 1602:5	Dr. Robert Brigham	If the drop box were indoors for an election as busy as the 2020 general election, "Each of the cars would have to park before me and that would take extra time. To me time is a really important thing. It would take extra time. Then, of course, you'd have to go out and get in -- walk into the Supervisor's office, and then I don't know how long it would take to drop ballots when there was a line there, but I'd have to join that line. And my situation gets worse when I do physical actions as opposed to sitting the car, so it would have been more difficult for me, definitely."
Tr. Day 5, 1603:16-20	Dr. Robert Brigham	Dr. Brigham uses drop boxes because he has had bad experiences with the mail: "I mailed in

		my property tax and it -- it never got there. And as far as I know, it was never found. I didn't discover this until much later and then I had to pay a penalty for paying my property tax later."
Tr. Day 5, 1606:7-14	Dr. Robert Brigham	Regarding the Drop Box Provisions, "I think anything that restricts my options impacts me because the more options I have, the more likely I will be to get through the voting process. So when you restrict the boxes, I don't know if that would mean longer lines -- I think it will -- and, again, that bothers me."
Tr. Day 5, 1607:6-13	Dr. Robert Brigham	If Dr. Brigham had an onset of his condition while voting, "I would go home. Stop what I was doing and go home and then hope I could get back another day."
Tr. Day 7, 1877:24-1878:11	Rep. Carlos Smith	"[T]his is a common theme throughout central Florida -- is a working class constituency, as I mentioned before, many of them being individuals who work in the hospitality industry that due to low wages and low benefits, they have multiple jobs, and they work weeknights; they work weekends. And the way that the bill was written, which restricts how vote-by-mail drop boxes can be available after what we would consider normal operating hours, restricted it in such a way that it would really have a disproportionate impact on those individuals, constituents who I represent, who are a big part of our community, who just can't get there during those times to drop off their vote-by-mail ballot in a drop box."
Tr. Day 7, 1867:22	Rep. Carlos Smith	One-third of Rep. Smith's district is Hispanic or Latino.
Tr. Day 7, 1994:18-1995:13	Cliff Albright	After-hours drop box access is crucial for Black voters who work shift jobs and may not have the ability to access a drop box during business hours.
Tr. Day 7, 1997:20-21	Cliff Albright	Having the drop boxes monitored by officials is likely to have a "chilling effect" on Black voters.



Tr. Day 7, 2049:4-7	Andrea Mercado	SB 90's restrictions on drop box hours imposes a burden on some voters: "I think people were very excited to use drop boxes and just how accessible they were and they can go and drop off after their third shift at work. So now the hours being limited impacts our members."
Tr. Day 7, 2049:7-9	Andrea Mercado	SB 90's requirement that drop boxes must be physically monitored "might be intimidating to some voters."
Tr. Day 7, 2049:13	Andrea Mercado	"Some member[s] have expressed frustration and dismay [with the Drop Box Provision]."
Tr. Day 7, 2093:9-10	Amy Zukeran	"Q. Can you describe your disability for the Court? A. Yes, it's anxiety, major depression, and PTSD."
Tr. Day 7, 2097:12-2098:12	Amy Zukeran	"Q. How was that experience of using the drop box for you? A. That one, it was -- it was anxiety-provoking. Q. Is that because there was a person there? A. Yes. I didn't like it because I always feel -- and it's a social moray -- that you have to be -- you have to acknowledge the other person, and I don't -- sometimes I'm so anxiety-filled that I don't want to deal with other people. And so I sometimes avoid it."
Tr. Day 7, 2099:6-8	Amy Zukeran	"Q. Would you have the same issue if the drop box was monitored with a video camera as opposed to a person? A. I don't think so. I don't think so."
Ex. 214, ECF No. 608-49	--	Bradford County Supervisor Amanda Seyfang: "I could not give up one of my staff members to just sit at our drop box all day long, nor could I afford with my budget to hire another staff member just to do that." "If the bill passes with that current language, I would have to just pull my drop box. There's no way a county my size could afford it."
Ex. 213, ECF No. 608-48	--	Hillsborough County Supervisor Craig Latimer: "We should be looking for cost-effective ways

		to expand [drop box] use, including the use of secure 24-hour drop boxes with camera surveillance. Instead, the new legislation prohibits that.”
ECF No. 549-3, 104:21-105:4	Supervisor Craig Latimer	Nearly half of voters who voted with a mail ballot in Hillsborough County did so via drop box.
ECF No. 549-3, 111:16-112:3	Supervisor Craig Latimer	The Drop Box Provisions “make [returning VBM ballots] harder because it starts to limit the hours that you can have drop boxes to just the early voting hours instead of outside those hours, which some other counties were doing.”
ECF 549-3, 119:4-20  Ex. 221, ECF No. 608-56	Supervisor Craig Latimer	Hillsborough Supervisor Craig Latimer does not plan to offer a 24-7 drop box in 2022 because of the cost to “have somebody physically monitor it.”
Tr. Day 8, 2158:25- 2159:8	Dr. Michael Herron	In 2020, “there were roughly 1.3 million ballots cast via drop box. That’s approximately 31 percent of all vote-by-mail ballots in the 46 counties for which I have data. I know that there is additional reporting that there are actually 1.5 million ballots cast. The reason I said 1.3 is because I don’t have data on every single county, only 46, as I mentioned. So that’s a conservative number compared to 1.5 million. Any restrictions on drop box voting would affect all of those voters.”
Tr. Day 8, 2247:23- 2248:9, 2248:13-18,	Dr. Michael Herron	<p>“Q. Does the USPS provide any guidance for when domestic nonmilitary ballots should be placed in the mail to ensure that a ballot is received in time to be counted?</p> <p>A. The guidelines are that a voter should allow one week.</p> <p>Q. Can a voter who receives their vote-by-mail ballot within a week of election day abide by that guidance?</p> <p>A. No, that would be impossible. Any voter</p>



		<p>who received a ballot within a week of an election, even if the voter were to turn around and fill it out immediately, could not return the ballot via mail and still be compliant with Postal Service guidelines.”</p> <p>“If a voter has a vote-by-mail ballot and chooses to wait to vote until close to election day in order to gain information about the candidates and other issues on the election, if that voter places his or her ballot in the Postal Service within a week of election day, that ballot’s not in compliance with Postal Service guidelines.”</p>
Tr. Day 8, 2247:3-10, 2247:16-22	Dr. Michael Herron	<p>“When a vote-by-mail ballot is placed in a drop box, it is effectively delivered, and it is processed like any other vote-by-mail ballot. Earlier I mentioned the issue about late vote-by-mail ballots being those that arrive at elections offices after 7 p.m. on election day, so when a vote-by-mail ballot is placed in a drop box, it is not late. It is guaranteed on-time delivery, and then it is processed normally like any other vote-by-mail ballot would be.”</p> <p>“[A] vote-by-mail ballot in the mail is subject to Postal Service delivery schedules, and I would say there are two points here: One is the one I made before, which is that the voter can no longer control delivery because the Postal Service has the ballot; and, in addition, Postal Service can be late, and so there is a risk of a late ballot anytime you put a ballot in the postal system.”</p>
Tr. Day 8, 2249:2-6	Dr. Michael Herron	<p>“Q. Is it true that a number of ballots are rejected for having arrived after 7 p.m. on election day in Florida in every election? A. Yes. Every election there are thousands of ballots of this type.”</p>

Tr. Day 8, 2256:9-13, 2256:17-21	Dr. Michael Herron	<p>An analysis of the 46 counties that produced data on the total counts of drop box ballots provides “suggestive evidence that counties with more numbers of Black vote-by-mail voters are also counties that had greater drop boxes -- drop box usage rates, which would suggest that Blacks -- Black voters used drop boxes more frequently than non Black voters.”</p> <p>The relationship between a counties’ percentage of Black vote-by-mail voters and the rate of drop box use is “positive, meaning [the] greater the Black percent of vote-by-mail usage, the greater the drop box rate.”</p>
Tr. Day 8, 2282:17-21; 2283:5-9	Dr. Michael Herron	<p>“The evidence that I have suggests that there are -- that Black voters are more likely to use drop boxes than White voters; that Democratic affiliates are more likely to use drop boxes than Republican affiliates; and that young voters are more likely to use drop boxes than older voters.”</p> <p>“[A]ll Florida voters are burdened by the restrictions the SB90 places on drop boxes, but in particular, Black, Democratically affiliated, and young voters are burdened. They are burdened disproportionately given their usage -- their disproportionate usage of drop boxes.”</p>
Tr. Day 8, 2285:19-25	Dr. Michael Herron	<p>“Because in Florida, elections -- early voting ends on Sunday, so individuals who vote with drop boxes on Monday, the Monday before election day would be disproportionately burdened. And, in addition, individuals who use drop boxes before early voting started, they will also be disproportionately burdened because of the restrictions of SB 90.”</p>
Tr. Day 8, 2287:2-7, 2287:18-24,	Dr. Michael Herron	<p>Table 22 includes 27 of 67 counties: “The Total column at the bottom of this table shows that there were roughly half a million drop box ballots voted either prior to the start of early</p>

Ex. 5 at 70, ECF No. 608-1		voting or in the last week before an election day, 21.16, we'll call it 21 percent, in the early period prior to early voting and around 29 percent in the week before election day." But this number of conservative – "The number of ballots cast in the earlier and later periods, which I write down, is 517,000. The true number is of course larger than that, and that's because I only have data on a limited number of counties."
Tr. Day 8, 2289:18-20; 2290:5-11  Ex. 5 at 72, ECF No. 608-1	Dr. Michael Herron	Table 23 shows "there is tremendous variance in Florida across potential drop box sites based on SB 90's restrictions." "The most racially heterogenous counties can be found -- in Florida can be found in the top left of the table: Miami-Dade, Broward, and so forth. So those are places where the ratio of voters to potential drop box location is high, and so that means that those counties are particularly, in terms of -- are particularly burdened by SB 90's restrictions on locations."
Tr. Day 8, 2290:23- 2291:13, 2291:14-20, 2292:14-17	Dr. Michael Herron	In the 2020 general election, there were approximately 488 drop boxes available to voters. Approximately 65 drop boxes were available 24 hours per day spread across 48 counties. 41 counties used video surveillance and 30 counties used 24-hour video surveillance.  At the time of Dr. Herron's report, 14 counties were reducing drop box hours because of SB 90 and 11 were reducing drop box locations because of SB 90. Not all counties provided definitive drop box plans.
Tr. Day 8, 2292:23- 2293:7	Dr. Michael Herron	"One of the reasons [for the reductions in drop box availability], as I noted in paragraph 214, is the requirement that SB 90 imposes on monitoring. It requires that a drop box is continuously monitored by an employee of a Supervisor of Elections' office. So, as I note,

		Lake County commented on that in their discovery. Similarly, Lafayette County made a comment about not using drop boxes. And Palm Beach noted that it will be reducing the times of drop boxes because of staffing issues, again, associated with staffing drop boxes -- staffing drop boxes -- using employees of Supervisor of Elections' offices."
Tr. Day 8, 2293:22-2294:5, 2294:8-17	Dr. Michael Herron	<p>"[W]hen there are fewer [drop box] locations, individuals have to travel further. . . The fewer locations, the more that some people have to travel, and that's transportation costs."</p> <p>"So when hours are reduced, drop boxes . . . aren't as accessible as often as they were. And I discussed that -- earlier that in the cost-of-voting literature, it's well known that not everyone has the same amount of time flexibility in their lives due to employment and other features of their personal backgrounds that I already discussed. So that lack of flexibility means that individuals who might want to use a drop box at a point that is no longer permitted by SB 90 will be burdened, and they will be disproportionately burdened compared to the regular drop box users."</p>
Tr. Day 8, 2393:10-20	Dr. Daniel Smith	<p>"The [drop box] provision is going to have a major effect on all Florida voters, but particularly it will have a disparate impact, negative impact, on Black and Hispanic voters . . . Potentially millions of voters [will be impacted by the] drop box provisions, which I'm happy to go into details. With respect to the data[,] I was able to process for some of the counties, we're talking thousands of voters."</p>
Tr. Day 8, 2412:18-22, 2413:3-8	Dr. Daniel Smith	<p>"[W]e know that African-Americans are more distrustful of the U.S. Postal Service, and there's good reason here in Florida to understand why with respect to mail delivery rates and the timing that the U.S. Postal Service suggests --takes to both request and deliver</p>

		mail.” So I think that’s an interesting way of thinking about the attitudes that African-Americans likely have towards vote-by-mail with respect to trusting the delivery by physically depositing it as opposed to putting it in perhaps a mailbox down the block in which you, yourself, may not regularly be getting your mail through the U.S. Postal Service on a regular basis.”
Tr. Day 8, 2420:6-13	Dr. Daniel Smith	“[T]he reduction caused by SB 90 on drop boxes, both in time and place, is going to have a depressive effect on the likely use of vote-by-mail ballots and certainly the successful return of vote-by-mail ballots.”
Tr. Day 9, 2459:2-13	Dr. Daniel Smith	Drop boxes affected by SB90 were located across Florida. In large and small counties, rural and urban counties, and in counties along the I-4 corridor.
Tr. Day 9, 2462:2-2463:7	Dr. Daniel Smith	“[I]ndividuals who have disabilities, infirmities, physical ailments who are relying on the ability, as they did in 2020, to conveniently come up and outside drop off a vote-by-mail ballot into a box, perhaps not even having to leave the car because there is a box that’s available through drive-through, they will certainly be affected [by drop boxes being moved from outside to indoors]. Others who have health considerations that may not be physical, but other health considerations, will be also be affected, I would think.”
Tr. Day 9, 2472:11-17	Dr. Daniel Smith	Those who will be impacted by the drop box restrictions include “people who may be working during the normal business days or may be working on the weekend and have not the ability to come by during those much more narrowly prescribed hours as we went over yesterday in terms of thinking about all that period of time that was previously available for

		Supervisors. Again, not all Supervisors used all that time, but many did.”
Tr. Day 9, 2476:14-25	Dr. Daniel Smith	Voters in Indian River County will be impacted by the Drop Box Restrictions: “[Indian River County] is fairly rural. There are a lot of migrant farm workers, especially on the west side of that county. And I suspect there are a lot of people who have difficulty dropping off a ballot during normal business hours, and that’s shown here with respect to one out of five vote-by-mail ballots that were returned to the county Supervisor were done so after normal business hours.”
Tr. Day 9, 2486:1-10	Dr. Daniel Smith	“The outright prohibition of drop boxes by days for those that are early in-person locations or other locations that meet that, and the restrictions on the 24/7 or any type of outdoor drop box because of the continuously monitored provision of SB 90, will have disproportionate effects on Black and Hispanic voters as well as those with disabilities, but it will also affect all Floridians, the 1.5 million who utilize drop boxes, because it will constrain both the time and the place of drop boxes in future elections, as according to what the Supervisors themselves have stated.”
Tr. Day 9, 2616:6-7	Supervisor Mark Earley	Voters “love the ability to use [drop boxes] as a method for returning a vote by mail ballot”
Tr. Day 9, 2655:23- 2656:5, 2659:17-20	Supervisor Mark Earley	Drop boxes help ensure that a vote-by-mail ballot arrives in time to be counted: “I would much rather have a vote-by-mail ballot put in one of our drop boxes than in the U.S. Mail system.” There are “a lot of failure points” with the U.S. Mail system. Even in 2020, the Leon County’s Supervisor’s Office would receive ballots from the post office that were from the 2018 general election.

Tr. Day 9, 2659:13-16	Supervisor Mark Earley	The most frequent reason that the Leon Supervisor cannot count a vote-by-mail ballot is because it has arrived too late to count.
Tr. Day 9, 2660:1-11	Supervisor Mark Earley	SOE Earley has to increase staffing at his drop boxes because of SB 90: “[I]n many instances,” he has to have two employees at each drop box, “just because Senate Bill 90 requires -- well, penalizes Supervisors potentially a \$25,000 fine, which is just unbelievable, if we don’t maintain that continuous monitoring or staffing of the drop box.”
Tr. Day 9, 2662:26- 2663:14	Supervisor Mark Earley	To avoid the \$25,000 penalty, “We’re going to have extra people, like I said, in most cases two workers, unless one of them has to leave to go to the restroom or has some kind of emergency, you know, and those – so we’ll have an extra person there.” Supervisor Earley does not believe this is an efficient use of resources, and he would not be doing it but for SB 90. “With that \$25,000 fine, I’m going to have two people there, and it’s likely not needed at all, but I can’t run the risk of not having it manned if somebody had to run to the restroom or what have you.”
Tr. Day 9, 2662:13-24	Supervisor Mark Earley	Supervisor Earley is “extremely displeased” about the \$25,000 fine against Supervisors. “It’s a threat -- it’s an implied threat to Supervisors. Not really implied. It’s a threat.... We don’t need this threat that we won’t follow the law sitting over our heads, and it creates -- you know, you almost want to do away with the drop boxes so you don’t have to worry about that...”
Tr. Day 10, 2792:20-22	Director Maria Matthews	“[S]ome drop boxes during the 2020 election cycle were monitored by video.”
Tr. Day 10, 2798:8-13	Director Maria Matthews	The Division of Elections told Supervisors “less than a month before the 2020 general election” that they could not “place a secure drop box at locations that are not staffed.”



Ex. 774, ECF No. 608-92		
Tr. Day 10, 2800:5-7	Director Maria Matthews	“There were Supervisors who, despite this document, monitored their drop boxes by video; correct? A. Yes.”
Tr. Day 10, 2805:17-21  Ex. 869, ECF No. 608-98	Director Maria Matthews	Supervisors disagreed with the Division’s position on pre-SB90 drop box monitoring: “We agree to withdraw our request for advisory opinion regarding 24-hour staffing of ballot boxes, although we continue to believe that there is no legal authority for such a rule.”
Tr. Day 10, 2811:20-2812:17  Ex. 1576, ECF No. 608-114	Director Maria Matthews	The Division told Supervisors before the 2020 general election that Supervisors could not have drop boxes at eligible early voting sites except during early voting. But “some Supervisors did offer drop boxes other than at their offices outside of early voting days and hours during the 2020 election,” including “offering such drop boxes on the day before the election.”
Tr. Day 12, 3180:1-8	Supervisor Christina White	“Q. And on the last two days of the election cycle, that is, the day before election day and election day, you used to have four drop boxes; correct? A. Correct. Q. And now you will have two drop boxes; correct? A. Correct. Q. And that’s because of Senate Bill 90; right? A. Correct. “Q. And if Senate Bill 90’s drop box restrictions were not enforceable, you could go back to having four drop boxes; right? A. That’s correct.”
Tr. Day 12, 3203:3-5, 3203:21-22	Supervisor Tommy Doyle	“One weekend during the 2020 election we had an overnight drop box, but we eliminated that Monday morning after the weekend.” On “Sunday I went into the office and checked [the overnight drop box] and it was very full.”



Tr. Day 13, 3500:24-3501:2	Supervisor Mark Earley	“[T]here’s some talk from Supervisors about potentially getting rid of those drop boxes because it’s just not worth the threat to them. It’s kind of unprecedented from our perspective, that fine.”
ECF No. 549-2, at 52:11-53:4	Supervisor Alan Hays	If a voter is returning a ballot by mail, Supervisor Hays probably recommended it be mailed at least a week before election day. But with a drop box “[t]hey are welcome to bring it to this box here at 6:58 p.m. on election night and we’ll still get it; because at 7 o’clock, I have two staff people out there at that box to remove all the ballots that are in it and bring them into the office. . . . So if they want to wait until the very last moment, then this is their best option.”
ECF No. 549-2, at 65:4-18	Supervisor Alan Hays	In the 2020 general election, the drop box outside Supervisor Hays’ office was available “the same day that we mailed them, which is 45 days ahead of time; or actually we do that to overseas. It’s probably 35 days ahead of the election. The day after we mail them out we put the drop box out there and we leave it for the entire time,” “all the way through election night.”
ECF No. 549-2, at 78:24-79:13	Supervisor Alan Hays	Lake County had a 24-hour drop box before SB 90 “[b]ecause one of our goals when I took office was to do everything that we could do to enhance the election day experience for everyone, whether it be the voter, whether it be the election worker or whether it be my full-time staff or my temporary staff. And by providing that convenience of 24-hour access that is secure, we felt like that was the right thing to do. And I had consulted with supervisors in other counties who had very successfully used it, and so we decided to install one here and used it very successfully.”
ECF No. 549-2, at 79:14-21	Supervisor Alan Hays	“If a vote-by-mail ballot is placed in a drop box on the day before election day, that ballot will be counted.” Supervisor Hays cannot be sure

		that “a vote-by-mail ballot that is placed in a mailbox on the day before election day will be counted.”
ECF No. 549-3, 35:14-22, 34:19-35:9, 37:10-19	Supervisor Craig Latimer	Hillsborough has been using drop boxes since 2009; they have not changed in design since. Hillsborough “ultimately” had physical staffing of its 24 hour drop box in 2020 instead of video surveillance because of a “memo that was put out by the Secretary of State’s Office” requiring them to do so. They otherwise had video surveillance for their 24-hour drop box, which they still have set up to this day.

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**A. The Drop Box Provision is not adequately supported by a sufficiently weighty state interest**

Citation	Witness	Evidence
Tr. Day 4, 1204:6-17	Supervisor Joe Scott	Broward “didn’t have any problems” at its video-monitored drop boxes. “[T]here wasn’t any kind of vandalism or any kind of, you know, issues that were reported to us. And so it seemed to work very, very well.”
Tr. Day 4, 1205:23-1206:18	Supervisor Joe Scott	The people who will staff Broward’s drop boxes “are generally not people who would violently confront somebody if somebody wanted to do harm to the drop box. The people that we hire are not the type of people that would be prepared to take on a violent confrontation.” If someone attacked the drop box, “we would want to protect the life of the employee first and we would ask the – you know, we would advise our employees to stay safe and to, you know, not to put themselves in any – in any physical jeopardy.” The person would be “told to call the police” in the event of an attack, just as someone monitoring by video would.
Tr. Day 4, 1206:19-1207:9	Supervisor Joe Scott	Having a staff member at the drop box to remind voters to sign and seal their ballot is “not the most efficient way to do that.” “[W]e actually have a – our drop boxes do have a sign on them and it does have it painted on the box for a reminder. We also have signs and flags that we place around the drop box to remind people to sign and make sure that their envelope is signed and sealed before they drop it in the drop box. So it’s not – that’s not the way. If I had a choice, that’s not the way I would chose to use those resources. I wouldn’t choose to use the resources to have two people standing there to tell a voter to sign and seal their envelope.”
Tr. Day 4, 1207:18-20	Supervisor Joe Scott	“U.S. Postal Service mailboxes are not monitored by Supervisor of Elections’ employees.”

Tr. Day 4, 1208:21-24	Supervisor Joe Scott	“Once the ballot gets to us, whether it comes through the Postal Service or if it comes from a drop box, when it reaches our office it goes through the same process where we – where we scan the envelope and capture the voter’s signature.”
Tr. Day 4, 1230:16-20	Supervisor Joe Scott	As for “whether somebody could take advantage of the opening to try to tamper with the contents” of a drop box, “I would say that anything is possible. But, again, you know, it could get hit by an asteroid.”
Tr. Day 5, 1334:25-1335:4	Supervisor Christina White	Supervisor White is not “aware of any problems with voter fraud in Miami-Dade . . . that specifically involved drop boxes in 2020.”
Tr. Day 5, 1368:6-8	Supervisor Christina White	Miami-Dade did not “have any problems with vandalism or attempted vandalism” of drop boxes in 2020.
Tr. Day 5, 1371:1-10	Supervisor Christina White	For signature matching, “prior to every election, we hire a forensic signature expert. That person comes to our office and trains the staff members that are going to be performing this activity. You know, it’s a lengthy training of how to identify what is not a signature in terms of flow and, you know, the way that the pen leans – the handwriting leans, things like that. After this training, there is a test that’s administered, and only those people who pass that test are able to perform this function. If not, then we, or course, put them to answer phones or do some other function in the department.”
Tr. Day 5, 1371:14-16	Supervisor Christina White	White is “confident that” the signature matching “process works.”
Tr. Day 5, 1371:17-19	Supervisor Christina White	The process is “the same for ballots that are returned by mail and for ballots that are returned by drop box.”
Tr. Day 5, 1397:17-20	Supervisor Christina White	“[W]hat makes sense for Miami-Dade in terms of manning drop boxes does not necessarily make sense throughout Florida.”

Tr. Day 5, 1547:22-25	Senator Gary Farmer	“Q. During deliberations over SB 90, were you ever made aware of any fraud involving a drop box that would have been prevented by the provisions of SB 90 that concerned drop boxes? A. No.”
Tr. Day 5, 1548:8	Senator Gary Farmer	The Drop Box provisions are “a solution in search of a problem.”
Tr. Day 8, 2420:23-2421:1	Dr. Daniel Smith	“Q. And based on all of the materials that you reviewed, did you find any evidence of any security issues associated with the expansion of drop boxes in Florida in 2020? A. No.”
Tr. Day 9, 2660:12-2661:9	Supervisor Mark Earley	The cost of have all of these monitors is in the “tens of thousands of dollars.” SB 90 also “greatly restricts our ability to use volunteers” to monitor drop boxes and restricts Supervisors’ ability to accept grants, which is how at least some Supervisors, including Leon County, paid for their drop box monitoring in 2020.
Tr. Day 9, 2664:8-13	Supervisor Mark Earley	Supervisor Earley is not aware of any vandalism or tampering with drop boxes occurring in his county or anywhere else in Florida.
Tr. Day 9, 2655:15-22	Supervisor Mark Earley	The idea that drop boxes can’t be trusted is a “misinformation campaign that’s always been inflamed by partisan interest.”
Tr. Day 10, 2806:5-2809:7, 2810:9-13  Ex. 775 at 2, ECF No. 608- 93	Director Maria Matthews	There were no incidents of vandalism at drop boxes in the 2020 elections in Florida. There was one incident at a mailbox. “Senate Bill 90 does not provide for the staffing of mailboxes.”
Tr. Day 12, 3180:24-3181:5	Supervisor Christina White	Miami-Dade “had no problems with vandalism or attempted vandalism at [its] drop boxes,” and its

		“staff members never had to intervene to prevent some sort of attack.”
Tr. Day 12, 3259:13- 3260:10	Supervisor Tommy Doyle	Supervisor Doyle is unaware of vandalism, theft, or fraud related to any drop box in Lee County in 2020. He also did not receive any complaints from voters who had submitted their ballot in the drop box saying that their ballot had not been counted.
Tr. Day 12, 3262:1-4	Supervisor Tommy Doyle	“Q. ... [I]n-person drop box monitoring and its costs might affect different counties differently as compared to how it affects your office; correct? A. That’s correct.”
Tr. Day 13, 3400:16-3401:9	Director Maria Matthews	The interest served by the drop boxes was that “[y]ou also want to be sure that everybody is applying the law in the same way. I mean, that’s one of the main duties that the Secretary has under Chapter 97, ensuring that the law is applied uniformly. In terms of the drop boxes, the main thing was making sure that those were secure; they were monitored, and that it also provided (audio feed glitch/indiscernible) all voters had an opportunity to have someone there in case they had a question about their ballot. They could – you know, You didn’t sign it, or has it been properly sealed. So there was that. And we didn’t want to have drop boxes that were unattended, that would be a risk for someone – bad actors, people who would probably want to target even maybe an area in which a drop box was located, and we, obviously, don’t want that. It undermines voter confidence.”
Tr. Day 13, 3500:5-10	Supervisor Mark Earley	“There is at least one, and really several more in the wings, of Supervisors that have either announced they are retiring after this term and specifically stated the \$25,000 fine is just one more -- one more attack, essentially, on elections officials that they have to work under. So it’s become a very difficult work environment.”

Ex. 428 at 108, ECF No. 461-37	--	<p>Senator Farmer: So, again, I just want to get this on the record. They're not -- you can't point to any actual instance of VBM drop box tampering?</p> <p>Senator Baxley: I've never made the case that there's box tampering. I've made the case that there's a responsibility for chain of responsibility for handling these ballots and whatever gets put in that box.</p>
ECF No. 549-2 at 62:25-63:11	Supervisor Alan Hays	<p>Lake County has had drop boxes to collect ballots for years. "Since before I came on, every early voting site has had a drop box, and the Supervisor of Elections office has always had a drop box. The box outside, to my knowledge, the 2017 election of -- the municipal elections that were here, that's the first time it has been used in Lake County. And it was used successfully for all five of the big elections. Actually, with every election, since 2017 through the 2020 general election, we had used that outside drop box very successfully."</p>
ECF No. 549-2 at 69:4-70:1	Supervisor Alan Hays	<p>After the Elections Division providing guidance that "said that it had to be an in-person monitoring," "I then hired what we call rent-a-cop to come out there and sit in their patrol car for hour upon endless hour watching the night go by with no activity at the box." They "did not find any suspicious activity around the 24-hour drop box."</p>
ECF No. 549-2 at 70:16-22	Supervisor Alan Hays	<p>"Q. . . . To your knowledge, from 2017 until you hired an independent security firm, during the time when the drop box was only monitored via video surveillance, was there any suspicion of activity such as destruction of the box or stealing of the ballots inside the box? A None whatsoever."</p>



ECF No. 549-2 at 85:10-86:5	Supervisor Alan Hays	<p>“Q. . . . What is your opinion of SB 90’s requirement that the drop boxes must be continuously and physically monitored, as opposed to surveilled by video?</p> <p>A. I think it’s absurd, in one word.</p> <p>Q. And why is that?</p> <p>A. Because there is no monitoring that I am aware of, whether it be cameras or in person, of the thousands of mailboxes that are available to voters all across the state of Florida. Right here in front of my office is now a postal service drop box, and any voter can but any ballot in there they want to, and I don’t have to have the cameras on there. I choose to keep the cameras on there. But just down the street at the post office, there are two other drop boxes that are drive-bys that they can put them in right there, and the list goes on and on and on. And this requirement not allowing camera surveillance is absurd, in my opinion.”</p>
ECF No. 549-2, at 86:6-15	Supervisor Alan Hays	<p>“Q. Is it fair to say that you think that your drop boxes were secure when they were solely – or your drop box outside your office was secure when it was monitored solely via video?</p> <p>A. I can best answer that by saying that it has been there in place for every election since we moved into this building, and I have had not one instance of any kind of suspected malbehavior. So security, yes, it is very secure and – you know, it is what it is.”</p>
ECF No. 549-2, at 87:15-18	Supervisor Alan Hays	Regarding the \$25,000 fine if a drop box is left unattended: “I think it’s a slap in the face, I think it’s insulting, I think it is totally unnecessary, unwarranted and completely out of order.”
ECF No. 549-2, at 90:9-21, 91:7-12	Supervisor Alan Hays	Because of SB 90, “Lake County does not plan on having a 24-hour drop box outside the Supervisor of Elections office during the 2022 election cycle.” Supervisor Hays would need to ‘have it monitored in person, and “I am not going to pay again for the – I apologize, I am having to



		think of the contract security company. I am not going to pay for one of them to sit out there for 24 hours a day; that is, I think, a ludicrous use of the taxpayer dollars and I am not going to do it.”
ECF No. 549-2 at 93:25-94:11, Ex. 173 at 1, ECF No. 608-39	Supervisor Alan Hays	Supervisor Hays replaced the drop box outside his office with a mailbox: “our voters had – several of them had become accustomed to bringing their vote-by-mail ballots here, dropping them off in our private drop box. To allow them to continue the convenience of this location, I asked the postmistress if she would bring one of her drop boxes down here and put it in and that’s what they did[.]”
ECF No. 549-2 at 94:19-95:17	Supervisor Alan Hays	The drop box was “more secure” than the mailbox is, “because the contents of that box are handled only by employees of my office. It doesn’t go – it comes directly from the voter directly into our vote-by-mail department; it does not have to go through the myriad of USPS stops along the way. Now the box is – the contents of that box is retrieved by only one person, that person takes it to the Tavares post office, it then goes from there to the Lake Mary central postal facility, and then hopefully the next day it comes back to us. The postmistress recently did a test herself and it was two days later before it came back to the Tavares post office, and then it has to come back to us. So there is at least a two-day lag and potentially longer lag before we get that ballot in our hands. So in that sense, it’s more secure, in that it’s handled only by our office and not the U.S. postal people. It’s more secure in the sense that we have two people retrieving the ballots instead of only one.”
ECF No. 549-2 at 97:2-18	Supervisor Alan Hays	“Q. Other than what we’ve discussed, why would you have a concern about promptness with regard to the USPS? A. Forgive me for chuckling at that question. The U.S. Postal Service is notorious for tardy

		deliveries. After saying that, though, let me add that our experience here in Lake County has been very, very good with those folks. We have had very few late deliveries. But the postal service recently put out a notice to the entire country saying that rather than first-class mail being delivered in three days, we should now expect it in five days. So that – I think that sort of speaks to itself, of the notorious U.S. Postal Service delivery schedule has been degraded along the way over the last several years.”
ECF No. 549-2 at 103:18-104:1	Supervisor Alan Hays	“It would be my opinion that the USPS box is subjecting those ballots to an unnecessary chance of being misplaced or disfigured or destroyed or lost or anything else that would preclude those votes from being counted. And it’s my firm conviction that the box that we had out there that was monitored by the cameras was exceptionally adequate and highly secure.”
ECF No. 549-2 at 144:25-145:17	Supervisor Alan Hays	Supervisor Hays thinks the Drop Box Provision “is unlikely to increase election security,” and he is not “aware of any other justification for this restriction beyond election security.” “[T]hat goes back to another TV interview that I referenced earlier this morning when the lady asked me ‘why are they doing this.’ I got better things to do with my time than to try to figure out why harebrain things like this come in. And so I didn’t bother to ask the legislators ‘Why are you doing this this way?’ I tried to explain to them on multiple occasions that this was bad idea, bad public policy, and it needn’t be done this way. And I might as well have talked to you for all the good that it did.”
Ex. 453, ECF 461-62 at 6:10-16	--	“Victor Torres: So you’re saying that the elimination of the drop boxes is because – is there fraud with the drop boxes? Can you answer that? Dennis Baxley: I don’t know that I would have the evidence chain to present to you for that case. What I would say is now is the time. We had

		excellent, excellent conducted election and very highly credibility.”
Ex.428 at 108:19-109:1, ECF No. 461-36	--	“Senator Farmer: So, again, I just want to get this on the record. They’re not – you can’t point to any actual instance of VBM drop box tampering? Senator Baxley: I’ve never made the case that there’s box tampering. I’ve made the case that there’s a responsibility for chain of responsibility for handling these ballots, and whatever gets put in that box.”
ECF No. 549-3, 30:11-14	Supervisor Craig Latimer	Drop boxes were secure before SB 90: Hillsborough “utilize[d] a large, probably two, two and a half foot by two and a half foot box with a lock on it and a seal, has a slit in the top to be able to put return vote-by-mail ballots in.”
ECF No. 549-3, 42:25-43:6	Supervisor Craig Latimer	Hillsborough County not aware of any violations of election law or instances of vandalism at drop boxes in 2020.
ECF No. 549-3, 124:2-22	Supervisor Craig Latimer	Hillsborough is considering triple-staffing drop boxes “because of the 25,000 dollar fine, I don’t want to put us in a position where someone has moved away from the box and left it unattended,” which raises the cost of offering drop boxes.
ECF No. 549-3 at 132:15-20	Supervisor Craig Latimer	Hillsborough SOE is not aware of any of his employees in 2020 having to intervene or prevent any sort of tampering at the drop box.
ECF No. 549-3 at 192:21-193:18	Supervisor Craig Latimer	Having drop boxes physically monitored does not necessarily prevent anyone from tampering with a drop box; monitors do not necessarily “have time to respond” to keep someone from causing harm to the box.

#### IV. The Solicitation Provision

##### A. The Solicitation Provision unduly burdens the right to vote

Citation	Witness	Evidence
Tr. Day 1, 57:1-19	Cecile Scoon	Ms. Scoon and other League members will set up at polling places: “we have our sign; we have our banner; we have all our educational materials.”
Tr. Day 1, 59:2-22	Cecile Scoon	The League will cross into the buffer zone “if we see someone is having any difficulty getting up the steps, opening the door, if they’re sweating, or just, you know -- if it’s a small community, you might actually know the person going in. And if you know that they generally need help, you would usually walk up to them and say, Mrs. Smith, I see -- you know, can I open the door for you? or How are you doing? And then she might say, you know, I had to wait for my ride, and I couldn’t get my meal and my blood sugar is dropping. You know, they would say things like that because the elderly coming in, someone had to bring them. . . . So you just inquire, and you might get an answer, I’m feeling a little bit light-headed. So then you would say, Can I get you a cookie or a candy? You know, it would be wrapped, and you would bring it to them. They’d say yes, and you might bring it to them.”
Tr. Day 1, 59:23-60:4	Cecile Scoon	“Sometimes people are going in and they come to a table, and they say, I’m not comfortable going in. I went and talked to them yesterday, and I don’t like how they talked to me. They were talking down to me. I was upset. Can you double-check and make sure I get treated properly? So there are different things that you might be pulled into in that zone and help the person in some way.”
Tr. Day 1, 60:19-61:1	Cecile Scoon	“And there are times when people -- there have been times if there’s a problem with a machine or something, some little delay, you know, they can

		back up. The line can back up. And sometimes it's really hot. The sun is really out and there's no shade in a lot of these places, and so you would then see the person and you would say, Wow, it's hot. Would you like some water? And we have a cooler with little baby waters in there and there's ice and everything. So I've done that."
Tr. Day 1, 61:2-9	Cecile Scoon	"I know, like, if people are upset and they feel like they have been mistreated by the Deputy Supervisor of Elections and they don't want to vote provisionally or something like that, they often come to our table and they say, I don't feel like I'm being treated properly, you know. I'm upset. Can you come in with me and talk with them -- with me to the person in charge? And you'd always say yes and go in and have that conversation and support them."
Tr. Day 1, 61:10-24	Cecile Scoon	When Ms. Scoon goes to polling places, "A good portion is physical support, and then others are emotional support. The fact of the matter is that for many persons of color -- I said Black people -- they have not had a lot of good experiences with the government. The government has often been the police. It's often been somebody in authority who is challenging them: Why are you here? What are you doing? making them feel uncomfortable and often disrespected. So our presence there and when they ask for our help, we're just providing a little bit of a shield and a vitamin so they feel that, you know, their voice is going to be heard; they're going to be given every consideration. And for those people I think it's education for them and it's also emotional support."
Tr. Day 1, 61:25-62:6	Cecile Scoon	Voters who Ms. Scoon helps are "So grateful, just like, I am so glad you're here. You hear that, and you feel really good. Again, you're volunteering your time, and it's really powerful to hear an individual voter say, I'm so glad you're here. Thank you. I was really nervous about this, and I feel much better."

Tr. Day 1, 62:16-63:2	Cecile Scoon	Even when Ms. Scoon is unable to resolve an issue, “even those people, even though they still maybe have to vote provisionally, or a few times they couldn’t vote at all, just to know that a nonpartisan, unbiased organization stood with them through that process is powerful.”
Tr. Day 1, 63:3-8	Cecile Scoon	After Senate Bill 90, Ms. Scoon and the League are “absolutely not going to [assist voters in the buffer zone] anymore because the interpretation of what the law means and providing assistance is so broad.”
Tr. Day 1, 56:22-25	Cecile Scoon	The League has found their Party at the Polls to “be very, very effective. We would get kudos from your Supervisor of Elections that, you know, the precinct where we were doing our event, their voting increased and stuff.”
Tr. Day 1, 66:24-67:13	Cecile Scoon	“[M]y experience has been things can get very, very busy for Supervisors of Elections. They’re not going to have the -- I don’t think -- I’ve not seen that they have the ability to just post someone there to look and make things smoother and give water and cookies and things like that. They’re busy inside calling, things happen, the machine needs to be checked, you know, whatever activities are going on inside. I don’t see an easy capacity for the busy Supervisors of Elections on a busy day, which is voting day -- any of the voting days, I don’t see them designating someone to just do that easily. I think it’s not going to work very well. And in many places it won’t happen at all because their primary goal, I imagine, is get people in and get people out, get them voted. They’re not there to hold people’s hands, in my opinion”
Tr. Day 1, 69:2-6	Cecile Scoon	The under-resourced precincts are the ones that can have the longest times to vote.
Tr. Day 1, 401:12-25	Jasmine Burney-Clarke	“[I]n Black communities there are oftentimes polling place changes during either early voting or on election day, whether that has to do with capacity or shifts in sizes of the community. And

		what we've really seen during early voting is that there are some historical sites in Black communities where folks are known to be able to go and vote at. And because they are known, they've been there for a little while, those lines tend to be much longer than some of the other polling places in the community. What we also know is that some of those polling places are smaller in size, just based off of where the Supervisor has chosen to place that polling place and/or resource that polling place. So if they are smaller in size, staff size could also be a result of why that polling place may have long lines."
Tr. Day 2, 530:20-24	Anthony Brown	If the NAACP Florida State Conference stops providing line-warming assistance to voters in line at polling places, voters will be adversely affected. "[T]he weather, the heat, the rain, and our people coming from work. So under those conditions, people sitting there getting hot, they would more likely leave the voting lines or not even go."
Tr. Day 2, 632:19-22	William Cooper	"10.1 percent of the 18 to 64 population has a disability, and 32.4 percent of the 65 and over population has a disability, and for the entire 18 and over population that averages out to 15.9 percent."
Tr. Day 2 at 635:7-12	William Cooper	There are 799,988 voting-age Floridians with vision difficulties and 508,914 voting-age Floridians with hearing difficulty.
Tr. Day 4, 1235:1-5	Supervisor Joe Scott	"I think the problem with [the Solicitation Definition in] Senate Bill 90 is that it's intimidating to people and there could be issues where, you know, volunteers who would otherwise be helpful to the public are not going to because they're confused about what the law is and will be nervous about doing anything wrong."
Tr. Day 5, 1371:20-1372:5	Supervisor Christina White	"[H]istorically there have sometimes been very long lines to vote in person in Miami-Dade," with voters "waiting for many hours to vote in some instances." "[I]n the 2012 election, there were



		some precincts that did not close until after 1:00 am on the day after election day.”
Tr. Day 5, 1379:9-11	Supervisor Christina White	Supervisor White’s poll workers “do not” “hand out water to voters waiting in line to vote.”
Tr. Day 5, 1468:21-1469:6	Rep. Geraldine Thompson	“[D]uring the primaries in August when it’s very, very hot, there were nonprofit organizations who would give people umbrellas to protect them from the Florida sun....you’re giving the Supervisor’s staff more work to do during the elections when they are very, very busy”
Tr. Day 5, 1559:18-1560:1	Sen. Gary Farmer	“[O]ftentimes the lines get longest at the end of the day when people are coming from work because as long as you are in line by 7 p.m., you get to vote, and so the lines could be quite long and the process can take a long time for you to get up there and finally vote. And people -- minority voters are of -- a majority of those people. And without being able to just do something as humane as give them a bottle of water or an energy bar was going have a negative impact on their willingness to stay in line and vote.”
Tr. Day 5, 1565:15-18	Sen. Gary Farmer	“Various minority interest groups often staffed highly populated polling places where they knew long lines would exist and they would be there to hand out water and typically energy bars to voters.”
Tr. Day 5, 1628:7-20	William Sauers	Florida seniors need assistance at the polls, whether because of physical limitations, or the risk of dehydration: “[I]f a retiree had to wait [without assistance], it would be very easy for them to be dehydrated and disoriented.”
Tr. Day 7, 1917:14-1918:6	Rep. Anna Eskamani	<p>“[L]ong lines have continued to be very common, especially in major election cycles”</p> <p>Linewarming services help making in-person voting more accessible... “It’s really driven just to make sure that you are not dissuaded from voting because of heat or hunger.”</p>



Tr. Day 7, 1982:6- 1983:9	Cliff Albright	BVM specifically targets its voter comfort activities in places by looking at “polling places that tend to have longer lines” which tend to be more likely in Black communities rather than white communities. “You know, very often in a White community, you’re able to just walk right in and walk right on out. But in our communities, in Black communities, for your voters, we often see these lines, again, whether it’s 30 minutes or an hour long, or in, you know, worst-case scenarios, four-, five-hour long lines.”
Tr. Day 7, 1986:20-23	Cliff Albright	“[T]here will inevitably be some people who aren’t able to get these services who will, in fact, wind up leaving the line because of our inability and the inability of others to provide these services.”
Tr. Day 7, 1990:3- 1991:13	Cliff Albright	BVM has no confidence polling officials will be able to provide the assistance BVM and other nonpartisan groups previously provided. In past years, BVM has “provided water to poll workers because they were unable to get such support” themselves.
Tr. Day 7, 1993:3- 1994:12	Cliff Albright	Assistance within the 150- foot buffer zone is a critical zone for help. First, voters can get caught inside the buffer zone for extended periods when machines stop working or when poll workers run out of ballots. But separately, “it’s the person that’s within that buffer zone that might be in the most need of these services...[W]hen they first showed up, and the line was outside the zone... their stomach was already full with food and water or their phones were fully charged. But now, you know, they’ve gotten inside the buffer zone, maybe an hour, maybe two hours, maybe three hours later, and now it’s more important that they get that support. And so we really believe strongly that it’s just as important that we be able to provide the support to folks inside that buffer zone as much as outside the buffer zone.”

Tr. Day 7, 2045:21- 2046:10	Andrea Mercado	<p>“[H]istorically, sometimes long lines are used to dissuade people from voting. And it’s Florida; sometimes it’s very hot or raining on an election day, and so we feel like anything that we can do to make a voter in line feel more comfortable in exercising their right to vote, then we want to provide that.”</p> <p>“Q. In your experience are voters more likely to stay in line if they receive food, water, or another item?</p> <p>A. If there is a long line, yes. So if it’s very hot or it’s raining and people are waiting in long line and there is no shade or cover, sometimes people do leave that line. And so when we are there -- when a volunteer is there to offer a bottle of water in the heat or an umbrella in the rain, you know, sometimes that can be the encouragement that someone needs to stick it out and stay in line until they cast their vote.”</p>
ECF 549-3, 48:3-13	Supervisor Craig Latimer	Hillsborough SOE Office does not distribute food, water, umbrellas, or anything of the sort to voters waiting in line to vote.
Ex. 12, ECF No. 608-17 at par. 74	Dr. Sharon Austin (Report)	Evidence demonstrates that Black and Hispanic voters tend to wait in longer lines to vote in Florida.
Ex. 12, ECF No. 608-17 at par. 73	Dr. Sharon Austin (Report)	Evidence demonstrates that voters do not vote when the lines are unsustainable.
Tr. Day 9, 2541:3-11	Dr. Daniel Smith	<p>“In 2012, voters waited on average 39 minutes in Florida, only 2 minutes -- less than 2 minutes in Vermont. That has persisted. 2008 -- people like Stephen Pettigrew have drawn on those data and have found that Black voters are more likely to wait in line than White voters, about twice as long. He found that in 2006, ‘8, ‘12, and ‘14, I believe were the elections he looked at. Ansolabehere and</p>

		Stewart in their 2013 article, which was then subsequently peer reviewed in 2015, found the same thing in the 2012 election.”
Tr. Day 9, 2542:12-24	Dr. Daniel Smith	A study using the ”same data from 2016, as well as 2018 study, combined those, and was able to have the ability to look at majority Black precincts, majority Hispanic precincts, majority White precincts in terms of people who actually voted on election day, and found that the lines in predominantly Black precincts may not have been as long in terms of their length outside of the polling location, but the wait times were actually longer and actually utilized and mined the data on whether or not voters left the lines because of long wait times, and found that those in Black precincts -- majority Black precincts were more likely to leave the line. I think it’s a very important study to think about the relationship between wait time and length of line.”
Tr. Day 9, 2543:1-10	Dr. Daniel Smith	“[A] peer-reviewed article, and found that Black – predominately Black neighborhoods using ZIP codes were about 74 percent more likely to wait in lines longer than 30 minutes than voters in predominantly White neighborhoods, again, using the observational data of cell phone pings to identify where an individual is located.”
Tr. Day 9, 2543:25-2544:14, 2544:19-24	Dr. Daniel Smith	“We looked at wait times in the 2012 general election in Florida, and, as you know . . . that was an election because the state legislature had curtailed the number of early in-person voting days from up to 14 to just 8 and eliminated that final Sunday of early voting, that Souls to the Polls. We were interested in who actually checked in on that -- on those days and whether they checked in after 7 p.m. during the early voting period in 2012. We, first of all, found that Black and Hispanic voters were much more likely to face longer wait times based on when they checked in and, you know, conservatively saying, Well, did you cast your ballot after 7:30 p.m.? which we

		<p>have timestamps for. We know that you stood in line at least half an hour because you had to be in line at 7 p.m., much more likely to face longer wait times than White voters in the 2012 election.”</p> <p>“We found, actually, that they were about 1 percentage point less likely to vote in the 2016 election, a higher rate than that in the 2014 election in terms of the dropoff of turnout, and they were definitely less likely to vote early in person in the subsequent election, 2016, I think largely because of that poor experience they had.”</p>
Tr. Day 9, 2565: 3-12	Dr. Daniel Smith	<p>“We also know that those lines are not equally distributed across different groups of voters. Racial and ethnic voters, particularly Black and Hispanic voters, face longer wait times at their polling locations either during early in-person voting, as we have seen, or on election day, particularly Hispanic voters, and that these wait times actually have downstream effects that influence the likelihood of voters casting ballots using that same method in future elections who face long wait times and that being a depressive effect or, in fact, less likely to turn out at all.”</p>
Tr. Day 9, 2537: 3-13	Dr. Daniel Smith	<p>Long lines can lead to balking, “[t]hat’s not joining the line because you psychologically or because of other time commitments don’t want to bear that cost.” “There is also reneging, which means you are already in the line, but the line is going so slow that you decide to leave the line. And maybe you have good intentions to come back, but that’s not necessarily a given.”</p>
Tr. Day 9, 2541:3-11	Dr. Daniel Smith	<p>“In 2012, voters waited on average 39 minutes in Florida, only 2 minutes -- less than 2 minutes in Vermont. That has persisted. 2008 -- people like Stephen Pettigrew have drawn on those data and have found that Black voters are more likely to wait in line than White voters, about twice as long. He found that in 2006, ‘8, ‘12, and ‘14, I believe were the elections he looked at. Ansolabehere and</p>

		Stewart in their 2013 article, which was then subsequently peer reviewed in 2015, found the same thing in the 2012 election.”
Tr. Day 9, 2542:12-24	Dr. Daniel Smith	A study using the ”same data from 2016, as well as 2018 study, combined those, and was able to have the ability to look at majority Black precincts, majority Hispanic precincts, majority White precincts in terms of people who actually voted on election day, and found that the lines in predominantly Black precincts may not have been as long in terms of their length outside of the polling location, but the wait times were actually longer and actually utilized and mined the data on whether or not voters left the lines because of long wait times, and found that those in Black precincts -- majority Black precincts were more likely to leave the line. I think it’s a very important study to think about the relationship between wait time and length of line.”
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		<p>have timestamps for. We know that you stood in line at least half an hour because you had to be in line at 7 p.m., much more likely to face longer wait times than White voters in the 2012 election.”</p> <p>“We found, actually, that they were about 1 percentage point less likely to vote in the 2016 election, a higher rate than that in the 2014 election in terms of the dropoff of turnout, and they were definitely less likely to vote early in person in the subsequent election, 2016, I think largely because of that poor experience they had.”</p>
Tr. Day 9, 2565: 3-12	Dr. Daniel Smith	<p>“We also know that those lines are not equally distributed across different groups of voters. Racial and ethnic voters, particularly Black and Hispanic voters, face longer wait times at their polling locations either during early in-person voting, as we have seen, or on election day, particularly Hispanic voters, and that these wait times actually have downstream effects that influence the likelihood of voters casting ballots using that same method in future elections who face long wait times and that being a depressive effect or, in fact, less likely to turn out at all.”</p>
Tr. Day 10, 2744:18-2745:1	Olivia Babis	<p>Disability Rights Florida: In instances where disabled voters receive assistance at the polls, it is typically from “civic engagement organizations that were posted outside” – not from employees of the Supervisors of Elections Office.</p>

**B. The Solicitation Provision is not adequately supported by a sufficiently weighty state interest**

Citation	Witness	Evidence
Tr. Day 11, 3131:17-3132:2	David Ramba	The FSE had as a priority to “change the size of the buffer zone that was listed in one statutory provision” but did not request “a change to the definition of solicitation.”
Tr. Day 13, 3439:22-3440:2	Director Maria Matthews	The Non Solicitation Provision “is to ensure that the voter is not harassed or unduly influenced while they are trying to either drop their vote-by-mail ballot in a box or trying to vote at an early voting site or election day polling location.”
Ex. 530, ECF No. 462-31 at 30	--	<p>Anna Eskamani: “All right. Last question, Mr. Speaker. About the solicitation zone, does your amended bill change any of the solicitation zones from the previous version? And on top of that, do we have any evidence that volunteer organizations outside of the SOE providing water and food is actually impacting how a person votes?”</p> <p>Rep. Ingoglia: “We’ve never said that any non-profit organization is trying to influence votes.”</p>
Tr. Day 13, 3474:8-17	Director Maria Matthews	<p>“Q. Director Matthews, you were asked about some complaints about solicitation at polling place. Do you recall that?</p> <p>A. Yes.</p> <p>Q. Were those complaints about nonpartisan organizations handing out water to voters?</p> <p>A. I don’t recall that being the case, no. I think it was more about harassment, not just an abstraction but a harassment in terms of people – loud noises, being approached, that sort of thing.”</p>



**V. The Challenged Provisions together impose an undue burden on the right to vote.**

Citation	Witness	Evidence
Tr. Day 3, 738:6-15	Frederick Velez Burgos	These laws have “a domino effect. If you are making it a little bit more difficult for people ... to vote by mail, if you are shortening hours where people can drop off their vote-by-mail ballots, right, it will have -- it will force people that could use those options that cannot use them anymore to go vote on election day. And, again, that’s a domino effect because it will make lines longer. And then which -- it happens, some voters might actually see long lines and decide not to vote or decide to come in later and then miss the ability to vote.”
Tr. Day 4, 1210:10-17	Supervisor Joe Scott	More voters voting by mail helps keep in-person lines shorter: “The most recent elections, as I mentioned, a lot more people voting by mail has caused a, you know, great reduction in how many people are coming to our early voting sites as well as voting on election day, and we have not had those complaints of long lines in the recent election, especially during the COVID-19 era.”
Tr. Day 4, 1215:11-25	Supervisor Joe Scott	“Absolutely. From the very point where they could potentially become a registered voter to begin with, you know, you’re siphoning off people who could potentially become a registered voter, and then once they become a registered voter, you’re making it hard for people who have busy lives, people who work. Some people work two or three jobs. You’re making it harder for them to actually cast a ballot. You’re making it harder for disabled people to cast a ballot.” “So across the board this bill has not improved our voting system and has not strengthened our democracy. It has actually done the exact opposite.”
Tr. Day 4, 1216:5-18	Supervisor Joe Scott	“[W]ithout a doubt there will be people who will not be able to vote because the provisions of



		Senate Bill 90 made it so that they never became a registered voter to begin with. And also the provisions of Senate Bill 90 made it so that they didn't have sufficient options to return the ballot. In some cases they will possibly mail their ballot when they would have dropped it in a drop box, and it may not – the Postal Service may not get it to us on time. You know, so there's just a number of different ways that people can lose their ability to vote, and Senate Bill 90 did not take the necessary steps to fix the problems that exist and, in fact, Senate Bill 90 created a number of new problems to make it even harder for people to exercise their right to vote."
Tr. Day 4, 1253:1-10	Supervisor Joe Scott	"[T]he people who are most likely to get caught up by this are also the same people who probably, you know, would be maybe too intimidated to reach out and ask for help."
Tr. Day 5, 1371:20-1372:5	Supervisor Christina White	"[H]istorically there have sometimes been very long lines to vote in person in Miami-Dade," with voters "waiting for many hours to vote in some instances." "[I]n the 2012 election, there were some precincts that did not close until after 1:00 am on the day after election day."
Tr. Day 5, 1372:8-13	Supervisor Christina White	White is "sure" that "lines have been shorter more recently" "in part because more voters are voting by mail instead of in person." "[E]very voter who votes by mail potentially one fewer person in line on election day."
Tr. Day 6, 1694:22-1695:4	Dr. Morgan Kousser	"The second overview principle is that in the end when you get a comprehensive election law in the post-Reconstruction period in Florida – and it's similar in other Southern states – the whole is greater than the sum of the parts. If you simply take – pull apart a law and do it provision by provision, you underestimate the total effect of the law because the law also acts as a signal to legislators, to elites of both parties, to voters that a new regime has taken place."

Tr. Day 6, 1786:13- 1787:2	Dr. Morgan Kousser	Due to population growth between 1980 and 2020, “[i]t just was not physically feasible for everybody to vote on election day” as they had in 1980. “And so Florida, which became the third largest state in the country over that period of time – Florida had to find other ways to vote by mail – I’m sorry – to vote in general. Voting by mail is one of them; early in-person voting is another; drop boxes in 2020, or another – one can think of other means as well. . . . But the basic thing is Florida could not stay in – having people vote in the same way in 1980 and 2020. As the Red Queen said, you have to run faster to stay in place. And Florida had to increase the ways of voting in order to keep the experience of voting anything like what it had been in 1980.”
Tr. Day 8, 2151:6-22	Dr. Michael Herron	“[O]ver 19 million vote-by-mail ballots cast in Florida since 2014. There were approximately 2.8 million vote-by-mail ballots cast in the 2016 general election, and consistent with the surge that I already discussed, there were roughly 4.9 million vote-by-mail ballots cast in Florida in November 2020. That’s a record for the state. SB 90’s restrictions on vote-by-mail voting will affect all of these voters. There are millions of them. And, in addition, the restrictions on vote-by-mail voting, to the extent it burdens vote-by-mail voters and causes some of them to vote in person, will also burden individuals who vote in ways other than vote-by-mail, i.e., in person. That’s because if vote-by-mail voters vote in person, then they risk causing congestion in polling places, so that shows how an effect -- a burden on one form of voting can impact voters at large, i.e., voters who use a different form of voting.”
Tr. Day 8, 2242:12-19; 2242:22-24	Dr. Michael Herron	A state could raise the cost of voting by “requir[ing] more frequent requests; or, say, one way that I haven’t really talked about much yet about voting absentee ballots is drop boxes. A state could make it difficult to use a drop box,

		which is one way of delivering a vote-by-mail ballot. These would all raise the cost of voting.” SB 90 raises the cost of voters for “all voters in Florida, and particularly for those who bear extra burdens given their particular circumstances.”
Tr. Day 9, 2618:22- 2619:11	Supervisor Mark Earley	Supervisors know that changes to one modality of voting have ripple effects on other forms of voting. And if you hit “vote-by-mail in general, if you impact that, then you increase demands on the other voters voting and potentially [] dissuade people from voting if it’s the method they want to use and it’s difficult”
Tr. Day 13, 3463:22- 3464:5	Director Maria Matthews	There were “some very long lines at polling places in 2012” and “that came after the legislature had limited early voting sites in 2011” and “was attributed in part to that.”
Tr. Day 13, 3507:4-13	Supervisor Mark Earley	“Q. What would happen if tomorrow 100 percent of your voters had to vote in person on election day? A. That would be a bad thing. We saw a very small version of that in 2012, and we just don’t have the capacity, and it would be tough to get the capacity to handle that....So it would be a huge change. There would be lines. There would be a lot of angry voters.”
Tr. Day 13, 3507:16- 3508:4	Supervisor Mark Earley	In 2012, the Legislature made “moderate decrease in early voting ability, but even that change, I think, resulted -- was all over the news. And I know I use -- sorry, Your Honor – colorful adjectives, but it was chaos in 2012, and there was substantial changes as a reaction to try and repair the damage to our voters in the 2013 legislative cycle. And, frankly, we warned the legislature of that same potential during the Senate Bill 90 committee hearings.”
Ex. 216, ECF No. 608-51	--	Supervisor Latimer noting that “[e]ncouraging Vote By Mail is one of the ways we avoid lines at in-person voting.”