UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Florida Rising Together, Inc., et al.
Plaintiffs,

v. Case No. 6:24-cv-01682-AGM-NWH

Cord Byrd, et al.,
Defendants. /

SECRETARY CORD BYRD'S MOTION TO DISMISS AMENDED COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

Defendant, Cord Byrd, moves to dismiss Plaintiffs Florida Rising Together, Inc. ("FRT") and Florida Rising, Inc.'s Amended Complaint for lack of standing and failure to state a claim.

INTRODUCTION & BACKGROUND

Florida law requires that applicants with a Florida driver license, Florida identification card, or Social Security number provide their number(s) on their voter registration applications. § 97.053(5)(a), Fla. Stat.[1] That information is verified by comparing it to the applicants' numbers on file with the Florida Department of Highway Safety and Motor Vehicles ("DHSMV") or the Social Security Administration. § 97.053(6), Fla. Stat. (the "voter verification statute").

If the numbers do not match, applicants must verify the authenticity of their information by presenting their driver license, Florida ID card, or Social Security card, or sending a copy of the card(s) via mail, facsimile, or e-mail, to their local

[1] Those without such identification may still register to vote. They need only "affirm this fact in the manner prescribed in the . . . registration application." § 97.053(5)(a)5., Fla. Stat.

supervisor of elections. *Id.* If applicants verify their information by election day, they may cast a regular ballot. *Id.* If not, applicants may cast a provisional ballot, which will be counted if the applicant verifies their information "no later than 5 p.m. of the second day following the election." *Id.*

Plaintiffs disagree with the Florida Legislature's policy choice to require applicants to verify their eligibility before registering to vote. They insist the verification process, which they call the "exact match protocol," imposes an illegal precondition to voting that disenfranchises eligible – and primarily minority – Florida voters.[2] In doing so, they claim the process imposes an undue burden on the right to vote (Count I) and violates § 8 of the National Voter Registration Act (NVRA) (Count II), and § 2 of the Voting Rights Act of 1965 (Count III). To support their claims, Plaintiffs cherry-pick voter registration data from a subset of counties to suggest that the statute disproportionately affects minority voters.

In reality, the voter verification statute is facially neutral, imposes at most a minor inconvenience in the rare circumstances an applicants' information does not match that on file, and allows applicants to verify their identity. Further, Plaintiffs' statistical data suggests only that black Floridians are rejected more often under the statute – not that the statute discriminates against them or unduly burdens the right to vote. Indeed, Plaintiffs provide no evidence racial bias causes the disparity.

[2] The phrase "exact match protocol" does not appear in the Florida Statutes or Florida Administrative Code. Instead, both provisions emphasize "identity" and "verification." Accordingly, the Secretary refers to § 97.053(6) as the "voter verification statute." But the Secretary will refer to the "protocol" when discussing Plaintiffs' allegations to be consistent.

Nonetheless, Plaintiffs filed this suit against the Secretary, Attorney General, and four Supervisors of Elections seeking approval of their members' unverified applications and an injunction prohibiting future verification under the statute. After the Defendants moved to dismiss and this Court granted the motions with leave to amend, Plaintiffs filed the Amended Complaint. It adds 1 plaintiff and 11 Supervisor of Election defendants.

But the flaws persist. Plaintiffs lack associational and organizational standing and demonstrate neither traceability nor redressability against the Secretary. Likewise, they lack prudential standing to assert the voting rights of third parties. And the Amended Complaint fails to state a claim on all counts. For each reason, the Court should again dismiss the Amended Complaint.

STANDARD OF REVIEW

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations omitted). Courts "assume the veracity of well-pleaded factual allegations," but may not credit allegations in the form of "labels and conclusions." *Newbauer v. Carnival Corp.*, 26 F.4th 931, 934 (11th Cir. 2022) (cleaned up).

Motions to dismiss under Rule 12(b)(1), on the other hand, challenge the Court's subject matter jurisdiction. These challenges come in two forms: facial and factual. *McElmurray v. Consol. Gov't of Augusta–Richmond Cnty.*, 501 F.3d 1244,

1251 (11th Cir. 2007). Facial attacks probe whether the plaintiff "has sufficiently alleged a basis of subject matter jurisdiction," *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1335 (11th Cir. 2013), while factual attacks "challenge subject matter jurisdiction in fact, irrespective of the pleadings," *Morrison v. Amway Corp.*, 323 F.3d 920, 925 n.5 (11th Cir. 2003). This motion will show that Plaintiffs do not establish their standing, making it a facial attack to which courts apply the standards for Rule 12(b)(6) motions. *Houston*, 733 F.3d at 1335.

ARGUMENT

I. Plaintiffs lack associational and organizational standing.

To show Article III standing, litigants must show "(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (cleaned up). Organizations can show an injury in two ways: "(1) through [their] members (i.e., associational standing)," or "(2) through [their] own injury . . . that satisfies the traceability and redressability elements (i.e., organizational standing)." *Ga. Ass'n of Latino Elected Offs. v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1114 (11th Cir. 2022).

1. Plaintiffs do not have associational standing because they do not specifically identify members harmed by the voter verification statute.

"To establish associational standing, an organization must prove that its members would otherwise have standing to sue." *Jacobson*, 974 F.3d at 1249 (citation omitted). This means that "at least one member meets the three

requirements of individual standing." *Sierra Club v. Tenn. Valley Auth.*, 430 F.3d 1337, 1344 (11th Cir. 2005). Thus, organizations must identify "at least one member who can establish an actual or imminent injury." *Ga. Republican Party v. Sec. & Exch. Comm'n*, 888 F.3d 1198, 1204 (11th Cir. 2018). Plaintiffs need not "identify affected members by their legal names," *Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, 103 F.4th 765, 773 (11th Cir. 2024), but must make "specific allegations establishing that at least one identified member had suffered or would suffer harm," *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009).

A. FRT and Florida Rising allege they have members throughout Florida. *See* Am. Compl. ¶¶ 19 & 27. But both are 501(c) corporations that do not have formal "members." The Supreme Court established in *Hunt v. Washington State Apple Advertising Commission* that non-membership advocacy organizations do not have associational standing unless their "constituents" possess "indicia of membership" such that the organization "represents the [constituents] and provide the means by which they express their collective views and protect their collective interests." 432 U.S. 333, 344-45 (1977). Specifically, the Court determined the constituents in *Hunt* possessed these indicia because "they alone elect the members of the Commission; they alone may serve on the Commission; they alone finance its activities, including the costs of this lawsuit." *Id.*

Here, neither FRT nor Florida Rising allege that their constituents play any role in the organizations. Instead, the Amended Complaint merely claims that "Florida Rising and its members educate, register, and mobilize voters as one key

way of holding politicians accountable and making their voices heard." Am. Compl. ¶ 26. And it does not allege anything about FRT's members. These allegations do not bear the "indicia of membership" in an organization. Accordingly, Plaintiffs' constituents are not "members" for purposes of associational standing.

But even if Plaintiffs' constituents bore the required "indicia," they would still lack associational standing because the Amended Complaint does not demonstrate that the constituents "otherwise have standing to sue in their own right." *See Hunt*, 432 U.S. at 343; *see also Doe v. Stincer*, 175 F.3d 879, 886 (11th Cir. 1999) ("The right to sue on behalf of its constituents, however, does not relieve the [organization] of its obligation to satisfy *Hunt*'s first prong by showing that one of its constituents otherwise had standing."). Indeed, in *Doe,* the Court determined that even though the constituents of a similar organization bore the "indicia of membership," the organization lacked associational standing because it did not "show that any of its [constituents] suffered a concrete injury." 175 F.3d at 887. Plaintiffs have the same problem.

B. Florida Rising alleges that it has "identified nearly 150 members of the organization who are currently in 'unverified' status due to the Exact Match Protocol." *Id.* ¶ 27. But neither Plaintiff provides a scintilla of information about their members, much less do they "allege that a specific member will be injured by the [statute]," and "offer . . . evidence to support such an allegation." *Ga. Republican Party*, 888 F.3d at 1203. That is the standard for associational standing. *See id.* Florida Rising simply notes that it "is a people-powered

organization made up of members advancing economic and racial justice across Florida." Am. Compl. ¶ 26. And Florida Rising says only once that it has members. *Id.* ¶ 19. Courts "cannot accep[t] an organization['s] self-descriptions of [its] membership . . . regardless of whether it is challenged." *Summers*, 555 U.S. at 499. And abstract claims of harm to unknown people do not establish associational standing. *See Jacobson*, 974 F.3d at 1249 (organization lacked standing because it "failed to identify any of its members, much less one who will be injured").

The Amended Complaint identifies only one applicant, Susan Hammack Bach, and claims that the Duval County Supervisor of Elections processed her application and placed her in "unverified" status. Am. Compl. ¶¶ 104-05. But it does not allege that Ms. Bach is or was a member of Florida Rising. Only members count for associational standing. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs.*, 528 U.S. 167, 181 (2000).

Moreover, even if Ms. Bach was a member of Florida Rising, she could not confer associational standing upon Plaintiffs because the Amended Complaint admits she was registered in time to vote in the November 2024 election. Thus, to the extent she had an injury, it is cured. "[P]ast occurrences of unlawful conduct do not establish standing to enjoin the threat of future unlawful conduct. *City of S. Miami v. Governor*, 65 F.4th 631, 637 (11th Cir. 2023). And members without an injury do not have standing to confer. *See Cahaba Riverkeeper v. U.S. Env't Prot. Agency*, 938 F.3d 1157, 1162 (11th Cir. 2019) ("Organizations have standing to sue

on behalf of their members only when the members themselves 'would otherwise have standing to sue in their own right.'" (quoting *Hunt*, 432 U.S. at 343)).

2. Plaintiffs do not have organizational standing because the voter verification statute does not harm their core business practices.

Without associational standing, Plaintiffs must establish organizational standing. The outcome is the same. Organizations can "sue on their own behalf for injuries they have sustained." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982). To establish this "organizational" standing, entities must satisfy the same standards for injury in fact, causation, and redressability applicable to individuals. *Id.* at 378-79. As a result, organizations must allege "actual present harm" or the "threat of imminent harm." *City of S. Miami*, 65 F.4th at 638. Organizations typically do so through a diversion of resources theory. *Id.*

Under this theory, an organization suffers actual harm "if the defendant's illegal acts impair [the organization's] ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts." *Jacobson*, 974 F.3d at 1250 (citation modified). Organizational plaintiffs must show that they diverted their resources to counteract defendants' actions that "directly affected and interfered with [their] core business activities – not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer." *FDA v. All. For Hippocratic Med.*, 602 U.S. 367, 395 (2024). Put another way, Plaintiffs must show that they devoted resources to overcome a statute that directly interferes with their efforts to "conduct[] massive voter registration, voter education, voter

engagement, and election protection programs in numerous counties across Florida." Am. Compl. ¶ 19. Plaintiffs do not make this showing – Florida Rising does not allege a diversion of resources, and FRT's attempt falls short.

A. FRT claims the voter verification statute "forc[es] [it] to divert its limited resources to resolve voter-registration problems for Floridians." *Id.* at ¶ 19. FRT alleges it "launch[ed] an outreach program designed specifically to contact individuals wh[o] . . . have been denied or placed in 'unverified' status due to the Exact Match Protocol." *Id.* at ¶ 21. And it insists this diversion "frustrates a core component of Florida Rising's mission by interfering with its ability to register Floridians to vote." *Id.* at ¶ 20.

But FRT acknowledges that it "diverts" resources to "resolve voter-registration problems for Floridians *they assist with registering to vote*." Am. Compl. ¶ 19. In other words, they created a program and deployed staff and resources to *help people with the same problems on which they were already assisting* – registering to vote. Indeed, FRT notes that "in connection with th[e] [outreach] program, [FRT staff] help[s] impacted applicants navigate the barriers to registration erected by the Exact Match Protocol, so that they can vote." *Id.* at ¶ 21.[3] Thus, the voter verification statute does not "directly affect[t] and interfer[e] with [Plaintiffs'] core business activities" – it *promotes* them. *See All. for Hippocratic Med.*, 602 U.S. at 395. And because FRT does not – and cannot –

[3] *See also id.* ("For many years, Florida Rising Together has assisted voters who are confused about their voter registration status and adversely impacted by the Exact Match Protocol.").

plausibly allege interference, it lacks diversion of resources standing. *See Havens Realty*, 455 U.S. at 379 (finding plaintiffs had standing because defendant's practices "perceptibly impaired [the organization's] ability to provide counseling and referral services for low- and moderate-income homeseekers").[4]

At most, Plaintiffs claim the voter verification statute requires them to take additional steps to accomplish their existing goal of registering new voters. In other words, "simply a setback to [their] abstract social interests." *Id.* But a setback does not confer standing. *All. for Hippocratic Med.*, 602 U.S. at 394 ("A plaintiff must show far more than simply a setback to the organization's abstract social interests.") (citation omitted).

B. FRT also alleges that the voter verification statute forces it to "deploy staff and other resources that would otherwise be devoted to the organization's core voter registration, voter education, and get-out-the-vote work." Am. Compl. ¶ 21. And it claims this diversion means FRT "is unable to reach as many other potential registrants as it would otherwise be capable of reaching." *Id.*

But an "organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. *All. for Hippocratic Med.*, 602 U.S. at 394. Organizations "cannot manufacture [their]

[4] *Cf. Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995) (finding plaintiff did not have organizational standing because challenged statute "has not forced [plaintiff] to expend resources in a manner that keeps [it] from pursuing its true purpose of monitoring the government's revenue practices").

own standing in th[is] way." *Id.* Otherwise, "all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies." *Id.* at 395. The diversion theory "does not support such an expansive theory of standing." *Id.*

C. But even if it did, FRT would still lack organizational standing because its members do not have a credible fear that the voter verification process will even apply to their applications.

An organizational plaintiff must demonstrate "*both* that it has diverted its resources *and* that the injury to the identifiable community that the organization seeks to protect is itself a legally cognizable Article III injury that is closely connected to the diversion." *City of S. Miami*, 65 F.4th at 638–39. In other words, plaintiffs must allege concrete harm to an identifiable community – not speculation based on "mere conjecture about possible governmental actions." *Id.* at 639 (cleaned up) For instance, in *Georgia Latino*, the plaintiff organizations diverted their volunteers from teaching citizenship classes to educating their members how to deal with a new immigration law. *See* 691 F.3d at 1260. The Court held this diversion was a concrete injury because the members faced a "credible threat of detention" under the new immigration law, which forced organizations to divert their resources to protect them from this imminent harm. *Id.* at 1258.

Recall that applicants can register to vote in Florida online through the Secretary of State's secure portal, § 97.0525(2), Florida Statutes; electronically through the DHSMV, § 97.057, Florida Statutes; or via mail or hand delivery to any

supervisor of elections, the Secretary of State's Division of Elections, a driver license office, a voter registration agency, or an armed forces recruitment office, among other places, § 97.053(1), Florida Statutes. The Secretary's regulations also provide that "[a]ny valid application for new registration that is complete and *submitted other than electronically through DHSMV* shall be routed . . . for verification" of the applicant's information pursuant to § 97.053(6). Fla. Admin. Code ("F.A.C.") Rule 1S-2.039(5) (emphasis added).

In other words, the voter verification statute applies *only* to applications submitted online through its secure portal or delivered to one of the statutorily enumerated locations. But the Amended Complaint says nothing about how FRT's members plan to register. Thus, FRT does not plausibly allege a credible threat that the voter verification statute applies to their applications. As a result, FRT diverted resources to address "fears of hypothetical future harm that is not certainly impending," which "amounts to a self-imposed injury 'based on speculative fears of future harm.'" *Id.* at 640. But "[s]peculative harms are no more cognizable dressed up as an organizational injury than as an associational one." *Id.* And "an organization can no more spend its way into standing based on speculative fears of future harm than an individual can." *Id.* at 639 (cleaned up).

3. Plaintiffs do not trace the alleged injury to the Secretary or show that a favorable judgment will redress that injury.

Plaintiffs also do not establish the second and third elements of Article III standing – traceability and redressability. To establish traceability, a plaintiff

"must show a 'causal connection' between [its] injury and the challenged action of the defendant . . ., as opposed to the action of an absent third party." *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019) (en banc) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). And for redressability, Plaintiffs "must show that it is likely, not merely speculative, that a favorable judgment will redress [their] injury." *City of S. Miami*, 65 F.4th at 640 (citation omitted).

A. Plaintiffs demand the Secretary "discontinue the Exact Match Protocol at least insofar as it results in Florida Rising members and voter applicants registered by Florida Rising Together being placed in 'unverified' status." Am. Compl. ¶ 194(a). Plaintiffs use the term "Exact Match Protocol" as a shorthand for the process of verifying applications under section 97.053(6), Florida Statutes. Their description of the protocol, however, explicitly relies on the Secretary's administrative rules, specifically Rule 1S-2.039(4)-(5), Florida Administrative Code. And these rules require the Supervisors of Elections, not the Secretary, to verify applicants' information before placing them on the voter rolls.[5]

Indeed, upon receiving an application, Supervisors enter the applicant's information into the Florida Voter Registration System (FVRS) "as it appears" or, if they cannot "discern the correct or intended spelling of the name," "to the extent possible." Rule 1S-2.039(4)(c), FAC. If the Supervisors determine the applicant is otherwise eligible to vote, they route his or her FVRS record to the DHSMV or SSA

[5] *See* § 97.053(6), Fla. Stat. ("If the applicant[s] provide[] the necessary evidence [to verify their information], the supervisor shall place [their] name on the registration rolls as an active voter.").

(based on the information provided) to verify his or her first name, last name, date of birth, residential address, and personal identification number provided by the applicant. *See id.* 1S-2.039(5).[6] The DHSMV and SSA then determine whether the applicant's information matches the agency's record for that applicant. *Id.* If it does, they route the "verified" application back to the Supervisors to place the applicant on the voter rolls. *Id.* 1S-2.039(5)(a)(1). If not – and this is where the Secretary comes in – the agencies route the "unverified" application to the Secretary's Bureau of Voter Registration Services ("BVRS"). *Id.* 1S-2.039(5)(a)(2).

There, the Secretary's staff reviews the unverified application again to determine whether a data entry error prevented verification. *Id.* If it did, BVRS corrects the FVRS record and re-submits it to DHSMV or SSA for matching. If not, BVRS simply "flag[s] the [applicant's FVRS' record as unverified" and sends it to the Supervisor of the applicant's home county for further action. *Id.* 1S-2.039(5)(a)(3). In other words, the Supervisors, with the help of DHSMV and SSA, perform the "matching" and verification – not the Secretary. As a result, Plaintiffs' alleged injury is not redressable by the Secretary because they do not implement the Exact Match Protocol. *See Lujan*, 504 U.S. at 571 (holding plaintiffs lacked redressability against defendant that could not implement requested remedy).

[6] For applicants who provide a driver license or Florida identification card number, Supervisors route the applicant's FVRS record to the DHSMV, which attempts to match the FVRS record to the applicant's record in its Driver and Vehicle Information Database ("DAVID"). *Id.* For applicants who provide their SSN4, Supervisors transmit the applicant's FVRS record to SSA, which attempts to match it to records contained in its Help America Vote Verification database ("HAVV"). *Id.*

Accordingly, Plaintiffs demonstrate neither traceability nor redressability against the Secretary.

B. Similarly, the Help America Vote Act ("HAVA"), in the section titled "[v]erification of voter registration information," provides that "an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes . . . the applicant's driver's license number; or . . . the last 4 digits of the applicant's social security number."[7] 52 USC § 21083(5)(A)(i). And it directs that the "State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law." *Id.* § 21083(5)(A)(iii). In other words, HAVA requires states to use an applicant's driver's license number, social security number, or state identification card number to verify his identity before placing the applicant on the rolls. Or, the precise "protocol" Plaintiffs challenge.

Likewise, Plaintiffs allege the database the SSA uses to verify applicants' information (HAVV) is "error-prone" and thereby "routinely produce[s] inconsistent results and high rates of false negatives." Am. Compl. ¶ 76. But HAVA again requires states to do what Florida is already doing. Section 21083(a)(5)(B)(i) directs a state's chief election official and the "official responsible for the State motor vehicle authority of a State" to "*match* information in the database of the

[7] HAVA also provides that if an applicant "has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes." 52 USC § 21083(5)(A)(ii). Section 97.053(6) also accounts for this option by allowing applicants to provide their "Florida identification card number" to verify their identity.

statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to *verify the accuracy of the information provided on applications for voter registration*." (emphasis added).[8] In other words, again, what Florida already does.

The Eleventh Circuit "ha[s] held traceability to be lacking if the plaintiff would have been injured in precisely the same way without the defendant's alleged misconduct." *Walters v. Fast AC, LLC*, 60 F.4th 642, 650 (11th Cir. 2023) (citation omitted). In other words, "a plaintiff lacks standing to sue over a defendant's action if an independent source would have caused him to suffer the same injury." *Id.* at 650-51 (citation omitted). Here, that independent source is HAVA, which requires the same protocol Plaintiffs challenge and thereby would cause the same harm they allege, regardless of any state verification protocol. And because the Secretary is therefore not the cause of Plaintiff's alleged injury, relief against it will not redress its harm. *See Jacobson*, 974 F.3d at 1254. Thus, for this additional reason, Plaintiffs cannot show either traceability or redressability as to the Secretary.[9]

4. Plaintiffs do not have prudential standing to challenge the voter verification statute on behalf of third parties.

Last, even assuming Plaintiffs specifically identified one of their members with an actual injury, properly alleged diversion of resources, or traced their

[8] Interestingly, Plaintiffs do not allege that the DHSMV's DAVID database has such problems.
[9] *See Ohio Republican Party v. Brunner*, 544 F.3d 711, 713-14 (6th Cir. 2008) (en banc) (denying motion to vacate TRO requiring Ohio Secretary of State to reactivate verification process required by HAVA), *vacated*, 555 U.S. 5 (2008) ("express[ing] no opinion on the question of whether HAVA is being properly implemented" while vacating TRO on other grounds).

alleged injuries to the Secretary, Plaintiffs would still lack standing to challenge the voter verification statute on behalf of third parties.

Plaintiffs' claims each invoke the right to vote. *See* 52 U.S.C. § 10301(a); Am. Compl. ¶ 157; 52 USC § 20507(b)(1)-(2). But people vote, not organizations. *Cf. Gill v. Whitford*, 585 U.S. 48, 65 (2018) (noting that voting rights are "individual and personal in nature") (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)); *see also Vote.Org v. Callanen*, 39 F.4th 297, 303 (5th Cir. 2022). Thus, Plaintiffs assert the constitutional rights of third parties – eligible Florida voters. *See* Am. Compl. ¶ 1.

As a general rule, litigants may sue only on their own rights and cannot base claims "on the legal rights or interests of third parties." *Valley Forge Christian Coll. v. Am. United for Separation of Church and State, Inc.*, 454 U.S. 464, 474 (1982) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). The Supreme Court, however, has crafted a prudential exception to this rule whereby plaintiffs may assert the rights of third parties upon "two additional showings": (1) the plaintiff "has a 'close' relationship with the person who possesses the right," and (2) "there is a 'hindrance' to the possessor's ability to protect his own interests." *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004) (quoting *Powers v. Ohio*, 499 U.S. 400, 411 (1991)). This inquiry is distinct from, and in addition to, the Article III standing analysis. *Id.* at 129. And plaintiffs bear the burden to show third party standing. *See Warth*, 422 U.S. at 518. Plaintiffs do not even attempt to meet it here.

A. A relationship between a plaintiff and an absent third party is sufficiently close if "the former is fully, or very nearly, as effective a proponent of the right as

the latter." *Powers*, 499 U.S. at 413 (citation omitted). Exemplary relationships include those between doctors and patients, employers and employees, and vendors and customers. On the other hand, *Kowalski* held that the relationship between criminal defense attorneys and "as yet unascertained . . . criminal defendants who will request, but be denied, appellate counsel" was "no relationship at all." *Kowalski*, 543 U.S. at 125-26 (citations omitted). In the same way, the third parties with whom Plaintiffs claim a close relationship are "as yet unascertained" Floridians who may not be registered to vote under the voter verification statute. But Plaintiffs cannot sue based on the future denial of another's right. *See Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 265–66 (1992).

Courts also consider a plaintiff's monetary incentives for asserting a third party's rights when determining whether that plaintiff will advocate as effectively as the third parties. *See, e.g.*, *Young Apartments, Inc. v. Town of Jupiter*, 529 F.3d 1027, 1042 (11th Cir. 2008). Plaintiffs, however, do not allege that they charge for the assistance they provide. Thus, Plaintiffs' case for third party standing is worse off even than the attorneys in *Kowalski*, who at least demonstrated a potential vendor-customer relationship. *See Callanen*, 39 F.4th at 304.

B. As to the second exception, nothing prevents unregistered Floridians allegedly injured by the voter verification statute from joining this lawsuit or filing their own to assert their right to vote. *See Kowalski*, 543 U.S. at 130; *Callanen*, 39 F.4th at 304. And surely Plaintiffs' members are no more inhibited than the

indigent prisoners in *Kowalski* – whom the Supreme Court determined could advance their own rights via *pro se* litigation. *See* 543 U.S. at 131.

For each of these reasons, Plaintiffs lack third-party standing to challenge the voter verification statute on behalf of Florida voters.

II. The Amended Complaint fails to state a claim for undue burden under the First and Fourteenth Amendments.

Count I alleges that the voter verification statute, by preventing applicants from registering to vote until state officials verify their information, "impose[s] severe burdens on Floridians' fundamental right to vote." Am. Compl. ¶ 13.

But this claim has at least two threshold flaws. First, the Amended Complaint alleges a facial challenge but does not, and cannot, show that the statute is unconstitutional in all circumstances. In addition, it invokes the rights of a small group of voters, rather than voters generally, as the *Anderson/Burdick* test requires. Most importantly, the Amended Complaint does not state a claim for undue burden under the First and Fourteenth Amendments because the State of Florida's interests in secure elections far outweigh the slight inconvenience imposed by the voter verification statute.

1. Plaintiffs' facial challenge to Section 97.053(6) fails to state a claim because it cannot show the statute is invalid under all circumstances.

Plaintiffs ask this Court to "declar[e] that the Defendants' use of an Exact Match Protocol . . . under Fla. Stat. § 97.053(6) violates [] the fundamental right to vote under the First and Fourteenth Amendments" and order the Secretary to discontinue applying the protocol to voter registration applicants. Am. Compl. ¶¶

192, 194. Where, as here, "an injunction . . . reach[es] beyond the particular circumstances of th[is] plaintif[f]," it "must therefore satisfy [the Supreme Court's] standards for a facial challenge to the extent of that reach." *Doe v. Reed,* 561 U.S. 186, 194 (2010). Plaintiffs do not meet that high bar.

Courts evaluating undue burden claims on the right to vote under the First and Fourteenth Amendments apply the *Anderson-Burdick* test. *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019). *Anderson/Burdick* 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 v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

Facial challenges, as distinguished from as-applied challenges, "seek[] to invalidate a statute or regulation itself." *Indigo Room, Inc. v. City of Fort Myers*, 710 F.3d 1294, 1302 (11th Cir. 2013) (citation omitted). The distinction, however, "is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge." *Am. Fed'n of State, Cnty. & Mun. Emps. Council 79 v. Scott*, 717 F.3d 851, 863 (11th Cir. 2013). Rather, the distinction "goes to the breadth of the remedy employed by the Court." *Citizens United v. Fed. Election Comm'n,* 558 U.S. 310, 331 (2010). "[W]hen a plaintiff mounts a facial challenge to a statute or regulation,

the plaintiff bears the burden of proving that the law could never be applied in a constitutional manner." *DA Mortg., Inc. v. City of Miami Beach*, 486 F.3d 1254, 1262 (11th Cir. 2007). Put another way, "the challenger must establish that no set of circumstances exists under which the Act would be valid." *U.S. v. Salerno*, 481 U.S. 739, 745 (1987).

Section 97.053(6)'s alleged burden, however, applies only under certain circumstances. Verifying applicants' personal information burdens their right to vote only if (1) they *have* that right – i.e., are *eligible* to vote and (2) they provide accurate information that does not match the numbers on file with DHSMV or SSA through no fault of their own. If the applicants are not eligible to vote, then there is no right to burden. Likewise, if the applicants are eligible but provide incorrect information on their application, their mistake caused the burden, not the State's. And if the applicants' information matches the numbers on file, they are approved and placed on the voter rolls – with no burden on their right to vote.

Thus, Plaintiffs cannot show that applying the "protocol" will cause an undue burden in *every* circumstance. As a result, the Amended Complaint does not state a facial undue burden claim, and Count I must be dismissed.

2. Plaintiffs do not state a claim under *Anderson/Burdick* because the Amended Complaint invokes only the rights of rejected applicants.

Anderson/Burdick is also not a constitutional catch-all. The test requires courts to first "identify a burden before [they] can weigh it." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 205 (Scalia, J., concurring). Once a court

identifies a burden on the right to vote, it "consider[s] the laws and their reasonably foreseeable effect on *voters generally*," not on a subset of the electorate. *Id.* at 206. That is because *Anderson/Burdick* requires courts to "weigh these burdens against the state's interests by looking at the whole electoral system," consider provisions that make voting easier, and avoid "substitution of judicial judgment for legislative judgment" along the way. *Luft v. Evers*, 963 F.3d 665, 671-72 (7th Cir. 2020); *cf. Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 671 (2021) (holding that, in the context of § 2 of the VRA, "courts must consider the opportunities [to vote] provided by a State's entire system of voting"). Indeed, the Supreme Court's subsequent cases "refute the view that individual impacts are relevant to determining the severity of the burden it imposes," and thereby "follo[w] *Burdick's* generalized review of nondiscriminatory election laws." *Crawford*, 553 U.S. at 205-06 (Scalia, J., concurring); *see also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *Clingman v. Beaver*, 544 U.S. 581, 586–587 (2005).

Here, the alleged burden applies only to a narrow set of potential voters – those whose application information did not match their numbers on file with the DHSMV or SSA. In other words, under Plaintiffs' theory, the voter verification statute burdens only the small percentage of applicants whose information cannot be verified. Eligible applicants that provide accurate information suffer no burden. Thus, Plaintiffs seek to vindicate only the rights of rejected applicants, rather than

the rights of all Florida voters, as *Anderson/Burdick* requires. Such allegations do not state an undue burden claim.[10]

3. The Amended Complaint does not state a claim for undue burden because the State's interests in secure elections outweigh the statute's slight burden.

"[A]s a practical matter, there must be substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974). As a result, "[e]lection laws will invariably impose some burden upon individual voters." *Burdick*, 504 U.S. at 434.

A. As discussed, courts considering whether state election laws unduly burden the right to vote "weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments . . . against the precise interests put forward by the State as justifications for the burden imposed by its rule" *Burdick*, 504 U.S. at 434 (citation modified). Under this standard, "the rigorousness of [a court's] inquiry . . . depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights." *Id.* "[W]hen those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance.'" *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). Alternatively, when an

[10] *See Crawford*, 553 U.S. at 202-03 (concluding Indiana law did not impose an undue burden because "[w]hen we consider only the statute's broad application to all Indiana voters we conclude that it 'imposes only a limited burden on voters' rights'" (quoting *Burdick*, 504 U.S. at 439); *cf. Burdick*, 504 U.S. at 446 (Kennedy, J., dissenting) ("The majority's analysis ignores the inevitable and significant burden a write-in ban imposes upon some individual voters . . . .").

election statute "imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* (quoting *Anderson,* 460 U.S. at 788). Under this "flexible standard," "States . . . have considerable leeway to protect the integrity and reliability of . . . election processes generally." *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009).

The Court can perform this balancing test at the motion to dismiss stage. Indeed, the Eleventh Circuit recently did so in *Polelle v. Florida Secretary of State*, 131 F.4th 1202 (11th Cir. 2025). There, a voter registered "No Party Affiliation" challenged Florida's closed system of primary elections, which prevents voters not registered with a political party from participating in a party's primary. *Id.* at 1205. The voter alleged that Florida's closed primary statute unduly burdens his right to vote and the Secretary of State moved to dismiss, alleging the voter failed to state a claim under *Anderson/Burdick*. The district court performed the required balancing test and agreed, dismissing the claim after concluding that Florida's interests in preserving political parties outweighed the minimal burden on the plaintiff's First and Fourteenth Amendment rights. *Polelle v. Byrd*, No. 8:22-CV-1301, 2022 WL 17549962, at *2 (M.D. Fla. Nov. 3, 2022). And the Eleventh Circuit affirmed the order dismissing the voter's claim, concluding that "Florida's interests in supporting parties as identifiable groups and improving electioneering efforts

outweigh the minimal burdens that Florida's closed-primary system imposes on Polelle's First and Fourteenth Amendment rights." *Polelle*, 131 F.4th at 1240.

Thus, the Court can, and should, weigh Florida's interest in preventing voter registration fraud against the voter verification statute's minimal burden on Plaintiffs' right to vote. Doing so shows that the Amended Complaint fails to state a claim for undue burden under *Anderson/Burdick*.

B. As the Supreme Court has recognized, "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Voter fraud, however, "drives honest citizens out of the democratic process and breeds distrust of our government." *Id.* Thus, "[a] State indisputably has a compelling interest in preserving the integrity of its election process." *Id.* (internal citation omitted).

Florida's "interest in preventing election fraud . . . 'provides a sufficient justification for carefully identifying all voters participating in the election process.'" *Billups*, 554 F.3d at 1353 (quoting *Crawford*, 553 U.S. at 196). The voter verification statute furthers that important regulatory interest by ensuring the accuracy of Florida's voter registration rolls and thereby boosting public confidence in the electoral process. And while *Anderson* "requires a state to identify the interests that it seeks to further by its regulation . . . it does not require any evidentiary showing or burden of proof to be satisfied by the state government." *Billups*, 554 F.3d at 1353 (cleaned up); *see also Timmons*, 520 U.S. at 364 (noting courts do not "require elaborate, empirical verification of the

weightiness of the State's asserted justifications"). Indeed, the Supreme Court in *Crawford* upheld an Indiana voter verification law designed to address in-person voter fraud despite there being "no evidence of any such fraud actually occurring in Indiana at any time in its history." 553 U.S. at 194.

C. Section 97.053(6), Florida Statutes, imposes little, if any, burden on voter registration applicants. It simply asks applicants with a driver's license number or Florida identification card number to place that number on their applications, and asks all other applicants who have Social Security numbers to indicate the last four digits of that number. *See* § 97.053(6), Fla. Stat. Florida protects each applicant's identifying information from public disclosure, *see* § 97.0585(1)(c), Fla. Stat., and does not ask any applicant to obtain a driver's license, Florida identification card, or Social Security number to register.

The statute even allows applicants whose information was not verifiable to validate their applications after the book-closing deadline. *See* 97.053(6), Fla. Stat. Supervisors of election must notify such applicants that their applications are unverified, and applicants have more than 30 days after registration books close – up to 5 p.m. two days after the election – to verify the identifying information they provided. *See id.* And they can even cast a provisional ballot if they have not yet verified their information by election day, which will be counted if they do so by "5 p.m. of the second day following the election." *Id.*

In addition, to the extent Plaintiffs claim that data errors burden applicants, the Secretary's own rules significantly reduce any such burden. As Plaintiffs

acknowledge, if an applicant's information does not match his or her information on file, BVRS conducts a hand review to "check for data entry errors using the scanned image of the application in the [Florida Voter Registration System], and a comparison of information available from DHSMV." Rule 1S-2.039(5)(a)(2), F.A.C.; Am. Compl. ¶¶ 72-75. And "[i]f a data entry error occurred, the BVRS shall correct the application record and resubmit the record to DHSMV or SSA for verification." Rule 1S-2.039(5)(a)(2), F.A.C.

Plaintiffs counter that the protocol "impose[s] severe burdens on Floridians' fundamental right to vote" because a failure to verify an applicant's information "prevent[s] applicants from registering to vote." Am. Compl. ¶ 159. But they misunderstand the nature of this inquiry. The measure of the burden is not whether an applicant can register to vote if it does not comply. If it were, *every* voter registration requirement would impose a "severe" burden – and thus be subject to strict scrutiny. Rather, the relevant question is what the statute requires applicants to provide *in order to register*. Here, as discussed, that simply means providing information to verify your identity.

D. Courts, including the Supreme Court and the Eleventh Circuit, have held that similar, or even more burdensome, anti-fraud measures do not impose a "severe" burden. Most notably, the Supreme Court in *Crawford* held that an Indiana law requiring voters to present a government-issued photo ID when voting "imposes only a limited burden on voters' rights," despite requiring some voters to procure a photo ID before voting. 553 U.S. at 203 (quoting *Burdick*, 504 U.S. at

439). The Court also noted that "severity of that burden is, of course, mitigated by the fact that, if eligible, voters without photo identification may cast provisional ballots that will ultimately be counted." *Id.* at 199. Accordingly, given the Court's recognition that "[t]here is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters," it held that "[t]he application of the statute to the vast majority of Indiana voters is amply justified." *Id.* at 196, 204. Likewise, the Eleventh Circuit in *Billups* concluded that a photo ID requirement like that in *Crawford* was an "insignificant" and "slight" burden. 554 F.3d at 1354. And it held that "[t]he legitimate state interest in preventing voter fraud, as recognized in *Crawford*, is more than sufficient to outweigh the limited burden of producing photo identification." *Id.* at 1354-55 (internal quotation omitted); *compare Burdick*, 504 U.S. at 438–39 (concluding ban on write-in voting "impose[d] only a limited burden"), *with Harper v. Va. State Bd. Of Elections*, 383 U.S. 663, 668-70 (1966) (invalidating poll tax as a severe burden), *and Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 183–84 (1979) (same for regulations that effectively barred political party from ballot).

The same is true in other circuits. For example, in *Gonzalez v. Arizona,* the Ninth Circuit declared that a state law requiring applicants to submit a verifiable driver license number or other evidence of citizenship with their registration applications did not impose a severe burden because a "vast majority of Arizona citizens . . . already possess at least one of the documents sufficient for registration." 485 F.3d 1041, 1050 (9th Cir. 2007). And the Fourth Circuit in

Greidinger v. Davis held that although requiring a Social Security number on a voter registration application compelled a "profound invasion of privacy," "no substantial burden would exist" if the disclosure were required only for the "internal use" of election officials. 988 F.2d 1344, 1354 & n.10 (4th Cir. 1993).

And the Northern District of Florida found the voter verification statute's burden "is not severe," but rather "impose[s] a constitutionally acceptable burden on a remarkably small fraction of applicants." *Florida State Conf. of NAACP v. Browning,* 569 F. Supp. 2d 1237, 1256-57 (N.D. Fla. 2008) ("*Browning I*").[11] Indeed, the Court held the challenged statute "is no more burdensome – indeed, it is less so – than election regulations recently sustained by federal courts, including the Supreme Court in *Crawford*." *Id.* at 1252. Thus, Florida's interest in preventing voter fraud and thereby "preserving the integrity of its election process," which is "indisputably" a "compelling interest," *Purcell*, 549 U.S. at 4, clearly outweighs any burden the challenged statute imposes.[12] For that reason, Count I fails to state a claim under *Anderson/Burdick*. *See Polelle*, 131 F.4th at 1240.[13]

[11] This motion references two district court orders from *Browning*. The order discussed later in Section IV (labeled *Browning II*) granted the plaintiffs' first motion for preliminary injunction on their HAVA claims and the Secretary's motion to dismiss the claim brought under § 2 of the VRA. The order discussed in this paragraph (*Browning I*), which came to the district court on remand after an interlocutory appeal reversed the injunction (*Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008)), denied Plaintiffs' second motion for preliminary injunction that raised two counts: undue burden and equal protection.

[12] Plaintiffs acknowledge that "election integrity" is a "legitimate state interest." Am. Compl. ¶ 155.

[13] *Accord See Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d 1128, 1220 (N.D. Ga. 2022) (rejecting undue burden challenge to Georgia's "exact match" protocol because "the burden on voters is relatively low" and "the State's justifications outweigh any potential burdens on voters").

III. The Amended Complaint fails to state a claim under § 8 of the NVRA.

Statutory interpretation "begins and ends with the statutory text." *Singh v. U.S. Att'y Gen.*, 945 F.3d 1310, 1314 (11th Cir. 2019). Accordingly, we begin there.

1. The NVRA applies to voter maintenance and removal statutes, not registration restrictions.

Section 20507(b) regulates the steps officials may take to "ensur[e] the maintenance of an accurate and current voter registration roll." 52 U.S.C. 20507(b). Voter rolls are centralized lists of every registered voter. *See id.* § 21083(a). Thus, for Plaintiffs to state a claim under § 20507(b), the voter verification statute must regulate how the Secretary "ensures the maintenance of," or "maint[ains]," the list of registered voters. *Id.* § 20507(b).

The NVRA does not define either "maintenance" or "maintain." When a statutory term is undefined, courts give the term its ordinary meaning. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012). To ascertain the ordinary meaning of undefined terms, courts often turn to dictionaries in existence around the time of enactment. *Paresky v. United States*, 995 F.3d 1281, 1285 (11th Cir. 2021). Section 20507(b) appeared in the original 1993 version of the NVRA. Thus, we look to dictionaries in effect around that time.

The word "maintenance" is defined as "[t]he work of keeping something in proper condition," *Maintenance*, AMERICAN HERITAGE DICTIONARY (3d ed. 1992), or "in a state of repair or efficiency," *Maintenance*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993). Similarly, "maintain" means to "keep up" or

"in good order." *Maintain*, BLACK'S LAW DICTIONARY (6th ed. 1990); *Maintain*, AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (3d ed. 1992). Thus, § 20507(b) applies to laws that keep the list of registered persons "in proper condition" or "in good order." These definitions match § 20507(b)'s title: "[c]*onfirmation* of voter registration." But they do not match the voter verification statute, titled "[a]cceptance of voter registration applications." § 97.053, Fla. Stat.

Further, while the statutory text controls, legislative history consistent with that text can bolster its plain meaning. *See CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1229 n.7 (11th Cir. 2001) (recognizing courts routinely review legislative history that "supports and complements the plain meaning of statutory language") (citation omitted). That is because these kinds of "legislative statements, particularly committee reports, can be extremely helpful in understanding what Congress intended – in determining what the statute means." *Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1453 (9th Cir. 1992).

That is the case here. The Senate committee's report on the NVRA demonstrates that § 20507(b) was intended "to prohibit selective or discriminatory *purge* programs." S. REP. No. 103-6, 103rd Cong., at 31 (1993) ("Subsection (b) sets forth the standards for the confirmation of voter registration . . . The purpose of this requirement is to prohibit selective or discriminatory *purge* programs."). The Supreme Court agrees, describing § 20507(b) as a limit on "state removal programs." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 764 (2018). And the District of Arizona recently concluded that "[s]ection 8(b) does not apply to state

programs regarding individuals not yet registered to vote. Section 8(b), which expressly addresses confirming rather than soliciting voter registration, speaks to ensuring the *maintenance*, not the enlargement, of current voter registration rolls." *Mi Familia Vota v. Fontes*, 691 F. Supp. 3d 1077, 1095 (D. Ariz. 2023).

Applying the dictionary definitions, legislative history, and caselaw makes clear that § 20507(b), by its plain terms, "appli[es] to state removal programs," not voter registration policies like the voter verification statute. *Husted*, 584 U.S. at 764. Thus, the Amended Complaint fails to state a claim under § 8 of the NVRA.

2. Section 97.053(6) applies uniformly throughout the State of Florida and is not discriminatory.

But even if § 20507(b) applied to the voter verification statute, Count II still fails to state a claim because the Amended Complaint does not show that it is not uniform or is discriminatory.[14] *See* 52 U.S.C. § 20507(b)(1).

Looking again to the plain text, "uniform" is defined as "[c]onforming to one rule, mode, pattern, or unvarying standard" and "applicable to all places or divisions of a country." *Uniform*, BLACK'S LAW DICTIONARY (6th ed. 1990). And the Senate committee's report on the NVRA states that "[t]he term 'uniform' is intended to mean that any purge program or activity must be applied *to an entire jurisdiction*." S. REP. No. 103-6, 103rd Cong., at 31 (1993); *accord* H.R. Rep. No. 103-9 at 15 (Feb. 2, 1993) (same).

[14] Section 20507(b)(1) also provides that the "program or activity" must be "in compliance with the Voting Rights Act of 1965." Count II fails to state a claim under this requirement for the reasons demonstrated in Section IV, *infra*.

As for "nondiscriminatory," the Supreme Court strongly suggested in *Husted* that claims brought under § 20507(b)(1) must show both discriminatory effect *and* discriminatory intent. 584 U.S. at 779 (concluding plaintiff did not state a claim under § 20507(b)(1) because neither he nor "Justice SOTOMAYOR has . . . pointed to any evidence in the record that Ohio instituted or has carried out its program with discriminatory intent").

Applying these sources makes clear that to state a claim under § 20507(b)(1), Plaintiffs must show *both* that the voter verification statute does not apply equally across the State of Florida *and* that the Secretary applies the statute with the intent to discriminate against black voters. Plaintiffs cannot make the first showing because § 97.053(6), Florida Statutes, is a general law. *See Venice HMA, LLC v. Sarasota Cnty.*, 228 So. 3d 76, 80 (Fla. 2017) ("[A] general law operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state.") (citation omitted). And they do not make the second showing because the Amended Complaint does not allege a single fact suggesting that Defendants intend to discriminate against a minority group.

Accordingly, Count II must be dismissed – both because § 20507(b) does not apply to voter registration policies like the voter verification statute and because the Amended Complaint does not plausibly allege that the statute violates § 8 of the NVRA.

IV. The Amended Complaint fails to state a claim under § 2 of the VRA.

Section 2(a) of the Voting Rights Act provides that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 USC 10301(a). But unlike discrimination claims brought under the Fourteenth and Fifteenth Amendments, which require proof of both discriminatory intent and discriminatory effect, § 2(a) requires only proof of discriminatory "results." *Greater Birmingham Ministries v. Sec'y of State for Ala.*, 992 F.3d 1299,1329 (11th Cir. 2021) (quoting *Chisom v. Roemer*, 501 U.S. 380, 403–04 (1991)). Despite this broad language, "[s]ection 2 does not prohibit all voting restrictions that may have a racially disproportionate effect." *Johnson v. Governor of Fla.*, 405 F.3d 1214, 1228 (11th Cir. 2005). Section 2 is an "equal-treatment requirement," not an "equal-outcome command." *Frank v. Walker*, 768 F.3d 744, 754 (7th Cir. 2014).

Instead, Plaintiffs must show that the challenged law "*caused* the denial or abridgment of the right to vote on account of race." *Greater Birmingham*, 992 F.3d at 1330. Put another way, Plaintiffs must show that racial bias *caused* the disparity between the percentage of white and black Floridians whose registration applications were rejected under the voter verification statute. *See Johnson*, 405 F.3d at 1238 (Tjoflat, J., specially concurring) (stating that the words "on account of" contained in § 2(a) require a "showing that racial bias in the relevant

community *caused* the alleged vote denial or abridgment"); *Nipper v. Smith*, 39 F.3d 1494, 1515 (11th Cir. 1994) (stating that "to be actionable," § 2 claims must show that the challenged voting practice "depends on race or color, not . . . some other racially neutral cause," to preclude minority voters from equally participating in the political process).

Under § 2(b), this analysis turns on whether, based on the totality of circumstances, "[black Floridians] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Johnson*, 405 F.3d at 1228 (citation omitted). When making this inquiry, courts have historically considered a non-exclusive list of objective factors (the "Senate factors") detailed in a Senate Report accompanying the 1982 amendments. *Id.* at 1227 n.26 (citing S. Rep. No. 97–417, at 28–29, 1998 U.S.C.C.A.N. at 206; The Supreme Court identified and expounded upon them in *Thornburg v. Gingles*, 478 U.S. 30, 36 (1986). They include the extent of any history of discrimination affecting the right to vote, the scope of racially polarized voting, and the degree to which discrimination hinders the ability of those affected by the challenged law to participate in the voting process.

The Supreme Court in *Brnovich*, however, questioned the usefulness of the *Gingles* factors for evaluating vote *denial* claims – like Count III – given that *Gingles* was a vote *dilution* case, wherein the plaintiff claimed that legislative districting plans diluted the ability of particular voters to affect the outcome of elections. *See Brnovich*, 594 U.S. at 672; *see also Gingles*, 478 U.S. at 47.

Accordingly, the Supreme Court identified other relevant factors, including the size and degree of the burden, the size of the disparities between the protected class and other groups, the opportunities provided by a state's voting system, among others. *Brnovich*, 594 U.S. at 665-66; 668-71. But it was careful to note these factors are "guideposts," and are neither exhaustive nor prescriptive. *Id.* at 666.

Nonetheless, *Brnovich* clarified that "the core of § 2(b) is the requirement that voting be 'equally open'" to minority and non-minority groups alike. *Id.* at 668. It explained this phrase means that members of protected groups have an equal opportunity to vote because there are no "restrictions as to who may participate," such as requirements of "special status, identification, or permit[s] for entry or participation." *Id.* at 667-68. Putting it all together, to state a claim under § 2(a), Plaintiffs must show that "specific and relevant racial biases in society interact with [the challenged practice], resulting in a denial of the franchise on account of race or color." *Johnson*, 405 F.3d at 1230 n.31 (cleaned up).

Plaintiffs fall short. They neither allege that the voter verification intentionally discriminates on the basis of race, nor do they discuss any of the objective *Gingles* factors that courts consider when analyzing § 2 challenges. Instead, they claim, without supporting evidence or further explanation, that "Florida's Exact Match is compounded by a legacy of historic and deliberate disenfranchisement and interacts with the effects of racial and economic discrimination to restrict access to the franchise." Am. Compl. ¶ 9. And they insist that the protocol "raises additional barriers to register to vote . . . denying them an

equal opportunity to participate in Florida's electoral process." *Id.* But conclusions and magic words are not enough. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("[L]abels and conclusions, and a formulaic recitation of the elements of a cause of action" do not state a claim). And even if they attempted to allege that Florida's voter registration scheme is not "equally open" to minority voters, Plaintiffs would fail because Florida's process gives all eligible applicants the same opportunity to verify their identity. *See Lee v. Va. State Bd. of Elections*, 843 F.3d 592, 600 (4th Cir. 2016) (affirming judgment that Virginia photo-ID law does not violate § 2 because "Virginia allows everyone to vote and provides free photo IDs to persons without them" and thus "provides every voter an equal opportunity to vote"); *Frank*, 768 F.3d at 755 (rejecting § 2 challenge to Wisconsin photo-ID law because "everyone has the same opportunity to get a qualifying photo ID").

Plaintiffs also allege that the protocol has "a disparate and discriminatory impact on Black citizens and other citizens of color." Am. Compl. ¶ 124. And they cite statistical disparities between whites and minorities apparently suggesting that black and other minority applicants are more likely to have their applications marked "unverified" than white applicants. *Id.* at ¶¶ 114-140. But simply highlighting a numerical disparity between applicants labeled "unverified" without any evidence of racial bias does not state a claim under § 2. *See Johnson*, 405 F.3d at 1230 n.31 (noting that in a challenge to a felon-disenfranchisement law, "[a]lthough the record includes some evidence of a statistical difference in the rate of felony convictions along racial lines, these disparities do not demonstrate racial

bias"); *see also Gonzalez v. Arizona*, 677 F.2d 383, 405 (9th Cir. 2012) (en banc) ("[A] § 2 challenge based purely on a showing of some relevant statistical disparity between minorities and whites, without any evidence that the challenged voting qualification causes that disparity, will be rejected.") (citation omitted).

Indeed, circuit courts have consistently "rejected [Section] 2 challenges based purely on a showing of some relevant statistical disparity between minorities and whites." *See Smith v. Salt River Project Agric. Improvement & Power Dist.*, 109 F.3d 586, 595 (9th Cir. 1997).[15]

The *Browning* case is again directly on point. There, the Court dismissed the § 2 challenge to the voter verification statute because plaintiffs relied on statistical disparities in voter registration, and it declared that "[s]ection [2] claims must do more than simply demonstrate a relevant disparity between white voters and minority voters." *Browning II*, Case No. 4:07-cv-402, 2007 WL 9697653 at *7 (N.D. Fla. Dec. 18, 2007) (quoting *Johnson*, 405 F.3d at 1228).[16] The Court also concluded "[t]he process of registering to vote [in Florida] is open to participation by all citizens," and "[t]he fact that those unmatched citizens are more likely to be

[15] *See also, e.g.*, *Salas v. Sw. Tex. Junior Coll. Dist.*, 964 F.2d 1542 (5th Cir. 1992) (rejecting Section 2 challenge to at-large elections premised exclusively on the lower voter turnout of minority electors); *Irby v. Va. State Bd. of Elections*, 889 F.2d 1352 (4th Cir. 1989) (rejecting Section 2 challenge to Virginia's system of appointing school board members – despite a "significant disparity" between the proportions of minorities in the population and on the school board); *Wesley v. Collins*, 791 F.2d 1255 (6th Cir. 1986) (rejecting Section 2 challenge to Tennessee's felon-disenfranchisement law that relied chiefly on disparities in conviction rates among minorities and whites).

[16] As mentioned in note 12, the Eleventh Circuit's interlocutory opinion reversed this order's injunction on the HAVA counts, but did not affect its' dismissal of the § 2 VRA claim because the plaintiffs did not appeal that issue. *See* 569 F.Supp.2d at 1241-42. ("*Browning I*").

members of ethnic minorities does not, without more, demonstrate discriminatory intent or racial bias in the operation of [the voter verification statute]." *Id.; see also Fair Fight Action*, 634 F. Supp.3d at 1245 (rejecting § 2 challenge to Georgia's "exact match" protocol because "the burden on voters, disparate impact, and strength of the State's interest weigh against finding a Section 2 violation").

Plaintiffs rely entirely on unsupported conclusions and statistical disparities to show discriminatory effect. But courts are clear that a challenged law violates Section 2 only if it "*caused* the denial or abridgment of the right to vote on account of race." *Greater Birmingham*, 992 F.3d at 1330. And Plaintiffs do not plausibly allege a "causal connection between racial bias and disparate effect necessary to make a vote-denial claim." *Id.* at 1330-31. For that reason, Count III fails to state a claim and must be dismissed.

CONCLUSION

For these reasons, this Court should dismiss the Amended Complaint.

Dated: December 31, 2025,

Respectfully submitted,

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RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), I hereby certify that counsel for the Secretary conferred with Plaintiffs' counsel by e-mail on December 30, 2025. Plaintiffs' counsel objects to the requested relief.

/s/ Nicholas J.P. Meros
Counsel for the State Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of this motion was served via the Court's CM/ECF system, which provides notice to all parties, on December 31, 2025.

/s/ Nicholas J.P. Meros
Counsel for Secretary Byrd