

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

**Case No.: 4:21-cv-00201-MW-MJF**

**FLORIDA RISING TOGETHER, et al.,**

**Plaintiffs,**

**vs.**

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

**Defendants.**

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**SUPERVISOR OF ELECTIONS' RESPONSE TO FLORIDA RISING  
TOGETHER PLAINTIFFS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND SUPPORTING MEMORANDUM**

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Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, the referenced Supervisor of Elections Defendants<sup>1</sup> submit the following in response to the Florida Rising Together Plaintiffs’ Motion for Partial Summary Judgment and Supporting Memorandum of Law. (ECF 241; ECF 241-1.)

### **INTRODUCTION**

The Florida Rising Together Plaintiffs seek partial summary judgment on Claims 5, 6, and 8 of their operative complaint (ECF 59.)

Claims 5 and 6 concern Section 29 of Senate Bill 90 (“SB 90”), Fla. Stat. § 102.031(4)(b) (“Section 29”), which prohibits anyone from “engaging in any activity with the intent to influence or effect of influencing a voter” within 150 feet of a polling location. On October 8, 2021, this Court in *Florida League of Women Voters of Florida, Inc., et al v. Laurel Lee, et al*, Case No. 4:21-cv-186-MW/MAF (ECF 274) (“*League Litigation*”), concluded that the Supervisors of Elections

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<sup>1</sup> The following Supervisors of Elections have joined in this Motion and are collectively referred to as the “Supervisor Defendants”: Joe Scott, Broward County Supervisor of Elections; Mark Earley, Leon County Supervisor of Elections; Paul Lux, Okaloosa County Supervisor of Elections; Bill Cowles, Orange County Supervisor of Elections; and Mike Hogan, Duval County Supervisor of Elections.

were the only defendants against whom Plaintiffs had standing to assert their challenges to SB 90's amendments to sections 101.62 and 102.031, Florida Statutes. (ECF No. 274.) In a separate order, this Court rejected the Supervisors' request to stand aside in the *League Litigation* and let the state actors defend SB 90, stating that the Supervisors "must choose—default or defend." (ECF No. 273 at 4.) Accordingly, the Supervisor Defendants submit this response to Florida Rising Together Plaintiffs' Motion with respect to Claims 5 and 6.<sup>2</sup>

### **LOCAL RULE 56.1(C) STATEMENT OF FACTS**

With respect to Florida Rising Together Plaintiffs' Statement of Facts in its motion for partial summary judgment as to Claims 5 and 6, the Supervisor Defendants do not dispute that Plaintiffs "run programs to assist voters at the polls." (ECF 241-1: at 3-5 ¶¶5-7.)

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<sup>2</sup> Claim 8 concerns SB 90 Section 7, Fla. Stat. § 97.0575(3)(a) ("Section 7") which requires organizations that register voters to provide a lengthy warning to applicants that, among other things. This Court's Order on Motions to Dismiss submitted in *League Litigation* (ECF 274) ordered that "claims against the Defendant Supervisors with respect to section 97.0575, Florida Statutes, are **DISMISSED for lack of standing.**" Thus, the Supervisor Defendants submit no response to Florida Rising Together Plaintiffs' Motion with respect to Claim 8.

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

Section 29. Paragraphs (a), (b), and (e) of subsection (4) of section 102.031, Florida Statutes, are amended to read:

102.031 Maintenance of good order at polls; authorities; persons allowed in polling rooms and early voting areas; unlawful solicitation of voters. —

(4)(a) No person, political committee, or other group or organization may solicit voters inside the polling place or within 150 feet of **a drop box** or the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor where vote-by-mail ballots are requested and printed on demand for the convenience of electors who appear in person to request them. Before the opening **of a drop box location, a the** polling place, or an early voting site, the clerk or supervisor shall designate the no solicitation zone and mark the boundaries.

(b) For the purpose of this subsection, the terms “solicit” or “solicitation” shall include, but not be limited to, seeking or attempting to seek any vote, act, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; **and** selling or attempting to sell any item; **and engaging in any activity with the intent to influence or effect of influencing a voter.** The terms “solicit” or “solicitation” may not be construed **to prohibit an employee of, or a volunteer with, the supervisor from providing**

**nonpartisan assistance to voters within the no-solicitation zone such as, but not limited to, giving items to voters, or** to prohibit exit polling.

(e) The owner, operator, or lessee of the property on which a polling place or an early voting site is located, or an agent or employee thereof, may not prohibit the solicitation of voters **by a candidate or a candidate's designee** outside of the no-solicitation zone during polling hours.

Section 29, Chapter 2021-11, Laws of Florida (emphases added).<sup>3</sup>

With respect to the 150 foot no-solicitation zone, various Supervisor Defendants testified or provided responses to written discovery regarding prohibiting volunteers from distributing water to voters standing in line at polling places. For example, Supervisor Earley of Leon County testified that he did not allow volunteers to provide water to voters in line. (ECF 238-13 at 87:8-11.) In addition, Supervisor Early did not “remember a request...from an outside group to hand out water to voters in line.” (ECF and 238-13 at 177:4-16.)

Additionally, other Supervisor Defendants testified that the revised non-solicitation provision does not require them to do anything differently than they did in previous elections. Supervisor

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<sup>3</sup>Words ~~stricken~~ are deletions; words underlined are additions.

Corley of Pasco County testified: “[W]e have never allowed any sort of activity other than exit polling... within the no-solicitation zone... and we are going to continue our policy moving forward;” (ECF 238-19 at 166:23-168:9.) Supervisor Bennett of Manatee County stated that no groups provided food or water to Manatee County voters in 2020. (ECF 238-12 at 107:9-13.)

None of the Supervisor Defendants testified in their depositions or provided sworn answers in response to discovery propounded in this action that they intend to change their existing practices regarding the distribution of water or food within the 150 foot no-solicitation zone as a result of SB 90. In fact, some Supervisor Defendants affirmatively testified that nothing in SB 90’s change to the definition of “solicit” would cause them to do anything differently in the 2022 election cycle than they did in the 2020 election cycle. (E.g., ECF 238-13 at 88:11-15.)

### **LEGAL STANDARD**

Summary judgment is appropriate where the moving party demonstrates that “there is no genuine dispute as to any material fact” and the moving party is “entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).



## **ARGUMENT**

Plaintiffs facially challenge Senate Bill 90's amendment to the definition of "solicit" on grounds that it is either unconstitutionally vague or overbroad. Plaintiffs' vagueness challenge centers around whether SB 90's amendment to the definition of "solicit" "fails to provide people with ordinary intelligence "fair notice of conduct that is forbidden or required" See *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012); (ECF 241 at 23.) Plaintiffs further argue that SB 90's amendment to the definition of "solicit" violates Section 208 of the Voting Rights Act because it "prohibits voters with disabilities and limited English proficiency from receiving the assistance they are entitled to receive . . . "by a person of the voter's choice'." (ECF. 241 at 29.)

The Supervisor Defendants acknowledge the applicability of *Jacobson v. Florida Secretary of State*, 974 F.3d 1236 (11th Cir. 2020), and the burdens it places on this Court and the parties by requiring that all 67 of Florida's Supervisors of Elections be named as defendants to satisfy the elements of "traceability and redressability." 974 F.3d at 1258. However, the fact remains that

none of the Supervisor Defendants advocated for the enactment of any of the provisions challenged in this litigation. During the course of the Legislature's consideration of SB 90 and its House counterpart, PCB PIE21-05 / HB 7041, the Florida Supervisors of Elections (the Supervisor Defendants' state association) issued three letters opposing the legislation. (ECF 238-18 at 182:18-185-5; 185-20-187:25, and 188-1-190:25.)

Supervisors of Elections are sworn to uphold and apply the laws as enacted by the Legislature, subject to judicial determination as to the constitutionality of those laws. As noted by the Florida Supreme Court “[n]othing can be more essential for a supervisor of elections to maintain strict compliance with the statutes in order to ensure credibility in the outcome of the election.” *Jacobs v. Seminole County Canvassing Bd.*, 773 So. 2d 519, 524 (Fla. 2000) (footnote omitted).

Whether the challenged provisions are constitutional will clearly impact the fundamental rights and the duties and responsibilities of the Supervisor Defendants. But whether SB 90 is or is not constitutional or whether it violates the Voting Rights Act are legal questions for the Court. *See, e.g., United States v. Paradies*, 98 F.3d 1266, 1284 (11th Cir. 1996). On these issues, the Supervisor

Defendants take no position and, upon determination by the Court of the issues presented in this case, they will comply with all orders and judgments relating to the challenged provisions of SB 90.

**CONCLUSION**

The Supervisor Defendants take no position on the purely legal questions raised by Plaintiffs' Motion for Partial Summary Judgment and Supporting Memorandum of Law.

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULES**

The undersigned certifies that the foregoing filing complies with the size, font, and formatting requirements of Local Rule 5.1(C), and that the foregoing filing complies with the word limit in Local Rule 7.1(F) because it contains 1,539 words, excluding the case style, signature block, and certificates.

December 3, 2021,

Respectfully submitted,

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