

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

HARRIET TUBMAN FREEDOM
FIGHTERS, CORP. *et al.*,

Plaintiffs,

v.

LAUREL M. LEE, in her official
capacity as Secretary of State of
Florida, *et al.*,

Defendants,

REPUBLICAN NATIONAL
COMMITTEE, *et. al.*,

Intervenor-Defendants.

Case No. 4:21-cv-242

Consolidated with Case Nos.
4:21-cv-186, 4:21-cv-187,
and 4:21-cv-201

PLAINTIFF HARRIET TUBMAN FREEDOM FIGHTERS'
MOTION FOR SUMMARY JUDGMENT AS TO CLAIMS I AND II, AND
INCORPORATED MEMORANDUM OF LAW

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INTRODUCTION

When Defendants asked Plaintiff Harriet Tubman Freedom Fighters what it wants this Court to do, it replied: “We want to be able to speak freely, and we don't want words put into our mouths for us to say what the state wants us to say. That isn't freedom.”¹ This is a straightforward First Amendment challenge to government overreach conscripting private actors to be the state's mouthpiece, coupled with unbridled enforcement authority.

Section 97.0575, as amended by Florida Senate Bill 90 (“SB 90”), violates Plaintiff Harriet Tubman Freedom Fighters’ (“HTFF” or “Plaintiff”) First Amendment rights and Fourteenth Amendment right to due process because it (1) compels Plaintiff to alter its core political speech to speak a particular government-dictated message with which it disagrees and would not otherwise communicate, and (2) fails to adequately put Plaintiff on notice of the consequences for failing to speak this government script.

SB 90 requires that third-party voter registration organizations (“3PVROs”) “notify the applicant at the time the [registration] 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,” “advise the applicant that he or

¹ ECF 212-1, Dep. of Rosemary McCoy vol. I (“HTFF Dep. I”), 112:11–14 (Oct. 8, 2021).

she may deliver the application in person or by mail,” and “inform the applicant how to register online with the division and how to determine whether the application has been delivered” (the “Disclaimer and Disclosure Requirement”). Fla. Stat. § 97.0575(3)(a). It identifies no specific penalty for noncompliance; however, the Secretary “may refer” suspected violations to the Attorney General, who “may institute a civil action for a violation of this section or to prevent a violation of this section.” *Id.* § 97.0575(4). Such actions “may include a permanent or temporary injunction, a restraining order, or any other appropriate order.” *Id.*

This prescribed speech is an impermissible content-based restriction that serves no legitimate government interest, let alone a compelling one. SB 90 compels Plaintiff to undermine its own mission by forcing it to adopt a government script with no justification, a particularly egregious violation given it targets Plaintiff’s core political speech. Finally, the Disclaimer and Disclosure Requirement violates Plaintiff’s due process rights by failing to put 3PVROs, such as Plaintiff, on notice of the specific, potential penalties for noncompliance.

Accordingly, Plaintiff’s summary judgment motion should be granted.

STATEMENT OF FACTS

A. Voter Registration in Florida

Defendant Secretary is Florida’s chief election official. Fla. Stat. § 97.012. The Secretary promulgates Florida’s voter registration application pursuant to its

regulatory authority. Fla. Admin. Code r. 1S-2.040. Florida's voter registration ("VR") form contains the following instruction:

Where to Register: You can register to vote by completing this application and delivering it in person or by mail to any supervisor of elections' office, office that issues driver's licenses, or voter registration agency (public assistance office, center for independent living, office serving persons with disabilities, public library, or armed forces recruitment office) or the Division of Elections. Mailing addresses are on page 2 of this form.²

It further states, "the downloadable/printable online form is available at registertovoteflorida.gov".³ It references neither online voter registration nor 3PVROs.⁴

B. Third Party Voter Registration Organizations in Florida

In Florida, before engaging in voter registration activities, 3PVROs must register directly with the Division of Elections and provide specific information about their operations, officers, employees, and agents.⁵ Fla. Stat. § 97.0575(1); Fla. Admin Code r. 1S-2.042. Organizations are then assigned an organization ID, which they must place along with the date the application is collected from the applicant

² ECF 212-22, at 2, Form DS-DE 39, *Florida Voter Registration Application*, FLA. DEP'T OF STATE (Oct. 2013) ("Fla. Voter Reg. Form") (Produced as HTFF00440-41), available at <https://files.floridados.gov/media/704795/dsde39-english-pre-7066-20200914.pdf>.

³ *Id.*

⁴ *Id.*

⁵ Fla. Admin. r. 1S-2.042 (Form DS-DE119), *Florida Third-party Voter Registration Organization ("3PVRO") Registration Form*, FLA. DEP'T OF STATE (Sep. 2012), available at <https://files.floridados.gov/media/693298/dsde119.pdf>.

“in a conspicuous space on the bottom portion of the reverse side of the voter registration application in a manner that does not obscure any other entry.” Fla. Admin Code r. 1S-2.042(4)(b). Each county supervisor of elections must “provide to the division information on voter registration forms assigned to and received from third-party voter registration organizations. Fla. Stat. § 97.0575(2). The law further provides:

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 be promptly delivered to the division or the supervisor of elections in the county in which the applicant resides within 14 days after the application was completed by the applicant, but not after registration closes for the next ensuing election.⁶

Id. § 97.0575(3)(a). Specific fines may be assessed against a 3PVRO for failing to timely return a completed voter registration form, culminating in a \$1,000 aggregate fine “for violations committed in a calendar year[.]” *Id.*

Between 2009 and November 5, 2021, 2,149,709 voter registration applications were received from 3PVROs.⁷ These applications represent at least

⁶ Prior to SB 90, this Court ruled that the prior version of Fla. Stat. § 97.0575 required 3PVROs to submit applications within 10 days of receipt from the applicant. *Judgment, League of Women Voters of Fla.*, No. 4:11-cv-00628-RH-CAS at *1 (N.D. Fla. Aug. 31, 2012), ECF 84 (enjoining Fla. Stat. § 97.0575(3)(a)(2) to the extent it requires delivery of an application within 48 hours or any period less than 10 days).

⁷ ECF 212-29 at 200, “Voter Registration Applications Received and/or Provided,” *Third Party Voter Registration Organizations*, FLA. DEP’T OF STATE,

763,240 currently-registered individual voters whose latest registration contact with the state (new application or most recent registration update) involved assistance from a 3PVRO.⁸ This current number excludes voters who originally registered through a 3PVRO and then later updated their registration through another method, e.g., a voter registration agency or driver license office.⁹

Of Florida's sixty-seven counties, eleven do not track voter applications delivered late by 3PVROs.¹⁰ Thirty-six counties had such information, but reported no late forms turned in by 3PVROs in 2020.¹¹ Only eight counties had more than five voter registration applications turned in late by 3PVROs in 2020.¹² Sixty-four

<https://tpvr.elections.myflorida.com/Applications.aspx> ("3PVRO Applications Database") (lasted visited Nov. 5, 2021) (referenced in ECF 212-4 at 4, Sec'y of State ("SoS") Resp. to Pl.'s 1st Set of Interrogs. No. 3).

⁸ ECF 212-3, Dep. of Maria Matthews, 204:3-24 (Oct. 20, 2021).

⁹ *Id.*

¹⁰ ECF 212-11 at 7-8, 17, 26-27, 32, 40, 48-49, 56-57, 67-68, 95, 100-101, Resps. of Cnty. Supervisors of Elections ("SoE") to League of Women Voters of Fla. (LWVFL) Pls.' 1 Set of Interrogs., No. 7 (Clay, Gilchrist, Gulf, Hillsborough, Madison, Martin, Okaloosa, Okeechobee, Union and Volusia Counties); ECF 212-32 at 18 Orange Co. Resp. to LWVFL's RFP 33.

¹¹ ECF 212-12 at 5-6, 11-12, 17, 23, 30, 38, 48, 54, 60, 66, 77, 87, 100, 111, Resps. of Cnty. SoEs to LWVFL Pls.' 1 Set of Interrogs., No. 7 (Baker, Bay, Bradford, Calhoun, Collier, Columbia, DeSoto, Dixie, Franklin, Hamilton, Hardee, Hendry, Hernando Glades); ECF 212-13 at 10, 15, 22, 30, 37, 46, 60, 67, 72, 79, 87, 93, 99, 105, 117, 122, Resps. of Cnty. SoEs to LWVFL Pls.' 1st Set of Interrogs., No. 7 (Holmes, Jackson, Lee, Nassau, Manatee, Miami-Dade, Palm Beach, Putnam, Sarasota, St. Lucie, Sumter, Suwannee, Taylor, Wakulla, Walton, Washington, Liberty Counties) (Bay, Hendry Lee, Miami-Dade (documents referenced for Bay, Hendry, Lee, Miami-Dade Cntys. do not indicate existence of 2020 late forms); ECF 212-14 at 5, 12, 21, Resps. of Cnty. SoEs to LWVFL Pls.' 1 Set of Interrogs., No. 7 (Lafayette, Indiana River, Monroe); ECF 212-37, Deposition of Joe Scott, Broward Cnty. SoE, 79:25-80:6, 86:25-87:4; ECF No. 212-33 at 11, Lake Cnty. SoE Supp. Resp. to LWVFL Pls.' Req. for Prod. ("RFP") No. 33.

¹² ECF 212-34 at 6-7, 12-13, 27-28, 39, 68-69, Resps. of Cnty. SoEs to LWVFL Pls.' 1 Set of Interrogs., No. 7 (Duval, Escambia, Highlands, Leon and Polk); ECF 212-35 at 3-12, 25-27. Documents Produced by Cnty. SOEs to LWVFL Pls.' RFP No. 33 (Brevard, Pasco); ECF 212-36 at 5, St. John's Cnty. SoE Resp. to LWVFL Pls.' Request for Admission ("RFA") No. 10.

counties admitted that they were not aware of any voter in their county who was unable to vote in 2020 as a result of a 3PVRO returning their voter registration form late or failing to return a voter registration form.¹³ Some 3PVROs in 2020 submitted completed registration forms after the close of registration, but such instances were rare; only one county reported any registration applicants as unable to vote in an election—the March primary—because their applications were received from 3PVROs after the close of registration, affecting 12 residents.¹⁴ Across the counties which produced records regarding “late” 3PVRO voter registration applications including those which did not arrive within the mandated 10-day turnaround window, the documents indicate that the number of late forms in 2020 were in the low hundreds.¹⁵

¹³ ECF 212-38 at 3, 14-15, 22-23, 30-31, 38-39, 54, 79-80, 88, 99, 108-09, 118, 127-28, 135-36, 152, 161, 170 Resps. of Cnty. SoEs to LWVFL Pls.’ RFA, No. 10 (Alachua, Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Duval, Dixie, Escambia); ECF 212-39 at 4-5, 20-21, 28-29, 36-37, 54, 66-67, 82-83, 94, 106, 117, 122-23, 138, 157 Resps. of Cnty. SoEs to LWVFL Pls.’ RFA, No. 10 (Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes); ECF 212-40 at 5, 15-16, 24, 39-40, 48, 58, 69, 81-82, 89-90, 106, 116, 126, 134, 142, 151 Resps. of Cnty. SoEs to LWVFL Pls.’ RFA, No. 10 (Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Levy, Liberty, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Leon); ECF 212-41 at 4-5, 13, 25, 38, 47, 65, 91, 100-01, 108-09, 116-17, 130, Resps. of Cnty. SoEs to LWVFL Pls.’ RFA, No. 10 (Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Polk, Putnam, Santa Rosa, Sarasota, Seminole); ECF 212-42 at 5, 14-15, 22-23, 30-31, 38-39, 46, 55-56, 63-64, 71-72 Resps. of Cnty. SoEs to LWVFL Pls.’ RFA, No. 10 (St. Lucie, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington Counties).

¹⁴ ECF 212-36 at 5, St. Johns County SOE Resp. to LWVFL Pls.’ RFA No. 10.

¹⁵ ECF 212-34 at 6-7, 12-13, 19, 27-28, 39, 51, 58 68-69, 76, Resps. of Cnty. SoEs to LWVFL Pls.’ 1st Set of Interrogs., No. 7 (Duval (reported 116 non-compliant voter registration applications from 3PVROs but did not distinguish between late forms and forms which were noncompliant for other reasons. The actual number of late forms received may be lower), Escambia, Gadsden,

Since 2011, the Secretary has referred three cases to the Attorney General (“AG”) for § 97.0575(4) enforcement, all referred in 2011-2012 under the pre-injunction version of Fla. Stat. § 97.0575 which required 3PVROs to submit applications so that they were received within 48 hours of accepting them from the applicant.¹⁶ The AG has pursued no enforcement actions against 3PVROs since 2012.¹⁷ Enforcement decisions are “made on a case-by-case basis based on the particular facts and circumstances.”¹⁸ At deposition, the office was unaware of any enforcement guidelines with respect to violations of the Disclaimer and Disclosure Requirement¹⁹; unable to describe beyond the statutory language what type of civil actions it can pursue with respect to disclaimer and disclosure provision violations²⁰; could not say whether any type of relief besides an injunction or restraining order would be appropriate for a violation²¹; and did not know whether a 3PVRO’s status

Highlands, Leon (reported 324 late voter registration forms based on records “dating to 2015”), Levy, Osceola, Polk, and Seminole); ECF 212-35 at 3, 5, 7, 9, 11, 13, 16, 19, 22, 25, Docs produced by Cnty. SoEs to LWVFL Pls.’ RFP No. 33 (Brevard, Citrus, Flagler, Marion, Santa Rosa, Pasco); ECF 212-36 at 5, St. John’s County SoE Resp. to LWVFL Pls.’ RFA No. 10.

¹⁶ See ECF 212-15, at 2, ECF 212-16, at 2, ECF 212-17, at 3, Florida DOS Referral Letters to Attn’y Gen. (“AG”), OAG-LWVF_003473, OAG-LWVF_003384; AG Draft Complaint, OAG0LWVF_003404; *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1160–63 (N.D. Fla. 2012).

¹⁷ See ECF 212-7, Dep. of Elizabeth Guzzo, 68:7-71:3 (Oct. 22, 2021).

¹⁸ ECF 212-9 at 6, AG Resp. to Pl.’s 1st Set of Interrogs., No 10.

¹⁹ ECF 212-7, Guzzo Dep., 73:22-74.

²⁰ *Id.*, 74:10-14.

²¹ *Id.*, 75:17-22.

could be revoked for violating the requirement,²² nor who could be subject to an enforcement action.²³

C. Senate Bill 90

During the March 22, 2021 committee hearing on HB 7041, SB 90's companion bill,²⁴ the bill's sponsor, House Rep. Ingoglia, stated only that the 3PVRO changes "require[] [3PVROs] to inform applicants of a possible registration delay and that they may register online or deliver the application personally".²⁵ April committee hearings did not address the disclaimer and disclosure provision changes.²⁶ Both chambers passed the bill on April 29, 2021, and, on May 6, Governor DeSantis signed it, making it effective immediately.²⁷ Fla. Ch. L. 2021-11 § 33.

²² *Id.*, 75:23-76:2.

²³ *Id.*, 76:7-25.

²⁴ See CS for CS for CS for SB 90 (adopted by Fla. Senate Rules Committee Apr. 20, 2021); "Bill History," *Senate Bill 90*, FLA. SENATE, <https://www.flsenate.gov/Session/Bill/2021/90/?Tab=BillHistory> (last visited Nov. 11, 2021); ECF 212-18, at 13, SoS Resp. to *Florida Rising Together Pls.*' RFA, No. 35 ("Admitted that the Florida Senate's webpage for SB 90 is an accurate and authentic reflection of SB 90's history, text amendments, and analysis").

²⁵ *Elections: Hearing on H.B. 7041/Proposed Comm. B. PIE 21-05 Before the H. Pub. Integrity & Elections Comm.*, 2021 Leg., 123rd Sess. (Fla. 2021), <https://thefloridachannel.org/videos/3-22-21-house-public-integrity-elections-committee/>, at 25:58-26:06.

²⁶ See *Elections: Hearing on H.B. 7041 Before the H. Appropriations Comm.*, 2021 Leg., 123rd Sess. (Fla. 2021), <https://thefloridachannel.org/videos/4-8-21-house-appropriations-committee/>; *Elections: Hearing on H.B. 7041 Before the H. State Affs. Comm.*, 2021 Leg., 123rd Sess. (Fla. 2021), <https://thefloridachannel.org/videos/4-19-21-house-state-affairs-committee/>; *Elections: Hearing on S.B. 90 Before the S. Comm. on Rules*, 2021 Leg., 123rd Sess. (Fla. 2021), <https://thefloridachannel.org/videos/4-20-21-senate-committee-on-rules/>.

²⁷ See ECF 212-26 at 6, 8 "Bill History," *Senate Bill 90*, FLA. SENATE, <https://www.flsenate.gov/Session/Bill/2021/90/?Tab=BillHistory> (last visited Nov. 11, 2021).

Section 7 of SB 90 amends Fla. Stat. § 97.0575(3)(a), which governs 3PVROs, to include the following language:

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.

During this litigation, the Defendants shifted their position about whether the fines enumerated in § 97.0575(3)(a) apply to the Disclaimer and Disclosure Requirement,²⁸ but now concede that such fines are inapplicable.²⁹

According to the Secretary, violations of the Requirement are addressed via § 97.0575(4), which provides:

If the Secretary of State reasonably believes that a person has committed a violation of this section, the secretary may refer the matter to the Attorney General for enforcement. The Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.³⁰

²⁸ ECF 79-1, at 35-36.

²⁹ ECF 158, at 2; ECF 212-3, Matthews Dep., 174:13-175:5.

³⁰ ECF 158 at 2.

Fla. Stat. § 97.0575(4). The Secretary stated that she intends to promulgate regulations that might “address” the enforcement of the Disclaimer and Disclosure Requirement but has not drafted any to date.³¹

During discovery Defendant Secretary advanced various post-hoc rationales for the Disclaimer and Disclosure Requirement, including that it:

1. “serves to remind voters that they can register directly through various means, including online and, that by registering through a third-party group, the voters run the risk of their registration not being processed in time for book closing before an upcoming election”³²;
2. ensures “that the voter is well informed...it’s important for voters who are not always savvy that 3PVROs are not an extension of the Supervisor of Elections office. They are not election officials. They are private entities or persons that are offering to collect an application and turn it in on behalf of someone else”³³; and
3. along with SB 90’s other provisions, “ensure[s] the integrity of Florida’s elections and give[s] Floridians [sic] confidence in the integrity of their elections by closing available opportunities for fraud, irregularities, or the appearance of impropriety.”³⁴

Notably, the Defendants cannot point to a shred of evidence—other than their own subjective opinion—indicating that prospective registered voters were confused

³¹ ECF 212-3, Matthews Dep., 165:6-167:19; ECF 212-4, at 6, SoS Resp. to Pl.’s 1st Set of Interrogs., No. 5.

³² ECF 212-20 at 3, SoS Resp. to LWVFL Pls.’ 1st Set of Interrogs., No. 1.

³³ ECF 212-3, Matthews Dep., 142:20-143:6.

³⁴ ECF 212-20 at 3-4, SoS Resp. to LWVFL Pls.’ 1st Set of Interrogs., No. 1.

about 3PVROs’ role. Nor did the Secretary assert that the Disclaimer and Disclosure Requirement itself addresses any fraud, irregularities, or the appearance of impropriety.³⁵ Indeed, Defendant Secretary stated of the 2020 General Election: “[A]ll Florida voters, no matter how they chose to cast a ballot, or who they voted for, could be confident in the integrity of Florida’s elections system and security of their vote.”³⁶

D. Harriet Tubman Freedom Fighters, Corp.

HTFF is a Florida 501(c)(3) non-profit corporation with a principal place of business, office, and registered agent in Jacksonville, Florida.³⁷ HTFF was incorporated in October 2020³⁸ by Rosemary McCoy and Sheila Singleton, who have been Florida voting rights activists for several years.³⁹ HTFF is a small, grassroots organization⁴⁰ with an operating budget of approximately \$70,000⁴¹ that relies largely on grants,⁴² donations,⁴³ volunteer work,⁴⁴ and the unpaid labor of its founders.⁴⁵ HTFF’s mission is to “grow civic engagement for democracy”⁴⁶ and, to

³⁵ ECF 212-3, Matthews Dep., 142:20-143:6.

³⁶ ECF 211-19 at 12, SoS Resp. to LWVFL Pls.’ RFA, No. 25

³⁷ ECF 212-21 at 2-10; ECF 212-1, HTFF Dep. I, 27:7–12.

³⁸ *Id.*, HTFF Dep. I, 25:22-25.

³⁹ *Id.*, 14:23-15:7, 26:18-21.

⁴⁰ *Id.*, 30:4-8.

⁴¹ *Id.*, 44:20-24.

⁴² *Id.*, 40:18-20.

⁴³ *Id.*, 40:21-24.

⁴⁴ *Id.*, 31:3–6, 42:20–43:1.

⁴⁵ *Id.*, 31:18–21.

⁴⁶ *Id.*, 38:10–15.

do this, it engages in phone banking, canvassing, and speaking engagements to educate their community about and promote civic engagement.⁴⁷ As part of its civic engagement activities, HTFF assists individuals in registering to vote.⁴⁸

HTFF submitted its 3PVRO registration on June 4, 2021.⁴⁹ After it became a registered 3PVRO,⁵⁰ HTFF began training its voter registration canvassers in early August 2021.⁵¹ HTFF used additional training and materials over what it otherwise would have included to ensure that its canvassers complied with the Disclosure and Disclaimer Requirement.⁵² HTFF also diverted funds it would otherwise have used to generate educational materials, hire more canvassers, and build community capacity to train staff and print additional forms.⁵³ To date, HTFF has assisted over 300 voters to register to vote.⁵⁴ Not a single application was untimely.⁵⁵

HTFF has processes and staff training to ensure the timely delivery of voter registration applications.⁵⁶ Therefore, HTFF believes the Disclaimer requires them

⁴⁷ *Id.*, 35:25–38:9

⁴⁸ *Id.*, 44:25–45:7.

⁴⁹ ECF 212-21 at 2-5.

⁵⁰ ECF 212-2, Dep. of Rosemary McCoy vol. II (“HTFF Dep. II”), 165:11–22 (Oct. 22, 2021).

⁵¹ ECF 212-1, HTFF Dep. I., 46:20–47:7, 48:6–16; ECF 212-2, HTFF Dep. II, 170:16–23.

⁵² ECF 212-23, at 3, 4, Pl.’s Supp. Resp. to SoS Interrogs., Nos. 7 & 8; ECF 212-25 at 4-5, Pl.’s Resp. to Intervenor-Defs.’ Interrogs., Nos. 3(ii–iii), 10(ii); ECF 212-24 at 3-5, Pl.’s Supp. Resp. SoS RFP, Nos. 5, 9, 12, & 13; ECF 212-1, HTFF Dep., 43:3–16, 44:25–45:13; 45:21–46:19, 62:20–63:7, 121:8–15, 122:10–16, 123:24–124:8.

⁵³ ECF 212-1, HTFF Dep. I, 46:1–11.

⁵⁴ ECF 212-29 at 99, 3PVRO Applications Database (306 applications received from HTFF, 3PVRO 21-31).

⁵⁵ ECF 212-25 at 5-6, Pl.’s Resp. to Intervenor-Defs.’ Interrogs., Nos. 5–6.

⁵⁶ ECF 212-2, HTFF Dep. II, 189:18–190:18.

“to say certain things that we mostly wouldn’t say[,]”⁵⁷ is contradictory,⁵⁸ and is a “forced, compelling law that says we must say something that is not true.”⁵⁹ HTFF believes this law forces them to disseminate “misinformation or disinformation”⁶⁰ that erodes “trust in the system as it is”⁶¹ and “hinders the progress that [HTFF] is trying to make...to allow people to exercise their right to vote, and . . . to build participation in our democracy.”⁶² HTFF also believes that the disclosure provision is misleading because not everyone has internet access or government identification to register online,⁶³ can or will be able to access online forms, get stamps, and return forms to the proper government office,⁶⁴ and check their registration status online.⁶⁵

SB90 is “confusing” to Plaintiff because it does not tell it how to present the required Disclaimer and Disclosures or convey the penalties for non-compliance.⁶⁶ Nevertheless, HTFF has devoted time, energy, and resources to delivering the Disclaimer and Disclosures in an abundance of caution to avoid potential civil and criminal penalties.⁶⁷

⁵⁷ ECF 212-1, HTFF Dep. 32:24–33:2.

⁵⁸ *Id.*, 83:22–84:11.

⁵⁹ *Id.*, 86:15–16.

⁶⁰ *Id.*, 90:13–19.

⁶¹ *Id.*, 85:25–86:3.

⁶² *Id.*, 85:1–4.

⁶³ *Id.*, 94:21–95:1.

⁶⁴ *Id.*, 93:20–94:12.

⁶⁵ *Id.*, 95:15–18.

⁶⁶ *Id.*, 74:22–75:3, 76:13–25, 77:20–23, 78:6–18, 117:2–13, 118:3–15, 120:21–25.

⁶⁷ *Id.*, 46:15–19; 47:2–7; 48:6–10; 71:2–6.

MEMORANDUM OF LAW

A. Legal Standard

Summary judgment is appropriate where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Looney v. Moore*, 886 F.3d 1058, 1062 (11th Cir. 2018). The nonmoving party “must present affirmative evidence in order to defeat a properly supported motion for summary judgment.” *United States v. Gilbert*, 920 F.2d 878, 882–83 (11th Cir. 1991) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257 (1986)). “[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment....”. *Id.* at 882 (quoting *Anderson*, 477 U.S. at 247–48). “Rather, the nonmoving party must show that there are ‘genuine factual issues that properly can be resolved only by a finder of fact because they may be reasonably resolved in favor of either party.’ *Id.* at 882–83 (quoting *Anderson*, 477 U.S. at 250).

B. Argument

The Disclaimer and Disclosure Requirement constitutes a government-drafted mandated script HTFF would not otherwise deliver because it undermines HTFF’s mission and core political speech in violation of the First Amendment. It also fails to adequately put HTFF and its volunteers on adequate notice as to the penalties for noncompliance, in violation of the Due Process Clause. “Whether the Constitution protects particular speech is a question of law appropriate for resolution by summary

judgment.” *Nelson v. Bd. of Educ.*, 292 F. Supp. 3d 792, 797 (N.D. Ill. 2017) (citing *Spiegla v. Hull*, 481 F.3d 961, 965 (7th Cir. 2007)). Similarly, whether a law is void for vagueness is a question of law for the court to determine. *Konikov v. Orange Cnty.*, 410 F.3d 1317, 1330 (11th Cir. 2005).

1. The Disclaimer and Disclosure Requirement Violates the First Amendment By Compelling HTFF to Speak A Government Message It Would Not Otherwise Convey.

“The First Amendment prohibits the political restriction of speech in simple but definite terms: ‘Congress shall make no law . . . abridging the freedom of speech.’” *Otto v. City of Boca Raton*, 981 F.3d 854, 860 (11th Cir. 2020). It protects “both the right to speak freely and the right to refrain from speaking at all.” *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2463 (2018) (collecting cases); *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 797 (1988). SB 90 violates HTFF’s First Amendment right against compelled speech by compelling it to deliver on the state’s behalf a message it does not wish to convey, and in ways that undermine and dilute its own political speech.⁶⁸ It thus fundamentally alters the content of HTFF’s political speech against its will, without serving any compelling or even legitimate government interest.⁶⁹ *See Riley*, 487 U.S. at 795 (“Mandating

⁶⁸ ECF 212-1, HTFF Dep. 84:3–17.

⁶⁹ Order on Mot. Dismiss 14, ECF 190 (citing *Janus*, 138 S. Ct., at 2464 (“Whenever the Federal Government or a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines [the] ends [that free speech serves].”)).

speech that a speaker would not otherwise make necessarily alters the content of the speech.”); *Masterpiece Cakeshop Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719, 1745 (2018) (“Because the government cannot compel speech, it also cannot require speakers to affirm in one breath that which they deny in the next” (quotation omitted)).

a. The Disclaimer and Disclosure Requirement Imposes a Content-Based Restriction on HTFF’s Core Political Speech

The Disclaimer and Disclosure Requirement forces HTFF to speak a particular message that it otherwise would not.⁷⁰ Laws “compelling individuals to speak a particular message . . . alter the content of their speech.” *Nat’l Inst. of Family & Life Advocates (NIFLA) v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (citation and alterations omitted).

Content-based regulations “target speech based on its communicative content.” *Reed v. Town of Gilbert*, 576 U.S. —, —, 135 S.Ct. 2218, 2226, 192 L.Ed.2d 236 (2015). As a general matter, such laws “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Ibid.* This stringent standard reflects the fundamental principle that governments have “no power to restrict expression because of its message, its ideas, its subject matter, or its content.’ ”

Id. at 2371. Content-based restrictions on speech are subject to strict scrutiny. *Id.* at 2375.

⁷⁰ ECF 212-1, HTFF Dep. 32:24–33:2, 83:22–84:11, 85:1–4, 85:25–86:3, 86:15–16.

The restriction is particularly suspect because HTFF’s voter registration activities of assisting and encouraging others to register to vote⁷¹ constitute core political speech. *See League of Women Voters of Fla. (“LWVFL”) v. Cobb*, 447 F. Supp. 2d 1314, 1334 (S.D. Fla. 2006) (“the collection and submission of” the applications gathered in a voter registration drive “is intertwined with speech and association.”); *LWVFL v. Browning*, 863 F. Supp. 2d 1155, 1158 (N.D. Fla. 2012) (“[E]ncouraging others to register to vote” is “pure speech,” and, because that speech is political in nature, it is a “core First Amendment activity.”); *see also Meyer v. Grant*, 486 U.S. 414, 422 (1988). “[T]he First Amendment requires us to be vigilant” against limitations on political expression. *Buckley v. Am. Const. L. Found.*, 525 U.S. 182, 192 (1999) (citing *Meyer*, 486 U.S. at 421).

b. Defendants Advanced No Compelling Government Interest for the Disclaimer and Disclosure Requirement

Because the Disclaimer and Disclosure Requirement is a content-based restriction on HTFF’s core political speech, Defendants must show that it addresses both a compelling government interest and is narrowly tailored to achieve that interest. *See NIFLA*, 138 S. Ct., at 2371. Defendants cannot meet their burden with respect to HTFF’s compelled speech challenge, because no facts have been offered demonstrating any compelling government interest justifies the Requirement.

⁷¹ *Id.* 34:13–16, 35:25–38:14, 44:25–45:13.

First, the legislative record contains no evidence that enactors of the Disclaimer and Disclosure provisions advanced any compelling interest to justify it.⁷² Second, the post-hoc, government interests Defendants assert⁷³

offer hypothetical situations in which individuals *might be harmed* by their confusion regarding whether a voter registration entity is actually government-affiliated or not. They provide, however, *no evidence that such situations are likely or common*. In order for a compelled disclosure to pass constitutional muster, it must “remedy a harm that is,” at the very least, “ ‘potentially real[,] not purely hypothetical.’”

League of Women Voters v. Hargett, 400 F. Supp. 3d 706, 730 (M.D. Tenn. 2019) (quoting *NIFLA*, 138 S. Ct. at 2377) (emphases added). Defendants did not present any evidence that voters are actually confused regarding whether 3PVROs are private organizations or the state. Third, the record does not suggest that 3PVROs systematically return VR applications late or that existing laws—allowing the Secretary to impose fines for untimely submission of VR applications and refer 3PVROs to the AG for enforcement, Fla. Stat. § 97.0575(3)(a), (4)—are insufficient

⁷² *Elections: Hearing on H.B. 7041/Proposed Comm. B. PIE 21-05 Before the H. Pub. Integrity & Elections Comm.*, 2021 Leg., 123rd Sess. (Fla. 2021), <https://thefloridachannel.org/videos/3-22-21-house-public-integrity-elections-committee/>; *Elections: Hearing on H.B. 7041 Before the H. Appropriations Comm.*, 2021 Leg., 123^d Sess. (Fla. 2021), <https://thefloridachannel.org/videos/4-8-21-house-appropriations-committee/>; *Elections: Hearing on H.B. 7041 Before the H. State Affs. Comm.*, 2021 Leg., 123^d Sess. (Fla. 2021), <https://thefloridachannel.org/videos/4-19-21-house-state-affairs-committee/>; *Elections: Hearing on S.B. 90 Before the S. Comm. On Rules*, 2021 Leg., 123^d Sess. (Fla. 2021), <https://thefloridachannel.org/videos/4-20-21-senate-committee-on-rules/>.

⁷³ ECF 212-20 at 3 and 4, SoS Resp. to *LWVFL* Pls.’ Interrogs. No. 1; ECF 212-3, Matthews Dep. 142:20–143:12.

to incentivize timely application return. Since 2009, 3PVROs have submitted over 2,149,709 applications to SOEs.⁷⁴ Of Florida's 67 counties, eleven do not track the number of late applications delivered by 3PVROs.⁷⁵ Since 2012, the Secretary has apparently sent out only 44 letters imposing fines against 3PVROs for untimely submitted voter registration forms.⁷⁶ In only three instances since 2011 has the Secretary referred a 3PVRO to the AG for enforcement action, all under the now-enjoined 48-hour return rule.⁷⁷ The AG prosecuted none.⁷⁸ In 2020, SOEs identified only 12 Floridians in a single county as unable to vote in the March 2020 primary election due to late 3PVRO submissions.⁷⁹

In sum, 3PVROs submitted over 2 million voter registration applications since 2009 but, since the ten-day return requirement took effect in 2012, Defendants only sent 44 fine letters, referred no actions for enforcement, and undertook no prosecutions against 3PVROs for untimely application submission. Even if

⁷⁴ ECF 212-29 at 100, 3PVRO Application Database, (referenced by SoS Resp. to Pl.'s Interrogs. No. 3); ECF 212-3, Matthews Dep. 168:5–170:1.

⁷⁵ ECF 212-11 at 7–8, 17, 26–27, 32, 40, 48–49, 56–57, 67–68, 95, 100–01, Resps. of Cnty. SOE to *LWVFL* Pls.' Interrogs., No. 7 (Clay, Gilchrist, Gulf, Hillsborough, Madison, Martin, Okaloosa, Okeechobee, Union, and Volusia Counties); ECF 212-11 at 86, Orange Cnty. Resp. to *LWVFL* Pls.' RFP No. 33.

⁷⁶ Compilation of 3PVRO Fine Letters, ECF 212-27 at 1. While the Secretary of State stated that all documents responsive to Plaintiffs' Requests for Production of Documents were produced, ECF 212-3, Matthews Dep. 175:13-176:12; ECF 212-8 at 3, SoS Supp. Resp. to Pl.'s Interrog. No. 4, about 16 of these letters were unsigned. It is therefore unclear whether they were ever sent to the intended 3PVROs. ECF 212-27 at 1.

⁷⁷ See ECF 212-15 at 2; ECF 212-16 at 2; ECF 212-17 at 3, Fla. DOS Referral Letters to AG, OAG-LWVF_003473, OAG-LWVF_003384, AG's Draft Compl., OAG0LWVF_003404.

⁷⁸ ECF 212-7, Guzzo Dep. 68:7–71:3.

⁷⁹ ECF 212-36 at 5, St. Johns Cnty. Resp. to *LWVFL* Pls.' RFA., No. 10.

Defendants argue that because *some* 3PVROs untimely submitted VR applications the

the disclaimer . . . is “factual.” *The Supreme Court, . . . has flatly rejected the argument that merely because a statement is technically true then the government can force a person to make that statement without offending the First Amendment.* (citation omitted). Quite to the contrary, the Supreme Court has recognized that, if left unchecked, the government can use mandatory disclaimers—even truthful ones—as a means of “manipulat[ing] the content of . . . discourse” on issues of profound importance. That risk is especially acute where, as here, the disclaimer is designed to highlight the speaker’s lack of authority. As the court has already held, the speech touched on by the Act falls within the highest level of constitutional protection. Interfering with that speech is constitutionally suspect, whatever tool is used.

Hargett, 400 F. Supp. 3d at 730 (internal citations omitted) (emphasis added) (quoting *NIFLA*, 138 S. Ct. at 2372, 2374). Moreover, Defendants’ historically rare enforcement actions against 3PVROs for untimely submission bely any rationale they now advance that this occurrence is sufficiently “likely or common” to constitute a credible compelling government interest beyond hypothetical conjecture.

c. The Disclaimer and Disclosure is Not Narrowly Tailored to Achieve Any Compelling Government Interest.

Even assuming a properly-articulated compelling interest, Defendants cannot demonstrate that the Disclaimer and Disclosure Requirement is narrowly tailored to serve its purported interests of informing the public about a “possible registration

delay” or voter registration options more generally. Critically, Florida already has extensive requirements meant to ensure 3PVROs timely submit voter registration applications, including placing the collection date and organization ID on the forms—as HTFF does—and fines for noncompliance.

The Disclaimer forces HTFF to engage in false speech: HTFF has *never* returned a voter’s registration application late.⁸⁰ Indeed, it is mission-critical for 3PVROs like Plaintiff to comply with submission deadlines to ensure that the community members they are educating, assisting to register, and engaging become registered and active voters and participants in democracy.⁸¹

Second, SB 90 requires that 3PVROs give prospective registrants information regarding “how to register online⁸² with the division [of elections],” which is misleading because only applicants with DHSMV-issued Florida IDs can register online without submitting a paper application. Fla. Stat. § 97.0525(4)(c). Thousands of voter registration applicants without Florida driver’s licenses must submit a paper application in order to register.⁸³ Moreover, some applicants have no access to a computer or other internet device, including individuals that 3PVROs like HTFF

⁸⁰ ECF 212-25 at 5–6, Pl.’s Resp. to Intervenor-Defs.’ Interrogs., Nos. 5–6; ECF 212-1, HTFF Dep. 89:13–16, 99:8–14.

⁸¹ ECF 212-1, HTFF Dep. 83:2–18, 86:13–87:1.

⁸² ECF 212-3, Matthews Dep. 129:5–15.

⁸³ ECF 212-6, Matthews Dep. Ex. W; ECF 212-18 at 10–11, SoS Resp. to *FRT* Pls.’ RFA, Nos. 22–23.

assist.⁸⁴ HTFF objects to this information as misleading for these reasons⁸⁵ and because applicants may similarly be unable either to access necessary resources to submit their applications⁸⁶ or to check their registration status online.⁸⁷

Third, SB90's requirement that 3PVRs inform applicants how to determine whether a voter registration form has been "delivered" to a Supervisor of Elections is also misleading because there is currently no mechanism or website that does this.⁸⁸ The statewide Voter Information Lookup indicates whether a voter has been *registered*; if the application has not been granted, the lookup contains no information regarding its delivery status, and SOEs have 13 days to enter it in the state's database.⁸⁹

Lastly, SB90 imposes additional burdens on HTFF because, to counter these misleading messages, it must communicate additional information and explanations and reassure applicants that HTFF will timely submit their completed applications.⁹⁰ The government's alleged "simple interest in providing voters with additional relevant information does not justify a state requirement that a [speaker] make

⁸⁴ ECF 212-1, HTFF Dep. 94:21–95:2.

⁸⁵ *Id.*

⁸⁶ *Id.* 93:20–94:12.

⁸⁷ *Id.* 95:15–18.

⁸⁸ ECF 212-1, Matthews Dep. 173:9–174:12; ECF 212-4 at 6–7, SoS Resp. to Pl.'s Interrogs., No. 6.

⁸⁹ ECF 212-1, Matthews Dep. 173:9–174:12.

⁹⁰ ECF 212-1, HTFF Dep. 32:24–33:2, 83:22–84:11, 85:1–4, 85:25–86:3, 86:15–16.

statements or disclosures she would otherwise omit.” *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348 (1995).

d. The State Can, But Chooses Not To, Speak For Itself

Assuming that the rationale advanced for the Disclaimer and Disclosure requirement exceeded mere conjecture, Florida has “more benign and narrowly tailored options” available to serve its interests. *Riley*, 487 U.S. at 800. Unlike HTFF, the government is *entirely free to speak for itself*, and can “communicate the desired information to the public without burdening a speaker with unwanted speech during the course of a solicitation.” *Id.*; see also *NIFLA*, 138 S. Ct. at 2376.

First, the state could—but currently does not—inform applicants that Florida law requires 3PVROs to serve as a fiduciary to the applicant and to return completed applications within 14 days or by the registration deadline.⁹¹ The form already informs applicants that they can return their forms by mail or in person at certain government offices, and that the voter registration deadline is 29 days before Election Day, thereby allowing applicants to decide for themselves whether to entrust the form to a third party, and demonstrating the ease with which the government can communicate its own messages to applicants.⁹² The state also could—but currently does not—provide information on its registration form

⁹¹ See ECF 212-22 at 2, *Fla. Voter Reg. Form*.

⁹² *Id.*

concerning the option for those with DHSMV IDs to register online.⁹³ Instead it ignores online registration in its notice of “Where to Register” and says only that “the downloadable/printable online form is available at registertovoteflorida.gov” ignoring the existence of the online option at the very same website.

Second, Florida could, but does not, communicate the information to the public itself through a public awareness campaign. In *Hargett*, the court granted a preliminary injunction against a voter registration drive law that forced voter registration organizations to speak government messages, including training and disclaimer requirements. 400 F. Supp. 3d at 727. The court found there that the “state’s interest in avoiding errors might, therefore, justify a simpler [state] application form or a public education program, but there is substantial reason to doubt that it can justify the unusually aggressive insertion of government speech into private political association that the Act contemplates.” *Id.* The provisions, which were preliminarily enjoined under the First Amendment, “involve[d] inserting the government, as a speaker, into the associational activity between voter registration workers, directly implicating core First Amendment interests.” *Id.* at 720. There, as here, the state could accomplish its stated interest through its own communications and resources.⁹⁴ *See id.* at 727. The Secretary’s website includes voter registration

⁹³ *See id.*; Fla. Stat. § 97.0525.

⁹⁴ *See, e.g.*, ECF 212-3, Matthews Dep. 89:24–90:2 (Secretary put information on their website with their recommendations regarding mail ballot return), 104:18–105:4 (Secretary plans to post drop-box location information on its website).

information⁹⁵ and she even testified that some changes in SB 90 will not confuse voters *because* she asserts she will conduct voter education.⁹⁶

2. The Disclaimer and Disclosure Requirement Violates the Due Process Clause of the Fourteenth Amendment because it is Void for Vagueness.

“The void-for-vagueness doctrine reflects the principle that ‘a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.’” *Harris v. Mex. Specialty Foods, Inc.*, 564 F.3d 1301, 1310 (11th Cir. 2009) (alteration in original) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 629 (1984)). A law is void for vagueness if it (a) “fails to provide a person of ordinary intelligence fair notice of what is prohibited,” or (b) “it authorizes or encourages seriously discriminatory enforcement.” *Dana’s R.R. Supply v. Att’y Gen., Fla.*, 807 F.3d 1235, 1257 (11th Cir. 2015) (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)). “[R]igorous adherence” to the Due Process Clause’s notice requirements “is necessary to ensure that ambiguity does not chill protected speech.” *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1320 (11th Cir. 2017) (quoting *FCC v. Fox Television Stations*, 567 U.S. 239, 253–54 (2012)).

⁹⁵ ECF No. 212-4 at 7, SoS Resp. to Pl.’s Interrog. No. 8.

⁹⁶ See ECF 212-3, Matthews Dep. 124:1–12.

Here, Paragraphs (3)(a) and (4) of Section 97.0575 are unconstitutionally vague because they fail to “inform [HTFF] of the potential penalties that accompany noncompliance, and provide explicit standards for those who apply the law.” *Harris*, 564 F.3d at 1311. They also do not clarify whether 3PVROs and their volunteers could face penalties for unintentionally omitting the mandatory disclaimer and disclosures. Consequently, SB 90 does not put HTFF on adequate notice as to what is required of it, and invites arbitrary and discriminatory enforcement, violating the Due Process Clause. *Dana’s R.R. Supply*, 807 F.3d at 1257 (citing *Hill*, 530 U.S. at 732).

Defendants concede that Section 97.0575(3)(a) does not identify the penalties for not providing the required disclaimer and disclosures and the fines therein do not apply to the disclaimer and disclosure requirement.⁹⁷ They stated that, to enforce the Requirement, the Secretary would refer suspected violations to the AG, pursuant to subsection (4), and the AG may institute civil actions to enforce it.⁹⁸ However, Defendants’ mid-litigation shift⁹⁹ exposes, but does not cure, the inherent ambiguity concerning the State’s enforcement authority under § 97.0575(3)(a) because § 97.0575(4) is also vague.

⁹⁷ ECF 158 at 2; ECF 212-9 at 6, AG Resp. to Pl.’s Interrog. No. 9.

⁹⁸ ECF 158; ECF No. 212-3, Matthews Dep., 174:19–175:3; ECF 212-9 at 6, AG Resp. to Pl.’s Interrog. No. 9.

⁹⁹ Compare ECF 79 with ECF 158 at 2 and ECF 212-3, Matthews Dep. 174:13–175:12 and ECF 212-9 at 6, AG Resp. to Pl.’s Interrog. No. 9.

First, subsection (4), like paragraph (3)(a), does not identify specific penalties for noncompliance with the Disclaimer and Disclosure Requirement. It authorizes the AG to seek “a permanent or temporary injunction, a restraining order, or any other appropriate order,” but does not specify the form of a restraining order, the terms of a possible injunction, or any criteria that would give HTFF notice of what would be an “appropriate” order. Fla. Stat. § 97.0575(4). It also does not specify whether such an injunction could revoke HTFF’s 3PVRO status, which would prohibit it from conducting voter registration activities. *Id.* Further, subsection (4) does not specify whether the AG may take action against individual volunteers in addition to 3PVROs. *Id.*

Second, subsection (4) establishes no standards to govern the Secretary’s referral of violations to the AG, or to guide the AG about which types of enforcement actions are “appropriate.” *Id.* The AG admitted that enforcement decisions are “made on a case-by-case basis based on the particular facts and circumstances”¹⁰⁰ and could not identify any procedures or protocols for referrals, official understanding regarding referrals, or specific facts and circumstances that the civil division investigates after a referral.¹⁰¹ Despite the Secretary’s stated intention to pursue rulemaking for the Disclaimer and Disclosure Requirement¹⁰² and circulate

¹⁰⁰ ECF 212-9 at 6, AG Resp. to Pl.’s Interrog. No. 10.

¹⁰¹ ECF 212-7, Guzzo Dep. 65:3–25; ECF 212-30 at 5, 30(b)(6) Dep. Subpoena to OAG, Topic 2.

¹⁰² ECF 212-4 at 6, SoS Resp. to Pl.’s Interrog. No. 5.

proposed language a “couple of weeks” following her October 22, 2021 deposition, no draft rules exist.¹⁰³ There are no written standards governing referrals to the AG¹⁰⁴; nor has the Secretary provided any informal guidance explaining the requirements or their consequences.¹⁰⁵

This lack of standards raises the risk of arbitrary enforcement. *See, e.g., Papachristou v. City of Jacksonville*, 405 U.S. 156, 170 (1972) (absent “standards governing the exercise of the discretion. . . [i]t furnishes a convenient tool for ‘harsh and discriminatory enforcement by . . . prosecuting officials, against particular groups deemed to merit their displeasure.’”) (quoting *Thornhill v. Alabama*, 310 U.S. 88, 97–98 (1940)); *Gray v. Kohl*, No. 07-10024-CIV, 2007 WL 9702460, at *8 (S.D. Fla. June 29, 2007) (“[E]nforcement of the Statute against Plaintiff’s speech illustrates the danger of unfettered discretion. The Statute basically permits the state to pick and choose between speakers, permitting certain messages . . . and not others.”); *Nat’l Abortion Fed’n v. Metro. Atlanta Rapid Transit Auth.*, 112 F. Supp. 2d 1320, 1328 (N.D. Ga. 2000) (“[D]ifferent applications by different officials . . . illustrates the subjective and arbitrary nature of the policy and suggests that there is a potential for abuse.”). Likewise, this Court “cannot find clarity in a wholly

¹⁰³ ECF 212-3, Matthews Dep. 165:6–166:6.

¹⁰⁴ *Id.* 175:6-12.

¹⁰⁵ *See* ECF 212-4 at 6, SoS Resp. to Pl.’s Interrog. No. 5 (referencing presentation made to SOEs which provides no additional information); ECF 212-3, Matthews Dep. 171:19–173:7; ECF 212-5 at 16, Matthews Dep. Ex. S.

ambiguous statute simply by relying on the benevolence or good faith of those enforcing it.” *Wollschlaeger*, 848 F.3d at 1322 (citing *United States v. Stevens*, 559 U.S. 460, 480 (2010)).

Third, the Disclaimer and Disclosure Requirement contains no scienter requirement, meaning that HTFF (and potentially its canvassers) could face legal consequences simply for *unintentionally* not providing the mandatory disclaimer and disclosures.¹⁰⁶ *Cf. Hill*, 530 U.S. at 732–33 (challenged statute was not void for vagueness because it only applied to people who “knowingly” committed the prohibited conduct and clearly defined the zones in which the prohibited conduct could not take place); *Jones v. Governor of Fla.*, 975 F.3d 1016, 1047 (11th Cir. 2020) (“[E]ven laws that are in some respects uncertain may be upheld against a vagueness challenge if they contain a scienter requirement.” (quotation omitted)). As a result, even if HTFF does not ultimately face legal consequences, the potential danger of noncompliance and possible legal consequences forces them to alter their activities, chilling their core political speech.¹⁰⁷

Arbitrary enforcement concerns are not speculative; the Secretary inconsistently enforced Paragraph (3)(a) before SB 90. For example, it fined an organization \$150 for three late applications¹⁰⁸ but imposed no fines on Count My

¹⁰⁶ ECF No. 212-1, HTFF Dep. 74:15–75:3; 75:12–25; 76:4–8 77:20–23; 78:6–17; 78:20–79:4; 117:11–14; 119:3–13; 120:21–25.

¹⁰⁷ ECF 212-1, HTFF Dep. 82:8–23; 117:2–15.

¹⁰⁸ ECF 212-50, Florida SoS-1813900-01

Vote Florida after it delivered 67 late applications.¹⁰⁹ The Secretary again recommended no further action against Count My Vote Florida when it delivered six applications after book closing¹¹⁰ and another three late,¹¹¹ while recommending action against other 3PVROs with twenty-five¹¹² and eleven¹¹³ late-delivered applications. Eventually the Secretary recommended a \$100 fine against Count My Vote Florida for two late applications and because it was a “habitual offender”¹¹⁴, but, for no articulated reason, removed that recommendation about three weeks later.¹¹⁵ The Secretary’s repeated decisions to enforce § 97.0575(3) against some 3PVROs, but not others engaging in “egregious”¹¹⁶ violations, constitute inconsistent and arbitrary enforcement practices. The enforcement ambiguity inherent in the Disclaimer and Disclosure Requirement compounds the arbitrary enforcement risk.

Taken together, Section 97.0575’s deficiencies and potential for arbitrary enforcement force 3PVROs to take unknown risks in order to pursue their First Amendment-protected voter registration activities, lest they invite unknown consequences for acts as simple as a canvasser—in the midst of an engaging

¹⁰⁹ ECF 212-47, Florida SoS-01819028-37.

¹¹⁰ ECF 212-46, Florida SoS-01818897-902; ECF 212-44, Florida SoS-01818543-47.

¹¹¹ ECF 212-45, Florida SoS-01818558-62

¹¹² ECF 212-49, Florida SoS-01820988-91

¹¹³ ECF 212-48, Florida SoS-01820983-87

¹¹⁴ ECF 212-3, Matthews Dep. 134:22–135:9; 137:12–138:1.

¹¹⁵ ECF 212-43, Florida SoS-01818002-08.

¹¹⁶ ECF 212-3, Matthews Dep. 136:21–137:11.

interaction with a potential voter—forgetting to provide the mandatory disclaimer and disclosure. Accordingly, the Disclaimer and Disclosure Requirement is unconstitutionally vague in violation of the Due Process Clause.

3. HTFF is entitled to injunctive and declaratory relief.

To remedy these constitutional violations, Plaintiff seeks injunctive and declaratory relief. Constitutional violations establish per se irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms... unquestionably constitutes irreparable injury.”); HTFF has no adequate remedy at law for Florida’s deprivation of its rights. *Ferrero v. Associated Materials, Inc.*, 923 F.2d 1441 (11th Cir. 1991). The balance of hardships unquestionably favor HTFF, as Defendants suffer no cognizable injury by being prohibited from enforcing unconstitutional laws. Further, such relief would promote the public interest by eliminating the chilling effect of vague laws on free speech rights. *See Barrett v. Walker Cnty. Sch. Dist.*, 872 F.3d 1209, 1229 (11th Cir. 2017) (citing *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)); *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court enter summary judgment in its favor and award such other relief as may be necessary to effectuate the judgment.

Dated: November 12, 2021 Respectfully submitted,

/s/ Emma Bellamy

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CERTIFICATE OF WORD COUNT

The undersigned certifies on this 12th day of November 2021, that this document complies with word limits set forth in Rule 7.1(F), N.D. Fla. Loc. R., and contains 7,993 words which includes the headings, footnotes, and quotations, but does not include the case style, signature block or Certificates of Word Count and Service.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 12th day of November 2021, a true and correct copy of the foregoing was electronically filed in the US District Court, Northern District of Florida, using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Emma Bellamy

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