IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA STATE CONFERENCE OF BRANCHES AND YOUTH UNITS OF THE NAACP, *et al.*, Plaintiffs, v. LAUREL M. LEE, in her official capacity as Secretary of State of Florida, *et al.*, Defendants, and NATIONAL REPUBLICAN SENATORIAL COMMITTEE, *et al.*, Intervenor-Defendants.	Case No. 4:21-cv-187

SECRETARY OF STATE LEE'S MOTION TO DISMISS

Secretary of State Laurel M. Lee moves to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) the following Claims in *NAACP, et al. v. Lee, et al.*, No. 4:21-cv-00187: Count I, Count II, Count III, Count V, Count VI, Count VII, Count VIII, and Count IX. The Secretary of State's arguments are fully set forth in the attached Omnibus Memorandum in Support of the Secretary's Motion to Dismiss.

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Dated: June 25, 2021

NORTHERN DISTRICT OF FLORIDA
LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(D), a conference was not conducted as the relief requested herein will determine the outcome of several of Plaintiffs' claims.

LOCAL RULE 7.1(F) CERTIFICATION

Pursuant to Local Rule 7.1(F), the attached Omnibus Memorandum in Support of the Secretary's Motion to Dismiss Plaintiffs' Claims contains 11,907 words, excluding the case style, signature block, and any certificate of service.

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 the 25th of June, 2021.

/s/ Mohammad Jazil
Attorney for Defendant Secretary Lee

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
TALAHASSEE DIVISION**

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., *et al.*, Plaintiffs, v. LAUREL M. LEE, in her official capacity as Secretary of State of Florida, *et al.*, Defendants, and NATIONAL REPUBLICAN SENATORIAL COMMITTEE, *et al.*, Intervenor-Defendants.	Case No. 4:21-cv-186-MW-MAF Consolidated with Case Nos. 4:21-cv-187 and 4:21-cv-242 Motion to Transfer Pending in Case No. 4:21-cv-201

SECRETARY OF STATE'S OMNIBUS MEMORANDUM OF LAW IN SUPPORT OF HER MOTIONS TO DISMISS

I. Introduction

Sometimes what we want to hear the least is what we need to hear the most. The Plaintiffs need to hear and understand that Article I, Section 4 of the U.S. Constitution entrusts the Florida Legislature with setting the "times, places and manner" of elections; that Article III, Section 1 and Article VI, Section 1 of the Florida Constitution does much the same; that "[c]ommon sense, as well as

constitutional law, compels the conclusion that government must play an active role in structuring elections," *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); and that Chapter 2021-11, Laws of Florida (the "2021 Law") is the kind of reasonable, non-discriminatory law that falls within the Florida Legislature's constitutional purview. *See Burdick*, 504 U.S. at 433; *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

Even the Plaintiffs seemingly acknowledge the reasonableness of the 2021 Law as a whole. After all, the four complaints before this Court challenge only five of the thirty-two sections in the 2021 Law: sections 7, 24, 28, 29, and 32. *See* **Exhibit A** (Chpt. 2021-11, Laws of Fla. (2021)).[1] Section 7 requires that third-party voter registration groups inform people that "the organization might not deliver the application to the division [of elections] or the [relevant] supervisor of elections . . . in less than 14 days or before registration closes for the next ensuing election," that people can themselves deliver applications "in person or by mail," or that they can "register online" with the State. Section 24 asks that voter make two requests for vote-by-mail ballots every four years (instead of one) after the 2022 election cycle; it also asks that voters use information such as the last four digits of their social security number when making the requests. Section 28 makes changes to the State's drop box provision—a provision implemented for the first time throughout the State

[1] The corresponding statutory citations for these five sections of the 2021 Law are, respectively, Fla. Stat. §§ 97.0575, 101.62, 101.69, 102.031, and 104.0616.

during the 2020 election cycle. Section 29 revises the State's existing non-solicitation provision so that "engaging in any activity with the intent to influence or effect of influencing a voter" is prohibited, which in no way deprives voters of water (among other things) as some allege. And section 32 places a commonsense limitation on ballot collection, making State law consistent with an ordinance long implemented in Miami-Dade County.

While the Plaintiffs only challenge five sections of the 2021 Law, they take aim at these five sections through several theories of harm, spread over a dozen counts, many of which miss the mark for one reason or another. The Secretary thus moves to dismiss Counts I (Undue Burden) and III (Vague and Overbroad) in Case No. 186 (the *League of Women Voters* case); Counts I (Section 2, Voting Rights Act, Discriminatory Results), II (Undue Burden), III (Americans with Disabilities Act or ADA), V (Vague and Overbroad), VI (Fourteenth Amendment, Intentional Race Discrimination), VII (Fifteenth Amendment, Intentional Race Discrimination), VIII (Section 2, Voting Rights Act, Intentional Race Discrimination), and IX (Section 208, Voting Rights Act) in Case No. 187 (the *NAACP* case); Counts I (Section 2, Voting Rights Act, Intentional Race Discrimination and Discriminatory Results), II (Fourteenth Amendment, Intentional Race Discrimination), III (Fifteenth Amendment, Intentional Race Discrimination), IV (Undue Burden), V (Vague and

Overbroad), and VI (Section 208, Voting Rights Act) in Case No. 201 (the *Florida Rising* case); and Count I (Vagueness) in Case No. 242 (the *Harriet Tubman* case).

Given the overlap in the four complaints, the Secretary groups the allegations into six categories for the sake of brevity and clarity: (1) Undue Burden, (2) Intentional Discrimination, (3) Discriminatory Effect, (4) Vagueness and Overbreadth, (5) ADA, and (6) Section 208 of the Voting Rights Act.

II. Legal Standards for Motion to Dismiss

Standing under Article III of the U.S. Constitution presents a threshold jurisdictional determination, placing the burden squarely on the Plaintiffs to "clearly . . . allege facts demonstrating" standing. *Warth v. Seldin*, 422 U.S. 490, 518 (1975). The Plaintiffs must thus establish for *each* of their claims the "irreducible constitutional minimum[s]" of (1) an injury that is concrete and particularized, or actual or imminent; (2) caused by the Defendant; and (3) redressable, at least in part, through a favorable decision for the Plaintiffs and against the Defendant. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Failure to establish standing provides grounds to dismiss under Federal Rule of Civil Procedure 12(b)(1).

To withstand a motion to dismiss under Rule 12(b)(6), a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. v. Twombly*, 550 U.S. 544, 570 (2007). Facts not alleged cannot be assumed. *Id.* at 563 n.8. Allegations must amount to "more than labels and conclusions." *Id.* at 555.

"[F]ormulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (quoting *Twombly*, 550 U.S. at 555).

Judged against these standards, this Court should grant the Secretary's Omnibus Motion to Dismiss.

III. Argument

A. This Court should dismiss the undue burden claims because the right to vote is either not implicated or the Plaintiffs fail to focus on the electorate as a whole.[2]

This Court should dismiss the counts claiming an undue burden on the right to vote under Rule 12(b)(6). The *Anderson/Burdick* test applies to claims of an undue burden under the First and Fourteenth Amendments. That test asks courts to "weigh 'the character and magnitude of the asserted injury to the right [to vote] . . . that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,'" considering "'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). *Anderson/Burdick* is not, however, a constitutional catch-all. That test requires courts to first "identify a burden before [they] can weigh it." *Crawford v. Marion*

[2] Specifically, this Court should dismiss Count I in the *League of Women Voters* case, Count II in the *NAACP* case, and Count IV in the *Florida Rising* case.

Cnty. Election Bd., 553 U.S. 181, 205 (2008) (Scalia, J., concurring); *see also Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1261 (11th Cir. 2020). Once a court identifies a burden on the right to vote, the court "consider[s] the laws and their reasonably foreseeable effect on *voters generally*," not on a subset of the electorate, *Crawford*, 553 U.S. at 206 (Scalia, J., concurring); "weighing the burden of a nondiscriminatory voting law upon each voter and concomitantly requiring exceptions for vulnerable voters would effectively turn back decades of equal-protection jurisprudence." *Id.* at 207. In addition, the *Anderson/Burdick* test requires courts to "look[] at the whole electoral system," considering provisions that make voting easier, and should avoid "substitution of judicial judgment for legislative judgment" along the way. *Luft v. Evers*, 963 F.3d 665, 671-72 (7th Cir. 2020) (citing *Burdick*, 504 U.S. at 434, 439).

The *League of Women Voters, NAACP*, and *Florida Rising* Plaintiffs allege that changes to the process for requesting vote-by-mail ballots, adjustments to the drop box statute, the prohibition from "engaging in any activity with the intent to influence or effect of influencing a voter," and the limitation on ballot collection act in concert to unduly burden voting rights.[3] Not so.

[3] *See, e.g.*, Case No. 186, ECF 1 at ¶ 6; Case No. 187, ECF 45 at ¶ 75; Case No. 201, ECF 1 at ¶ 16.

1. Vote-by-mail Regulation Does Not Implicate the Right to Vote.

The vote-by-mail request changes, adjustments to the drop box statute, and the ballot collection provision all concern the same thing: voting by mail, asking for a vote-by-mail ballot, and then returning that ballot. Yet the U.S. Supreme Court held in *McDonald v. Board of Education Commissioners of Chicago* that, unless a restriction on vote-by-mail "absolutely prohibit[s]" someone from voting, the right to vote is not at stake. 394 U.S. 802, 809 (1969).

Specifically, in *McDonald*, pretrial detainees argued that their exclusion from four classes of people entitled to vote absentee in Illinois violated the Fourteenth Amendment's Equal Protection Clause. *Id.* at 803-05. The U.S. Supreme Court disagreed. *Id.* at 807. While the U.S. Supreme Court acknowledged that "voting rights[] classifications which might invade or restrain [voting rights] must be closely scrutinized and carefully confined," the unanimous Court held that Illinois's vote-by-mail provisions did not require that "exacting approach" because the detainees had not shown that they were "absolutely prohibited" from voting. *Id.* at 807-808, 808 n.7 (citation omitted). In short, it was "not the right to vote that [was] at stake . . . but a claimed right to receive absentee ballots." *Id.* at 807. The same is true here.

In this case, it cannot be credibly alleged, nor has anyone actually alleged, that requiring voters to make two vote-by-mail requests every four years instead of one; over the phone if they wish; using the last four digits of their social security number

along the way; and then returning a vote-by-mail ballot through the mail, in-person, with the help of a family member, or at one of the still-mandated drop box locations results in the electorate being "absolutely prohibited" from voting-by-mail. Thus, under *McDonald*, the right to vote is not implicated. Because the right to vote is not implicated, there is nothing to weigh under *Anderson/Burdick*. *See New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1281 (11th Cir. 2020); *Jacobson*, 974 F.3d at 1261.

The Plaintiffs might respond by urging this Court not to follow *McDonald* because it predates the *Anderson/Burdick* test. This Court should decline.

McDonald remains binding precedent that cannot be ignored. Importantly, *Anderson*, *Burdick*, and *Crawford* did not squarely address vote-by-mail issues. *McDonald* did. "If a precedent of [the U.S. Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions," which has not actually happened here,[4] "the [lower courts] should follow the case which directly controls, leaving to [the U.S. Supreme] Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989); *see also Fla. League of Prof'l Lobbyists, Inc. v.*

[4] Two subsequent U.S. Supreme Court cases citing *McDonald* have neither overruled nor limited *McDonald* to its facts. In *Goosby v. Osser*, the Court confronted allegations that "the Pennsylvania statutory scheme [at issue] absolutely prohibited [plaintiffs] from voting," thereby implicating the right to vote under *McDonald.* 409 U.S. 512, 521-22 (1973). And in *Hill v. Stone*, the Court simply summarized *McDonald.* 421 U.S. 289, 300 n. 9 (1975).

Meggs, 87 F.3d 457, 462 (11th Cir. 1996) ("[W]e are not at liberty to disregard binding case law that . . . has been only weakened, rather than directly overruled, by the Supreme Court.").

Regardless, *McDonald*'s logic holds firm even after *Anderson/Burdick*. In *Griffin v. Roupas*, a post-*Anderson/Burdick* case, the Seventh Circuit upheld a district court's motion to dismiss a claim on behalf of "working mothers who contend that because it is a hardship for them to vote in person on election day, the U.S. Constitution requires Illinois to allow them to vote by absentee ballot." 385 F.3d 1128, 1129 (7th Cir. 2004). Writing for the Seventh Circuit, Judge Posner, like the majority in *McDonald*, distinguished the right to vote from a claimed "blanket right of registered voters to vote by absentee ballot," *id.* at 1130, and concluded that "unavoidable inequalities in treatment, even if intended in the sense of being known to follow ineluctably from a deliberate policy, do not violate equal protection." *Id.* at 1132. In *New Georgia Project*, the Eleventh Circuit similarly concluded that Georgia's vote-by-mail return deadline "does not implicate the right to vote at all" because "Georgia has provided numerous avenues to mitigate chances that voters will be unable to cast their ballots," and it thus avoided an absolute prohibition on voting. 976 F.3d at 1281.[5]

[5] Discussing a procedural due process issue, but citing *McDonald*, Judge Lagoa further explained that "the Supreme Court has unambiguously held that the right to

In sum, *McDonald* controls, and there is no undue burden claim for changes to the vote-by-mail request process or the vote-by-mail return process (the drop box statute and the ballot collection provisions).

2. The Plaintiffs Must Focus on Electorate as a Whole.

Assuming the Plaintiffs *could* claim an undue burden on the right to vote because of changes to the vote-by-mail process (both asking for a ballot and returning that ballot) or the non-solicitation provision, they still have not done so. The *Anderson/Burdick* inquiry "consider[s] the laws and their reasonably foreseeable effect on *voters generally*," not on a subset of the electorate. *Crawford*, 553 U.S. at 206 (Scalia, J., concurring). But the Plaintiffs focus on a narrow band of potential voters when alleging their claim.

The *League of Women Voters* Plaintiffs allege, for example, that the drop box provision burdens "Floridians who struggle to vote on election day or during early voting hours due to personal circumstances, including restrictive work or class schedules, family care responsibilities, disabilities, health conditions, or other personal circumstances." Case No. 186, ECF 1 at ¶ 82. As to the non-solicitation provisions, they further allege harm to "senior voters, voters with disabilities, or any

vote *absentee* is not a fundamental interest that triggers Fourteenth Amendment protections." *New Ga. Project*, 976 F.3d at 1288 (Lagoa, J., concurring).

voter who is forced to wait in long lines at polling places." Case No. 186, ECF 1 at ¶ 113. So the voters generally are not the subject of the allegations.

The *NAACP* Plaintiffs similarly claim that the drop box restriction will "burden voters who do not receive their VBM ballots until the final days before the election," and presumably cannot vote in-person during the early voting period or on election day. Case No. 187, ECF 45 at ¶ 82. As to the ballot collection provisions, the *NAACP* Plaintiffs focus on a subset of the electorate that lacks a car and presumably lacks access to a mailbox, bus, or ride-sharing service, and lives more than walking distance from a supervisor's office or a drop box location. Case No. 187, ECF 45 at ¶ 89. As to the non-solicitation provisions, the *NAACP* Plaintiffs state that "[l]ong lines make voters irritable and frustrated, leading some to avoid voting altogether or to leave before voting, producing uncounted numbers of lost votes." Case No. 187, ECF 45 at ¶ 104 (quotations omitted). Again, the voters generally are not the subject of the allegations.

The *Florida Rising* Plaintiffs plead that the drop box rules are "particularly burdensome for voters who cannot get time off work," and presumably cannot vote in-person during the early voting period (which includes weekends), and usually includes locations centrally located to business districts. *See* Case No. 201, ECF 1 at ¶ 103. Of the vote-by-mail rules generally, they plead that "voters will be barred from obtaining a vote-by-mail ballot because they do not remember the document

that they used when registering to vote," and presumably will not have access to their driver's license number, Florida identification number, or social security number to update the necessary information. Case No. 201, ECF 1 at ¶ 126. Finally, as to the non-solicitation rules, the *Florida Rising* Plaintiffs allege that they will be barred from providing a list of items, including "food, water, chairs, umbrellas . . . ponchos . . . and entertainment" to voters waiting in line to vote and who, presumably, will choose not to vote without these items specifically provided to them by the *Florida Rising* Plaintiffs. Case No. 201, ECF 1 at ¶ 129, 132. *Florida Rising* thus slices the electorate into smaller and smaller subsets.

In sum, the Plaintiffs do not seek to vindicate the rights of the voters generally as *Anderson/Burdick* requires. Rather, the Plaintiffs speculate that the 2021 Law burdens a certain subset of the electorate already being subjected to an unfortunate confluence of personal and professional circumstances. The burdens on these vulnerable voters, the Plaintiffs allege, outweigh the State's interests. Yet "weighing the burden of a nondiscriminatory voting law upon each voter and concomitantly requiring exceptions for vulnerable voters would effectively turn back decades of equal-protection jurisprudence."[6] *Crawford*, 553 U.S. at 207 (Scalia, J., concurring).

[6] The Secretary further emphasizes that the non-solicitation provisions of the 2021 Law are not directed at the voters at all but instead at those "engaging in any activity with the intent to influence or [that has the] effect of influencing a voter." **Exhibit**

B. This Court should dismiss the race-based, intentional discrimination claims under the Fourteenth and Fifteenth Amendments, and Section 2 of the Voting Rights Act.[7]

This Court should also dismiss the intentional, racial discrimination claims under Rule 12(b)(6). Claims of racial discrimination under the Fourteenth and Fifteenth Amendments to the U.S. Constitution "require[] proof of *both* an intent to discriminate and actual discriminatory effect." *Greater Birmingham Ministries v. Sec'y of Ala.*, 992 F.3d 1299, 1321 (11th Cir. 2021). Section 2 of the Voting Rights Act, codified at 52 U.S.C. § 10301, requires Plaintiffs to either demonstrate proof of intent or demonstrate "that a challenged election practice has resulted in the denial or abridgement of the right to vote based on color or race."[8] *Chisom v. Roemer*, 501 U.S. 380, 394 (1991). The test for intent in *Village of Arlington Heights v. Metropolitan Housing Development Corporation* governs all intent claims at issue here. 429 U.S. 252, 265 (1977). *Arlington Heights* requires courts to assess:

A at § 29 (Pg. 25). The Plaintiffs fail to allege how limitations on them—not the voters—affect the right to vote.

[7] Specifically, this Court should dismiss Counts VI, VII, and VIII in the *NAACP* case, and Counts II and III in the *Florida Rising* case.

[8] The Secretary notes that while the plain language of Section 2 of the Voting Rights Act does not include an intent claim, certain courts have read an intent test into the statute. The U.S. Supreme Court may clarify this issue in *Brnovich v. Democratic Nat'l Comm.*, No. 19-1257 (U.S. argued Mar. 2, 2021) (reviewing claims brought under Section 2 of the VRA and the Fifteenth Amendment). For the purposes of this filing, and this filing only, the Secretary assumes that Section 2 of the Voting Rights Act allows for intent claims.

> (1) [T]he impact of the challenged law; (2) the historical background; (3) the specific sequence of events leading up to its passage; (4) procedural and substantive departures; and (5) the contemporary statements and actions of key legislators. And, because these factors are not exhaustive, the list has been supplemented: (6) the foreseeability of the disparate impact; (7) knowledge of that impact; and (8) the availability of less discriminatory alternatives.

Greater Birmingham Ministries, 992 F.3d at 1321-22. Neither the Plaintiffs in *NAACP* nor *Florida Rising* have alleged enough for intent under *Arlington Heights*.

1. The impact of the challenged law.

As the U.S. Supreme Court explained, for discriminatory impact from a challenged provision to carry the day, Plaintiffs must couple impact with sufficient allegations to "establish 'a pattern, unexplainable on grounds other than race.'" *Id.* at 1322 (citing *Arlington Heights*, 429 U.S. at 266).

The *NAACP* Plaintiffs fails to couple impact with unexplainable pattern. The complaint simply states that, for example, "[v]oters—especially in these historically disenfranchised communities—have come to rely on drop boxes as a safe and important option for casting a ballot," Case No. 187, ECF 45 at ¶ 78, and that "[t]hird-party ballot return is especially important for Black and Latino voters, who are less likely to have access to a vehicle and less likely to be able to secure time off work." *Id.* at ¶ 88-89. Neither of these alleged facts, nor any others alleged in the complaint, "establish a pattern unexplainable on grounds other than race." *Greater Birmingham Ministries*, 992 F.3d at 1322 (internal quotation omitted). Therefore,

the allegations are insufficient to satisfy this *Arlington Heights* factor. *Id.* (holding that "small disparities in ID possession rates do not, standing alone, establish a [racially discriminatory] pattern.") (internal quotation mark omitted).

The *Florida Rising* complaint largely provides bare legal conclusions regarding the "Impact of SB 90," stating that "SB 90 includes numerous provisions that impact or burden the right to vote of historically disenfranchised voters and disabled voters," Case No. 201, ECF 1 at ¶ 92. For the same reasons the *NAACP* complaint fails to plead discriminatory impact, however, the *Florida Rising* complaint's factual allegations are incapable of showing a "clear pattern, unexplainable on grounds other than race" that would qualify as the "rare" case where discriminatory impact alone could be determinative, *Greater Birmingham Ministries*, 992 F.3d at 1322.

2. The historical background.

The historical background inquiry focuses not on "an unlimited look-back to the past discrimination" that, "in the manner of original sin, condemn[s] governmental action that is not itself unlawful." *Greater Birmingham Ministries*, 992 F.3d at 1323-26. Instead, there must be some tie to the 2021 Law. *Id.*

The Plaintiffs, however, choose to dwell on the distant past. The *NAACP* Plaintiffs allege that "[f]rom 1972 to 2012 . . . multiple counties in Florida were required under the [Voting Right Act] to seek federal [pre]clearance for changes to

their election laws," Case No. 187, ECF 45 at ¶ 6, but neglect to mention that the State of Florida, as a whole, has never been a covered jurisdiction. The *NAACP* Plaintiffs also attempt to connect the past with today's Florida by invoking post-reconstruction history. Case No. 187, ECF 45 at ¶¶ 37-40. Many of their other allegations simply distort the past, *e.g.*, Case No. 187, ECF 45 at ¶ 41 (mistaken voter purge), or attempt to allude to a discriminatory dimension where there was none, *e.g.*, Case No. 187, ECF 45 at ¶ 42 (adjusting early voting day).

The *Florida Rising* Plaintiffs claim, in an effort to tie Florida's history to the 2021 Law, that "[t]he passage of SB 90 is the latest chapter in Florida's long history of racially discriminatory voting restrictions that dates back over 100 years." Case No. 201, ECF 1 at ¶ 53. They proceed to detail the obviously discriminatory laws from the 1880's and 1890s without providing facts that link that sordid history to the 2021 Law or those who passed it. *See* Case No. 201, ECF 1 at ¶¶ 54-68.

At best, the relevant historical background alleged in the complaints points to no intentional discrimination. Claims about high Black and Latino use of vote-by-mail ballots in 2020 ask this Court to infer that the Florida Legislature changed the rules because, during *one* election in midst of a global pandemic, more people overall, including Blacks and Latinos, used vote-by-mail ballots; and that Blacks and Latinos in this State form a monolithic voting block that votes against the political party with majorities in the Florida Legislature. *See, e.g.*, Case No. 187, ECF 45 at

¶¶ 2-3; Case No. 201, ECF 1 at ¶¶ 7-8, 120. Statements about more voters of the minority party using vote-by-mail than the majority party also prove inconsequential because "partisan reasons" fail to provide the requisite historical background for racial intent. *See Greater Birmingham Ministries*, 992 F.3d at 1326-27. Citation to past cases fails too because there is no tether to the 2021 Law, some of the cases failed to find racial animus, and others included no resolution of racial discrimination claims. *See e.g.*, Case No. 187, ECF 45 at ¶¶ 7 n.3, 44-45; Case No. 201, ECF 1 at ¶¶ 64, 67.

3. Sequence of Events Leading to Passage and Any Procedural and Substantive Departures.

The sequence of events and departures inquiry, as pled, is insufficient. *Arlington Heights* tells us that "[t]he specific sequence of events leading up to the challenged decision also may shed *some* light on the decisionmaker's purposes." 429 U.S. at 267 (emphasis added). The word "some" means that, even if this Court found significant evidence of unexplainable procedural deviations, this factor alone cannot support a finding of intent. Regardless, for these two prongs of the *Arlington Heights* test, the two sets of Plaintiff groups attribute most of the sequence of events and departure to a once-in-a-lifetime pandemic. *See, e.g.*, Case No. 187, ECF 45 at ¶¶ 2-3; Case No. 201, ECF 1 at ¶¶ 7-8, 120. There is one notable exception: the claim that the "strike all" amendment was unusual. *See* Case No. 187, ECF 45 at ¶¶ 63, 67; Case No. 201, ECF 1 at ¶¶ 88-89. That is not true. The Florida Legislature

used the "strike all" (or "delete all") tool with frequency; in 2021 it was used 359 times on 290 bills, i.e., on 9.4% of all bills during the 2021 Regular Session, and 440 times on 326 bills, i.e., on 9.3% of all bills during the 2020 Regular Session.[9]

4. Contemporaneous Statements of Key Legislators.

The Plaintiffs also cannot show discriminatory intent through statements of "key legislators" supportive of the 2021 Law "made contemporaneously" with its passage. *Greater Birmingham Ministries*, 992 F.3d at 1322. At best, key legislators, like Senate Sponsor Baxley, are alleged to have said that "[w]e are doing this bill because it becomes clear as you look across the country that there is a lot of confusion from many people on different fronts." Case No. 201, ECF 1 at ¶ 78. They are also alleged to have said that the 2021 Law was needed to address "some [issues] going on around the country, different places, and we want to be proactive and prevent things from going awry, rather than waiting to have some kind of

[9] This Court may take judicial notice of public records at this stage. *See Universal Express, Inc. v. United States SEC*, 177 Fed. App'x. 52, 53 (11th Cir. 2006) (unpublished) ("Public records are among the permissible facts that a district court may consider."); *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999). This information is available from the Florida Legislature's website at https://www.flsenate.gov/Session/Bills/2021?chamber=both&searchOnlyCurrentVersion=True&isIncludeAmendments=False&isFirstReference=True&citationType=FL%20Statutes&pageNumber=1 (last visited Jun. 24, 2021), using the search terms "strike all" and "delete all".

debacle to recover from." *Id.* Statements like these demonstrate a proactive approach in dealing with election regulations—not the intent to discriminate.

5. Foreseeability and Knowledge of Disparate Impact.

As alleged, there is no foreseeability or knowledge of a disparate impact either. This inquiry requires that a disparate effect be both "foreseeable" and "anticipated." *Columbus Bd. of Educ. v. Penick*, 443 U.S. 449, 464-65 (1979). Importantly, "[d]isparate impact and foreseeable consequences, without more, do not constitute a constitutional violation." *Id*. at 464.

The Plaintiffs rely on two types of allegations in support of this prong of the *Arlington Heights* analysis. They rely on statements that amount to no more than legal conclusions; simply saying that there exists a discriminatory impact (without even saying what that impact is) does not make it so. *See, e.g.*, Case No. 187, ECF 45 at ¶¶ 135, 194; Case No. 201, ECF 1 at ¶ 159. Plaintiffs also rely on statements from those opposing the 2021 Law's passage, *see* Case No. 187, ECF 45 at ¶¶ 119-124; Case No. 201, ECF 1 at ¶¶ 73-74; however, legislators are not required to take the word of their political opponents as there was no objective evidence presented of a foreseeable and anticipated impact. *Cf. Crawford*, 553 U.S. at 204 (explaining that neutral "justifications should not be disregarded simply because partisan interests may have" played a role in passing a law); *Greater Birmingham Ministries,*

992 F.3d at 1308, 1327 (noting concerns from political opponents but not giving them credence under the disparate impact analysis).

Notably, there are no allegations that any legislator voting for the 2021 Law "anticipated" there would be a disparate impact.

6. Less Discriminatory Alternatives.

The *Florida Rising* Plaintiffs make no attempt to allege less discriminatory alternatives to the 2021 Law. The Plaintiffs in *NAACP* only make passing conclusory statements concerning the issue, which simply ask for the pre-2021 status quo without alleging why that status quo is less discriminatory. *See* Case No. 187, ECF 45 at ¶¶ 138, 196, 220.

In sum, given the dearth of factual allegations that go to the *Arlington Heights* factors, this Court should dismiss the intentional, racial discrimination claims.

C. This Court should dismiss the discriminatory effect claims under Section 2 of the Voting Rights Act.[10]

The discriminatory effect claims under Section 2 of the Voting Rights Act fare no better for purposes of Rule 12(b)(6). The Act provides in pertinent part that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State . . . in a manner which *results* in a denial or

[10] Specifically, this Court should dismiss Count I in the *NAACP* case, and Count I in the *Florida Rising* case.

abridgment of the right . . . to vote on account of race or color." 52 U.S.C. § 10301(a) (emphasis added). The discriminatory result "is established if, based on the *totality of circumstances*, it is shown that" members of a race or color "have less opportunity than other members of the electorate to participate in the political process *and* to elect representatives of their choice." *Id.* § 10301(b) (emphasis added). "In other words, the challenged law must have *caused* the denial or abridgement of the right to vote on account of race" to violate Section 2. *Greater Birmingham Ministries*, 992 F.3d at 1330. "[D]isparate inconveniences that voters face when voting" are not enough to state a Section 2 claim. *Id.* (citations and alteration omitted).

In these consolidated cases, neither the *NAACP* Plaintiffs nor the *Florida Rising* Plaintiffs allege that the 2021 Law keeps them from electing candidates of their choice.[11] This is fatal. To reiterate, Section 2 provides that a discriminatory result "is established if, based on the *totality of circumstances*, it is shown that" members of a race or color "have less opportunity than other members of the electorate to participate in the political process *and* to elect representatives of their choice." 52 U.S.C. § 10301(b) (emphasis added); *see also Greater Birmingham Ministries*, 992 F.3d at 1329 (same).

[11] Both the *NAACP* and *Florida Rising* complaints each contain a single conclusory allegation to electing "representatives of their choice," *see* Case No. 187, ECF 45 at ¶ 133; Case No. 201, ECF 1 at ¶ 153, which amount to no more than "[t]hreadbare recitals of the elements of a cause of action," *Iqbal*, 556 U.S. at 678.

Separately, the complaints include no non-speculative, non-conclusory allegations of discriminatory effect. The *Florida Rising* complaint states, for example, that "in Pinellas County alone, approximately 28,000 voters lack a driver's license, state ID card, or social security number on file in the voter registration system." Case No. 201, ECF 1 at ¶ 85. But this allegation includes no mention of the racial composition of the alleged 28,000 or if the burdens fall disproportionately on Black or Latino voters. *See id.* The *NAACP* complaint relies primarily on claims relating to either Florida's (distant) history of racial prejudice or conclusory allegations about increases in minority voters' use of alternative means of voting (during a once-in-a-generation pandemic) in an attempt to make a cognizable claim under the totality of the circumstances. *See, e.g.*, Case No. 187, ECF 45 at ¶¶ 38-40. But coupling Florida's distant history and a single data point during a pandemic does nothing to show that "the challenged law . . . *caused* the denial or abridgment of the right to vote *on account* of race." *Greater Birmingham Ministries*, 992 F.3d at 1330 (second emphasis added).

In sum, the Plaintiffs have not adequately pled a discriminatory result claim under Section 2 of the Voting Rights Act.

D. This Court should dismiss the vagueness and overbreadth claims against the non-solicitation requirement.[12]

The Plaintiffs similarly fail to state a claim for purposes of Rule 12(b)(6) when they allege that the 2021 Law violates vagueness and overbreadth doctrines under the First or Fourteenth Amendments, or both, because of its prohibition on "engaging in any activity with the intent to influence or effect of influencing a voter" within "150 feet of a drop box or the entrance to any [in-person] polling place," which also does not apply to nonpartisan assistance from supervisors or their staff. **Exhibit A** at § 29 (Pg. 24-25). The *Harriet Tubman* Plaintiffs' argument that the voter-registration disclaimer is void for vagueness because it "does not specify the penalties" for non-compliance also misses the mark.

1. Non-Solicitation Provision Establishes Reasonably Clear Lines for All to Follow.

A law is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment where it "fails to provide people with ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" or because it "authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). "[R]easonably clear lines" between proscribed

[12] Specifically, this Court should dismiss Count III in the *League of Women Voters* case, Count V in the *NAACP* case, Count V in the *Florida Rising* case, and Count I in the *Harriet Tubman* case.

and permitted conduct is all that is required to pass muster under the Due Process Clause. *Smith v. Goguen*, 415 U.S. 566, 574 (1974).

The Plaintiffs assert that Section 29 of the 2021 Law—the non-solicitation provision—is unconstitutionally vague because it fails to draw an absolute line separating proscribed from permitted speech and conduct within the 150-foot zone surrounding polling locations. *See, e.g.*, Case No. 187, ECF 45 at ¶ 180. Their argument hinges on the use of the words "any activity," which the Plaintiffs argue are "necessarily expansive," and that there is therefore effectively no limit to the kinds of activities that may be criminalized within that 150-foot perimeter. *Id.* at ¶ 101. The *NAACP* Plaintiffs allege that Section 29 could criminalize "all activity" within that perimeter, including "possibly, the nonpartisan provision of free food, water, and similar basic resources to voters standing in line." *Id.* at ¶ 114. The *League of Women Voters* Plaintiffs warn that "[t]he possibilities of prohibited activities are *virtually limitless*, ranging from speaking words to a voter to handing them water bottles or food." Case No. 186, ECF 1 at ¶ 166. These arguments do not withstand scrutiny.

The non-solicitation provision's text reveals that it cannot reasonably be interpreted to criminalize "any activity" within the no-solicitation zone—and the Plaintiffs point to no language reasonably prohibiting, *inter alia*, the nonpartisan provision of food or water, or a chair to someone with mobility challenges.

First, contrary to the Plaintiffs' decision to read "any activity" in isolation, the canons of construction mandate that "[w]ords of a statute are not to be interpreted in isolation; rather a court must look to the provisions of the whole law and to its object and policy." *MicroStrategy Inc. v. Bus. Objects, S.A.*, 429 F.3d 1344, 1363 (Fed. Cir. 2005). When the phrase "any activity" is construed reasonably in context of its surrounding text and the provision as a whole, the text is unambiguous in what it prohibits: partisan efforts of individuals or campaigns to pressure or influence voters' decisions within the no-solicitation zone.

Second, another commonly used linguistic canon confirms that Section 29's meaning is not vague. Specifically, when, as here, general terms or phrases are included in a series of more specific items, the general term should be interpreted to have meaning akin to the more specific surrounding terms and in light of its surrounding provisions, i.e., *noscitur a sociis*.[13] Using the canon, it is apparent that the non-solicitation provision does not in any way prohibit innocent, nonpartisan assistance to voters waiting in line. Instead, the relevant provision targets partisan efforts to influence the decisions of voters near polling locations.

Notably, the "any activity" restriction itself is qualified by the important

[13] *See, e.g.*, *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995); *Beecham v. United States*, 511 U.S. 371 (1994); *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 36 (1990).

phrase "with the intent[14] to *influence* or effect of *influencing* a voter," demonstrating that the provision does not extend to ordinary, run-of-the-mill activities like innocently giving voters a drink of water—rather, the restriction narrowly targets activities with a reasonable likelihood of swaying a voter's decision on how to vote. **Exhibit A** at § 29 (Pg. 24-25) (emphasis added).

It follows that, while merely giving bottles of water to voters waiting in line would not reasonably be viewed as an activity "with the effect of influencing a voter," if for example the bottles have campaign logos pasted on the front or are supplemented with campaign literature, that obviously transforms the activity into the kind of solicitation the statute prohibits. Certainly, the Florida Legislature did not need to engage in the unwieldy exercise of spelling out each potential way that individuals or political groups could influence or attempt to influence voters while approaching a polling location—due process does not demand that level of enumeration to prohibit obviously unsuitable conduct in all its various permutations. Nor is that level of detail necessary to guard against the de minimis risk of

[14] The U.S. Supreme Court "has recognized that a scienter requirement may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed." *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 499 (1982). Accordingly, because the non-solicitation provision includes the scienter requirement of "intent to influence . . . a voter," any alleged vagueness that may exist with respect to that restriction is alleviated by the provision's inclusion of a threshold scienter requirement.

inconsistent enforcement. Instead, because the non-solicitation provision identifies the prohibited conduct through its plain text and clear purpose, the provision is not unconstitutionally vague.

Third, even if the phrase "any activity" *is* vague when viewed in isolation, as Plaintiffs assert, the series of prohibited activities immediately preceding the provision, coupled with its broader context, reveals exactly the kinds of "activities" the statute prohibits, and manifests an unmistakable purpose of prohibiting partisan solicitation near polling locations, defeating Plaintiffs' vagueness arguments. This is because the relevant "any activity" language comes from the definition of the terms "solicit" and "solicitation" under the provision. Dictionary definitions confirm that to "solicit" is ordinarily understood to mean to entreat, approach with a request or plea, urge, or entice to action. *See, e.g.*, *Solicit*, *Merriam-Webster's Dictionary*, https://www.merriam-webster.com/dictionary/solicit (last accessed June 22, 2021). Importantly, the word does not ordinarily include aiding or assisting someone as Plaintiffs allege, unless such assistance is intended or reasonably has the effect of influencing voters to change their vote. The items included in the non-solicitation provision's list of prohibited actions preceding the provision at issue here bolsters this interpretation. They include:

> seeking or attempting to *seek any vote*, fact, opinion, or contribution; distributing or attempting to distribute any *political or campaign material, leaflet, or handout*; conducting a *poll* . . . seeking or attempting to seek a *signature on any petition*; selling or attempting to

> sell any item; and engaging in any activity with the intent to *influence* or effect of influencing a voter.

Exhibit A at § 29 (Pg. 24-25) (emphasis added). Plaintiffs' complaints largely ignore this list of activities, presumably because it is fatal to their vagueness argument: viewed in its proper context, the "any activity" provision does not reasonably mean what Plaintiffs assert it could mean, nor is it vague. Instead, it is surrounded by a list of activities that include requesting votes, campaigning, distributing literature, and signature gathering for petitions—the statutory purpose is thus clear. Legislatures are presumed to not "hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001), which is exactly what the Plaintiffs ask this Court to do: they aim to expand the potential statutory meaning of "any activity" to prohibit a whole host of nonpolitical activities and assistance that are of a fundamentally different scope and character from the list of items immediately preceding that phrase. This Court should reject this effort to go well beyond what the statutory text and purpose reasonably indicate.

Finally, contrary to Plaintiffs' foreboding, the carveout for supervisors' volunteers and employees bolsters the Secretary's interpretation because it confirms the exact kinds of activities the statute permits and thus does not aim to restrict: "providing *nonpartisan* assistance to voters within the no-solicitation zone such as, but not limited to, giving items to voters." **Exhibit A** at § 29 (Pg. 25). Restricting assistance within the zone to nonpartisan activities again bolsters Defendant's

argument that the legislature was primarily concerned with restricting *partisan* activities, as evidenced by the kinds of activities prohibited by the previous clauses.

In sum, because Section 29's solicitation provision is not susceptible to the interpretations put forth by Plaintiffs, and given the U.S. Supreme Court's reluctance to declare statutes void for vagueness generally, *see Parker v. Levy*, 417 U.S. 733, 757 (1974), the Plaintiffs' vagueness claims should be dismissed.

2. Third-Party Registration Disclaimer Establishes Reasonably Clear Lines.

The *Harriet Tubman* Plaintiffs' challenge to the voter-registration disclaimer on vagueness grounds fails too. They argue that the disclaimer requirements do not "specify the penalties." Case No. 242, ECF 1 at ¶ 87. But there is a specific penalty.

Section 7 of the 2021 Law specifies in 97.0575(3)(a) that "the aggregate fine pursuant *to this paragraph* which may be assessed against a third-party voter registration organization, including affiliate organizations, for violations committed in a calendar year is $1,000." **Exhibit A** at § 7 (Pg. 9) (emphasis added). That "paragraph" as amended includes the relevant disclaimer requirement that a "third-party voter registration organization must notify the applicant at the time the application is collected 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." *Id.* (Pg. 8). There is nothing vague about the consequences to third-party voter registration organizations for non-compliance; again, the aggregate

maximum annual penalty explicitly established by statute for noncompliance is $1,000. *Id.* at § 7 (Pg. 8-9). Period.[15] *See Harris v. Mexican Specialty Foods, Inc.*, 564 F.3d 1301, 1311-12 (11th Cir. 2009) (holding potential defendants "have notice of the consequences of violating [the statute] because it clearly defines what conduct is prohibited and the potential range of fine that accompanies noncompliance").

3. The Overbreadth Claims Also Fail.

The First Amendment's[16] overbreadth doctrine prohibits regulation of substantially more protected speech than is necessary to achieve regulatory purposes. *See Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). A regulation's overbreadth "must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Id.* at 615. Overbreadth is, however, a "manifestly[] strong medicine" sparingly employed by courts "only as a last resort,"

[15] The *Harriet Tubman* Plaintiffs' separate concern that the statute does not identify whether "individual volunteers would face consequences for a violation under the law," Case No. 242, ECF 1 at ¶ ¶ 87, is also unavailing because Section 7 only permits assessment of the aggregate fine "against a third-party voter registration organization." **Exhibit A** at § 7 (Pg. 9) Far from being void for vagueness, the statute is clear that individual volunteers, including for such organizations, are not subject to penalties at all.

[16] In the Fourteenth Amendment context, the overbreadth doctrine is simply not applied. *See United States v. Salerno*, 481 U.S. 739, 745 (1987) ("[W]e have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment."); *Schall v. Martin*, 467 U.S. 253, 268 n.18 (1984) ("[O]utside the limited First Amendment context, a criminal statute may not be attacked as overbroad.").

id. at 613, meaning that "facial overbreadth adjudication is an exception" to the U.S. Supreme Court's "traditional rules of practice," *id.* at 615. Consequently, statutes should not be invalidated based on facial overbreadth whenever "a limiting construction has been or could be placed on the challenged statute." *Id.* at 613; *see also United States* v. *Thirty-seven Photographs*, 402 U.S. 363 (1971).

The U.S. Supreme Court's First Amendment precedents permit state governments to create so-called "nonpublic forums" where the government has significant flexibility to establish rules limiting speech. *Perry Ed. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46-49 (1983), and which the government "may reserve . . . for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression" merely because of government opposition to the speaker's viewpoint, *id.* at 46. Courts thus routinely uphold speech restrictions at nonpublic forums like polling places as constitutional because they qualify as "government-controlled property set aside for the sole purpose of voting." *Minn. Voters Alliance v. Mansky,* 138 S. Ct. 1876, 1885-86 (2018); *see also Burson v. Freeman,* 504 U.S. 191, 193-94 (1992). Accordingly, the government "may impose some content-based restrictions on speech in nonpublic forums [like polling locations], including restrictions that exclude political advocates and forms of political advocacy." *Mansky*, 138 S. Ct. at 1885-86.

The Plaintiffs' complaints hardly rise to the level of the exceptional kind of

claims or "last resort," *Broadrick*, 413 U.S. at 613, that would justify invoking the overbreadth doctrine. Far from prohibiting substantially more speech than the Constitution permits, the complaints do not describe restrictions on protected speech at all. This is fatal to the overbreadth claim and warrants dismissal.

First, as described in the above analysis of vagueness, the 2021 Law does not prohibit the kinds of activities that Plaintiffs allege. Contrary to Plaintiffs' allegations, the non-solicitation provision does not infringe on the "legal and constitutional right of volunteers to engage in expressive conduct by offering food, water, chairs, or other relief to voters" or the "right of voters to receive such assistance,"[17] Case No. 187, ECF 45 at ¶ 182. Even if the non-solicitation provision does prohibit expressive conduct as the Plaintiffs allege, that speech would still not be protected from regulation because the statute clearly regulates polling locations, which are nonpublic forums subject to content-based speech restrictions, including political advocacy prohibitions. *See Mansky*, 138 S. Ct. at 1885-86. The statute plainly targets partisan activities with the intent or "effect of influencing a voter," which is essentially identical to political advocacy that the Supreme Court has said

[17] This assumes that voters have a constitutional right to *receive* food, water, chairs, etc. in the first place while waiting in a public line to vote, which is conjectural at best. But even if such a constitutional right did exist, it would not be pursuant to the First Amendment, which means the overbreadth doctrine would not be applicable. *Salerno*, 481 U.S. at 745 ("[W]e have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment.").

may be restricted in polling locations. *See id.* Thus, no matter how Plaintiffs frame it, the result is the same: the overbreadth doctrine is entirely inapplicable to the non-solicitation provision.

Lastly, the *League of Women Voters* Plaintiffs' complaint suffers from a separate but equally problematic defect: it fails to provide a single statement (much less factual allegations) in support of its contention that the non-solicitation provision is unconstitutionally overbroad, and instead merely states that "the line warming ban is . . . overbroad under the First Amendment to the U.S. Constitution." Case No. 186, ECF 1 at ¶ 169. If ever there were an "unadorned" allegation, *Iqbal*, 556 U.S. at 678, that fails to provide any "grounds" for "entitlement to relief," *Twombly*, 550 U.S. at 555, this pure conclusory statement is it.

In sum, the overbreadth allegations must also be dismissed as a matter of law for failure to state a claim.

E. This Court should dismiss the ADA claim, at least with respect to the Secretary.[18]

As the only Plaintiffs alleging ADA violations in this action, the *NAACP* Plaintiffs fail to state a claim under which relief could be granted pursuant to Title II of the ADA. The *NAACP* Plaintiffs challenge four distinct provisions from the 2021 Law: (1) Section 28's in-person monitoring requirement for drop boxes; (2)

[18] Specifically, this Court should dismiss Count III of the *NAACP* complaint.

Section 32's ballot collection limit; (3) the vote-by-mail application renewal requirement; and (4) Section 29's polling place solicitation prohibition. Case No. 187, ECF 45 at ¶ 164. Each of these allegations fail, as explained further below.

1. The Plaintiffs Lack Standing to Sue the Secretary.

As a threshold matter, the *NAACP* Plaintiffs lack standing to bring their ADA claims against the Secretary. The Eleventh Circuit decision in *Jacobson* is instructive on this point. There, the Eleventh Circuit held that the plaintiffs lacked standing to sue the Secretary when challenging Florida's ballot order statute "because any injury would be neither traceable to the Secretary nor redressable by relief against her." 974 F.3d at 1253. The Eleventh Circuit explained that "[t]o satisfy the causation requirement of [Article III] standing, a plaintiff's injury must be 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.'" *Id*. (citations omitted). According to the Eleventh Circuit, the general statutory provisions concerning the Secretary's role as chief election officer failed to provide the necessary causal link to the challenged action; furthermore, county Supervisors of Elections acted as independent constitutional officers responsible for implementing the State's election laws. *Id.* Because any alleged injury stemming from a ballot order statute was attributable, if at all, to the Supervisors, the *Jacobsen* plaintiffs lacked standing to sue the Secretary. *Id.*

The same is true for the *NAACP* Plaintiffs' ADA claims against the Secretary. The *NAACP* Plaintiffs fail to link the Secretary to any of the injuries they allege and the relief they seek, as *Jacobson* required them to do. *Id.* For instance, regarding the complaint's allegation that the 2021 Law's in-person monitoring requirement of drop boxes violates the ADA, the *NAACP* pleads no facts showing the Secretary's involvement or causation of the alleged harms. The complaint alleges (with a high degree of speculation) that because of this staffing requirement, "many election officials will place most or all drop boxes indoors," making them allegedly less accessible to voters with disabilities. Case No. 187, ECF 45 at ¶ 159. The *NAACP* Plaintiffs also assert that due to Section 29's polling place solicitation prohibition, family members, caregivers, and others will be inhibited from providing food, water, or a chair to voters with disabilities. *Id.* at ¶ 161. Yet failures to provide reasonable accommodations for disabled voters returning absentee ballots or for voting in-person trigger responsibilities squarely within the purview of the State's 67 supervisors of elections. *Cf. Jacobson*, 974 F.3d at 1253. The same is true for any restrictions imposed on those interacting with voters in voting lines because the supervisors must manage lines at their respective polling places.

The *NAACP* Plaintiffs similarly fail to plead facts explaining how alleged injuries stemming from the enforcement of either the ballot collection limit or mail-in-ballot application renewal requirement are attributable to the Secretary. Case No.

187, ECF 45 at ¶¶ 160, 164. Again, the *NAACP* Plaintiffs ignore that the Supervisors are independent officials under Florida law responsible for implementing these laws and who "are not subject to the Secretary's control," *Jacobson*, 974 F.3d at 1253, which means injuries arising from such enforcement would not be fairly traceable to the Secretary. As the Eleventh Circuit determined regarding the ballot order statute in *Jacobson*, the Supervisors and other local officials are not agents of the Secretary and are not bound by judgments against the Secretary, persuasive as any judgments might be on an issue. *See id*. at 1253-54. Pointing to the Secretary's role as the "chief election officer of the state," Case No. 187, ECF 45 at ¶ 25, is insufficient to establish a causal connection between the Secretary and Plaintiffs' alleged injuries.

Absent any factual allegations tying the Secretary to the injuries alleged here, Plaintiffs lack standing to bring these ADA claims against the Secretary. At a minimum, these claims against the Secretary must be dismissed under Rule 12(b)(1). *See, e.g.*, *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 811 (11th Cir. 1993).

2. Regardless, the Plaintiffs Fail to State a Claim.

Even if the *NAACP* Plaintiffs did have standing to sue the Secretary, they still fail to state a claim for relief under Title II of the ADA. Such a claim requires the plaintiff to allege and then prove "(1) that he is a qualified individual with a disability; (2) that he was excluded from participation in or denied the benefits of a

public entity's services, programs, or activities, or was otherwise discriminated against by the public entity; and (3) that the exclusion, denial of benefit, or discrimination was by reason of the plaintiff's disability." *Am. Ass'n of People with Disabilities v. Harris*, 647 F.3d 1093, 1101 (11th Cir. 2011) (quoting *Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1081 (11th Cir. 2007)); *see also* 42 U.S.C. § 12132. Importantly, the ADA does not mandate the use of any particular technology or any specific accommodation, so long as every individual has "an opportunity to participate in and benefit from the aid, benefit or service that is . . . equal to that afforded others." *See* 28 C.F.R. § 35.130(b)(1)(ii)-(iii); *see also* 45 C.F.R. § 84.4(b)(1)(ii)-(iii). Because the 2021 Law does not exclude or deny the opportunity for voters with disabilities to equally participate in voting, deny them the benefits of public voting services, or discriminate against voters because of their disability, this Court should dismiss the ADA claim as outlined below.

i. In-Person Drop Box Monitoring

The *NAACP* Plaintiffs contend that Section 28's requirement that drop boxes be "monitored in person by" a Supervisor's employee at all times adds "impermissible barriers to voters with disabilities' participation in elections" by "severely curtail[ing]" their access to easily accessible outdoor drop boxes. Case No. 187, ECF 45 at ¶¶ 79, 81, 159. To support this assertion, the *NAACP* speculates that a result of the staffing requirement will be that "many election officials will

place most or all drop boxes indoors where staff are already located, which may be less accessible to voters with disabilities." *Id.* ¶ 159. The *NAACP* Plaintiffs fail to plead facts that, taken as true, show how the in-person monitoring requirement of drop boxes excludes or denies individuals with disabilities equal access to voting via drop box, much less discriminates against individuals with disabilities.

The *NAACP* Plaintiffs' instead ask the Court to infer three layers of speculation to support their claim. First, they ask the Court to infer that "many election officials" will opt to move their drop boxes indoors in response to Section 28's in-person staffing requirement. Case No. 187, ECF 45 at ¶ 159. Second, they then infer that, as a result, some drop boxes "may" be less accessible to voters with disabilities because of the boxes' likely placement indoors. *Id.* Third, they infer that the indoor spaces—the buildings—will themselves be inaccessible contrary to the requirements of the ADA, again without factual support. *See id*. Thus, far from pleading concrete facts capable of showing an ADA violation, this argument "piles speculation upon speculation," which is not enough. *D.C. ex rel. Walker v. Merck & Co. (In re Vioxx Prods. Liab. Litig.)*, 874 F. Supp. 2d 599, 609 (E.D. La. 2012).[19]

[19] Even if the *NAACP* Plaintiffs' concerns regarding what may transpire in the future as a result of Section 28 qualify as factual allegations for purposes of Rule 12(b)(6), these allegations are not ripe because they are mere "speculation about contingent future events," *Cheffer v. Reno*, 55 F.3d 1517, 1524 (11th Cir. 1995), meaning they are not "fit for adjudication," *Pittman v. Cole*, 267 F.3d 1269, 1278 (11th Cir. 2001) (quotation omitted), thus separately justifying dismissal. *See Texas v. United States*,

ii. Limitations on Ballot Collection

The *NAACP* Plaintiffs' allegation that restrictions on ballot collection will disenfranchise voters with disabilities is also speculative and inadequate to state a claim for relief under Title II of the ADA. The *NAACP* Plaintiffs assert that "[m]any voters with disabilities rely exclusively on caregivers and other non-family members to collect and return their VBM ballots, as do many elderly voters and voters with disabilities who live in group facilities in which staff collect and return VBM ballots on behalf of residents." Case No. 187, ECF 45 at ¶ 92. The theory goes that any limitation on returning ballots would therefore serve as a "significant barrier to the franchise for voters with disabilities" and "lead to outright disenfranchisement as they may be unable to find anyone to submit their ballots for them." *Id.* ¶ 160.

As an initial matter, however, the suggestion that the 2021 Law negatively impacts the ability of "elderly voters and voters with disabilities who live in group facilities" to deliver their absentee ballots, *see id.* ¶ 92, is directly contradicted by the statutory text. There is an express carve-out for "supervised voting at assisted living facilities and nursing home facilities as authorized under section 101.655 [of

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523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.") (citation omitted); *Digital Props., Inc. v. City of Plantation*, 121 F.3d 586, 589 (11th Cir. 1997) ("The ripeness doctrine protects federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes.").

the Florida Statutes]." **Exhibit A** at § 32 (Pg. 27).

Additionally, besides obvious problems with the *NAACP* Plaintiffs' speculation that individuals with disabilities "may" not be able to find anyone to submit their ballots for them, Case No. 187, ECF 45 at ¶ 160, including ripeness concerns, *see Cheffer*, 55 F.3d at 1524, the provision includes numerous potential avenues for third parties, including non-family volunteers, to deliver ballots for voters who are homebound or cannot risk exposure to crowds. First, the alleged risk of "outright disenfranchisement," Case No. 187, ECF 45 at ¶ 160, is unsupported because, even for homebound voters, mailing in a ballot remains accessible, just as it is for millions of voters who elect to mail in their ballots each election cycle. Second, beyond using the mail, the provision places no limit on the number of ballots that a voter's immediate family members (which includes grandchildren, siblings, or even immediate family members of the voter's *spouse*, **Exhibit A** at § 32 (Pg. 27)) can deliver to drop boxes for each other during an election cycle. Third, beyond delivery by an immediate family member, the statute also permits *any* third party to deliver the voter's ballot, including caregivers and volunteers, as long as that third party has not delivered more than two vote-by-mail ballots during that election cycle in addition to his or her own ballot. *Id.*

In sum, Florida's limitations on ballot collection are carefully and practically crafted to target and eliminate the use of mass ballot harvesting, while leaving open

ample reasonable alternative avenues for voters with disabilities to vote without restriction, including through third-party delivery to a drop box if they prefer. The claim that this law "will lead to outright disenfranchisement" is simply unfounded and without factual support. It should therefore be dismissed.

iii. Vote-by-Mail Renewal

The *NAACP* Plaintiffs offer minimal to no support for their contention that the requirement to renew vote-by-mail application requests each general election cycle (every 2 years), rather than every two general election cycles (every 4 years), as it was previously, denies Plaintiffs' rights protected by the ADA. *See* Case No. 187, ECF 45 at ¶ 164. The only fact alleged for this assertion is a short, conclusory statement that this requirement will "impose new burdens on many voters with disabilities, who will be forced to contend with the logistical challenges of completing a VBM ballot request twice as often." *Id.* at ¶ 94. This type of formulaic, "[t]hreadbare recital[] of the elements of a cause of action, supported by mere conclusory statements," is inadequate to state a claim for relief because it fails to explain the degree to which voters with disabilities will be burdened whether through logistical challenges or otherwise. *Iqbal*, 556 U.S. at 678.

iv. Non-Solicitation Requirement

The *NAACP* Plaintiffs also make the inaccurate assertion that the non-solicitation provision inhibits family members, caregivers, volunteers, and others

"from providing food or water to a voter with diabetes, or a chair to someone with limited mobility or breathing problems," and thus may expose these individuals to "potential liability for aiding . . . voters with disabilities," resulting in some voters with disabilities "having to choose between their health and casting their vote." Case No. 187, ECF 45 at ¶ 161. As discussed above, this interpretation of the 2021 Law is erroneous and distortive. Correctly interpreted, the statute tailors its *solicitation* prohibition to engaging in any partisan or campaign activities within 150 feet of polling places "with the intent to *influence* or effect of *influencing* a voter." **Exhibit A** at § 29 (Pg. 24-25). Nowhere does the statute prohibit Good Samaritans or volunteers from extending a helping hand to voters with disabilities, nor does it prohibit such voters from being accompanied by a family member, caregiver, etc., within the 150-foot zone, as long as that assistance is not done in a partisan manner to sway a voter's decision of how to vote.

Even if the erroneous but expansive interpretation of the non-solicitation requirement were correct, the argument still fails because the 2021 Law allows for "an employee of, or a volunteer with, the supervisor" to provide "nonpartisan assistance to voters within the no-solicitation zone such as, but not limited to, giving items to voters . . . ." *Id.* (Pg. 25). Thus, without pleading facts showing why a supervisor's employees or volunteers would be unable or unwilling to provide needed help to voters with disabilities who request assistance inside the 150-foot

zone, they still fail to state a claim that Section 32 does not provide reasonable accommodations for voters with disabilities, or that such voters would be excluded or denied the benefits of participation in in-person voting, or otherwise discriminated against based on the voters' disabilities. *Cf. Harris*, 647 F.3d at 1101.

In sum, because the *NAACP* Plaintiffs fail to state a claim of any failure of the 2021 Law to provide reasonable accommodations for voters with disabilities, its ADA claims must be dismissed.

F. This Court should dismiss the claims under Section 208 of the Voting Rights Act.[20]

Claims that Section 208 of the Voting Rights Act preempts the 2021 Law because the Florida law allegedly "criminalize[s] the provision of assistance to voters with disabilities," Case No. 187, ECF 45 at ¶ 228, should also be dismissed.

1. The Plaintiffs Lack Standing to Sue the Secretary.

As with the ADA claims, this Court should dismiss under Rule 12(b)(1) the Section 208 claims against the Secretary because the Plaintiffs fail to "clearly . . . allege facts demonstrating" that they have standing. *Warth*, 422 U.S. at 518.

Specifically, neither the *Florida Rising* nor the *NAACP* Plaintiffs provide a single factual contention showing that the alleged Section 208 violations are fairly

[20] Specifically, this Court should dismiss Count IX in the *NAACP* case and VI in the *Florida Rising* case.

traceable to the Secretary. For instance, the *Florida Rising* Plaintiffs claim (without support) that the 2021 Law prevents a volunteer from providing requested language assistance to voters needing assistance at the polls. *See* Case No. 201, ECF 1 at ¶¶ 195. Yet nothing is pled explaining the Secretary's involvement in such (in)actions, or how the causal element is satisfied for purposes of standing. *See id.* This omission serves as a tacit admission of the fact that supervisors of election supervise lines at the poll—not the Secretary. The *NAACP* Plaintiffs' complaint suffers from similar deficiencies, *see* Case No. 187, ECF 45 at ¶¶ 224-28. Because Plaintiffs fail to link the Secretary to the injuries they allege and the relief they seek under Section 208, their Section 208 claims against the Secretary must be dismissed for lack of standing. *See Jacobson*, 974 F.3d at 1253.

2. There is no Private Cause of Action.

Separately, and equally fatal to Plaintiffs' Section 208 claim, Section 208 does not provide a private right of action. The Voting Rights Act contains many sections dedicated to a remedial scheme to enforce its provisions. Some provisions are enforceable by the U.S. Attorney General, *see, e.g.*, 52 U.S.C. § 10504, and some provisions are enforceable by private litigants, *see, e.g.*, 52 U.S.C. § 10302(a). Section 208 contains no remedial scheme whatsoever. 52 U.S.C. § 10508.

The U.S. Supreme Court has articulated a four-part test to determine if a "private remedy is implicit in a statute not expressly providing one." *Cort v. Ash*,

422 U.S. 66, 78 (1975). "First, is the plaintiff one of the class for whose especial benefit the statute was enacted, that is, does the statute create a federal right in favor of the plaintiff?" *Id*. (internal quotation and citation omitted). "Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?" *Id.* "Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?" *Id*. "And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?" *Id*. "The Supreme Court has cautioned the judiciary to exercise restraint in implying a private right of action, and required that affirmative evidence of congressional intent to create a private remedy must exist." *McCulloch v. PNC Bank, Inc.,* 298 F.3d 1217, 1222 (11th Cir. 2002).

In this case, as an initial matter, the Plaintiffs are not the class of individuals that Congress contemplated in enacting Section 208 because none of them have had their right to receive necessary voting assistance unduly burdened by the series of speculative (and in many cases improbable) events they allege may take place in some future election. Second, although Congress's intent in Section 208 certainly was to allow needed assistance to voters who are disabled, blind, or illiterate, *see, e.g.*, JoNel Newman, *Ensuring That Florida's Language Minorities Have Access to The Ballot*, 36 Stetson L. Rev. 329, 354 (2007), the Plaintiffs provide no affirmative

evidence of congressional intent to create a private remedy under Section 208. To the contrary, the legislative scheme as a whole demonstrates that Congress did not intend to create a private right of action: Congress unambiguously created private rights of action in various other sections of the Voting Rights Act but conspicuously excluded it from Section 208. Obviously then, "when Congress wished to provide a private [] remedy, it knew how to do so and did so expressly," counseling strongly against this Court "imply[ing] a private remedy," *Touche Ross & Co. v. Redington*, 442 U.S. 560, 571-72 (1979) (refusing to imply a private right of action under Section 17(a) of the Securities Exchange Act of 1934). By declining to do so under Section 208, Congress demonstrated that its intent was to *not* provide a private remedy—inferring a right of action in spite of this weighty evidence would fly in the face of the Supreme Court's admonition to exercise restraint in implying a private right of action, *McCulloch*, 298 F.3d at 1222. And fourth, because the U.S. Constitution gives states the power to regulate elections, *see Sugarman v. Dougall*, 413 U.S. 634, 647 (1973), regulation of absentee ballots and polling locations is a function traditionally relegated to state law, further counseling against inferring a cause of action based solely on federal law. *Cort*, 422 U.S. at 78.

3. Section 208 Does Not Preempt Florida Law.

Turning to the merits, Section 208 provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may

be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 52 U.S.C. § 10508. Conflict preemption exists where a party's "compliance with both federal and state regulations is a physical impossibility," or where the challenged state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 567 U.S. 387, 399 (2012) (citations omitted). The Eleventh Circuit has affirmed its presumption of non-preemption when a state acts "in a field which the States have traditionally occupied," rooted in the "assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Fla. E. Coast Ry. v. City of W. Palm Beach*, 266 F.3d 1324, 1328 (11th Cir. 2001) (citation omitted).

As the Senate Report's discussion of Section 208 states regarding its objectives and the issue of preemption of state legislation:

> The Committee recognizes the legitimate right of any State to establish necessary election procedures, subject to the overriding principle that such procedures shall be designed to protect the rights of voters. State provisions would be preempted *only to the extent* that they *unduly burden the right recognized in this section*, with that determination being a practical one dependent upon the facts.

S. Rep. No. 417, 97th Cong., 2d Sess. at 62-63 (emphasis added). Because regulating elections is a quintessential area of traditional state regulation, the Plaintiffs must overcome a strong presumption against preemption. They cannot.

The Plaintiffs' complaints fail to plead sufficient facts to show that Section 32's limitation on ballot collection or Section 29's non-solicitation provision unduly burdens the rights of disabled voters requiring assistance to receive assistance by a person of the voter's choice. Again, the Plaintiffs' reading of the non-solicitation "criminaliz[ing] assistance from a friend, non-immediate family member, or non-partisan volunteer in the form of a chair, water, food, or medication provided to a voter with disabilities" is a wildly expansive interpretation divorced from the statutory text's actual limited prohibition of "solicitation" activities. Case No. 187, ECF 45 at ¶ 226. So, there is no conflict whatsoever with the demands of Section 208 of the Voting Rights Act.

The same is true for the limitation on ballot collection. Compliance with Florida law does not "unduly burden" the right to be given assistance by a person of the voter's choosing because having a ballot delivered to a drop box is not assistance that is *necessary* to vote in the first place—using the mail remains a perfectly feasible alternative for homebound voters. In any event, the provision does not make compliance with Section 208 "impossible." *Pet Quarters, Inc. v. Depository Tr. & Clearing Corp.*, 559 F.3d 772, 780 (8th Cir. 2009); *see also* 52 U.S.C. § 10508 (requiring assistance by "a person of the voter's choice," not assistance by the voter's *first* or even *preferred* choice).

Because Plaintiffs fail to state a claim of conflict preemption under Section 208, and because Section 208 does not provide for a private cause of action, Plaintiffs' Section 208 claim must be dismissed.

IV. Conclusion

For the foregoing reasons, this Court should grant the Secretary's Motions to Dismiss in the four cases pending before this Court.

Respectfully submitted by:

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Dated: June 25, 2021

NORTHERN DISTRICT OF FLORIDA
LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(D), a conference was not conducted as the relief requested herein will determine the outcome of several of Plaintiffs' claims.

LOCAL RULE 7.1(F) CERTIFICATION

Pursuant to Local Rule 7.1(F), the attached Omnibus Memorandum in Support of the Secretary's Motions to Dismiss contains 11,907 words, excluding the case style, signature block, and any certificate of service.

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 the 25th of June, 2021.

/s/ Mohammad Jazil
Attorney for Defendant Secretary Lee

EXHIBIT A

CHAPTER 2021-11

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 90

An act relating to elections; creating s. 97.029, F.S.; prohibiting certain persons from settling certain actions, consenting to conditions, or agreeing to certain orders in certain circumstances; requiring certain persons to make certain legal challenges and move to dismiss or otherwise terminate a court's jurisdiction in certain circumstances; creating s. 97.0291, F.S.; prohibiting certain agencies and state and local officials from soliciting, accepting, or otherwise using private funds for election-related expenses; providing for construction; amending s. 97.052, F.S.; revising requirements for the uniform statewide voter registration application; amending s. 97.0525, F.S.; requiring the Division of Elections to maintain a website for the online voter registration system; providing additional requirements for a biennial comprehensive risk assessment of the online voter registration system; amending s. 97.053, F.S.; revising requirements governing the acceptance of voter registration applications; amending s. 97.057, F.S.; requiring the Department of Highway Safety and Motor Vehicles to assist the Department of State in identifying certain residence address changes; requiring the Department of State to report such changes to supervisors of elections; amending s. 97.0575, F.S.; revising requirements governing third-party voter registration organizations; providing applicability; revising circumstances under which a third-party voter registration organization is subject to fines for violations regarding the delivery of voter registration applications; revising requirements for division rules governing third-party voter registration organizations; amending s. 97.0585, F.S.; deleting an exemption from public records requirements for information related to a voter registration applicant's or voter's prior felony conviction and his or her restoration of voting rights to conform to changes made by the act; amending s. 97.1031, F.S.; revising information that an elector must provide to a supervisor of elections when the elector changes his or her residence address, party affiliation, or name; amending s. 98.0981, F.S.; providing that certain ballot types or precinct subtotals may not be reported in precinct-level election results; requiring supervisors of elections to make certain data available on their websites and transmit such data to the division; requiring the division to create and maintain a certain dashboard; amending s. 99.012, F.S.; removing provisions relating to the method of filling a vacancy created by an officer's resignation to qualify as a candidate for another public office; amending s. 99.021, F.S.; revising the oath for candidates seeking to qualify for nomination as a candidate of a political party; requiring a person seeking to qualify for office as a candidate with no party affiliation to subscribe to an oath or affirmation that he or she is registered without party affiliation and has not been a registered member of a political party for a specified timeframe; amending ss. 99.061 and 99.063, F.S.; conforming provisions to changes made by the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

act; amending s. 100.111, F.S.; revising the method of filling a vacancy in nomination for a political party; amending s. 101.051, F.S.; prohibiting certain solicitation of voters at drop box locations; increasing the no-solicitation zone surrounding a drop box location or the entrance of a polling place or an early voting site wherein certain activities are prohibited; conforming a provision; amending s. 101.131, F.S.; revising requirements for poll watcher identification badges; amending s. 101.545, F.S.; requiring ballots, forms, and election materials to be retained for a specified minimum timeframe following an election; amending s. 101.5605, F.S.; revising the timeframe within which the Department of State must approve or disapprove a voting system submitted for certification; amending s. 101.5614, F.S.; revising requirements for making true duplicate copies of vote-by-mail ballots under certain circumstances; requiring that an observer of the duplication of ballots be provided certain allowances; requiring that the duplication process take place in the presence of a canvassing board member; requiring a canvassing board to make certain determinations; amending s. 101.572, F.S.; requiring that voter certificates be open for public inspection; providing certain persons with reasonable access to ballot materials; requiring a supervisor to publish notice of such access; amending s. 101.591, F.S.; revising the timeframe and requirements for the voting systems audit report submitted to the department; amending s. 101.595, F.S.; requiring a specified report regarding overvotes and undervotes to be submitted with the voting systems audit report; revising the date by which the department must submit the report to the Governor and Legislature; amending s. 101.62, F.S.; limiting the duration of requests for vote-by-mail ballots to all elections through the end of the calendar year of the next regularly scheduled general election; requiring certain vote-by-mail ballot requests to include additional identifying information regarding the requesting elector; requiring supervisors of elections to record whether a voter's certificate on a vote-by-mail ballot has a mismatched signature; revising the definition of the term "immediate family" to conform to changes made by the act; prohibiting counties, municipalities, and state agencies from sending vote-by-mail ballots to voters absent a request; specifying applicability of the act to outstanding vote-by-mail ballot requests; amending s. 101.64, F.S.; revising requirements for vote-by-mail ballot mailing envelopes and secrecy envelopes; amending s. 101.68, F.S.; specifying that the supervisor may not use any knowledge of a voter's party affiliation during the signature comparison process; authorizing the canvassing of vote-by-mail ballots upon the completion of the public preelection testing of automatic tabulating equipment; revising duties of the canvassing board with respect to protests; amending s. 101.69, F.S.; revising requirements governing the placement and supervision of secure drop boxes for the return of vote-by-mail ballots; requiring the supervisor to designate drop box locations in advance of an election; prohibiting changes in drop box locations for an election after their initial designation; specifying requirements regarding the retrieval of vote-by-mail ballots returned in a drop box; providing that the supervisor is subject to a civil penalty for certain violations regarding drop boxes; amending s. 102.031,

F.S.; prohibiting certain solicitation activities within a specified area surrounding a drop box; expanding the definition of "solicit" and "solicitation"; providing for construction; restricting certain persons from prohibiting the solicitation of voters by a candidate or a candidate's designee outside of the no-solicitation zone; creating s. 102.072, F.S.; requiring the supervisor of elections to post and update on his or her website vote-by-mail ballot data at specified intervals; amending s. 102.141, F.S.; requiring the names of canvassing board members be published on the supervisor's website before the tabulation of any vote-by-mail ballots in an election; authorizing each political party and candidate to have one watcher at canvassing board meetings within a distance that allows him or her to directly observe proceedings; requiring additional information be included in public notices of canvassing board meetings; amending s. 104.0616, F.S.; revising the definition of "immediate family"; prohibiting any person from distributing, ordering, requesting, collecting, delivering, or otherwise physically possessing more than two vote-by-mail ballots of other electors per election, not including immediate family members; providing exceptions; providing a penalty; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 97.029, Florida Statutes, is created to read:

97.029 Civil actions challenging the validity of election laws.—

(1) In a civil action challenging the validity of a provision of the Florida Election Code in which a state or county agency or officer is a party in state or federal court, the officer, agent, official, or attorney who represents or is acting on behalf of such agency or officer may not settle such action, consent to any condition, or agree to any order in connection therewith if the settlement, condition, or order nullifies, suspends, or is in conflict with any provision of the Florida Election Code, unless:

(a) At the time settlement negotiations have begun in earnest, written notification is given to the President of the Senate, the Speaker of the House of Representatives, and the Attorney General.

(b) Any proposed settlement, consent decree, or order that is proposed or received and would nullify, suspend, or conflict with any provision of the Florida Election Code is promptly reported in writing to the President of the Senate, the Speaker of the House of Representatives, and the Attorney General.

(c) At least 10 days before the date a settlement or presettlement agreement or order is to be made final, written notification is given to the President of the Senate, the Speaker of the House of Representatives, and the Attorney General.

(2) If any notification required by this section is precluded by federal law, federal regulation, court order, or court rule, the officer, agent, official, or attorney representing such agency or officer, or the Attorney General, shall challenge the constitutionality of such preclusion in the civil suit affected and give prompt notice thereof to the President of the Senate, the Speaker of the House of Representatives, and the Attorney General.

(3) If, after a court has entered an order or judgment that nullifies or suspends, or orders or justifies official action that is in conflict with, a provision of the Florida Election Code, the Legislature amends the general law to remove the invalidity or unenforceability, the officer, agent, official, or attorney who represents or is acting on behalf of the agency or officer bound by such order or judgment must promptly after such amendment of the general law move to dismiss or otherwise terminate any ongoing jurisdiction of such case.

Section 2. Section 97.0291, Florida Statutes, is created to read:

97.0291 Prohibition on use of private funds for election-related expenses. No agency or state or local official responsible for conducting elections, including, but not limited to, a supervisor of elections, may solicit, accept, use, or dispose of any donation in the form of money, grants, property, or personal services from an individual or a nongovernmental entity for the purpose of funding election-related expenses or voter education, voter outreach, or registration programs. This section does not prohibit the donation and acceptance of space to be used for a polling room or an early voting site.

Section 3. Paragraph (t) of subsection (2) of section 97.052, Florida Statutes, is amended to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(t)~~1.~~ Whether the applicant has ~~never~~ been convicted of a felony and, if convicted, has had his or her voting rights restored by including the statement "I affirm that I am not a convicted felon or, if I am, my right to vote has been restored ~~I have never been convicted of a felony~~." and providing a box for the applicant to check to affirm the statement.

~~2. Whether the applicant has been convicted of a felony, and if convicted, has had his or her civil rights restored through executive clemency, by including the statement "If I have been convicted of a felony, I affirm my voting rights have been restored by the Board of Executive Clemency." and providing a box for the applicant to check to affirm the statement.~~

~~3. Whether the applicant has been convicted of a felony and, if convicted, has had his or her voting rights restored pursuant s. 4, Art. VI of the State Constitution, by including the statement "If I have been convicted of a felony,~~

~~I affirm my voting rights have been restored pursuant to s. 4, Art. VI of the State Constitution upon the completion of all terms of my sentence, including parole or probation." and providing a box for the applicant to check to affirm the statement.~~

Section 4. Subsections (1) and (2) and paragraph (b) of subsection (3) of section 97.0525, Florida Statutes, are amended to read:

97.0525 Online voter registration.—

(1) ~~Beginning October 1, 2017,~~ An applicant may submit an online voter registration application using the procedures set forth in this section.

(2) The division shall establish and maintain a secure Internet website that safeguards an applicant's information to ensure data integrity and permits an applicant to:

(a) Submit a voter registration application, including first-time voter registration applications and updates to current voter registration records.

(b) Submit information necessary to establish an applicant's eligibility to vote, pursuant to s. 97.041, which includes the information required for the uniform statewide voter registration application pursuant to s. 97.052(2).

(c) Swear to the oath required pursuant to s. 97.051.

(3)

(b) The division shall conduct a comprehensive risk assessment of the online voter registration system ~~before making the system publicly available and~~ every 2 years ~~thereafter~~. The comprehensive risk assessment must comply with the risk assessment methodology developed by the Department of Management Services for identifying security risks, determining the magnitude of such risks, and identifying areas that require safeguards. In addition, the comprehensive risk assessment must incorporate all of the following:

1. Load testing and stress testing to ensure that the online voter registration system has sufficient capacity to accommodate foreseeable use, including during periods of high volume of website users in the week immediately preceding the book-closing deadline for an election.

2. Screening of computers and networks used to support the online voter registration system for malware and other vulnerabilities.

3. Evaluation of database infrastructure, including software and operating systems, in order to fortify defenses against cyberattacks.

4. Identification of any anticipated threats to the security and integrity of data collected, maintained, received, or transmitted by the online voter registration system.

Section 5. Paragraph (a) of subsection (5) and subsection (6) of section 97.053, Florida Statutes, are amended to read:

97.053 Acceptance of voter registration applications.—

(5)(a) A voter registration application is complete if it contains the following information necessary to establish the applicant's eligibility pursuant to s. 97.041, including:

1. The applicant's name.

2. The applicant's address of legal residence, including a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier, if appropriate. Failure to include a distinguishing apartment, suite, lot, room, or dormitory room or other identifier on a voter registration application does not impact a voter's eligibility to register to vote or cast a ballot, and such an omission may not serve as the basis for a challenge to a voter's eligibility or reason to not count a ballot.

3. The applicant's date of birth.

4. A mark in the checkbox affirming that the applicant is a citizen of the United States.

5.a. The applicant's current and valid Florida driver license number or the identification number from a Florida identification card issued under s. 322.051, or

b. If the applicant has not been issued a current and valid Florida driver license or a Florida identification card, the last four digits of the applicant's social security number.

In case an applicant has not been issued a current and valid Florida driver license, Florida identification card, or social security number, the applicant shall affirm this fact in the manner prescribed in the uniform statewide voter registration application.

6. A mark in the ~~applicable~~ checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, ~~has had his or her civil rights restored through executive clemency, or~~ has had his or her voting rights restored ~~pursuant to s. 4, Art. VI of the State Constitution~~.

7. A mark in the checkbox affirming that the applicant has not been adjudicated mentally incapacitated with respect to voting or that, if so adjudicated, has had his or her right to vote restored.

8. The original signature or a digital signature transmitted by the Department of Highway Safety and Motor Vehicles of the applicant swearing or affirming under the penalty for false swearing pursuant to s. 104.011 that the information contained in the registration application is true

and subscribing to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051.

(6) A voter registration application, including an application with a change in name, address, or party affiliation, may be accepted as valid only after the department has verified the authenticity or nonexistence of the driver license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant. If a completed voter registration application has been received by the book-closing deadline but the driver license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant cannot be verified, the applicant shall be notified that the number cannot be verified and that the applicant must provide evidence to the supervisor sufficient to verify the authenticity of the applicant's driver license number, Florida identification card number, or last four digits of the social security number. If the applicant provides the necessary evidence, the supervisor shall place the applicant's name on the registration rolls as an active voter. If the applicant has not provided the necessary evidence or the number has not otherwise been verified prior to the applicant presenting himself or herself to vote, the applicant shall be provided a provisional ballot. The provisional ballot shall be counted only if the number is verified by the end of the canvassing period or if the applicant presents evidence to the supervisor of elections sufficient to verify the authenticity of the applicant's driver license number, Florida identification card number, or last four digits of the social security number no later than 5 p.m. of the second day following the election.

Section 6. Subsection (13) is added to section 97.057, Florida Statutes, to read:

97.057 Voter registration by the Department of Highway Safety and Motor Vehicles.—

(13) The Department of Highway Safety and Motor Vehicles must assist the Department of State in regularly identifying changes in residence address on the driver license or identification card of a voter. The Department of State must report each such change to the appropriate supervisor of elections who must change the voter's registration records in accordance with s. 98.065(4).

Section 7. Paragraphs (c) and (d) of subsection (1), paragraph (a) of subsection (3), and subsection (5) of section 97.0575, Florida Statutes, are amended to read:

97.0575 Third-party voter registrations.—

(1) Before engaging in any voter registration activities, a third-party voter registration organization must register and provide to the division, in an electronic format, the following information:

(c) The names, permanent addresses, and temporary addresses, if any, of each registration agent registering persons to vote in this state on behalf of the organization. This paragraph does not apply to persons who only solicit applications and do not collect or handle voter registration applications.

~~(d) A sworn statement from each registration agent employed by or volunteering for the organization stating that the agent will obey all state laws and rules regarding the registration of voters. Such statement must be on a form containing notice of applicable penalties for false registration.~~

(3)(a) A third-party voter registration organization that collects voter registration applications serves as a fiduciary to the applicant, ensuring that any voter registration application entrusted to the organization, irrespective of party affiliation, race, ethnicity, or gender, must ~~shall~~ be promptly delivered to the division or the supervisor of elections in the county in which the applicant resides within 14 days after completed by the applicant, but not after registration closes for the next ensuing election. A third-party voter registration organization must notify the applicant at the time the application is collected 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. The third-party voter registration organization must also inform the applicant how to register online with the division and how to determine whether the application has been delivered ~~48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period~~. If a voter registration application collected by any third-party voter registration organization is not promptly delivered to the division or supervisor of elections in the county in which the applicant resides, the third-party voter registration organization is liable for the following fines:

1. A fine in the amount of $50 for each application received by the division or the supervisor of elections in the county in which the applicant resides more than 14 days ~~48 hours~~ after the applicant delivered the completed voter registration application to the third-party voter registration organization or any person, entity, or agent acting on its behalf ~~or the next business day, if the office is closed~~. A fine in the amount of $250 for each application received if the third-party voter registration organization or person, entity, or agency acting on its behalf acted willfully.

2. A fine in the amount of $100 for each application collected by a third-party voter registration organization or any person, entity, or agent acting on its behalf, before book closing for any given election for federal or state office and received by the division or the supervisor of elections in the county in which the applicant resides after the book-closing deadline for such election. A fine in the amount of $500 for each application received if the third-party registration organization or person, entity, or agency acting on its behalf acted willfully.

3. A fine in the amount of $500 for each application collected by a third-party voter registration organization or any person, entity, or agent acting on its behalf, which is not submitted to the division or supervisor of elections in the county in which the applicant resides. A fine in the amount of $1,000 for any application not submitted if the third-party voter registration organization or person, entity, or agency acting on its behalf acted willfully.

The aggregate fine pursuant to this paragraph which may be assessed against a third-party voter registration organization, including affiliate organizations, for violations committed in a calendar year is $1,000.

(5) The division shall adopt by rule a form to elicit specific information concerning the facts and circumstances from a person who claims to have been registered to vote by a third-party voter registration organization but who does not appear as an active voter on the voter registration rolls. The division shall also adopt rules to ensure the integrity of the registration process, including controls to ensure that all completed forms are promptly delivered to the division or a supervisor in the county in which the applicant resides ~~rules requiring third-party voter registration organizations to account for all state and federal registration forms used by their registration agents. Such rules may require an organization to provide organization and form specific identification information on each form as determined by the department as needed to assist in the accounting of state and federal registration forms~~.

Section 8. Paragraphs (d), (e), and (f) of subsection (1) of section 97.0585, Florida Statutes, are amended to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency, as defined in s. 119.011, and obtained for the purpose of voter registration is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(d) ~~Information related to a voter registration applicant's or voter's prior felony conviction and whether such person has had his or her voting rights restored by the Board of Executive Clemency or pursuant to s. 4, Art. VI of the State Constitution.~~

~~(e)~~ All information concerning preregistered voter registration applicants who are 16 or 17 years of age. This paragraph is

~~(f) Paragraphs (d) and (e) are~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 9. Section 97.1031, Florida Statutes, is amended to read:

97.1031 Notice of change of residence, change of name, or change of party affiliation.—

(1)(a) When an elector changes his or her residence address, the elector must notify the supervisor of elections. Except as provided in paragraph (b), an address change must be submitted using a voter registration application.

(b) If the address change is within the state and notice is provided to the supervisor of elections of the county where the elector has moved, the elector may do so by:

1. Contacting the supervisor of elections via telephone or electronic means, in which case the elector must provide his or her date of birth and the last four digits of his or her social security number, his or her Florida driver license number, or his or her Florida identification card number, whichever may be verified in the supervisor's records; or

2. Submitting the change on a voter registration application or other signed written notice.

(2) When an elector seeks to change party affiliation, the elector shall notify his or her supervisor of elections or other voter registration official by submitting a voter registration application ~~using a signed written notice that contains the elector's date of birth or voter registration number~~. When an elector changes his or her name by marriage or other legal process, the elector shall notify his or her supervisor of elections or other voter registration official by submitting a voter registration application ~~using a signed written notice that contains the elector's date of birth or voter's registration number~~.

(3) The voter registration official shall make the necessary changes in the elector's records as soon as practical upon receipt of such notice of a change of address of legal residence, name, or party affiliation. The supervisor of elections shall issue the new voter information card.

Section 10. Present subsections (4) and (5) of section 98.0981, Florida Statutes, are redesignated as subsections (5) and (6), respectively, a new subsection (4) is added to that section, and paragraph (a) of subsection (2) of that section is amended, to read:

98.0981 Reports; voting history; statewide voter registration system information; precinct-level election results; book closing statistics; live turnout data.—

(2) PRECINCT-LEVEL ELECTION RESULTS.—

(a) Within 30 days after certification by the Elections Canvassing Commission of a presidential preference primary election, special election, primary election, or general election, the supervisors of elections shall collect and submit to the department precinct-level election results for the election in a uniform electronic format specified by paragraph (c). The precinct-level

election results shall be compiled separately for the primary or special primary election that preceded the general or special general election, respectively. The results shall specifically include for each precinct the total of all ballots cast for each candidate or nominee to fill a national, state, county, or district office or proposed constitutional amendment, with subtotals for each candidate and ballot type. However, ballot type or precinct subtotals in a race or question having fewer than 30 voters voting on the ballot type or in the precinct may not be reported in precinct results, ~~unless fewer than 30 voters voted a ballot type~~. "All ballots cast" means ballots cast by voters who cast a ballot whether at a precinct location, by vote-by-mail ballot including overseas vote-by-mail ballots, during the early voting period, or by provisional ballot.

(4) LIVE TURNOUT DATA.—On election day, each supervisor of elections shall make live voter turnout data, updated at least once per hour, available on his or her website. Each supervisor shall transmit the live voter turnout data to the division, which must create and maintain a real-time statewide turnout dashboard that is available for viewing by the public on the division's website as the data becomes available.

Section 11. Paragraph (f) of subsection (3) and paragraph (g) of subsection (4) of section 99.012, Florida Statutes, are amended to read:

99.012 Restrictions on individuals qualifying for public office.—

(3)

(f)~~1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer's term were otherwise scheduled to expire.~~

~~2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter.~~ The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(4)

(g) ~~Notwithstanding the provisions of any special act to the contrary, with regard to an elective office, the resignation creates a vacancy in office to be filled by election, thereby authorizing persons to qualify as candidates for nomination and election as if the officer's term were otherwise scheduled to expire. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter.~~ The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

Section 12. Present paragraph (c) of subsection (1) of section 99.021, Florida Statutes, is redesignated as paragraph (d), a new paragraph (c) is added to that subsection, and paragraph (b) of that subsection is amended, to read:

99.021 Form of candidate oath.—

(1)

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.

2. That the person has ~~not~~ been a registered member of the ~~any other~~ political party for which he or she is seeking nomination as a candidate for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.

Section 13. Paragraph (a) of subsection (7) of section 99.061, Florida Statutes, is amended to read:

99.061 Method of qualifying for nomination or election to federal, state, county, or district office.—

(7)(a) In order for a candidate to be qualified, the following items must be received by the filing officer by the end of the qualifying period:

1. A properly executed check drawn upon the candidate's campaign account payable to the person or entity as prescribed by the filing officer in an amount not less than the fee required by s. 99.092, unless the candidate obtained the required number of signatures on petitions pursuant to s. 99.095. The filing fee for a special district candidate is not required to be drawn upon the candidate's campaign account. If a candidate's check is returned by the bank for any reason, the filing officer shall immediately notify the candidate and the candidate shall have until the end of qualifying to pay the fee with a cashier's check purchased from funds of the campaign account. Failure to pay the fee as provided in this subparagraph shall disqualify the candidate.

2. The candidate's oath required by s. 99.021, which must contain the name of the candidate as it is to appear on the ballot; the office sought, including the district or group number if applicable; and the signature of the candidate, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a).

3. If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b); or if the candidate is running without party affiliation for a partisan office, the written statement required by s. 99.021(1)(c).

4. The completed form for the appointment of campaign treasurer and designation of campaign depository, as required by s. 106.021.

5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics or the supervisor of elections prior to qualifying for office may file a copy of that disclosure at the time of qualifying.

Section 14. Paragraph (b) of subsection (2) of section 99.063, Florida Statutes, is amended to read:

99.063 Candidates for Governor and Lieutenant Governor.—

(2) No later than 5 p.m. of the 9th day following the primary election, each designated candidate for Lieutenant Governor shall file with the Department of State:

(b) If the office sought is partisan, the written statement of political party affiliation required by s. 99.021(1)(b); or if the office sought is without party affiliation, the written statement required by s. 99.021(1)(c).

Section 15. Paragraph (a) of subsection (3) of section 100.111, Florida Statutes, is amended to read:

100.111 Filling vacancy.—

(3)(a) In the event that death, resignation, withdrawal, or removal should cause a party to have a vacancy in nomination which leaves no candidate for an office from such party, the filing officer before whom the candidate qualified shall notify the chair of the state and county political party executive committee of such party and:

1. If the vacancy in nomination is for a statewide office, the state party chair shall, within 5 days, call a meeting of his or her executive board to consider designation of a nominee to fill the vacancy.

2. If the vacancy in nomination is for the office of United States Representative, state senator, state representative, state attorney, or public defender, the state party chair shall ~~notify the appropriate county chair or~~

~~chairs and~~, within 5 days, ~~the appropriate county chair or chairs shall~~ call a meeting of the state executive committee members residing ~~members of the executive committee~~ in the affected county or counties to consider designation of a nominee to fill the vacancy.

3. If the vacancy in nomination is for a county office, the state party chair shall notify the appropriate county chair and, within 5 days, the appropriate county chair shall call a meeting of his or her executive committee to consider designation of a nominee to fill the vacancy.

The name of any person so designated shall be submitted to the filing officer before whom the candidate qualified within 7 days after notice to the chair in order that the person designated may have his or her name on the ballot of the ensuing general election. If the name of the new nominee is submitted after the certification of results of the preceding primary election, however, the ballots shall not be changed and the former party nominee's name will appear on the ballot. Any ballots cast for the former party nominee will be counted for the person designated by the political party to replace the former party nominee. If there is no opposition to the party nominee, the person designated by the political party to replace the former party nominee will be elected to office at the general election.

Section 16. Subsections (2) and (5) of section 101.051, Florida Statutes, are amended to read:

101.051 Electors seeking assistance in casting ballots; oath to be executed; forms to be furnished.—

(2) It is unlawful for any person to be in the voting booth with any elector except as provided in subsection (1). A person at a polling place, a drop box location, or an early voting site, or within 150 ~~100~~ feet of a drop box location or the entrance of a polling place or an early voting site, may not solicit any elector in an effort to provide assistance to vote pursuant to subsection (1). Any person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If an elector needing assistance requests that a person other than an election official provide him or her with assistance in voting, the clerk or one of the inspectors shall require the person providing assistance to take the following oath:

DECLARATION TO PROVIDE ASSISTANCE

State of Florida

County of .....

Date .....

Precinct .....

I, …(Print name)…, have been requested by …(print name of elector needing assistance)… to provide him or her with assistance to vote. I swear or affirm that I am not the employer, an agent of the employer, or an officer or agent of the union of the voter and that I have not solicited this voter at the polling place, drop box location, or early voting site or within 150 ~~100~~ feet of such locations in an effort to provide assistance.

…(Signature of assistor)…

Sworn and subscribed to before me this ..... day of ....., …(year)….

…(Signature of Official Administering Oath)…

Section 17. Subsection (5) of section 101.131, Florida Statutes, is amended to read:

101.131 Watchers at polls.—

(5) The supervisor of elections shall provide to each designated poll watcher an~~, no later than 7 days before early voting begins, a poll watcher~~ identification badge which ~~that~~ identifies the poll watcher by name. Each poll watcher must wear his or her identification badge while performing his or her duties ~~in the polling room or early voting area~~.

Section 18. Section 101.545, Florida Statutes, is amended to read:

101.545 Retention and destruction of certain election materials.—All ballots, forms, and other election materials shall be retained in the custody of the supervisor of elections for a minimum of 22 months after an election and in accordance with the schedule approved by the Division of Library and Information Services of the Department of State. All unused ballots, forms, and other election materials may, with the approval of the Department of State, be destroyed by the supervisor after the election for which such ballots, forms, or other election materials were to be used.

Section 19. Paragraph (d) of subsection (2) of section 101.5605, Florida Statutes, is amended to read:

101.5605 Examination and approval of equipment.—

(2)

(d) The Department of State shall approve or disapprove any voting system submitted to it within 120 ~~90~~ days after the date of its initial submission.

Section 20. Paragraph (a) of subsection (4) of section 101.5614, Florida Statutes, is amended to read:

101.5614 Canvass of returns.—

(4)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in an open and accessible room in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ballot containing an overvoted race if there is a clear indication on the ballot that the voter has made a definite choice in the overvoted race or ballot measure. A duplicate ~~or a marked vote-by-mail ballot in which every race is undervoted which~~ shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). A duplicate may be made of a ballot containing an undervoted race or ballot measure if there is a clear indication on the ballot that the voter has made a definite choice in the undervoted race or ballot measure. A duplicate may not include a vote if the voter's intent in such race or on such measure is not clear. Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof, must be allowed to observe the duplication of ballots. The observer must be allowed to observe the duplication of ballots in such a way that the observer is able to see the markings on each ballot and the duplication taking place. All duplicate ballots must ~~shall~~ be clearly labeled "duplicate," bear a serial number which shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. The duplication of ballots must happen in the presence of at least one canvassing board member. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct. If any observer makes a reasonable objection to a duplicate of a ballot, the ballot must be presented to the canvassing board for a determination of the validity of the duplicate. The canvassing board must document the serial number of the ballot in the canvassing board's minutes. The canvassing board must decide whether the duplication is valid. If the duplicate ballot is determined to be valid, the duplicate ballot must be counted. If the duplicate ballot is determined to be invalid, the duplicate ballot must be rejected and a proper duplicate ballot must be made and counted in lieu of the original.

Section 21. Section 101.572, Florida Statutes, is amended to read:

101.572 Public inspection of ballots.—

(1) The official ballots and ballot cards received from election boards and removed from vote-by-mail ballot mailing envelopes and voter certificates on such mailing envelopes shall be open for public inspection or examination while in the custody of the supervisor of elections or the county canvassing board at any reasonable time, under reasonable conditions; however, no persons other than the supervisor of elections or his or her employees or the

county canvassing board shall handle any official ballot or ballot card. If the ballots are being examined prior to the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates whose names appear on such ballots or ballot cards by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

(2) A candidate, a political party official, or a political committee official, or an authorized designee thereof, shall be granted reasonable access upon request to review or inspect ballot materials before canvassing or tabulation, including voter certificates on vote-by-mail envelopes, cure affidavits, corresponding comparison signatures, duplicate ballots, and corresponding originals. Before the supervisor begins comparing signatures on vote-by-mail voter certificates, the supervisor must publish notice of the access to be provided under this section, which may be access to the documents or images thereof, and the method of requesting such access. During such review, no person granted access for review may make any copy of a signature.

Section 22. Subsection (5) of section 101.591, Florida Statutes, is amended to read:

101.591 Voting system audit.—

(5) By December 15 of each general election year ~~Within 15 days after completion of the audit~~, the county canvassing board or the board responsible for certifying the election shall provide a report with the results of the audit to the Department of State in a standard format as prescribed by the department. The report must be consolidated into one report with the overvote and undervote report required under s. 101.595(1). The report shall contain, but is not limited to, the following items:

(a) The overall accuracy of audit.

(b) A description of any problems or discrepancies encountered.

(c) The likely cause of such problems or discrepancies.

(d) Recommended corrective action with respect to avoiding or mitigating such circumstances in future elections.

Section 23. Subsections (1) and (3) of section 101.595, Florida Statutes, are amended to read:

101.595 Analysis and reports of voting problems.—

(1) No later than December 15 of each general election year, the supervisor of elections in each county shall report to the Department of State the total number of overvotes and undervotes in the "President and Vice President" or "Governor and Lieutenant Governor" race that appears first on the ballot or, if neither appears, the first race appearing on the ballot

pursuant to s. 101.151(2), along with the likely reasons for such overvotes and undervotes and other information as may be useful in evaluating the performance of the voting system and identifying problems with ballot design and instructions which may have contributed to voter confusion. This report must be consolidated into one report with the audit report required under s. 101.591(5).

(3) The Department of State shall submit the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15 ~~January 31~~ of each year following a general election.

Section 24. Paragraphs (a) and (b) of subsection (1), subsection (3), and paragraph (c) of subsection (4) of section 101.62, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

101.62 Request for vote-by-mail ballots.—

(1)(a) The supervisor shall accept a request for a vote-by-mail ballot from an elector in person or in writing. One request is ~~shall be~~ deemed sufficient to receive a vote-by-mail ballot for all elections through the end of the calendar year of the next ~~second ensuing~~ regularly scheduled general election, unless the elector or the elector's designee indicates at the time the request is made the elections within such period for which the elector desires to receive a vote-by-mail ballot. Such request may be considered canceled when any first-class mail sent by the supervisor to the elector is returned as undeliverable.

(b) The supervisor may accept a written, an in-person, or a telephonic request for a vote-by-mail ballot to be mailed to an elector's address on file in the Florida Voter Registration System from the elector, or, if directly instructed by the elector, a member of the elector's immediate family, or the elector's legal guardian. If an in-person or a telephonic request is made, the elector must provide the elector's Florida driver license number, the elector's Florida identification card number, or the last four digits of the elector's social security number, whichever may be verified in the supervisor's records.~~;~~ If the ballot is requested to be mailed to an address other than the elector's address on file in the Florida Voter Registration System, the request must be made in writing. A written request must be ~~and~~ signed by the elector and include the elector's Florida driver license number, the elector's Florida identification card number, or the last four digits of the elector's social security number. However, an absent uniformed service voter or an overseas voter seeking a vote-by-mail ballot is not required to submit a signed, written request for a vote-by-mail ballot that is being mailed to an address other than the elector's address on file in the Florida Voter Registration System. For purposes of this section, the term "immediate family" has the same meaning as specified in paragraph (4)(c). The person making the request must disclose:

1. The name of the elector for whom the ballot is requested.

2. The elector's address.

3. The elector's date of birth.

4. The elector's Florida driver license number, the elector's Florida identification card number, or the last four digits of the elector's social security number, whichever may be verified in the supervisor's records.

5. The requester's name.

6.~~5.~~ The requester's address.

7.~~6.~~ The requester's driver license number, the requester's identification card number, or the last four digits of the requester's social security number, if available.

8.~~7.~~ The requester's relationship to the elector.

9.~~8.~~ The requester's signature (written requests only).

(3) For each request for a vote-by-mail ballot received, the supervisor shall record: the date the request was made; the identity of the voter's designee making the request, if any; the Florida driver license number, Florida identification card number, or last four digits of the social security number of the elector provided with a written request;~~,~~ the date the vote-by-mail ballot was delivered to the voter or the voter's designee or the date the vote-by-mail ballot was delivered to the post office or other carrier; the address to which the ballot was mailed or the identity of the voter's designee to whom the ballot was delivered;~~,~~ the date the ballot was received by the supervisor;~~,~~ the absence of the voter's signature on the voter's certificate, if applicable; whether the voter's certificate contains a signature that does not match the elector's signature in the registration books or precinct register;~~,~~ and such other information he or she may deem necessary. This information shall be provided in electronic format as provided by division rule ~~adopted by the division~~. The information shall be updated and made available no later than 8 a.m. of each day, including weekends, beginning 60 days before the primary until 15 days after the general election and shall be contemporaneously provided to the division. This information shall be confidential and exempt from s. 119.07(1) and shall be made available to or reproduced only for the voter requesting the ballot, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees for political purposes only.

(4)

(c) The supervisor shall provide a vote-by-mail ballot to each elector by whom a request for that ballot has been made by one of the following means:

1. By nonforwardable, return-if-undeliverable mail to the elector's current mailing address on file with the supervisor or any other address the elector specifies in the request.

2. By forwardable mail, e-mail, or facsimile machine transmission to absent uniformed services voters and overseas voters. The absent uniformed services voter or overseas voter may designate in the vote-by-mail ballot request the preferred method of transmission. If the voter does not designate the method of transmission, the vote-by-mail ballot shall be mailed.

3. By personal delivery before 7 p.m. on election day to the elector, upon presentation of the identification required in s. 101.043.

4. By delivery to a designee on election day or up to 9 days before ~~prior to~~ the day of an election. Any elector may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two vote-by-mail ballots per election, other than the designee's own ballot, except that additional ballots may be picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, grandchild, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that ballot and shall indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

5. Except as provided in s. 101.655, the supervisor may not deliver a vote-by-mail ballot to an elector or an elector's immediate family member on the day of the election unless there is an emergency, to the extent that the elector will be unable to go to his or her assigned polling place. If a vote-by-mail ballot is delivered, the elector or his or her designee shall execute an affidavit affirming to the facts which allow for delivery of the vote-by-mail ballot. The department shall adopt a rule providing for the form of the affidavit.

(7) Except as expressly authorized for voters having a disability under s. 101.662, for overseas voters under s. 101.697, or for local referenda under ss. 101.6102 and 101.6103, a county, municipality, or state agency may not send a vote-by-mail ballot to a voter unless the voter has requested a vote-by-mail ballot in the manner authorized under this section.

Section 25. Notwithstanding the amendments made to s. 101.62(1)(a), Florida Statutes, by this act, an existing vote-by-mail ballot request

submitted before the effective date of this act is deemed sufficient for elections held through the end of the 2022 calendar year.

Section 26. Subsection (1) of section 101.64, Florida Statutes, is amended to read:

101.64 Delivery of vote-by-mail ballots; envelopes; form.—

(1)(a) The supervisor shall enclose with each vote-by-mail ballot two envelopes: a secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and a mailing envelope, into which the absent elector shall then place the secrecy envelope, which shall be addressed to the supervisor and also bear on the back side a certificate in substantially the following form:

Note: Please Read Instructions Carefully Before Marking Ballot and Completing Voter's Certificate.

VOTER'S CERTIFICATE

I, ..., do solemnly swear or affirm that I am a qualified and registered voter of ..... County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to $5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

…(Date)… …(Voter's Signature)…

…(E-Mail Address)… …(Home Telephone Number)…

…(Mobile Telephone Number)…

(b) Each return mailing envelope must bear the absent elector's name and any encoded mark used by the supervisor's office.

(c) A mailing envelope or secrecy envelope may not bear any indication of the political affiliation of an absent elector.

Section 27. Subsections (1) and (2) of section 101.68, Florida Statutes, are amended to read:

101.68 Canvassing of vote-by-mail ballot.—

(1) The supervisor of the county where the absent elector resides shall receive the voted ballot, at which time the supervisor shall compare the signature of the elector on the voter's certificate with the signature of the elector in the registration books or the precinct register to determine

whether the elector is duly registered in the county and must ~~may~~ record on the elector's registration record ~~certificate~~ that the elector has voted. During the signature comparison process, the supervisor may not use any knowledge of the political affiliation of the voter whose signature is subject to verification. An elector who dies after casting a vote-by-mail ballot but on or before election day shall remain listed in the registration books until the results have been certified for the election in which the ballot was cast. The supervisor shall safely keep the ballot unopened in his or her office until the county canvassing board canvasses the vote. Except as provided in subsection (4), after a vote-by-mail ballot is received by the supervisor, the ballot is deemed to have been cast, and changes or additions may not be made to the voter's certificate.

(2)(a) The county canvassing board may begin the canvassing of vote-by-mail ballots upon the completion of the public testing of automatic tabulating equipment pursuant to s. 101.5612(2) ~~at 7 a.m. on the 22nd day before the election~~, but must begin such canvassing by no ~~not~~ later than noon on the day following the election. ~~In addition, for any county using electronic tabulating equipment, the processing of vote-by-mail ballots through such tabulating equipment may begin at 7 a.m. on the 22nd day before the election.~~ However, notwithstanding any such authorization to begin canvassing or otherwise processing vote-by-mail ballots early, no result shall be released until after the closing of the polls in that county on election day. Any supervisor, deputy supervisor, canvassing board member, election board member, or election employee who releases the results of a canvassing or processing of vote-by-mail ballots prior to the closing of the polls in that county on election day commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) To ensure that all vote-by-mail ballots to be counted by the canvassing board are accounted for, the canvassing board shall compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list.

(c)1. The canvassing board must, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that vote-by-mail ballot. A vote-by-mail ballot may only be counted if:

a. The signature on the voter's certificate or the cure affidavit matches the elector's signature in the registration books or precinct register; however, in the case of a cure affidavit, the supporting identification listed in subsection (4) must also confirm the identity of the elector; or

b. The cure affidavit contains a signature that does not match the elector's signature in the registration books or precinct register, but the

elector has submitted a current and valid Tier 1 identification pursuant to subsection (4) which confirms the identity of the elector.

For purposes of this subparagraph, any canvassing board finding that an elector's signatures do not match must be by majority vote and beyond a reasonable doubt.

2. The ballot of an elector who casts a vote-by-mail ballot shall be counted even if the elector dies on or before election day, as long as, before the death of the voter, the ballot was postmarked by the United States Postal Service, date-stamped with a verifiable tracking number by a common carrier, or already in the possession of the supervisor.

3. A vote-by-mail ballot is not considered illegal if the signature of the elector does not cross the seal of the mailing envelope.

4. If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the cure affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the voter's certificate or the cure affidavit ~~the ballot~~, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate or cure affidavit may not be accepted after the ballot has been removed from the mailing envelope.

5. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that official ballots are preserved.

(d) The canvassing board shall record the ballot upon the proper record, unless the ballot has been previously recorded by the supervisor. The mailing envelopes shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style. The votes on vote-by-mail ballots shall be included in the total vote of the county.

Section 28. Subsection (2) of section 101.69, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

101.69 Voting in person; return of vote-by-mail ballot.—

(2)(a) 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 return mail 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 permanent 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). Drop boxes must be geographically located so as to provide all voters in the county with an equal opportunity to cast a ballot, insofar as is practicable. Except for secure drop boxes at an office of the supervisor, a secure drop box may only be used; ~~provided, however, that any such site must be staffed~~ during the county's early voting hours of operation and must be monitored in person by an employee of the supervisor's office. A secure drop box at an office of the supervisor must be continuously monitored in person by an employee of the supervisor's office when the drop box is accessible for deposit of ballots ~~or a sworn law enforcement officer~~.

(b) A supervisor shall designate each drop box site at least 30 days before an election. The supervisor shall provide the address of each drop box location to the division at least 30 days before an election. After a drop box location has been designated, it may not be moved or changed except as approved by the division to correct a violation of this subsection.

(c)1. On each day of early voting, all drop boxes must be emptied at the end of early voting hours and all ballots retrieved from the drop boxes must be returned to the supervisor's office.

2. For drop boxes located at an office of the supervisor, all ballots must be retrieved before the drop box is no longer monitored by an employee of the supervisor.

3. Employees of the supervisor must comply with procedures for the chain of custody of ballots as required by s. 101.015(4).

(3) If any drop box is left accessible for ballot receipt other than as authorized by this section, the supervisor is subject to a civil penalty of $25,000. The division is authorized to enforce this provision.

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, fact, 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 30. Section 102.072, Florida Statutes, is created to read:

102.072 Vote-by-mail count reporting.—Beginning at 7:00 p.m. election day, the supervisor must, at least once every hour while actively counting, post on his or her website the number of vote-by-mail ballots that have been received and the number of vote-by-mail ballots that remain uncounted.

Section 31. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 102.141, Florida Statutes, are amended to read:

102.141 County canvassing board; duties.—

(1) The county canvassing board shall be composed of the supervisor of elections; a county court judge, who shall act as chair; and the chair of the board of county commissioners. The names of the canvassing board members must be published on the supervisor's website upon completion of the logic and accuracy test. Alternate canvassing board members must be appointed pursuant to paragraph (e). In the event any member of the county canvassing board is unable to serve, is a candidate who has opposition in the election being canvassed, or is an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed, such member shall be replaced as follows:

(a) If no county court judge is able to serve or if all are disqualified, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed. In such event, the members of the county canvassing board shall meet and elect a chair.

(b) If the supervisor of elections is unable to serve or is disqualified, the chair of the board of county commissioners shall appoint as a substitute member a member of the board of county commissioners who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with

opposition in the election being canvassed. The supervisor, however, shall act in an advisory capacity to the canvassing board.

(c) If the chair of the board of county commissioners is unable to serve or is disqualified, the board of county commissioners shall appoint as a substitute member one of its members who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(d) If a substitute member or alternate member cannot be appointed as provided elsewhere in this subsection, or in the event of a vacancy in such office, the chief judge of the judicial circuit in which the county is located shall appoint as a substitute member or alternate member a qualified elector of the county who is not a candidate with opposition in the election being canvassed and who is not an active participant in the campaign or candidacy of any candidate with opposition in the election being canvassed.

(e)1. The chief judge of the judicial circuit in which the county is located shall appoint a county court judge as an alternate member of the county canvassing board or, if each county court judge is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (a).

2. The chair of the board of county commissioners shall appoint a member of the board of county commissioners as an alternate member of the county canvassing board or, if each member of the board of county commissioners is unable to serve or is disqualified, shall appoint an alternate member who is qualified to serve as a substitute member under paragraph (d).

3. If a member of the county canvassing board is unable to participate in a meeting of the board, the chair of the county canvassing board or his or her designee shall designate which alternate member will serve as a member of the board in the place of the member who is unable to participate at that meeting.

4. If not serving as one of the three members of the county canvassing board, an alternate member may be present, observe, and communicate with the three members constituting the county canvassing board, but may not vote in the board's decisions or determinations.

(2)(a) The county canvassing board shall meet in a building accessible to the public in the county where the election occurred at a time and place to be designated by the supervisor to publicly canvass the absent electors' ballots as provided for in s. 101.68 and provisional ballots as provided by ss. 101.048, 101.049, and 101.6925. <u>During each meeting of the county canvassing board, each political party and each candidate may have one watcher able to view directly or on a display screen ballots being examined for signature matching and other processes.</u> Provisional ballots cast

pursuant to s. 101.049 shall be canvassed in a manner that votes for candidates and issues on those ballots can be segregated from other votes. As soon as the absent electors' ballots and the provisional ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor.

(b) Public notice of the canvassing board members, alternates, time, and place at which the county canvassing board shall meet to canvass the absent electors' ballots and provisional ballots must be given at least 48 hours prior thereto by publication on the supervisor's website and published in one or more newspapers of general circulation in the county or, if there is no newspaper of general circulation in the county, by posting such notice in at least four conspicuous places in the county. The time given in the notice as to the convening of the meeting of the county canvassing board must be specific and may not be a time period during which the board may meet.

Section 32. Section 104.0616, Florida Statutes, is amended to read:

104.0616 Vote-by-mail ballots and voting; violations.—

(1) For purposes of this section, the term "immediate family" means a person's spouse or the parent, child, grandparent, grandchild, or sibling of the person or the person's spouse.

(2) Any person who distributes, orders, requests, collects, delivers ~~provides or offers to provide, and any person who accepts, a pecuniary or other benefit in exchange for distributing, ordering, requesting, collecting, delivering~~, or otherwise physically possesses ~~possessing~~ more than two vote-by-mail ballots per election in addition to his or her own ballot or a ballot belonging to an immediate family member, except as provided in ss. 101.6105-101.694, including supervised voting at assisted living facilities and nursing home facilities as authorized under s. 101.655, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or, ~~,~~ s. 775.083~~, or s. 775.084~~.

Section 33. This act shall take effect upon becoming a law.

Approved by the Governor May 6, 2021.

Filed in Office Secretary of State May 6, 2021.