UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., et al.,

Plaintiffs,

v.

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

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE, and NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

Intervenor-Defendants.

Cases Consolidated for Trial:

Case Nos.: 4:21-cv-186-MW/MAF
4:21-cv-187-MW/MAF
4:21-cv-201-MW/MAF
4:21-cv-242-MW/MAF

**LEAGUE PLAINTIFFS' MOTION TO DETERMINE ENTITLEMENT TO ATTORNEYS' FEES, EXPERT FEES, AND LITIGATION EXPENSES AND INCORPORATED MEMORANDUM OF LAW[1]**

Pursuant to 42 U.S.C. §§ 1983 and 1988, Fed. R. Civ. P. 54(d), and Local Rule 54.1, Plaintiffs League of Women Voters of Florida, Inc., League of Women

[1] The League Plaintiffs are aware of the Court's Order earlier today deferring consideration of the Motion for Entitlement to Attorneys' Fees filed in the *HTFF* case, No. 4:21-cv-242, ECF No. 272. The League Plaintiffs nevertheless file this Motion to ensure that their rights are preserved.

Voters of Florida Education Fund, Inc., Black Voters Matter Fund, Inc., Florida Alliance For Retired Americans, Inc., Cecile Scoon, Susan Rogers, Dr. Robert Brigham, and Alan Madison (collectively, the "League Plaintiffs") respectfully request that this Court find that the League Plaintiffs are prevailing parties entitled to an award of attorneys' fees, expert fees, and litigation expenses against Defendant Laurel M. Lee, in her official capacity as the Florida Secretary of State, and Defendant Ashley Moody, in her official capacity as the Florida Attorney General.[2]

## I. INTRODUCTION

The League Plaintiffs are prevailing parties under 42 U.S.C. § 1988 ("Section 1988") because the Court awarded the League Plaintiffs permanent injunctive relief on the merits of several of their constitutional claims, which were brought pursuant to 42 U.S.C. § 1983 ("Section 1983"). As such, Plaintiffs are entitled to their reasonable attorneys' fees, expert fees, and litigation expenses incurred in pursuit of that relief.

[2] Plaintiffs make this motion pursuant to Local Rule 54.1(A)'s bifurcated procedure, which requires "[a] party who seeks an award of attorney's fees" to "first move for a determination of the party's *entitlement* to a fee award." The party may "move for a determination of the *amount* of an award only after the Court determines the party's entitlement to an award." *Id*. If the Court determines that Plaintiffs are entitled to an award of their attorneys' fees, expert fees, and litigation expenses incurred in pursuit of the permanent injunction and judgment successfully obtained in this action, Plaintiffs will file a motion for determination of the amount of the award, supported by detailed time entries and declarations supporting the recoverable amount of such fees pursuant to Local Rule 54.1(E).

Obtaining such relief took great effort, including wading through 6 million pages of discovery from Defendants, preparing and responding to several expert reports, taking and defending more than twenty depositions, defending against a motion for summary judgment on all claims, and participating in a seventeen-day trial, in which the League Plaintiffs' counsel took the lead in examining many of the key witnesses.

As a result of the League Plaintiffs' efforts, third-party voter registration organizations ("3PVROs") in Florida, including the League, no longer need to tell aspiring voters that they may not turn in their voter registration forms on time, a requirement that was both severely misleading and hampered organizations' voter registration efforts. As a result of the League Plaintiffs' efforts, the League may also now engage in nonpartisan assistance at the polls.

Given this effort and these exceptional results, an award of the full costs and fees reasonably incurred by Plaintiffs in obtaining this relief is appropriate.

## II. BACKGROUND

On May 6, 2021, mere minutes after Governor DeSantis signed Senate Bill 90, the League Plaintiffs—including the League of Women Voters of Florida, Black Voters Matter, the Alliance for Retired Americans, and several Florida voters—filed a complaint for permanent relief in this Court. Compl., ECF No. 1. The League Plaintiffs challenged five provisions of Senate Bill 90 as unconstitutional under the

First and Fourteenth Amendments: the VBM Request Provision, the Drop Box Provisions, the Registration Disclaimer Provision, Solicitation Definition, and the Volunteer Assistance Ban. *Id*. The League Plaintiffs named as Defendants the Secretary, the Attorney General, and all 67 of Florida's Supervisors of Elections. *See id.* Shortly thereafter, the Court permitted the Republican National Committee (RNC) and National Republican Senatorial Committee (NRSC) to intervene to defend the laws alongside the Secretary, Attorney General, and the Supervisors. Mot. to Intervene, ECF No. 25; Mem. in Supp. of Mot., ECF No. 26; Resp. In Opp. Of Mot., ECF No. 65; Order, ECF No. 72.

The parties began engaging in discovery. The League Plaintiffs sought information on the anticipated effects of Senate Bill 90 from every Defendant. Plaintiffs received more than 6 million pages of documents in response to their discovery requests. In turn, the League Plaintiffs were required to respond to a total of 129 interrogatories and 82 requests for production promulgated by the Defendants and Defendant-Intervenors.

The League Plaintiffs developed, and submitted for the Court's consideration, expert reports from Drs. Michael Herron and Kenneth Mayer. Dr. Herron's expert report covered the calculus of voting framework, Florida's general election administration, an overview of Senate Bill 90, the evidence (or lack-thereof) of voter fraud in American and Florida elections, the evolution of voting by mail in Florida,

drop-box use in the 2020 elections (including usage by race), information on voter registration and 3PVROs (including usage by race), and voting lines. Dr. Mayer's report, narrower in scope, responded specifically to Defendants Secretary Lee and Attorney General Moody's expert, Dr. Quentin Kidd, and the shortcomings in his report and analysis. Prior to consolidation of this case for trial with the other cases challenging Senate Bill 90, the League Plaintiffs also developed and served an expert report from historian Dr. Vernon Burton, on the history of voter suppression in Florida. The Court did not hear from Dr. Burton at trial, as Dr. Burton's testimony would have overlapped with other co-plaintiff experts', including particularly Dr. Morgan Kousser's.

The Defendants collectively noticed and took the deposition of every League Plaintiff and expert, with counsel to Defendants Lee and Moody sharing responsibility for those depositions with counsel for the RNC and NRSC. Among the various plaintiff groups consolidated for trial, the League Plaintiffs took the lead on conducting the depositions of the Director of the Division of Elections Maria Matthews; Supervisors Earley, White, Scott, Hays, Corley, Latimer, Bennett, Marcus, and Lenhart; the Attorney General's representative Guzzo; and representatives of the RNC and NRSC. The League Plaintiffs further participated in the depositions of Defendants Lee and Moody's expert Dr. Kidd and the RNC and

NRSC's expert Dr. Lockerbie, of Supervisor Doyle, and of a representative of the Palm Beach County Supervisor of Elections.

On October 8, 2021, the Court dismissed the League Plaintiffs' challenge to the Volunteer Assistance Ban for lack of standing. Order at 23-24, ECF No. 274. The Court also dismissed the League Plaintiffs' challenge to the Drop Box Provisions against Defendant Moody (leaving the claims against Lee and the Supervisors), *id.* at 20-21, dismissed the League Plaintiffs' challenge to the VBM Request Provision and Solicitation Definition against Defendants Lee and Moody (leaving the claims against the Supervisors), *id.* at 24-25, and dismissed the League Plaintiffs' challenge to the Registration Disclaimer Provision against the Supervisors (leaving the claims against Lee and Moody), *id.* at 26.

After the Court's order on the motions to dismiss, the remaining claims and Defendants were as follows:

| **Provision** | **Defendants** |
|---|---|
| Drop Box Provisions | Defendant Lee, Supervisors, RNC, NRSC |
| VBM Request Provisions | Supervisors, RNC, NRSC |
| Solicitation Definition | Supervisors, RNC, NRSC |
| Registration Disclaimer Provision | Defendant Lee, Defendant Moody, RNC, NRSC |

Defendant Lee, however, was not willing to leave defense of the VBM Request Provisions and Solicitation Definition to the Supervisors, the RNC, and the NRSC—no doubt because, as trial would make clear, the Supervisors were no fans

of Senate Bill 90. In late November, Defendant Lee moved to intervene to defend those two provisions. Mem. in Supp. of Mot. to Intervene, ECF No. 337-1. The League Plaintiffs opposed the Secretary's intervention, arguing that "allowing the Secretary to defend these laws will increase the remaining briefing and time required for trial, necessarily inflating litigation costs to Plaintiffs." Pls.' Opp. to Mot. at 8, ECF No. 341. The Court ultimately granted intervention to the Secretary, "recognizing Plaintiffs may suffer some prejudice" as a result. Order at 3, ECF No. 359. After the Court's order, the parties and Defendants were the following:

| **Provision** | **Defendants** |
|---|---|
| Drop Box Provisions | Defendant Lee, Supervisors, RNC, NRSC |
| VBM Request Provisions | Defendant Lee, Supervisors, RNC, NRSC |
| Solicitation Definition | Defendant Lee, Supervisors, RNC, NRSC |
| Registration Disclaimer Provision | Defendant Lee, Defendant Moody, RNC, NRSC |

The League Plaintiffs then defended against Defendants' Motion for Summary Judgment on all claims. *See* Mem. in Supp. of Mot. for Summ. J., ECF No. 321-1 After the Court denied that motion, the League Plaintiffs turned to preparing for trial. Among the plaintiff groups, the League Plaintiffs took the lead role in coordinating the pretrial stipulation and gathering and coordinating the parties' exhibits, all of which took substantial effort.

Over the course of seventeen trial days, the League Plaintiffs presented testimony from each of the League Plaintiffs and experts Dr. Herron and Dr. Mayer. Among plaintiff groups, the League Plaintiffs also took the lead on the direct (and cross) examinations of other essential witnesses in the case, including Director Matthews, Supervisor Earley, Supervisor White, Supervisor Scott, Supervisor Corley, and David Ramba. The League Plaintiffs' post-trial brief totaled nearly 200 pages. League Pls.' Post-Trial Br., ECF No. 649.

On March 31, this Court entered an order granting a permanent injunction on several of the League Plaintiffs' claims. *See* Final Order, ECF No. 665.

*First*, the Court found for the League Plaintiffs and entered a permanent injunction prohibiting Defendants Lee and Moody from enforcing the Registration Disclaimer Provision. The League Plaintiffs challenged this requirement as unconstitutional compelled speech under the First Amendment. The Court found that Cecile Scoon and Alan Madison (individual League Plaintiffs) and the League organizational entities had standing to sue, *id.* at 191, 194, 196 n.6, and that the Secretary and Attorney General were proper Defendants for this claim, *id.* at 193. The Court relied on the League Plaintiffs' evidence to find that the speech at issue was not commercial, *id.* at 203, that the chance that a 3PVRO would return a voter's registration late was "vanishingly small," *id.* at 210, and that the Supervisors agreed that there was not a significant issue with 3PVROs delivering forms late, *id.* at 212.

The Court found that the disclaimer would fail under both strict scrutiny and exacting scrutiny, *id.* at 215-16, and permanently enjoined Defendants Lee and Moody from enforcing it, *id.* at 218. As a result of this injunction, the League, other 3PVROs in Florida, and the League's individual members can return to effectively registering voters in Florida.

*Second*, the Court found for the League Plaintiffs and entered a permanent injunction prohibiting Bay County Supervisor Mark Andersen from enforcing the Solicitation Definition. The Court found that the League Plaintiffs—specifically Cecile Scoon and the League entities—had standing to challenge the Solicitation Definition against Defendant Andersen. *Id.* at 138-141. The Court relied on the League Plaintiffs' evidence to find that the Plaintiffs' line warming activities were expressive. *See id.* at 163 ("Indeed, Ms. Scoon testified that voters who receive assistance have expressed an understanding of and gratitude for the emotional support that the League volunteers offer to voters waiting in lines outside of the polls."). The Court then found the Solicitation Definition to be both impermissibly vague and overbroad, *id.* at 181, 184, relying in large part on the testimony the League Plaintiffs developed at trial from Director Matthews and the Defendant Supervisors, *id.* at 178-180.

*Third,* the Court did not reach the League Plaintiffs' challenges to the Drop Box Provisions, but only because the Court enjoined the Defendants from enforcing

the Drop Box Restrictions on intentional discrimination grounds based on the claims of plaintiffs in consolidated cases. *Id.* at 244-45. And in determining that the Drop Box Restrictions were intentionally discriminatory, the Court relied on substantial evidence presented by the League Plaintiffs, including (but not limited to) extensive analysis and testimony by Dr. Herron on drop box usage by Black voters, *id.* at 97-101, and the League Plaintiffs' examinations of Supervisors Corley, White, Scott, and Earley, *id.* at 78, 92-93.

The only claim brought by the League Plaintiffs that the Court rejected was their challenge to the VBM Request Provision. *Id.* at 255.

## III. ARGUMENT

### A. The League Plaintiffs are prevailing parties under § 1988.

The League Plaintiffs' success in obtaining permanent injunctive relief renders them "prevailing parties" within the meaning of Section 1983, entitled to an award of attorneys' fees, expert fees, and costs pursuant to Section 1988. Section 1988 entitles plaintiffs in Section 1983 actions to such an award, "if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (citation omitted). The fee award formulation is "generous," *id.*, and designed to effectuate Congress' purpose "to ensure 'effective access to the judicial process' for persons with civil rights grievances." *Id.* at 429 (quoting H.R. Rep. No. 94-1558, at 1 (1976)).

To establish entitlement, one need only "point to a resolution of the dispute which changes the legal relationship between itself and the defendant." *Tex. State Tchrs. Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792 (1989). Both the Supreme Court and the Eleventh Circuit have "repeatedly held that an injunction or declaratory judgment, like a damages award, will usually satisfy that test." *Lefemine v. Wideman*, 568 U.S. 1, 4 (2012). "The touchstone of the prevailing party inquiry . . . [is] the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." *Tex. State Tchrs. Ass'n,* 489 U.S. at 792-93.

A prevailing party "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402 (1968). "Moreover, because the special circumstances exception is a judicially imposed provision not found within the text of section 1988, the exception 'should be narrowly construed so as not to interfere with the congressional purpose in passing [section 1988].'" *Johnson v. Mortham*, 950 F. Supp. 1117, 1122 (N.D. Fla. 1996) (quoting *Martin v. Heckler*, 773 F.2d 1145, 1150 (11th Cir. 1985) (en banc), *disapproved of on other grounds*, *Tex. State Tchrs. Ass'n v. Garland Ind. Sch. Dist.*, 489 U.S. 782 (1989)), *on reconsideration in part*, 173 F.R.D. 313 (N.D. Fla. 1997).

Under these established standards, Plaintiffs qualify as "prevailing parties" as a result of their success on their claims against the Registration Disclaimer and Solicitation Definition. Plaintiffs requested that the Court permanently enjoin such provisions, *see* Pls.' First Am. Compl., ECF No. 160, which is what the Court did in its order granting permanent injunctive relief, *see* Final Order, ECF No. 665. As a result of this Court's Order, there has been a "material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1356 (11th Cir. 2009) (quoting *Sole v. Wyner*, 551 U.S. 74, 74 (2007)). In particular, the Court's Order means that the Secretary and Attorney General may no longer take action against 3PVROs, such as the League, who do not deliver the warning found in Senate Bill 90, and Defendant Anderson may not take action when the League provides nonpartisan assistance to voters at the polls.

The Legislature's passage of Senate Bill 524 on March 9 does nothing to change this, because that bill still has not become law, or even been presented to the Governor for signature. Senate Bill 524 is therefore no different from any of hundreds of other bills that move through the legislative process without ever taking effect. The Court waited more than three weeks after the passage of Senate Bill 524 to see if the Legislature would transmit the bill to the Governor and if the Governor would sign it. It never happened. Thus, while Florida had an opportunity to

voluntarily terminate the Registration Disclaimer Provision by putting Senate Bill 524 into effect, Florida chose to forgo that opportunity and take its chances with the Court. Simply put, the existence of pending legislation that was not transmitted to or signed by the Governor was not an unambiguous termination of the unconstitutional law, as would have been required to render the League Plaintiffs' claims moot before judgment was entered. *Troiano v. Supervisor of Elections in Palm Beach Cnty.*, 382 F.3d 1276 (11th Cir. 2004). It was not a termination at all.

Finally, that the League Plaintiffs did not prevail on *all* of their claims at trial does nothing to change the League Plaintiffs' status as prevailing parties. Plaintiffs in Section 1983 actions are entitled to fees under Section 1988 "if they succeed on *any* significant issue in litigation which achieves *some* of the benefit the parties sought in bringing suit." *Hensley*, 461 U.S. at 433 (emphasis added) (quoting *Nadeau v. Helgemoe,* 581 F.2d 275, 278-79 (1st Cir. 1978)). The League Plaintiffs' success on their challenges to the Disclaimer Provision and the Solicitation Definition undeniably qualify.

### B. As prevailing parties, the League Plaintiffs are entitled to attorneys' fees, costs, and expenses, including expert fees.

As prevailing parties under Section 1988, the League Plaintiffs may recover "a reasonable attorney's fee" and "expert fees" as part of their costs. 28 U.S.C. § 1988(a), (b). Moreover, the League Plaintiffs are not limited to usual kinds of costs permissible in every case under 28 U.S.C. § 1920. Rather, "[a]n award of attorney's

fees under section 1988 also includes various costs and expenses, over and above those outlined in [28 U.S.C. § 1920], the general statute for taxation of costs." *Johnson*, 950 F. Supp. at 1126, *on reconsideration in part*, 173 F.R.D. 313 (N.D. Fla. 1997).

Section 1988(c) explicitly provides for the inclusion of expert fees. Here, Plaintiffs retained and provided expert reports and testimony from Dr. Michael Herron, a Professor of Political Science at Dartmouth University, and Dr. Kenneth Mayer, a Professor of Political Science at the University of Wisconsin. The League Plaintiffs' experts' findings provided additional and important support for Plaintiffs' claims, and the reports were relied upon by this Court in finding for the League Plaintiffs.

The League Plaintiffs also retained the services of Dr. Vernon Burton, a historian, who prepared a report that was disclosed to Defendants, and whom Defendants deposed. To streamline the presentation of evidence at trial, however, the League Plaintiffs ultimately decided not to call Dr. Burton due to overlap between Dr. Burton's anticipated testimony and the testimony of expert witnesses presented by plaintiffs in the consolidated cases. The League Plaintiffs had no way to know when they retained Dr. Burton, however, that their case would be consolidated with other cases for trial, and Dr. Burton's retention was therefore a necessary part of the League Plaintiffs' preparation of their case. The League

Plaintiffs should not be penalized, in their fee application, by their efforts to streamline their presentation following the consolidation of the cases for trial.

Finally, the League Plaintiffs are also entitled to recovery of other reasonable litigation expenses pursuant to Section 1988(b). The definition of reasonable litigation expenses is broad, including such items as photocopying charges, fees of process servers, travel and related meal expenses, telephone, postage, computer research, and data hosting and processing fees. *See Missouri v. Jenkins ex rel. Agyei*, 491 U.S. 274, 285 (1989) (noting that the "fee must take into account the work not only of attorneys, but also of secretaries, messengers, librarians, janitors, and others whose labor contributes to the work product for which an attorney bills her client; and it must also take account of other expenses and profit"); *Evans v. Books-A-Million*, 762 F.3d 1288, 1299 (11th Cir. 2014) (collecting cases detailing types of reasonable litigation expenses); *NAACP v. City of Evergreen*, 812 F.2d 1332, 1337 (11th Cir. 1987) ("'[W]ith the exception of routine office overhead normally absorbed by the practicing attorney, all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case may be taxed as costs under section 1988' and 'the standard of reasonableness is to be given a liberal interpretation.'") (quoting *Dowdell v. City of Apopka*, 698 F.2d 1181, 1192 (11th Cir. 1983)). Accordingly, the League Plaintiffs also respectfully

request that the Court determine that they are so entitled to their reasonable costs incurred.[3]

### C. The Court should award fees against Defendants Lee and Moody.

The Court entered judgment for the League Plaintiffs against Defendants Lee and Moody on the League Plaintiffs' challenge to the Registration Disclaimer Provision, and against Bay County Supervisor of Elections Mark Andersen on the League Plaintiffs' challenge to the Solicitation Definition. The Court's injunction of the Solicitation Definition did not issue against the Secretary, because she had disclaimed responsibility for it, resulting in the Court's dismissal of that claim

[3] Local Rule 54.1(A)'s bifurcated procedure, which requires "[a] party who seeks an award of attorney's fees" to "first move for a determination of the party's *entitlement* to a fee award," (emphasis added), would seem to supersede Fed. R. Civ. P. 54(d)(2)(B)(iii)'s requirement that a party seeking fees and costs specify "the amount sought or a fair estimate of it." Out of an abundance of caution, however, the League Plaintiffs provide the following good faith estimate of the attorneys' fees and expenses incurred that they will seek in this case, which League Plaintiffs reserve the right to revise in the course of preparing a fee application, should the Court grant this motion: a total of $5.5 million in attorneys' fees, expert fees, and other costs beyond those documented on the League Plaintiffs' contemporaneously filed bill of costs. This estimate does not reflect all attorney time spent in the preparation of this motion, nor does it project additional fees and costs that will be incurred in further litigating either entitlement or the question as to the appropriate amount of any fee award, should the Court grant this Motion. Should the Court determine that Plaintiffs are entitled to an award of their attorneys' fees, expert fees, and litigation expenses, Plaintiffs will follow the procedure set forth in Local Rule 54.1(A) and file a motion for determination of the amount of the award, supported by detailed time entries and declarations supporting the recoverable amount of such fees pursuant to Local Rule 54.1(E), as well as setting forth the legal justification for the amount of the award requested.

against the Secretary. Order on Mots. to Dismiss, ECF No. 274. But the Secretary then voluntarily reinserted herself as a defendant against that claim. Mem. in Supp. of Mot. to Intervene, ECF No. 337-1; Order, ECF No. 359. The Court should award the League Plaintiffs' fees against Defendants Lee and Moody as discussed below. The League Plaintiffs do not seek a fee award against Supervisor Andersen.

**1. Defendants Lee and Moody are liable for fees as the enforcers of the unconstitutional Registration Disclaimer Provision.**

Defendants Lee and Moody are liable for fees as the enforcers of the unconstitutional Registration Disclaimer Provision. "The governmental entity charged with administering an offending statute exposes itself to liability for attorney's fees and costs under § 1988." *Mallory v. Harkness*, 923 F. Supp. 1546, 1552 (S.D. Fla. 1996), *aff'd*, 109 F.3d 771 (11th Cir. 1997). "Fee awards against enforcement officials are run-of-the-mill occurrences," even where it is the legislature that enacted an unconstitutional law. *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 739 (1980). "[A] government official responsible for enforcing an unconstitutional statute is liable for attorney's fees, even where the official took no active steps to enforce the statute." *Council for Periodical Distribs. Assocs. v. Evans*, 827 F.2d 1483, 1486 (11th Cir. 1987). Officials' "conduct and motive, whether in good or bad faith, are irrelevant for purposes of recovery of attorneys' fees" against them. *Id.* (quoting *Robinson v. Kimbrough*, 652 F.2d 458,

461 n.2 (5th Cir. 1981)). And Defendants Lee and Moody, like the Defendants in *Council for Periodical Distributors Association*, "were represented at trial by their own counsel, and did oppose the plaintiffs' effort," rather than, "as they could have, . . . concede at the outset of the litigation that the [statute] was unconstitutional." *Id.* at 1487.

**2. Defendant Lee is liable for fees due to her intervention to defend the Solicitation Definition**

The Court should also hold Defendant Lee liable for fees based on her intervention to defend the Solicitation Definition. An award of fees against an intervenor is subject to a higher standard, requiring a showing of wrongdoing or fault. *Mallory*, 923 F. Supp. at 1553; *see also Ind. Fed. of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989). But that requirement is easily met against Defendant Lee here.

Much like the Florida Attorney General in *Mallory*, by intervening to defend the Solicitation Definition, Defendant Lee "defended the unconstitutional statute voluntarily and in doing so attempted to aid in the offending statute's enforcement." *Mallory*, 923 F. Supp. at 1553. Having successfully extricated herself from the challenge to the Solicitation Definition, Defendant Lee then affirmatively sought to reestablish herself as a defendant "so that she may defend all statutory provisions being challenged before this Court." Mem. in Supp. of Mot. to Intervene at 2, ECF No. 337-1. Defendant Lee's counsel at Holtzman Vogel took the lead at trial in

defending the Solicitation Definition alongside the other provisions. In contrast, the Supervisors—the only non-intervenor Defendants with respect to the Solicitation Definition—took a far less active role, with only Supervisor White's counsel asking any questions at trial, and then only a handful. Supervisor Andersen did not appear at trial at all.

As the Court observed in *Mallory*, a state official, "acting as a representative of the state, cannot be 'innocent' in terms of violating the Plaintiff's civil rights" when "the state enacted, enforced, and defended the unconstitutional statute." 923 F. Supp. at 1553. Just as in *Mallory*, "[t]he state should not be allowed to require [officials] to enforce an unconstitutional statute, defend that statute on the merits as an intervenor in federal court, and then attempt to use its intervenor status to escape liability for attorney's fees. Allowing such a loophole violates the policy behind 42 U.S.C. § 1988." *Id.* Thus, the Court should award attorneys' fees against Defendant Lee based on her intervention to defend the Solicitation Definition, as well.[4]

[4] While the Intervenor-Defendants in *Independent Federation of Flight Attendants* were not liable for fees, that case is distinguishable. There, the intervenor was a private organization that "intervened to assert the collectively bargained contract rights of its incumbent employees, rights that neither respondents nor [the employer] had any interest in protecting in their settlement agreement." 491 U.S. at 765. The Supreme Court explained that this was "certainly not conduct that [the fee-shifting] statute aimed to deter." *Id.* Here, in contrast, Defendant Lee is a state official who intervened in the case to defend Florida's ability to continue to enforce an unconstitutional statute—*precisely* what § 1988 was intended to deter.

## IV. CONCLUSION

For the reasons discussed above, the Court should find that the League Plaintiffs are prevailing parties entitled to an award of their reasonable attorneys' fees and costs, including expert fees and other reasonable and related litigation expenses, and that those fees and costs should be awarded against Defendants Lee and Moody as discussed above. In accordance with the local rules, should the Court grant this Motion, the League Plaintiffs will then file a subsequent motion to determine the fee amount with all appropriate supporting material.

## LOCAL RULES CERTIFICATION

Undersigned counsel conferred with opposing counsel pursuant to Local Rule 7.1(B), and confirms that Defendants Lee and Moody oppose the requested relief. Pursuant to Local Rule 7.1(F), undersigned counsel further certifies that this motion contains 4,574 words, excluding the case style, local rule certification and certificate of service.

Respectfully submitted this 14th day of April, 2022.

/s/ *Frederick S. Wermuth*
Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
King, Blackwell, Zehnder & Wermuth, P.A.
P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472
Facsimile: (407) 648-0161

fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com

Marc E. Elias
Elisabeth C. Frost
Aria Branch*
David R. Fox*
Lalitha D. Madduri*
Christina A. Ford
Francesca Gibson*
ELIAS LAW GROUP LLP
10 G St NE, Suite 600
Washington, DC 20002
Telephone: (202) 968-4490
Facsimile: (202) 968-4498
melias@elias.law
lfrost@elias.law
abranch@elias.law
dfox@elias.law
lmadduri@elias.law
cford@elias.law
fgibson@elias.law

*Admitted *Pro Hac Vice*
*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 14, 2022 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel in the Service List below.

/s/ Frederick S. Wermuth
Frederick S. Wermuth
Florida Bar No. 0184111

*Counsel for Plaintiffs*

**SERVICE LIST**

Bradley R. McVay
Ashley E. Davis
Colleen E. O'Brien
William D. Chappell
Florida Department of State
RA Gray Building
500 South Bronough Street, Ste. 100
Tallahassee, FL 32399
Telephone: 850-245-6531
brad.mcvay@dos.myflorida.com
ashley.davis@dos.myflorida.com
colleen.obrien@dos.myflorida.com
david.chappell@dos.myflorida.com

William H. Stafford, III
Bilal A. Faruqui
Karen A. Brodeen
Rachel R. Siegel
William Chorba
Office of the Attorney General
PL-01 The Capitol
Tallahassee, Florida 32399
Telephone: 850-414-3785
william.stafford@myfloridalegal.com
bilal.faruqui@myfloridalegal.com
karen.brodeen@myfloridalegal.com
rachel.siegel@myfloridalegal.com
william.chorba@myfloridalegal.com

*Counsel for Defendant Ashley Moody*

Mohammad O. Jazil
Gary V. Perko
Holzman Vogel Baran Torchinsky & Josefiak PLLC
119 S. Monroe Street, Suite 500
Tallahassee, FL 32301
Telephone: 850-567-5762
mJazil@holtzmanvogel.com
gperko@holtzmanvogel.com

Phillip M. Gordon
Kenneth C. Daines
Holzman Vogel Baran Torchinsky & Josefiak PLLC
15405 John Marshall Hwy.
Haymarket, VA 20169
Telephone: 540-341-8808
pgordon@holtzmanvogel.com
kdaines@holtzmanvogel.com

*Counsel for Defendant Laurel M. Lee*

Robert C. Swain
Diana M. Johnson

Edward P. Cuffe
Susan Erdelyi

Alachua County Attorney's Office
12 SE First St.
Gainesville, FL 32602
Telephone: 352-374-5218
bswain@alachuacounty.us
dmjohnson@alachuacounty.us

*Counsel for Defendant Kim A. Barton*

Marks Gray, P.A.
1200 Riverplace Blvd, Ste. 800
Jacksonville, FL 32207
Telephone: 904-807-2110
sse@marksgray.com
pcuffe@marksgray.com

*Counsel for Defendants Christopher Milton, Mark Anderson, Amanda Seyfang, Sharon Chason, Tomi S. Brown, Starlet Cannon, Heather Riley, Shirley Knight, Laura Hutto, Carol Dunaway, Travis Hart, Grant Conyers, Janet Adkins, Charles Overturf, Tappie Villane, Vicky Oakes, William Keen, Jennifer Musgrove, Dana Southerland, Deborah Osborne, Joseph Morgan, Bobby Beasley and Carol Rudd*

Frank M. Mari
John M. Janousek
Roper, P.A.
2707 E. Jefferson St.
Orlando, FL 32803
Telephone: 407-897-5150
fmari@roperpa.com
jjanousek@roperpa.com

*Counsel for Defendants Mark Negley, Connie Sanchez, John Hanlon, Marty Bishop, Heath Driggers, Lori Scott, Kaiti Lenhart, and Penny Ogg*

Ronald A. Labasky
Brewton Plante PA
215 S. Monroe Street, Ste. 825
Tallahassee, FL 32301
Telephone: 850-222-7718
rlabasky@bplawfirm.net

John T. LaVia
Gardner, Bist, Bowden, Bush, Dee, Lavia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
Telephone: 850-385-0070
jlavia@gbwlegal.com

*Counsel for Defendants Chris H. Chambless, Vicki Davis, Mary Jane Arrington, Gertrude Walker and Lori Edwards*

Andy V. Bardos
James T. Moore, Jr.
GrayRobinson PA
301 S. Bronough St, Ste. 600
Tallahassee, FL 32301
Telephone: 850-577-9090
andy.bardos@gray-robinson.com
tim.moore@gray-robinson.com

*Counsel for Defendant Jennifer J. Edwards, Leslie Swan, Alan Hays, Tommy Doyle, Michael Bennett, Wesley Wilcox, Joyce Griffin, Brian Corley, Christopher Anderson and Paul Stamoulis*

Stephen M. Todd
Office of The County Attorney
601 E. Kennedy Blvd., 27th Floor
Tampa, FL 33602
Telephone: 813-272-5670
todds@hillsboroughcounty.org

*Counsel for Defendant Craig Latimer*

Jon A. Jouben
Kyle J. Benda
Hernando County
20 N. Main Street, Ste. 462
Brookesville, FL 34601-2850
Telephone: 351-754-4122
jjouben@co.hernando.fl.us
kbenda@co.hernando.fl.us

*Counsel for Defendant Shirley Anderson*

Kelly L. Vicari
Jared D. Kahn
Pinellas County Attorney's Office
315 Court Street, 6th Floor
Clearwater, FL 33756
Telephone: 727-464-3354
kvicari@pinellascounty.org
jkahn@pinellascounty.org

*Counsel for Defendant Julie Marcus*

Matthew R. Shaud
Escambia County Attorneys Office
221 Palafox Place, Ste. 430
Pensacola, FL 32502
Telephone: 850-595-4970
mrshaud@myescambia.com

*Counsel for Defendant David H. Stafford*

Benjamin Salzillo
Nathaniel A. Klitsberg
Joseph K. Jarone
Brendalyn V.A. Edwards
115 South Andrews Ave., Ste. 423
Ft. Lauderdale, FL 33301
Telephone: 954-357-7600
bsalizzo@broward.org
nklitsberg@broward.org
jkjarone@broward.org
breedwards@broward.org

*Counsel for Defendant Joe Scott*

Dale Scott
Bell & Roper, P.A.
2707 E. Jefferson St.
Orlando, Florida 32803
Telephone: 407-897-5150
dscott@bellroperlaw.com

*Counsel for Defendant Maureen Baird*

Craig D. Feiser
Jason Teal
Mary Margaret Giannini
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202
Telephone: 904-255-5052
cfeiser@coj.net
mgiannini@coj.net

*Counsel for Defendant Mike Hogan*

Robert Shearman
Geraldo F. Olivo
Henderson, Franklin, Starnes
& Holt, P.A.
1715 Monroe Street
Ft. Myers, Florida 33901
Telephone: 239-334-1346
robert.shearman@henlaw.com
jerry.olivo@henlaw.com

*Counsel for Defendants Aletris Farnam, Diane Smith, Brenda Hoots, Therisa Meadows, Tammy Jones and Melissa Arnold*

Mark Herron
S. Denay Brown
Patrick O'Bryant
Messer Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, Florida 32308
Telephone: 850-222-0720
mherron@lawfla.com
dbrown@lawfla.com
pobryant@lawfla.com

*Counsel for Defendant Mark Earley*

Gregory T. Stewart
Elizabeth D. Ellis
Kirsten H. Mood
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
Telephone: 850-224-4070
gstewart@ngnlaw.com
eellis@ngnlaw.com
kmood@ngnlaw.com

*Counsel for Defendant Paul Lux*

Nicholas Shannin
Shannin Law Firm
214 S. Lucerne Circle East
Orlando, Florida 32801
Telephone: 407-985-2222
nshannin@shanninlaw.com

*Counsel for Defendant Bill Cowles*

W. Kevin Bledsoe
London L. Ott
123 W. Indiana Avenue, Room 301
Deland, Florida 32720
Telephone: 386-736-5950
kbledsoe@volusia.org
lott@volusia.org

*Counsel for Defendant Lisa Lewis*

Michael B. Valdes
Oren Rosenthal
Miami-Dade Attorney's Office
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Telephone: 305-375-5620
michael.valdes@miamidade.gov
oren.rosenthal@miamidade.gov

*Counsel for Defendant Christine White*

Benjamin J. Gibson
Daniel E. Nordby
George N. Meros, Jr.
Amber S. Nunnally
Frank A. Zacherl
Tara R. Price
Shutts & Bowen LLP
215 S. Monroe St., Ste. 804
Tallahassee, FL 32301
Telephone: 850-241-1720
bgibson@shutts.com
dnordby@shutts.com
gmeros@shutts.com

Morgan Bentley
Bentley Law Firm, P.A.
783 South Orange Ave., Third Floor
Sarasota, Florida 34236
Telephone: 941-556-9030
mbentley@thebentleylawfirm.com

*Counsel for Defendant Ron Turner*

Ashley D. Houlihan
Palm Beach County Supervisor of Elections
240 S Military Trail
West Palm Beach, FL 33416
Telephone: 561-656-6200
ashleyhoulihan@votepalmbeach.gov

Ronald A. Labasky
Brewton Plante PA
215 S. Monroe Street, Ste. 825
Tallahassee, FL 32301
Telephone: 850-222-7718
rlabasky@bplawfirm.net

*Counsel for Defendant Wendy Link*

anunnally@shutts.com
fzacherl@shutts.com
tprice@shutts.com

Daniel J. Shapiro
Cameron T. Norris
Tyler R. Green
Steven C. Begakis
Consovoy McCarthy, PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
Telephone: 703-243-9423
daniel@consovoymccarthy.com
cam@consovoymccarthy.com
tyler@consovoymccarthy.com
steven@consovoymccarthy.com

*Counsel for Intervenor Defendants Republican National Committee and National Republican Senatorial Committee*