UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA STATE CONFERENCE OF BRANCHES AND YOUTH UNITS OF THE NAACP, COMMON CAUSE, and DISABILITY RIGHTS FLORIDA, et al.,

Plaintiffs,

v.

LAUREL M. LEE,

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

Defendants,

REPUBLICAN NATIONAL COMMITTEE and NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

Intervenor-Defendants.

Case 4:21-cv-00187-MW-MAF

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS CRAIG LATIMER AND CHRISTINA WHITE'S MOTION FOR SUMMARY JUDGMENT

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The Florida State Conference of Branches and Youth Units of the NAACP, Common Cause, and Disability Rights Florida (together, "Plaintiffs"), oppose the Motion for Summary Judgment of Defendant Craig Latimer, in his official capacity as Supervisor of Election for Hillsborough County ("Defendant Latimer") and the Notice of Joinder of Defendant Christina White, in her official capacity as Supervisor of Elections for Miami-Dade County ("Defendant White" and together, "Defendants"). ECF Nos. 278 ("Latimer Motion"), 289 ("White Motion" and together, the "Motions"). For the reasons explained in detail below, Defendants' Motions should be denied.

INTRODUCTION

Defendants' Motions are premised on a fundamental misconception: that Plaintiffs have mounted an as-applied challenge to certain provisions of Senate Bill 90, An Act Relating to Elections, 2021 Fla. Sess. Law Serv. ch. 2020-11 (West) ("SB 90"), rather than a facial challenge to the relevant provisions. Defendants also argue that Plaintiffs' injuries are "speculative and hypothetical," and that Plaintiffs' lack standing to sue. There is ample evidence that Plaintiffs are in "realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement," and therefore have

established their standing to seek injunctive and declaratory relief. *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979).

STATEMENT OF FACTS

I. Plaintiffs Mount Facial Challenges, Not As-Applied Challenges.

Plaintiffs challenge three of SB 90's provisions: Section 24, which requires voters to apply for vote-by-mail ("VBM") ballots twice as often; Section 28, which sharply curtails the availability of drop boxes; and Section 29, which potentially criminalizes traditional forms of nonpartisan support to voters waiting in line, such as the provision of food, water, chairs, and umbrellas (collectively, the "Challenged Provisions"); *see generally* First Am. Complaint ("FAC"), ECF No. 45. Plaintiffs seek relief against all 67 Supervisors of Elections for each of Plaintiffs' asserted claims in this action. FAC ¶¶ 125-228.

Plaintiffs request, *inter alia*, "[a]n injunction barring each and every Defendant-Supervisor of Elections [ ] and any of their agents, officers, employees, and successors, and all persons acting in concert with each or any of them or under their direction from enforcing and implementing" the Challenged Provisions. FAC ¶ 230.

Plaintiffs also request "[a]n injunction barring Defendant Laurel M. Lee and her agents, officers, employees, and successors, and all persons

acting in concert with each or any of them or under their direction from enforcing the Drop Box Restrictions for all voters." FAC ¶ 229. Plaintiffs' claims are not directed at the conduct of any individual supervisor, but rather at the operation of the Challenged Provisions themselves.

LEGAL STANDARD

Summary judgment is only appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is "material" if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). At the summary judgment stage, the Court does not "weigh conflicting evidence or make credibility determinations." *Wate v. Kubler*, 839 F.3d. 1012, 1018 (11th Cir. 2016). Instead, it "must construe all facts and draw all rational inferences" in favor of the non-moving party. *Ga. State Conference of NAACP v. Fayette Cty. Bd. of Comm'rs*, 775 F.3d 1336, 1343 (11th Cir. 2015). Summary judgment is rarely appropriate in voting rights litigation due to the fact-driven nature of the inquiry. *See id.* at 1348.

ARGUMENT

I. Contrary to Defendants' Allegations, Plaintiffs Have Asserted a Facial Challenge, Not An As-Applied Challenge.

Plaintiffs commenced the instant action the day SB 90 was signed into law and before any of its provisions were enforced. FAC ¶ 4; *see also Fla. State Conf. of NAACP v. Lee Nat'l Republican Senatorial Comm.*, No. 4:21CV187-MW/MAF, 2021 WL 4818913, at *1 (N.D. Fla. Oct. 8, 2021) ("Plaintiffs are nonprofit groups who challenge Florida's newly enacted law, Senate Bill 90.") (internal quotation marks omitted). It is thus axiomatic that Plaintiffs' challenge is a facial, pre-enforcement challenge. *See e.g., Reno v. Am. Civil Liberties Union,* 521 U.S. 844, 883-85 (1997); *Young v. Hawaii*, 992 F.3d 765, 779 (9th Cir. 2021).

Both Defendants Latimer and White ignore the plain language of Plaintiffs' well-pleaded complaint to argue that the Plaintiffs have asserted as-applied challenges. FAC ¶¶ 229-230. Defendant Latimer "[s]eeks summary judgment. . . . against any *as applied* challenge which may be inferred from Plaintiffs' pleadings[.]" Latimer Mot. at 4. Defendant White "joins the Motion for Summary Judgment filed by Supervisor Latimer as to

any as applied challenge that may be inferred from Plaintiffs' pleadings[.]"[1] White Mot. at ¶ 8.[2] However, Plaintiffs contest the Challenged Provisions on their face, and no such as-applied challenge can reasonably be inferred from Plaintiffs' First Amended Complaint.

Defendants' requested relief is thus both premature and inappropriate at this juncture. Because Plaintiffs have not sought as-applied relief but rather seek only prospective injunctive and declaratory relief based on a facial challenge, Defendants' motion should be denied.

II. Plaintiffs Have Established An Injury Sufficient to Confer Standing.

To establish standing, a litigant must show that it has suffered: (1) an injury in fact that is (2) fairly traceable to the challenged action of the

[1] Defendant White joined Defendant Latimer's Motion by means of an untimely Joinder, filed three days after the Court's deadline for summary judgment. *See* White Mot. As Plaintiffs explain by separate motion, Defendant White's joinder should be stricken for that reason. This Opposition nevertheless addresses both Defendants' arguments.

[2] Supervisor White "defers to the State of Florida, through the Secretary Lee, to defend the constitutionality of its law against any facial challenge." White Mot. at ¶ 11. As this Court reiterated in its November 23, 2021, Order to Show Cause, Secretary Lee lacks standing to defend plaintiffs' claims regarding SB 90's VBM application restriction (Section 24) or line relief restriction (Section 29). ECF No. 295 at 1-2; *see also* ECF No. 305 (Plaintiffs' response to Secretary Lee's response to order to show cause).

defendant, and (3) likely to be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).[3]

An organization has associational standing to sue on its members' behalf when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Greater Birmingham Ministries v. Sec'y of State of Ala.*, 992 F.3d 1299, 1316 (11th Cir. 2021) ("*GBM*") (internal citations omitted). A request for "prospective relief weigh[s] in favor of finding that associational standing exists." *Id.* at 1316 n.29.

Here, the evidence shows that the Challenged Provisions will directly burden members of all three organizations. *See* ECF No. 314-1 ¶¶ 6-9; ECF No. 314-2 ¶¶ 5-7; ECF No. 314-3 ¶¶ 6-8, 12-13. Plaintiffs' members will suffer time, transportation, information, and health costs in trying to vote via drop

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[3] An organization can establish an injury in fact under two theories: organizational standing and associational standing. Plaintiffs have established standing under both theories in this case. *See Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1165–66 (11th Cir. 2008). Defendants only argue that Plaintiffs lack associational standing as they do not dispute that Plaintiff organizations would have to divert personnel and time as a result of the Challenged Provisions. Latimer Mot. at 12-17; White Mot. at 2-4. In any event, Plaintiffs have demonstrated that they also have organizational standing in this case. *See* Opp. to Sec'y's Mot. for Summ. J. at 15-20.

boxes, as Section 28 will deprive voters of more than 40,000 hours of drop box availability, as compared to the 2020 General Election. ECF No. 314-4 ¶¶ 127-130.

Likewise, the costs of Section 24 will "fall most heavily on racial and ethnic minorities" and voters with disabilities, including Plaintiffs' members, because these groups of voters more frequently rely on VBM ballots, and SB 90 forces them to request those ballots twice as often. ECF No. 314-4 ¶¶ 10, 105; *see also* ECF No. 314-2 ¶ 7; ECF No. 314-1 ¶ 9; ECF No. 314-3 ¶¶ 12-13; ECF No. 314-5 ¶ 10; ECF No. 314-6 ¶¶ 9-11.

Regarding Section 29, Plaintiffs' members will suffer longer lines without line relief assistance, diminishing their opportunities to vote. Indeed, the impact of these restrictions will be more pronounced for minority voters, in part because voter assistance has historically been offered most often in predominately Black and Hispanic communities, where lines tend to be longer. ECF No. 314-4 ¶¶ 13, 27, 225, 231. Moreover, these restrictions will severely burden voters with disabilities and may lead some voters to forgo casting a ballot altogether. ECF No. 314-7 ¶¶ 4, 7, 16.

Defendants' weak attempt to dispute Plaintiffs' standing falls flat against the weight of this evidence. Latimer Mot. at 14-15 (arguing that Plaintiffs present no injury-in-fact), 16 (arguing that Plaintiffs' alleged

injuries are not fairly traceable to Defendant Latimer and are not redressable); White Mot. at 2-4 (arguing that Plaintiffs lack standing as to Sections 24, 28, and 29). Further, as discussed in greater detail below, the injury Plaintiffs' members will experience as a result of the Challenged Provisions presents at least a triable dispute of fact precluding summary judgment as to associational standing.

A. Plaintiffs' and Plaintiffs' Members Injuries Are Not Merely "Speculative" or "Hypothetical."

Defendants claim that, because SB 90 has not yet been enforced, Plaintiffs' allegations of injury are "hypothetical" and "speculative."[4] Latimer Mot. at 14. However, Plaintiffs seeking declaratory or injunctive relief may do so before a statute's actual enforcement. *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1251–52 (11th Cir. 2012) ("[A] plaintiff with the exercise of a constitutional right at stake may seek declaratory or injunctive relief prior to the challenged statute's enforcement."). As the Eleventh Circuit has made clear, "[t]he 'injury' in this pre-enforcement context is the well-founded fear that comes with the risk of subjecting oneself to

[4] Plaintiffs' standing is explained in further detail in Plaintiffs' Opposition to the Secretary's Motion for Summary Judgment. *See* Opp. to Sec'y's Mot. for Summ. J. at 15-22.

prosecution for engaging in allegedly protected activity." *Id.* The threatened injury is therefore not at all "speculative" for purposes of standing analysis.

1. There is ample evidence that Plaintiffs' members will be injured as a result of the Drop Box Restrictions in Hillsborough and Miami-Dade Counties.

In arguing that Plaintiffs' members will not be injured by SB 90's drop box restrictions, Defendants ignore the evidence that Section 28 will limit tens of thousands of hours of drop box availability for potentially tens of thousands of voters, *see supra* Section II, including impacts in their counties.

For example, Defendant Latimer asserts that there is no dispute of material fact "that in Hillsborough County there will be no reduction in the availability of drop boxes in 2022." Latimer Mot. at 8-9. However, record evidence, including testimony from Defendant Latimer's own office, establishes that due to SB 90, Hillsborough County will no longer offer a 24/7 drop box that was previously available. *See* ECF No. 314-12 ¶ 10. As Hillsborough County SOE representative Margaret "Peg" Reese stated in her June 25, 2021 affidavit, "[t]he SOE 24 hour drop box at the Elections Service Center will be discontinued." ECF No. 314-18 at 3; *see also* ECF No. 314-12 ¶ 10. Previously, this drop box had been available to voters 24/7 from the time VBM ballots were mailed to voters through Election Day. *Id.;* ECF No. 314-12 ¶ 10

Similarly, Defendant White's assertion that "there will be no severe restriction of the availability of drop boxes in Miami-Dade County" resulting from SB 90 is also contradicted by admissible record evidence. White Mot. at ¶ 5. Indeed, Defendant White's own prior testimony establishes that, specifically due to SB 90, two drop box locations will no longer be available to voters on Election Day and the Monday prior to Election Day in Miami-Dade County. ECF No. 314-10 at 16:8-16; ECF No. 314-19 at 4-5; *see also* ECF No. 314-12 ¶¶ 16-19.

Defendants assert that the injury will not be "severe." Latimer Mot. at 7; White Mot. at ¶ 3. That is incorrect. But even if this characterization were supported, the severity of the burden is irrelevant in this context: "a small injury, 'an identifiable trifle,' is sufficient to confer standing." *Common Cause/GA v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009). Moreover, this does not negate that there is at least a triable dispute of fact, as demonstrated by Defendants' own contradictory statements.

2. There is ample evidence that Plaintiffs' members will be injured as a result of the Line Relief Restrictions in Hillsborough and Miami-Dade Counties.

Similarly, Defendants fail to call into question the burdens that Section 29 imposes on the ability of Plaintiff NAACP and similar organizations to

provide assistance to voters waiting in line. Latimer Mot. at 11-12, 14; White Mot. at 3-4; ECF No. 314-7 ¶¶ 3-7; ECF No. 314-4 ¶¶ 15, 27.

Florida's history of long lines at the polls is well-known and was recounted during discovery in this case. *See, e.g.*, ECF No. 314-8 at 130:12-15 (acknowledging that "at least some counties in Florida have a history of long lines at the polls"); ECF No. 314-9 at 91:11-15 (same). Hillsborough and Miami-Dade Counties are no exception.

Miami-Dade County, in particular, has a history of very long lines at the polls: Supervisor White testified that in 2012, there were reports that the wait time for voters was so long that some precincts did not close until after 1:00 a.m. the day after Election Day. ECF No. 314-10 at 50:18-51:9. Most recently, in 2020, voters in Miami-Dade County experienced wait times of 40, 45, and 90 minutes during early voting. *Id.*; ECF No. 314-4 ¶ 240.[5]

Likewise, while Defendant Latimer claims that in Hillsborough County there are "no long lines on Election Day" and estimates that "the longest amount of time a voter has had to wait in line to vote in Hillsborough County as 30 minutes," Latimer Mot. at 11, there is ample evidence, including

[5] Brooke Shafer, *Miami-Dade Sees 'Record Setting Turnout' of Over 43K Early Voters on Day 1*, CBS Miami (Oct. 19, 2020), https://miami.cbslocal.com/2020/10/19/miami-dade-record-setting-early-voter-turnout/.

Defendant Latimer's *own admission*, that this is not the case. *See* ECF No. 314-11 at 6 (admitting that Hillsborough County voters have waited over 30 minutes in line to vote since January 1, 2012). Indeed, Hillsborough County experienced at least one 150-person-long line lasting approximately one hour during early voting in October 2020, and has experienced long lines in recent past elections.[6]

A 2015 study by Professors Smith and Herron found that voters in both Hillsborough and Miami-Dade Counties experienced long lines at the close of polls (7:00pm) on Election Day. ECF No. 314-12 ¶¶ 21, 22-24. In both counties, at the time the polls closed there were still thousands of voters waiting in line. *Id.* ¶¶ 23-24. Further exacerbating this problem, several supervisors, including Supervisor White, testified that the cumulative burdens of SB 90 will likely *increase* lines for *future* elections, because SB 90 makes other methods of voting more difficult. *See, e.g.*, ECF No. 314-10 at 51:13-18; ECF No. 314-13 at 145:18-146:4.

[6] *See* Allison Ross, *Florida's Early Voting Off to Smooth Start Across Tampa Bay*, Tampa Bay Times (Oct. 19, 2020), https://www.tampabay.com/news/florida-politics/elections/2020/10/19/early-in-person-voting-kicks-off-across-florida/; *see also* Mark Potter, *Long Lines, Few Problems In Fla. Swing County*, NBC News (Nov. 2, 2004), https://www.nbcnews.com/id/wbna6384701.

Moreover, Defendants' intentions to continue to provide water to voters in line are irrelevant. Latimer Mot. at 16; White Mot. at 3. Plaintiffs have adduced significant evidence demonstrating that Section 29's restrictions are vague while Defendants have produced no evidence to the contrary. ECF No. 314-7 at ¶¶ 10-11; ECF No. 314-2 at ¶ 9 ("Because of the vague wording of SB 90's Voting Line Relief Restriction, Common Cause believes that its work could potentially be criminalized under the statute"). In fact, Defendant Latimer himself acknowledged the sweeping discretion he has in enforcing this provision. ECF No. 314-14 at 170:9-22 (testifying that as supervisor, there is "absolutely" an "aspect of judgment" in how he chooses to enforce the "line warming" ban (Section 29)). As a result, Plaintiffs' are unable to risk attempting to provide the assistance they once provided, which causes injury to the Plaintiffs and their members.

Moreover, even if Defendants Latimer and White do not believe line warming is "needed," Latimer Mot. at 11-12; White Mot. ¶ 7, Plaintiffs want to continue to offer it, and, as explained in Plaintiffs' Opposition to Secretary Lee's Summary Judgment Motion, SB 90's chilling of their right to do so is a violation of Plaintiffs' constitutional rights. *See* Opp. to Sec'y's Mot. for Summ. J. at 71-74. Defendants' motions entirely ignore the distinct harms incurred by the Voting Line Relief Restrictions, which discourages—and

potentially criminalizes—expressive conduct by Plaintiffs' members, in the form of providing relief to persons in line to vote, which is protected by the First Amendment. *See Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1243 (11th Cir. 2018).

3. There is ample evidence that Plaintiffs' members will be injured as a result of the VBM Restrictions in Hillsborough and Miami-Dade Counties.

As explained above, Section 24's VBM application restrictions will burden voters by requiring them to request VBM ballots at least twice as often as in the past, and voters who do not timely request a ballot may miss their opportunity to vote. Fla. Stat. § 101.62(1)(a). SOEs—including Latimer and White—testified at length about the burdens this requirement will impose on voters, including by confusing voters, reducing access, and changing a process that voters were extremely familiar with. ECF No. 314-15 at 129:4-131:9; ECF No. 314-14 at 25:8-26:6, 137:23-138:1; ECF No. 314-16 at ¶ 23; ECF No. 314-10 at 91:3-14, 89:18-90:18; ECF No. 314-17 at 1-2. For example, Supervisor Latimer testified that the SB 90's VBM application restrictions will "cause confusion in voters" and impose an "undue burden" on voters who now must request a VBM ballot twice as often as they did before SB 90's passage. ECF No. 314-14 at 25:8-26:6, 137:23-138:1. Supervisor White similarly testified that this provision will "have grave

impacts on voting accessibility." ECF No. 314-17 at 1-2; ECF No. 314-10 at 89:18-90:1, 91:3-14. Defendants Latimer and White's attempt to deny the very same burdens they themselves voiced concern over presents a triable issue of fact precluding summary judgment.

Defendants' conclusory assertions that their offices will address the administrative burden of this provision, and will educate voters on the changes, fail to rebut the record evidence demonstrating that Plaintiffs' members will be harmed by this provision. Latimer Mot. at 9-11; White Mot. ¶ 6. First, there is no reason to believe—and Defendants provide none—that educating voters, even if done exceptionally, would do anything more than lessen the severity of Plaintiffs' injuries, rather than prevent them. Indeed, Defendant Latimer undermines this argument within his own brief, stating that "his office will educate voters on the change from four years to two years. . . [e]ven so, Latimer believes the change will cause confusion for voters." Latimer Mot. at 10.

Plaintiffs have presented clear evidence of "a realistic danger of sustaining direct injury" as a result of the Challenged Provisions' "operation or enforcement." *GeorgiaCarry.Org*, 687 F.3d at 1252 (internal quotations omitted).

B. SOEs Are Responsible for Enforcing the Challenged Provisions; Therefore, Plaintiffs' Injuries Are Traceable to, and Redressable by, the SOEs.

1. Plaintiffs' Injuries Are Traceable to SOEs.

This Court has already determined that "Plaintiffs' injuries as to the drop box restrictions are traceable to the Defendant Supervisors and Defendant Lee, and their injuries as to the 'line warming' ban and the 'repeat vote-by-mail request' requirement are also traceable to the Defendant Supervisors." *Fla. State Conf. of NAACP v. Lee*, 2021 WL 4818913, at *10-11 (N.D. Fla. Oct. 8, 2021). Defendants ignore the Court's ruling on this issue and attempt to re-litigate the issue of traceability.

Moreover, in arguing that the injury in this case is not fairly traceable to him, Defendant Latimer misconstrues the holding of *Jacobson*. In *Jacobson*, the 11th Circuit held that any injury caused by a law which determined the ordering of candidates on ballots was not "fairly traceable" to the Florida Secretary of State because it was the SOEs, rather than the Secretary, who had the statutory authority to enforce it. *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1241 (11th Cir. 2020). By contrast, both Plaintiffs as well as Defendants Latimer and White agree that the SOEs are responsible for implementing specific provisions of SB 90. FAC ¶ 30; Latimer Mot. at 3; ECF No. 314-14 at 167:3-168:18 (SOEs are responsible for

enforcing Section 24, despite the lack of any "logic" behind this change, and testifying that SOEs' offices would indeed incur a financial burden due to this enforcement duty); *id.* at 170:9-22 (testifying that as supervisor, there is "absolutely" an "aspect of judgment" in how he chooses to enforce the nonsolicitation provision (Section 29)); ECF No. 314-10 at 21:21-22:3. Here, Plaintiffs have only sought relief against Defendant Latimer and other Supervisors of Elections for those provisions which they are statutorily required to enforce. This is fully consistent with *Jacobson*. Plaintiffs have properly sought relief against the Supervisors of Elections.

2. Plaintiffs' Injuries Are Redressable.

As with the issue of traceability, Defendants Latimer and White ignore that the Court has already ruled on the issue of redressability and found that an injunction against Defendant Supervisors would "redress Plaintiffs' injuries" as to Sections 24, 28, and 29. Order on MTD, 2021 WL 4818913, at *11-12.

Plaintiffs thus reiterate what this Court has already held: injuries incurred by Plaintiffs as a result of the Challenged Provisions are redressable by a favorable order from this Court. If the Court grants Plaintiffs' request for declaratory or injunctive relief, the Supervisors would not enforce the statute and the Plaintiffs will not suffer further injury from its enforcement,

including burdens on their members' access to the ballot, diversion of their resources, and potential threats of legal penalties. *See id.*

Once again, Defendants' assertions are directly contradicted by the record evidence. Though Defendant Latimer claims that if the Court grants relief in this case "nothing will happen[,]" as previously discussed, he has acknowledged the burdens imposed by the Challenged Provisions. *See supra* II.A.3; *see also* ECF No. 314-14 25:17-19 (testifying that VBM application restrictions "puts an undue burden on a voter specifically who votes by mail"). A favorable ruling from the Court would halt those burdens.

C. Defendant Latimer's Intent Is Irrelevant to Plaintiffs' Claims.

Defendant Latimer argues that this Court should dismiss Plaintiffs' intentional discrimination claims against him because he does not intend to enforce SB 90 in a discriminatory manner. Latimer Mot. at 3-4, 6-7, Defendant Latimer's intent is irrelevant to, and certainly not dispositive of, Plaintiffs' intent claims, for two reasons.

First, to the extent Defendant Latimer references and defends his personal actions and beliefs, they are irrelevant to Plaintiffs' challenge against him in his official capacity, and thus, against his office. "A suit against state officials in their official capacities is not a suit against the officials but rather is a suit against the officials' offices and, thus, is no

different from a suit against the State itself." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 59 (1989). Defendant Latimer's assertions about his *personal* beliefs and intentions is are irrelevant to Plaintiffs' claims against him *in his official capacity*. *See CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 325 (D. Md. 2018) ("An action is not cured of discriminatory taint because it is taken by an unprejudiced decision-maker who is . . . controlled by another who is motivated by discriminatory intent."). In that capacity, Defendants are charged with implementing SB 90, which is tainted by discrimination: what matters is the legislature's intent in enacting SB 90, not Defendants' intent.

Second, the focus of analysis in intentional discrimination claims is the Legislature's intent in passing SB 90 and the Challenged Provisions. *See Vill. of Arlington Heights v. Metro. Hous. Development Corp.*, 429 U.S. 252, 266 (1977). How Defendant Latimer plans to enforce SB 90, and his personal beliefs about how the provisions will impact election administration in his county, have no bearing on questions concerning whether a discriminatory purpose animated SB 90's passage in the Legislature.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motions in their entirety.

Dated: December 3, 2021

Respectfully submitted,

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LOCAL RULE 7.1 CERTIFICATION

The foregoing complies with the size and font requirements, contains 3,670 words, excluding the case caption, signature blocks, certificate of service, and this certification. Therefore, this motion complies with the Local Rule 7.1.

/s/ P. Benjamin Duke
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to all counsel of record through the Court's CM/ECF system on December 3, 2021.

/s/ P. Benjamin Duke
Counsel for Plaintiffs