

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

FLORIDA STATE CONFERENCE  
OF BRANCHES AND YOUTH UNITS  
OF THE NAACP, *et al.*,

Plaintiffs,

Case No. 4:23-cv-00215-MW-MAF

v.

CORD BYRD, in his official capacity  
as Secretary of State Florida, *et al.*,

Defendants.

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**THE SUPERVISORS OF ELECTIONS'  
MOTION TO DISMISS COUNTS I, II, AND V**

Defendants, all sixty-seven Florida County Supervisors of Elections, respectfully move the Court to dismiss Counts I, II, and V of Plaintiffs' Second Amended Complaint for Declaratory and Injunctive Relief (ECF No. 139) to the extent those counts assert claims against the Supervisors.

**INTRODUCTION**

Counts I, II, and V of the Second Amended Complaint challenge three provisions of section 97.0575 of the Florida Statutes that were amended by Senate Bill 7050 (2023) and that regulate third-party voter registration organizations, or 3PVROs. Plaintiffs allege that the Supervisors of Elections enforce only one of those provisions: the 3PVRO Fines

Provision, which imposes fines on 3PVROs that submit voter-registration applications late. ECF No. 139 ¶¶ 58–59. But the Supervisors do not and cannot enforce the 3PVRO Fines Provision.<sup>1</sup> Plaintiffs therefore have no standing to assert that challenge against the Supervisors.

Plaintiffs do not allege that the Supervisors have authority to impose the fines that Plaintiffs challenge. Indeed, Plaintiffs allege that the Secretary of State imposes the fines. *Id.* ¶ 55. To plead standing to sue the Supervisors, Plaintiffs allege that the Supervisors, when processing voter-registration applications, report late-submitted applications to the Secretary of State and the Attorney General, who in turn “may later access and use” that information “to make enforcement decisions.” *Id.* ¶ 59. To be sure, Rule 1S-2.042(8)(c), Florida Administrative Code, directs the Supervisors to “report any untimely filed voter registration application” submitted by a 3PVRO. As this Court has concluded, however, the power to report potential violations of law does not transform the *reporting* entity into the *enforcing* entity. It is precisely because the Supervisors are not the enforcing entity that they provide factual reports of potential violations to an official who is. Because a mere reporting obligation does not convert the Supervisors into the enforcers of the fines, the alleged injury is not traceable to or redressable by the Supervisors, and Plaintiffs have no standing to assert their challenge to the 3PVRO Fines Provision against the Supervisors.

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<sup>1</sup> The Second Amended Complaint defines “3PVRO Fines Provision” to mean section 97.0575(5)(a), Florida Statutes, as amended by Senate Bill 7050 (2023). ECF No. 139 ¶ 74.

Accordingly, as to the Supervisors, the Court should dismiss Counts I, II, and V with prejudice.

### ARGUMENT

To plead standing, a plaintiff must plausibly allege that it suffers an injury in fact that is fairly traceable to the challenged conduct and that is likely to be redressed by a favorable judicial decision. *Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1337 (11th Cir. 2021). Because as a matter of law the Supervisors do not enforce the 3PVRO Fines Provision, Plaintiffs' alleged injuries are not traceable to the Supervisors, nor would judgment against them redress those injuries. Because other governmental parties, not the Supervisors, have sole enforcement authority to enforce the 3PVRO Fines Provision, Plaintiffs lack standing to assert their challenge to that provision against the Supervisors.

In *Jacobson v. Florida Secretary of State*, 974 F.3d 1236 (11th Cir. 2020), the plaintiffs challenged a statute that regulated the order in which candidates appear on the ballot. *Id.* at 1241. The court held that the plaintiffs did not have standing to sue the Secretary of State. *Id.* at 1253. While state law directed the Secretary to certify the names of qualified candidates to the Supervisors, it charged the Supervisors alone with preparation of the ballot. *Id.* Because the Secretary had no authority to enforce the challenged law, the court found that the alleged injury was not fairly traceable to the Secretary, and an injunction directed to the Secretary would not have redressed the plaintiffs' injuries. *Id.* at 1253–55.

This Court has twice concluded that, under the principles announced in *Jacobson*, a power to report is not a power to enforce. In *ACLU of Florida, Inc. v. Lee*, 546 F. Supp. 3d

1096 (N.D. Fla. 2021), and *Hetherington v. Lee*, No. 3:21-cv-00671-MCR, 2021 WL 6882441 (N.D. Fla. July 12, 2021), the court considered whether the Secretary of State's authority to report alleged violations to the Florida Elections Commission under section 106.25(2), Florida Statutes, rendered the Secretary the enforcing entity with respect to the statutes challenged in those cases. In *ACLU*, the plaintiffs challenged a law limiting contributions to political committees that sponsor proposed amendments to the Florida Constitution. 546 F. Supp. 2d at 1098. In *Hetherington*, the plaintiffs challenged a statute that prohibited non-partisan candidates from publicly campaigning based on party affiliation. 2021 WL 6882441, at \*1. In both, this Court concluded that the Secretary's power to report alleged violations of those statutes to the Florida Elections Commission did not transform the Secretary into those statutes' enforcer. *Hetherington*, 2021 WL 6882441, at \*3 (concluding that the Secretary's power to report alleged violations "does not mean that the Secretary possesses the authority to enforce" the challenged law); *ACLU*, 546 F. Supp. 3d at 1109–11 (finding that the Secretary "does not enforce the challenged statute," despite his power to report violations). The Court dismissed the claims against the Secretary in both cases.

The same principles demonstrate that Plaintiffs here do not have standing to sue the Supervisors. In *Jacobson*, the Secretary reported the names of qualified candidates to the Supervisors, who prepared the ballots. But the Eleventh Circuit did not find that the Secretary enforced the statute merely because the Secretary reported information to the Supervisors. Nor did the court enjoin the Secretary not to report the names of qualified candidates to the Supervisors as a means of preventing enforcement of the challenged

law. In *ACLU* and *Hetherington*, the Secretary was empowered to report potential violations of the challenged laws to the Florida Elections Commission, but this Court flatly rejected the argument that the power to report equated to enforcement. Here too, the Supervisors' power to report information regarding untimely filed voter registration forms to the officials who do enforce the challenged law—so that those officials “may later access and use” that information “to make enforcement decisions,” ECF No. 139 ¶ 59—does not prove that the Supervisors enforce the statute. Rather, it proves that they do not.

In *ACLU* and *Hetherington*, this Court noted that in addition to the Secretary, any member of the public could also report violations of the challenged laws to the Florida Elections Commission. *Hetherington*, 2021 WL 6882441, at \*3 n.4; *ACLU*, 546 F. Supp. 3d at 1101. The same is true here. Any person “may report allegations of irregularities or fraud involving an organization’s voter registration activities by filing an elections fraud complaint with” the Division of Elections. Fla. Admin. Code r. 1S-2.042(8)(b); accord Fla. Stat. §§ 97.012(15), 97.022(1), (2) (authorizing citizen complaints of irregularities in voter registration); Fla. Admin. Code r. 1S-2.025(2), (3) (same). Just as the power to report does not transform *everybody* into an enforcement authority, it does not render the Supervisors the enforcers either.<sup>2</sup>

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<sup>2</sup> By analogy, a citizen who reports a potential crime to the police does not on that account become “law enforcement.”

The reporting of late-submitted applications has nothing to do with the *amount* of the fines—which is what Plaintiffs challenge. If Plaintiffs prevail on their contention that the fines are excessive, then, rather than leave Florida without any operative regulation of 3PVROs, the previous statute, with its lesser fines, would be revived and take effect again. *See White Motor Corp. v. Citibank, N.A.*, 704 F.2d 254, 261 (6th Cir. 1983) (explaining that, rather than create a “void” or “chaotic hiatus” in the law, invalidation of a statute revives the predecessor statute); *Smith v. Smathers*, 372 So. 2d 427, 429 (Fla. 1979); *State ex rel. Boyd v. Green*, 355 So. 2d 789, 795 (Fla. 1978); *State ex rel. Worthington v. Cannon*, 181 So. 2d 346, 347 (Fla. 1965). In that event, an injunction that prohibits the Supervisors from reporting late-submitted applications would be inappropriate, since it would not redress any alleged injury, but only cover violations of a *valid* statute in silence.

Nothing in section 97.0575 grants the Supervisors any authority to initiate actions against 3PVROs for any violations of that section or to assess the fines that Plaintiffs challenge. Plaintiffs concede as much in their Second Amended Complaint, alleging that “the Department of State . . . is tasked with . . . imposing fines on 3PVROs.” ECF No. 139 ¶ 55.

Because the Supervisors do not enforce the 3PVRO Fines Provision as a matter of law, amendment would be futile. Plaintiffs, moreover, concede that the Supervisors “have no role in any aspect of enforcement” of the other 3PVRO Restrictions—namely, the 3PVRO Information Retention Ban and the Citizenship Requirement. ECF No. 139 ¶ 58. As to the Supervisors, therefore, this Court should dismiss Counts I, II, and V with

prejudice. *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1133 (11th Cir. 2019) (explaining that a court need not grant leave to amend if a more carefully drafted complaint could not state a claim).<sup>3</sup>

### CONCLUSION

The Supervisors respectfully move the Court to dismiss Counts I, II, and V with prejudice to the extent those counts assert claims against the Supervisors.

Respectfully submitted,

/s/ Nathaniel A. Klitsberg  
Nathaniel A. Klitsberg (FBN 307520)  
Joseph K. Jarone (FBN 117768)  
Devona A. Reynolds Perez (FBN 70409)  
BROWARD COUNTY ATTORNEY'S OFFICE  
115 S. Andrews Avenue, Suite 423  
Fort Lauderdale, Florida 33301  
Telephone: 954-357-7600  
nklitsberg@broward.org  
jkjarone@broward.org  
dreynoldsperez@broward.org  
*Attorneys for Defendant, Broward County  
Supervisor of Elections*

/s/ Andy Bardos  
Andy Bardos (FBN 822671)  
GRAYROBINSON, P.A.  
301 South Bronough Street, Suite 600  
Tallahassee, Florida 32301  
Telephone: 850-577-9090  
andy.bardos@gray-robinson.com  
*Attorneys for Supervisors of Elections for  
Charlotte, Collier, Indian River, Lake, Lee,  
Monroe, Marion, Manatee, Pasco, and  
Seminole Counties*

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<sup>3</sup> The Supervisors recognize, of course, that any injunction entered against other defendants to this action will bind the Supervisors to the extent Federal Rule of Civil Procedure 65(d)(2) so provides.

/s/ Nicholas A. Shannin

Nicholas A. Shannin (FBN 9570)  
SHANNIN LAW FIRM, P.A.  
214 E. Lucerne Circle, Suite 200  
Orlando, Florida 32801  
Telephone: 407-985-2222  
nshannin@shanninlaw.com  
*Attorney for Defendant, Orange County  
Supervisors of Elections*

/s/ Robert C. Swain

Robert C. Swain (FBN 366961)  
Diana M. Johnson (FBN 69160)  
ALACHUA COUNTY ATTORNEY'S  
OFFICE  
12 S.E. 1st Street  
Gainesville, Florida 32601  
Telephone: 352-374-5218  
bswain@alachuacounty.us  
dmjohnson@alachuacounty.us  
*Attorneys for Defendant, Alachua County  
Supervisor of Elections*

/s/ Susan S. Erdelyi

Susan S. Erdelyi (FBN 0648965)  
MARKS GRAY, P.A.  
1200 Riverplace Blvd., Suite 800  
Jacksonville, Florida 32207  
Telephone: 904-398-0900  
serdelyi@marksgray.com  
*Attorney for Defendants, Baker, Bay, Bradford,  
Calhoun, Columbia, Dixie, Franklin,  
Gadsden, Gulf, Hamilton, Jackson, Lafayette,  
Liberty, Nassau, Putnam, Santa Rosa, St.  
Johns, Sumter, Suwannee, Taylor, Union,  
Walton, Wakulla, and Washington County  
Supervisors of Elections*

/s/ Frank M. Mari

Frank M. Mari (FBN 93243)  
ROPER, P.A.  
2707 E. Jefferson Street  
Orlando, Florida 32803  
Telephone: 407-897-5150  
fmari@roperpa.com  
*Attorneys for Defendants, Brevard, Desoto,  
Flagler, Gilchrist, Highlands, Jefferson, and  
Madison County Supervisors of Elections*

/s/ John T. LaVia, III  
John T. LaVia, III (FBN 0853666)  
GARDNER, BIST, BOWDEN, BUSH, DEE,  
LAVIA & WRIGHT, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone: 850-385-0070  
jlavia@gbwlegal.com  
*Attorney for Defendants, Clay,  
Martin, Osceola, Polk, and St. Lucie County  
Supervisors of Elections*

/s/ Craig D. Feiser  
Craig D. Feiser (FBN 164593)  
DUVAL COUNTY ATTORNEY'S OFFICE  
117 W. Duval Street, Suite 480  
Jacksonville, Florida 32202  
Telephone: 904-255-5100  
cfeiser@coj.net  
*Attorneys for Defendant, Duval County  
Supervisor of Elections*

By: /s/ Ronald A. Labasky  
Ronald A. Labasky (FBN 206326)  
P.O. Box 350  
Tallahassee, FL 32302  
Telephone: 850-566-2396  
ronlabasky@gmail.com  
rhonda@gbwfirm.net  
*Attorney for Defendants, Clay,  
Martin, Osceola, Polk, and St. Lucie County  
Supervisors of Elections*

By: /s/ Morgan Bentley  
Morgan Bentley (FBN 962287)  
Bentley Goodrich Kison, P.A.  
783 South Orange Ave., Third Floor  
Sarasota, FL 34236  
Telephone: 941-556-9030  
mbentley@bgk.law  
*Counsel For Defendant Sarasota County  
Supervisor of Elections*

/s/ Dale A. Scott

Dale A. Scott (FBN 0568821)  
ROPER, P.A.  
2707 E. Jefferson Street  
Orlando, Florida 32803  
Telephone: 407-897-5150  
dscott@roperpa.com  
*Attorneys for Defendant, Citrus County  
Supervisors of Elections*

/s/ Christi Jo Hankins

Christi Jo Hankins (FBN 483321)  
ESCAMBIA COUNTY ATTORNEY'S  
OFFICE  
221 Palafox Place, Suite 430  
Pensacola, Florida 32502  
Telephone: 850-595-4970  
cjhankins@myescambia.com  
*Attorneys for Defendant, Escambia County  
Supervisor of Elections*

/s/ Gregory T. Stewart

Matthew R. Shaud (FBN 122252)  
Gregory T. Stewart (FBN 203718)  
NABORS GIBLIN & NICKERSON, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
Telephone: 850-224-4070  
mshaud@ngnlaw.com  
gstewart@ngn-tally.com  
*Attorneys for Defendant, Okaloosa County  
Supervisor of Elections*

/s/ Kyle J. Benda

Kyle J. Benda (FBN 113525)  
Jon Jouben (FBN 149561)  
HERNANDO COUNTY  
20 N. Main Street, Suite 462  
Brooksville, Florida 34601-2850  
Telephone: 352-754-4122  
kbenda@co.hernando.fl.us  
*Attorneys for Defendant, Hernando County  
Supervisor of Elections*

/s/ Jared D. Kahn

Jared D. Kahn (FBN 105276)  
PINELLAS COUNTY ATTORNEY'S OFFICE  
315 Court Street, 6th Floor  
Clearwater, Florida 33756  
Telephone: 727-464-3354  
jkahn@pinellas.gov  
*Attorneys for Defendant, Pinellas County  
Supervisor of Elections*

/s/ Stephen M. Todd

Stephen M. Todd (FBN 0886203)  
HILLSBOROUGH COUNTY ATTORNEY'S  
OFFICE  
601 E. Kennedy Blvd., 27th Floor  
Tampa, Florida 33602  
Telephone: 813-272-5670  
todds@hillsboroughcounty.org  
*Attorneys for Defendant, Hillsborough County  
Supervisor of Elections*

/s/ Michael B. Valdes

Michael B. Valdes (FBN 93129)  
Sophia M. Guzzo (FBN 1039644)  
MIAMI-DADE COUNTY ATTORNEY'S  
OFFICE  
111 N.W. First Street, Suite 2810  
Miami, Florida 33128  
Telephone: 305-375-5151  
michael.valdes@miamidade.gov  
sophia.guzzo@miamidade.gov  
*Attorneys for Defendant, Miami-Dade County  
Supervisor of Elections*

/s/ Mark Herron

Mark Herron (FBN 199737)  
MESSER CAPARELLO, P.A.  
2618 Centennial Place  
Tallahassee, Florida 32308  
Telephone: 850-222-0720  
mherron@lawfla.com  
*Attorneys for Defendant, Leon County  
Supervisor of Elections*

/s/ Jessica R. Glickman

David K. Markarian (FBN 480691)  
Jessica R. Glickman (FBN 118586)  
THE MARKARIAN GROUP  
2925 PGA Boulevard, Suite 204  
Palm Beach Gardens, Florida 33410  
Telephone: 561-626-4700  
dave@forbusinessandlife.com  
jessica@forbusinessandlife.com  
*Attorneys for Defendant, Palm Beach County  
Supervisor of Elections*

/s/ Sarah Lynn Johas

William K. Bledsoe (FBN 02969)  
Sarah Lynn Jonas (FBN 115989)  
VOLUSIA COUNTY ATTORNEY'S OFFICE  
123 W Indiana Avenue  
Deland, Florida 32720  
Telephone: 386-736-5950  
kbledsoe@volusia.org  
sjonas@volusia.org  
*Attorneys for Defendant, Volusia County  
Supervisor of Elections*

By: /s/ Geraldo Olivo

Geraldo Olivo (FBN 60905)  
Henderson, Franklin,  
Starnes & Holt, P.A.  
P.O. Box 280  
Fort. Myers, Florida 33902  
Telephone: 239-344-1168  
geraldo.olivo@henlaw.com  
*Attorneys for Defendants, Glades, Hardee,  
Hendry, Holmes, Levy, and Okeechobee County  
Supervisors of Elections*