

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

**PLAINTIFFS' OPENING STATEMENT**

In accordance with the Court’s November 29 Order, ECF No. 403, Plaintiffs in these four consolidated cases present this combined written opening statement.

## **INTRODUCTION**

The Governor, the Secretary of State, state legislators, and county Supervisors of Elections all agreed: the 2020 election in Florida was safe and secure, a model for the country. The Court will hear that Floridians turned out in record numbers to exercise their right to vote, and that of the more than 11 million Florida voters who voted in the 2020 general election, nearly five million cast their votes using vote-by-mail (“VBM”) ballots, one-third of whom returned their ballots by secure drop box—both records for the state. The Court will also hear that there were no meaningful problems of voter fraud or misconduct.

And yet just months later, the Legislature pushed through Senate Bill 90 (“SB 90”), a sweeping and unnecessary alteration of Florida’s election laws. Plaintiffs will show that the challenged provisions of SB 90 were intended to, and will, make it harder for Florida voters—especially senior voters, young voters, Hispanic and Black voters, and voters with disabilities—to exercise their right to vote, and make it more burdensome and more costly for many Florida voters and organizations to assist and encourage others to register and vote. Republican legislators passed SB 90 along party lines and over strong objections from Democratic legislators, voters, civil rights groups, and the county Supervisors of Elections themselves. The

Legislature charged ahead in the face of data demonstrating that SB 90 would significantly burden Florida voters generally and especially voters who have historically had to overcome substantial hurdles to reach the ballot box, such as Black voters. The evidence will show that no commensurate state interest justifies the significant burdens imposed by the Challenged Provisions.

If the Challenged Provisions of SB 90 are allowed to stand, countless eligible Floridians will find it unjustifiably harder to vote. SB 90 attacks virtually every method of voting that Florida's voters relied upon to facilitate 2020's record-breaking turnout, including by: (1) making it harder to successfully persuade voters to register and help them do so (particularly those not easily or ordinarily reached by government-sponsored means of registration), (2) making it harder for voters to request a VBM ballot, (3) making it harder for voters to access drop boxes to ensure that their ballots are returned on time to be counted, and—when voters who would otherwise vote by mail find it too difficult to navigate these new barriers—(4) making it harder to vote in person. Rather than attempt to address Florida's ongoing issues with excessively long lines (particularly at voting sites in communities of color), the Legislature moved to make it even harder for voters who encounter those long lines to tolerate them, broadly criminalizing even the nonpartisan voter support (often referred to as “line warming” or “line relief”) that had previously been

provided to Florida voters by civic organizations who work to help them exercise their most fundamental right.

These new restrictions impede the right to vote, as well as the free speech and associational rights of these organizations and their members who are dedicated to the pursuit of greater levels of political participation, particularly among vulnerable communities. The magnitude of these burdens and the scope of voters affected will inevitably lead to disenfranchisement of voters. None of them are justifiable under the relevant standards applicable under the U.S. Constitution or federal law. The evidence presented will demonstrate why this Court's declarative and injunctive relief is necessary to prevent the disenfranchisement of voters.

### **THE PLAINTIFF GROUPS**

#### ***A. League of Women Voters of Florida, Inc. v. Lee, 4:21-cv-186***

Plaintiffs in *League of Women Voters* are four civic organizations and four individual voters, each of whom is negatively affected by the challenged provisions of SB 90.

The League of Women Voters of Florida, Inc. and the League of Women Voters of Florida Education Fund, Inc. (together, the "League") are nonpartisan, voter-focused nonprofit organizations with twenty-nine local chapters across Florida. The Court will hear from the League's president, Cecile Scoon, and its Executive Director, Leah Nash. As Ms. Scoon and Ms. Nash will explain, the

League's mission is to encourage informed and active participation of citizens in government, including by educating citizens about voting rights, facilitating voting through get-out-the-vote efforts, and registering voters through registration drives. Ms. Scoon and Ms. Nash will also explain that the challenged provisions of SB 90 interfere with the League's mission, require a diversion of resources from other pressing tasks, and infringe the League's members' rights.

Black Voters Matter Fund, Inc. is a nonpartisan civic organization dedicated to increasing power in communities of color. The Court will hear from Black Voters Matter's Executive Director, Clifford Albright. Mr. Albright will explain that Black Voters Matter conducts voter education and get-out-the-vote activities in Florida, with a particular focus on communities of color, and that the challenged provisions of SB 90 require it to divert scarce resources away from other priorities in Florida and from activities in other states.

The Florida Alliance of Retired Americans (the "Florida Alliance") is a nonprofit corporation with nearly 200,000 members in Florida, principally made up of retirees from public and private sector unions and community organizations. The Court will hear from the Florida Alliance's state president, William Sauers, who will explain that the Florida Alliance is dedicated to pursuing and promoting legislation and public policies that are in the best interest of current and future retired Floridians, including by ensuring that the Florida Alliance's members are able to meaningfully

and actively participate in and vote in Florida's elections. Mr. Sauers will explain that the challenged provisions frustrate the Florida Alliance's mission and impair the rights of its members.

The four individual voter plaintiffs are Cecile Scoon, Susan Rogers, Dr. Robert Brigham, and Alan Madison. Each will testify that he or she is a Florida citizen and a voter whose rights are impaired by one or more of the challenged provisions. Ms. Scoon, the League President, will testify that the Registration Disclaimer Provision requires her to say something that she does not believe and interferes with her voter registration activities. Ms. Rogers, who is legally blind, will explain that the VBM Request Provision makes it much harder for her to continue to vote by mail, and that it is very burdensome for her to vote in any other way. Dr. Brigham and Mr. Madison will explain that both the VBM Request Provision and the Drop Box Provisions will disrupt their normal means of voting and make it harder for them—and other Florida voters—to vote.

***B. Florida State Conference of Branches and Youth Units of the NAACP, et al. v. Lee, et al., No. 4:21-cv-187***

The *NAACP* Plaintiffs—the Florida State Conference of Branches and Youth Units of the NAACP (“Florida NAACP”), Disability Rights Florida (“DRF”) and Common Cause—are three longstanding civic organizations. These organizations and their members are all harmed by the Challenged Provisions of SB 90.

The Florida NAACP is a membership-based, nonprofit, non-partisan civil rights organization with approximately 12,000 members who reside throughout the state. Its members are predominantly Black and other minority individuals, including many registered voters. Florida NAACP's mission is to ensure the political, social, educational, and economic equality of all persons and to eliminate race-based discrimination. The Court will hear from Anthony J. Brown, the President of the Indian River County Branch of the Florida NAACP and Third Vice President of the Florida NAACP, who will testify that the organization has engaged heavily in statewide voter registration, public education, and advocacy concerning the right to vote, including voter registration drives, get-out-the-vote programs, and "Souls to the Polls" events. He will also explain that Florida NAACP has engaged in line relief efforts, providing non-partisan aid to voters waiting in line to vote at early voting locations and polling places.

Disability Rights Florida ("DRF") is an independent, nonprofit corporation designated by law as Florida's federally funded protection and advocacy system for individuals with disabilities. In this capacity, DRF is authorized to pursue legal, administrative, and other appropriate remedies to protect and advocate for the rights of people with disabilities. All Floridians with disabilities are considered DRF constituents. Anthony DePalma, the Director of Public Policy for DRF, will testify that the organization devotes significant time, money, and other resources to increase

the political participation of people with disabilities, including by advocating for increased election accessibility for eligible voters with disabilities.

Common Cause is a nonpartisan, nonprofit organization dedicated to electoral reform, ethics in government, and the protection of citizen's rights in national, state, and local elections. It has approximately 55,000 members in Florida. The Court will hear from Sylvia Albert, the Director of Voting and Elections for Common Cause, who will explain that the organization encourages voter participation through voter education and outreach efforts and is the lead coordinator of Florida's nonpartisan Election Protection Coalition.

***C. Florida Rising Together v. Lee, No. 4:21-cv-201***

The *Florida Rising* Plaintiffs are seven nonprofit, nonpartisan organizations that seek to increase the political power of marginalized constituencies in Florida by, among other things helping voters register, educating voters, mobilizing voters, and helping voters when they vote.

Central to each Plaintiff's mission is the belief that all eligible citizens should be empowered and encouraged to participate in the democratic process. Plaintiffs rely on a variety of programs and activities to advance their missions. Several Plaintiffs have run voter registration programs, collecting thousands of applications each election cycle. Several Plaintiffs have run overall voter mobilization programs that, among other things, assist voters in requesting vote-by-mail ballots and



encourage them to return ballots using drop boxes. Finally, several Plaintiffs have run programs to assist voters at the polls, particularly in heavily Black and Latino precincts where long lines are common.

The Court will hear from the Executive Director or State Director of each organization: Andrea Mercado for Florida Rising Together, Jared Nordlund for UnidosUS, Jasmine Burney-Clarke for Equal Ground, Frederick Velez Burgos for Hispanic Federation, Esteban Garces for Poder Latinx, Soraya Marquez for Mi Familia Vota Education Fund, and Gepsie Metellus for Sant La Haitian Neighborhood Center. Each will explain how the challenged provisions of SB 90 interfere with their organization's mission and explain how the law has required a diversion of resources from other pressing tasks.

***D. Harriet Tubman Freedom Fighters Corp. v. Lee, No. 4:21-cv-242***

Harriet Tubman Freedom Fighters ("HTFF") is a grassroots nonprofit organization, founded in 2020, whose mission is to foster civic engagement. Rosemary McCoy, HTFF's co-founder, will testify that through its voter registration activities, HTFF makes a particular effort to build trust with community members who might not otherwise register to vote while convincing them of the efficacy of civic participation and voting. In particular HTFF tries to reach eligible voters who are wary of the electoral system and more likely to rely on members of their own community for assistance and information in navigating the voter registration

process. Ms. McCoy will testify to the ways in which the Registration Disclaimer Provision impacts HTFF's voter registration activities, making it more difficult to achieve the organization's mission. She will explain how, to comply with the Registration Disclaimer Provision, HTFF diverts resources it would deploy differently, despite a lack of clarity as to the precise requirements and the penalties for non-compliance. HTFF seeks to vindicate its constitutional rights because SB 90's Registration Disclaimer Provision interferes with HTFF's mission to build a more participatory electoral process.

### **THE CHALLENGED PROVISIONS**

Plaintiffs challenge a total of six provisions of SB 90: the Drop Box Provisions, the VBM Request Provision, the VBM Request Identification Provision, the Solicitation Definition, the Registration Disclaimer Provision, and the Registration Delivery Provision.

#### **A. The Drop Box Provisions**

The Drop Box Provisions appear in Section 28 of SB 90, which amends Fla. Stat. § 101.69. They restrict when and where Supervisors may offer drop boxes for the return of VBM ballots in numerous ways. First, except during early voting hours of operation, such drop boxes may be offered only at Supervisors' main or permanent branch offices. Fla. Stat. § 101.69(2)(a). As a result of this restriction, drop boxes at locations other than Supervisors' main or permanent branch offices

will be eliminated entirely (i) before the early voting period begins and (ii) between the end of the early voting period and Election Day. Second, the Drop Box Provisions require that every drop box must be continuously monitored in-person by an employee of the Supervisors' office, thereby prohibiting Supervisors' past reliance on video surveillance to monitor drop boxes and making it more expensive and inconvenient for Supervisors to offer drop boxes. *Id.* Third, if a drop box is left unattended, even briefly, the Supervisor is subjected to a \$25,000 civil penalty, imposed by the Florida Division of Elections, which is controlled by Defendant Lee. *Id.* § 101.69(3).

Plaintiffs will show that the Drop Box Provisions will make it harder for Florida voters—and particularly voters with disabilities and voters of color who are more likely to use drop boxes outside of normal business hours or between the early voting period and Election Day—to exercise their fundamental right to vote. Plaintiffs will present expert testimony from two political scientists who have independently determined that the Drop Box Provisions will curtail the availability of drop boxes to Florida voters, with disproportionate adverse impacts on voters of color, voters with disabilities, and other sub-groups. The evidence at trial will also include admissions from Supervisors that the Drop Box Provisions will cause them to reduce the numbers and hours of drop boxes they previously offered, especially during the crucial period before Election Day when it may be too late to return ballots

by mail. The Court will also hear from voters, including Plaintiffs and their members, who will testify that the reductions in drop box locations and hours caused by the Drop Box Provisions will make it harder for Floridians to vote. And the evidence will show that the Drop Box Provisions are unnecessary, because drop boxes in Florida were already a safe and secure method of voting before SB 90.

### **B. The VBM Request Provision**

The VBM Request Provision is contained in Section 24 of SB 90, which amends Fla. Stat. § 101.62(1)(a). It halves the maximum period for which a Florida voter's request for a vote-by-mail ballot remains valid, providing that all such requests expire every two years, after each general election, rather than every four years. *Id.* The VBM Request Provision therefore requires voters to request VBM ballots twice as often, and it increases the risk that voters will forget to do so. Plaintiffs will also show that the VBM Request Provision serves to prohibit Supervisors from allowing voters to renew their VBM ballot requests by checking a box when they return their ballots, a particularly non-burdensome renewal method that many Supervisors previously offered. Plaintiffs will show that the VBM Request Provision makes voting more burdensome, especially for voters with disabilities, who already face difficulties when requesting VBM ballots (and oftentimes require assistance to do so) and now must overcome those challenges twice as often. Plaintiffs will show that voters of color also more frequently face hurdles procuring,

filling out, or returning a VBM ballot request form, a burden needlessly exacerbated by the VBM Request Provision. No countervailing state interest justifies the change.

### **C. VBM Request Identification Provision**

The VBM Request Identification Provision is also contained in Section 24 of SB 90, which amends Fla. Stat. § 101.62(1)(b). It requires a voter applying for a VBM ballot to provide a driver's license number, identification card number, or the last four digits of a social security number, which must match the number in the Florida Voter Registration System ("FVRS"). *Id.* Plaintiffs will show that the VBM Request Identification Provision makes it harder for Florida voters, particularly voters of color, to vote. Plaintiffs will show that the provision will chill voters from requesting VBM ballots and will prevent access to VBM ballots for hundreds of thousands of Florida voters who lack the necessary forms of identification, who do not have a required form of identification in the FVRS, or who provide an identification number that does not match the FVRS records. Plaintiffs will further show that the VBM Request Identification Provision will have a disproportionate impact on voters of color who are much more likely to have registered without providing, or otherwise lack, one of the required forms of identification.

### **D. The Solicitation Definition**

The Solicitation Definition is contained in Section 29 of SB 90, which amends Fla. Stat. § 102.031(4)(b). It expands the definition of "solicit" and "solicitation,"

which is prohibited within 150 feet of a polling place or drop box, to encompass “any activity with the intent to influence or effect of influencing a voter” and makes it a criminal offense for anyone to engage in such activity. *Id.* Plaintiffs will show that this provision is vague and overbroad, and that it prevents them from engaging in expressive activities at and around polling places, including distributing food and water, and providing non-partisan assistance, to voters in line to vote, including those with disabilities and those needing language assistance. The evidence will show that the Solicitation Definition will exacerbate the burden of waiting in line to vote by reducing access to aid from volunteers, a practice that frequently occurs at polling places serving predominantly Black and Hispanic populations. By deterring such line-warming activities, the Solicitation Definition will also render in-person voting less accessible to voters with disabilities.

#### **E. The Registration Disclaimer Provision**

The Registration Disclaimer Provision is contained in Section 7 of SB 90, which amends Fla. Stat. § 97.0575(3)(a). It requires all organizations that collect voter registration forms from voters, called Third Party Voter Registration Organizations, to tell potential voters (1) that the organization “might not deliver” their registration form on time, (2) that the potential voters can instead deliver their registration forms themselves in-person or by mail, (3) how the potential voters can register online with the Division of Elections, and (4) how the potential voters can

determine whether the application has been delivered, regardless of whether the Third Party Voter Registration Organization has a record of wrongdoing or violations. Plaintiffs will show that these compelled warnings are misleading and interfere with Plaintiffs' efforts to build trust and community relationships with potential voters and persuade them to register and participate in the electoral process, thus forcing Plaintiffs to find ways to mitigate the Registration Disclaimer's impact. Plaintiffs will also show that this provision will chill voter registration efforts of Third Party Voter Registration Organizations, which minority voters have disproportionately used to register to vote in past elections.

Plaintiffs will also show that the Registration Disclaimer Provision is impermissibly vague because it does not provide adequate notice of what conduct results in what penalties; whether an inadvertent failure to provide the required disclosures, or any part thereof, constitutes a violation; what types of remedies or penalties the Attorney General may pursue for violations of the Registration Disclaimer; or whether individual employees or volunteers will be held liable for violations. The Registration Disclaimer is also vague because it risks arbitrary enforcement, as evidenced by already-existing arbitrary enforcement of the fines for late applications. The Registration Disclaimer's enforcement mechanism is deficient in the following ways: no criterion governs Defendants' discretion for enforcing the disclaimer; no policies or practices are in place for referring a Third Party Voter

Registration Organization to the Attorney General for alleged violations of the provision; no clear standards guide the Attorney General's discretion to bring enforcement actions for alleged violations of the provision; and nothing in the statute prevents Defendants from pursuing penalties against one group but not another for any reason.

#### **F. The Registration Delivery Provision**

The Registration Delivery Provision is contained in Section 7 of SB 90, which amends Fla. Stat. § 97.0575(3)(a)(1-3). It imposes substantial fines on Third Party Voter Registration Organizations if they do not deliver voter registration applications to each applicant's home county within 14 days. Plaintiffs will show that the Registration Delivery Provision will chill and burden voter registration efforts, which have been disproportionately used by minority voters to register in past elections. Plaintiffs will show that collecting and returning registration applications is one way these organizations convey their belief in the importance of all eligible citizens participating in the democratic process. The Registration Delivery Provision imposes significant burdens on Plaintiffs' constitutionally protected activities, and as a result of this provision and the Registration Disclaimer Provision, one Plaintiff organization has ended its registration program altogether. Plaintiffs will also show that the delivery requirement constitutes viewpoint- and speaker-based discrimination because it only applies to Third Party Voter



Registration Organizations and not to other entities or groups that conduct voter registration activities.

## LEGAL CLAIMS<sup>1</sup>

Plaintiffs' legal claims fall into five categories: constitutional claims for infringement of voting rights; free speech and expression claims; due process claims; discrimination claims; and preemption claims. Plaintiffs provide a brief overview of those claims here.

### **A. Infringement of Voting Rights**

Plaintiffs challenge each of the Challenged Provisions, as well as the cumulative impact of all of the Challenged Provisions, as an infringement of their constitutional right to vote. This claim is subject to the *Anderson-Burdick* test, which requires the court to weigh the burden imposed on voters by the challenged laws against the interests of the state in enforcing them. The evidence will show that the Challenged Provisions impose substantial burdens on voters, and that no legitimate, much less compelling, state interest exists to justify those burdens.

### **B. Free Speech and Expression Claims**

Plaintiffs challenge the Solicitation Definition, Registration Delivery Provision, and the Registration Disclaimer Provision as discrete violations of their First Amendment rights to free speech and expression. In particular, the Solicitation

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<sup>1</sup> The Parties' Joint Pretrial Stipulation identifies the specific claims brought by each Plaintiff; for the sake of simplicity, Plaintiffs describe all claims together here.

Definition is vague and overbroad, and it prohibits Plaintiffs from engaging in expressive, nonpartisan activities near early voting locations and polling places, thus chilling constitutionally protected conduct without adequate justification. The Registration Delivery Provision imposes substantial fines on Third Party Voter Registration Organizations if they do not deliver voter registration applications to each applicant's home county within 14 days, thus imposing significant burdens on Plaintiffs' protected speech and associative conduct without plausible justification. The Registration Disclaimer Provision compels Plaintiffs to express a misleading message with which they disagree, and that interferes with their efforts to build trust with potential voters and persuade them to register to vote.

### **C. Due Process Claim**

Plaintiffs challenge the Registration Disclaimer Provision as a violation of the Due Process Clause of the Fourteenth Amendment. In particular, the Registration Disclaimer Provision is vague because it does not provide adequate notice of what conduct results in what penalties, and it is susceptible to discriminatory or otherwise arbitrary enforcement.

### **D. Intentional Discrimination and Discriminatory Results Claims**

Plaintiffs challenge each of the Challenged Provisions on the basis that each was purposefully enacted to suppress the right to vote of Black and Hispanic voters in violation of the Fourteenth Amendment, the Fifteenth Amendment, and Section 2

of the Voting Rights Act. These claims are subject to the *Arlington Heights* factors, each of which supports the inference that SB 90 was enacted with discriminatory intent. Plaintiffs will show that the legislature passed SB 90 notwithstanding explicit and repeated warnings of the disparate impact it would have on Black voters and voters of color. Plaintiffs will also show that the passage of SB 90 was riddled with procedural anomalies designed to stifle debate, including failing to seek advice and support from the Supervisors of Elections, curtailing public input on the legislation, and using last-minute strike-all amendments to thwart debate and ram through discriminatory voting restrictions. They will further show that the legislature rejected multiple amendments that would have mitigated the discriminatory impact of the bill.

Plaintiffs also contend that the Challenged Provisions will disproportionately and adversely affect the right to vote of Black and Hispanic voters in violation of Section 2 of the Voting Rights Act. Many of the factors outlined in *Gingles*, and the guideposts outlined in *Brnovich*, support the conclusion that SB 90 will deny minority voters equal and meaningful access to the political process. The evidence will show that the Challenged Provisions burden Florida voters in general, and voters of color in particular. The evidence will also demonstrate that Black and Hispanic Floridians bear the effects of past discrimination in education, employment, and health as reflected in lower income and less access to jobs with flexible hours. And

Plaintiffs will show that the state interests purportedly served by the Challenged Provisions, if they exist at all, are far outweighed by their burdens.

Plaintiffs will demonstrate that the Drop Box Provisions, the VBM Request Provision, and the Solicitation Definition discriminate against voters with disabilities in violation of the Americans with Disabilities Act. In support, the Court will hear testimony from voters with disabilities, who will testify to the undue burden they will face under SB 90. The evidence will also show that SB 90's requirement that drop boxes be monitored in person will force—and in some counties have already forced—election officials to remove outdoor drop boxes in favor of placing them indoors. Indoor drop boxes are less accessible to voters with disabilities, especially those with limited mobility. Plaintiffs will also present evidence on the challenges voters with disabilities face when requesting a VBM ballot and how those challenges are exacerbated by the VBM Request Provision. The evidence will also show that the Solicitation Definition will render in-person voting less accessible to voters with disabilities and will cause some voters with disabilities to choose between their health and casting their vote.

#### **E. Preemption Claim**

Plaintiffs challenge the Solicitation Definition on the basis that it is preempted by Section 208 of the Voting Rights Act, which guarantees “[a]ny person who requires assistance to vote by reason of blindness, disability, or inability to read or

write” the right to receive assistance from “a person of the voter’s choice,” except for union representatives or employers. 52 U.S.C. § 10508. Because the Solicitation Definition frustrates Congress’s intent to ensure that all voters have access to the ballot regardless of disability or language skills, it is preempted by Section 208.

### **ANTICIPATED WITNESS TESTIMONY**

Plaintiffs will offer testimony from four types of witnesses: Plaintiffs and their members, expert witnesses, election officials, and Florida legislators. Rather than setting forth a detailed description of the witnesses’ anticipated live testimony at trial, Plaintiffs provide a brief overview of the categories of testimony that will be presented.

#### **A. Plaintiffs and Their Members**

The Court will hear testimony by each individual Plaintiff, and from at least one representative of each Plaintiff organization, about how the Challenged Provisions of SB 90 harm Plaintiffs and infringe on their rights, and the rights of other Florida voters. Because there are nineteen plaintiffs across the four consolidated cases, this category of testimony will take up a substantial portion of the trial. Plaintiffs will endeavor to streamline this testimony to the extent practicable while also ensuring that each Plaintiff presents the individualized evidence necessary to satisfy the standing requirements.

## **B. Experts**

Plaintiffs will present testimony from at least six expert witnesses. Two political scientists and a historian will testify regarding various aspects of the history and legislative proceedings leading to the passage of SB 90 and the hallmarks of intentional discrimination that characterize the Challenged Provisions. Professor Traci Burch, a political scientist at Northwestern University and Research Professor at the American Bar Foundation, will address on the political and legislative history of SB 90 in light of the long history of racially discriminatory election laws and practices in Florida. Based on an exhaustive review of the legislative record of SB 90, Dr. Burch will opine that the enactment of the Challenged Provisions can reasonably be explained only as a legislative reaction in response to minority voters' unprecedented turnout and use of VBM ballots in the 2020 election, consistent with the historical pattern of racially discriminatory laws in Florida intended by the legislature to curtail and discourage minority voting. Professor J.M. (Morgan) Kousser of the California Institute of Technology, an eminent expert on the history of minority voting rights, will analyze the history of SB 90 in light of the Florida legislature's long-standing use of seemingly small and incremental changes to the voting process to suppress the votes of Black and Latino voters and its reliance upon unfounded concerns about election security and "voter fraud" as pretexts for laws aimed at disenfranchising minority voters. Sharon Austin, a professor of Political

Science at the University of Florida and an expert on minority voter participation, will testify that SB 90 is best understood as a backlash to Black and Hispanic voter turnout in Florida's 2020 election, which fits into a pattern of Florida legislation similarly burdening Black and Hispanic voters following electoral success and supports the inference that the Challenged Provisions are in fact the product of discriminatory intent.

Plaintiffs will also present expert testimony of two additional political scientists, Dr. Michael Herron and Dr. Daniel Smith, who will testify to the burdens that the Challenged Provisions will impose on Florida voters. In particular, Dr. Herron and Dr. Smith will testify that voters of color, voters with disabilities, and other sub-groups of voters are more likely to be burdened by the challenged provisions. Dr. Herron, the William Clinton Story Remsen 1943 Professor of Quantitative Social Science at Dartmouth College, will testify that SB 90 has raised the cost of voting in Florida for all Florida voters, specifically non-White and Democratic voters. Dr. Smith, Professor of Political Science at the University of Florida, will opine on the severe burdens that the Challenged Provisions will impose on Florida voters, and particularly voters of color and those with disabilities.

William Cooper, an expert demographer, will provide additional quantitative evidence based on Census data concerning the socioeconomic characteristics of the Florida population by race, ethnicity, and disability status, and will show that, due

to social and economic disparities, Black and Hispanic voters, as well as voters with disabilities, face ballot access barriers beyond those experienced by their counterparts.<sup>2</sup>

### **C. Election Officials**

Plaintiffs intend to present testimony from several Supervisors of Elections who opposed provisions of SB 90 when it was introduced by the Florida Legislature. Supervisors will testify that SB 90 was unnecessary and that provisions such as the VBM Request Provision are likely to cause voter confusion. They will also testify that the Drop Box Provisions require them to reduce the numbers and hours of drop boxes they previously offered, and that the Drop Box Provisions are unnecessary, because drop boxes in Florida were a safe and secure method of voting before SB 90. There will also be testimony from Supervisors who believe the Registration Disclaimer Provision will make it more difficult for Third Party Voter Registration Organizations to help voters register.

### **D. Legislators**

The Court will hear testimony from members of the Florida Legislature who personally participated in the debates over SB 90 and ultimately voted against its

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<sup>2</sup> If necessary, Plaintiffs expect that two additional experts in political science—Dr. McDonald and Dr. Mayer—will testify in rebuttal to the flawed comparative analysis of state election laws undertaken by Defendants Lee and Moody’s designated expert, Dr. Quentin Kidd.



enactment. These individuals will testify about the evidence that was before the Legislature about the impact SB 90 would have on voters—including knowledge that SB 90 would significantly burden the ability of eligible Floridians to vote, particularly for voters of color, voters with disabilities, and other marginalized groups. Several legislators will also testify about the amendments they proposed to try to ameliorate SB 90's impact, all of which were rejected without adequate explanation. Finally, the legislators will testify about substantial irregularities in the legislative process, including the unusually rushed debates, the use of strike-all amendments in the middle of the night, and the opposition of the Supervisors of Elections to the bill.

### **CONCLUSION**

At the end of the trial, based on the evidence that will be presented, Plaintiffs will ask the Court to issue declaratory relief and to permanently enjoin the Challenged Provisions of SB 90, to protect Floridians' constitutional and statutory rights and ensure that all Florida citizens are able to exercise their right to vote. If Plaintiffs establish violations of the Fourteenth and Fifteenth Amendments that warrant equitable relief, Plaintiffs will also ask the Court to enter relief under Section 3(c) of the Voting Rights Act, 52 U.S.C. § 10302(c).

Respectfully submitted this 14th day of January, 2022.

/s/ Fredrick S. Wermuth

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I HEREBY CERTIFY that on January 14, 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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