

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

HARRIET TUBMAN FREEDOM  
FIGHTERS, CORP.,

*Plaintiff,*

v.

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

*Defendants,*

REPUBLICAN NATIONAL  
COMMITTEE, *et. al.*,

*Intervenor-Defendants.*

Case No. 4:21-cv-242

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

**PLAINTIFF HARRIET TUBMAN FREEDOM FIGHTERS' PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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## I. PROPOSED FINDINGS OF FACT

### A. Parties

1. Plaintiff Harriet Tubman Freedom Fighters, Corp. (“HTFF”) is a Florida 501(c)(3) non-profit, nonpartisan corporation. *League of Women Voters of Fla. v. Lee*, 4:21-cv-186, Trial Tr., Testimony of Rosemary McCoy, 256:17–20. It conducts activities solely in Duval County. *Id.* at 317:17–20.

2. HTFF was founded in October 2020. *Id.* at 293:5–7. It became a registered third-party voter registration organization in Florida (“3PVRO”) in July 2021 and began conducting voter registration activities in August or September 2021. *Id.* at 293:16–19, 293:23–294:1.

3. At trial, Rosemary McCoy, cofounder, chief executive officer, and president of HTFF, testified on HTFF’s behalf. *Id.* at 255:24–25, 256:21–22.

4. Prior to SB 90’s passage, Ms. McCoy had several years’ experience doing voter registration work with several different organizations. *Id.* at 264:18–20.

5. HTFF’s mission “is to increase participation among those that are underserved and also marginalized population.” *Id.* at 259:18–19. It seeks to accomplish this mission through “voter registration, organization, and education.” *Id.* at 259:22.

6. Defendant Laurel M. Lee is the Secretary of State of Florida and is named as a Defendant in her official capacity. She is Florida’s chief elections officer

and, as such, is responsible for the administration and implementation of election laws in Florida as prescribed by Section 97.012(1), Florida Statutes. The Secretary of State, personally and through the conduct of her employees, officers, agents, and servants, acted under color of state law at all times relevant to this action. ECF 402, Corrected Joint Pretrial Stipulation, at 37, ¶ 51.<sup>1</sup>

7. Defendant Ashley Moody is the Attorney General of Florida. The Attorney General is the State of Florida’s chief legal officer and is head of the Florida Department of Legal Affairs. The Attorney General’s responsibilities include civil enforcement authority over Section 97.0575, Florida Statutes (2021), which contains the challenged 3PVRO requirements. The Attorney General, personally and through the conduct of her employees, officers, agents, and servants, acted under color of state law at all times relevant to this action. *Id.* at 42–43, ¶ 11.

**B. Voter Registration Drives in Florida**

8. A 3PVRO is “any person, entity, or organization soliciting or collecting voter registration applications.” Fla. Stat. § 97.021(40). This definition excludes a “person engaged in registering to vote or collecting voter registration applications as an employee or agent of the division, supervisor of elections, Department of

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<sup>1</sup> Unless otherwise indicated, all ECF numbers refer to the lead consolidated case docket, *League of Women Voters of Florida v. Lee*, 4:21-cv-186.

Highway Safety and Motor Vehicles, or a voter registration agency.” *Id.* § 97.021(40)(b).

9. In Florida, before engaging in voter registration activities, 3PVROs must register directly with the Division of Elections and provide specific information about their operations, officers, employees, and agents. *Id.* § 97.0575(1); Fla. Admin. Code r. 1S-2.042; ECF 402 at 32–33, ¶ 26.

10. Florida law does not require individual canvassers to meet certain educational requirements or obtain licenses from the state to conduct voter registration. *See* Fla. Stat. § 97.0575. HTFF does not require its canvassers to meet any particular educational requirements. Trial Tr., McCoy Testimony, 289:5–8.

11. The State assigns each 3PVRO an organization ID, which they must place along with the date the application is collected from the applicant “in a conspicuous space on the bottom portion of the reverse side of the voter registration application in a manner that does not obscure any other entry.” Fla. Admin Code r. 1S-2.042(4)(b); ECF 402 at 33, ¶ 27.

12. Each county supervisor of elections must provide to the Division of Elections information on voter registration forms assigned to and received from 3PVROs. Fla. Stat. § 97.0575(2); ECF 402 at 33, ¶ 28.

13. Statistics regarding the number of voter registration applications submitted since 2009 by each registered 3PVRO are located on the Secretary of

State's website at the following web address: <https://tpvr.elections.myflorida.com/Applications.aspx>. ECF 402 at 37, ¶ 50. The Court may take judicial notice of the information reported therein. Exhibit 1530 contains information from this database. ECF 466-82.

14. Between 2009 and November 5, 2021, 2,149,709 voter registration applications were received by Florida's Supervisors of Elections from 3PVROs. ECF 402 at 34, ¶ 30.

15. Applications received from 3PVROs between 2009 and November 5, 2021 represent at least 763,240 currently-registered individual voters whose latest registration contact with the state (new application or most recent registration update) involved assistance from a 3PVRO. ECF 402 at 34, ¶ 31. This current number excludes voters who originally registered through a 3PVRO and then later updated their registration through another method, *e.g.*, a voter registration agency or driver license office. *Id.* at 34, ¶ 32. The number 763,240 is likely to be an undercount of voters who registered through a 3PVRO. Trial Tr., Testimony of Dr. Daniel Smith, 2568:9–14.

16. 3PVROs help reach voters who might not otherwise register to vote with their county supervisor of elections. Trial Tr., Testimony of Supervisor Joe Scott, 1162:12–15; Trial Tr., Testimony of Supervisor Christina White, 1343:3–6; Trial Tr., Testimony of Supervisor Mark Earley, 2666:6–11.

17. 3PVROs can reach voters because they are “volunteers from the community who have more trust than government agencies.” Trial Tr., Scott Testimony, 1162:15–19. 3PVROs are “necessary” to conduct voter registration because “[a]verage people just aren’t following elections and politics on a continuous basis when they have busy lives. So there is a huge service being done by these organizations.” *Id.* at 1168:11, 15–19.

18. 3PVROs lower the cost of voting because they lower the cost of voter registration. Trial Tr., Testimony of Dr. Michael Herron, 2295:2–3.

19. 3PVROs are a “big aid” in Leon County’s voter outreach efforts. Trial Tr., Earley Testimony, 3501: 17.

20. 3PVROs are active in Lee County and play an important role in registering voters there. Trial Tr., Testimony of Supervisor Tommy Doyle, 3215:12–13, 3241:25–3242:3.

21. Supervisor Doyle was not aware of any voter fraud associated with any 3PVROs in Lee County. *Id.* at 3247:16–19.

22. There were no complaints or problems with how voter registration was conducted, or with 3PVROs generally, in Broward and Hillsborough counties before SB 90 was passed. *Id.* at 51:1–5; Trial Tr., Scott Testimony, 1163:8–18.

23. There have been no issues, problems, or complaints concerning 3PVROs in Broward County. Trial Tr., Scott Testimony, 1162:24–1163:4.



24. There were also no complaints from voters in Lake and Miami-Dade counties about 3PVROs submitting untimely voter registration application forms. Trial Tr., White Testimony, 1343:13–16; ECF 549-2, Dep. Designation of Supervisor Alan Hays, 129:4–14. There were no complaints from voters in Miami-Dade County that 3PVROs failed to submit their completed voter registration application forms. Trial Tr., White Testimony, 3184:2–15.

25. It is rare for 3PVROs to deliver untimely voter registration application forms. Trial Tr., Earley Testimony, 2666:12–16; Trial Tr. Doyle Testimony, 3245:4–7, 3245:11–14; ECF 549-3, Dep. Designation of Supervisor Craig Latimer, 50:16–23.

26. The following chart summarizes responses to the *League* Plaintiffs’ Request for Admission No. 10 (“Admit that you are not aware of any voter who was unable to vote in your county in 2020 as a result of a third-party voter organization returning their voter registration form late or failing to return a voter registration form.”). See ECF 462-47–100; ECF 463-1–13.

**Table 1.**

Citation	County	Supervisor of Elections	Response Date	Response
ECF 462-47	Alachua	Kim A. Barton	October 14, 2021	Admit
ECF 462-48	Baker	Chris Milton	October 22, 2021	Admit.

<b>Citation</b>	<b>County</b>	<b>Supervisor of Elections</b>	<b>Response Date</b>	<b>Response</b>
ECF 462-49	Bay	Mark Andersen	October 22, 2021	Admit.
ECF 462-50	Bradford	Amanda Seyfang	October 22, 2021	Admit.
ECF 462-51	Brevard	Lori Scott	October 22, 2021	Admitted.
ECF 462-52	Broward	Joe Scott	October 21, 2021	Admit.
ECF 462-53	Calhoun	Sharon Chason	October 22, 2021	Admit.
ECF 462-54	Charlotte	Paul A. Stamoulis	October 22, 2021	Admitted.
ECF 462-55	Citrus	Maureen Baird	October 21, 2021	Admitted.
ECF 462-56	Clay	Chris Chambless	October 22, 2021	Admit.
ECF 462-57	Collier	Jennifer Edwards	October 21, 2021	Admitted.
ECF 462-58	Columbia	Tomi Brown	October 22, 2021	Admit.
ECF 462-59	DeSoto	Mark Negley	October 22, 2021	Admitted.
ECF 462-60	Dixie	Starlet Cannon	October 22, 2021	Admit.
ECF 462-61	Duval	Mike Hogan	October 27, 2021	Admitted.
ECF 462-62	Escambia	David H. Stafford	October 22, 2021	Admit
ECF 462-63	Flagler	Kaiti Lenhart	October 22, 2021	Admitted.
ECF 462-64	Franklin	Heather Riley	October 22, 2021	Admit.
ECF 462-65	Gadsden	Shirley Green Knight	October 22, 2021	Admit.

<b>Citation</b>	<b>County</b>	<b>Supervisor of Elections</b>	<b>Response Date</b>	<b>Response</b>
ECF 462-66	Gilchrist	Connie Sanchez	October 22, 2021	Admitted.
ECF 462-67	Glades	Aletris Farnam	October 22, 2021	Admitted.
ECF 462-68	Gulf	John Hanlon	October 22, 2021	Admitted.
ECF 462-69	Hamilton	Laura Hutto	October 22, 2021	Admit.
ECF 462-70	Hardee	Diane Smith	October 22, 2021	Admitted.
ECF 462-71	Hendry	Brenda Hoots	October 22, 2021	Admitted.
ECF 462-72	Hernando	Shirley Anderson	October 22, 2021	Admit.
ECF 462-73	Highlands	Penny Ogg	October 22, 2021	Admitted.
ECF 462-74	Hillsborough	Craig Latimer	October 22, 2021	Admit.
ECF 462-75	Holmes	Therisa Meadows	October 22, 2021	Admitted.
ECF 462-76	Indian River	Leslie Rossway Swan	October 21, 2021	Admitted.
ECF 462-77	Jackson	Carol Dunaway	October 22, 2021	Admit.
ECF 462-78	Jefferson	Marty Bishop (ret.)/ Justin "Tyler" McNeill	October 22, 2021	Admitted.
ECF 462-79	Lafayette	Travis Hart	October 22, 2021	Admit.
ECF 462-80	Lake	Alan Hays	October 21, 2021	Admitted.
ECF 462-81	Lee	Tommy Doyle	October 21, 2021	Admitted.

<b>Citation</b>	<b>County</b>	<b>Supervisor of Elections</b>	<b>Response Date</b>	<b>Response</b>
ECF 462-82	Leon	Mark Earley	October 21, 2021	Admitted.
ECF 462-83	Levy	Tammy Jones	October 22, 2021	Admitted.
ECF 462-84	Liberty	Grant Conyers	October 22, 2021	Admit.
ECF 462-85	Madison	Heath Driggers	October 22, 2021	Admitted
ECF 462-86	Manatee	Michael Bennett	October 21, 2021	Admitted.
ECF 462-87	Marion	Wesley Wilcox	October 21, 2021	Admitted.
ECF 462-88	Martin	Vicki Davis	October 22, 2021	Admit.
ECF 462-89	Miami-Dade	Christina White	October 22, 2021	Admitted.
ECF 462-90	Monroe	Joyce Griffin	October 21, 2021	Admitted.
ECF 462-91	Nassau	Janet Adkins	October 22, 2021	Admit.
ECF 462-92	Okaloosa	Paul A. Lux	October 22, 2021	Admitted.
ECF 462-93	Okeechobee	Melissa Arnold	October 22, 2021	Admitted.
ECF 462-94	Orange	Bill Cowles	October 22, 2021	The material allegations of this request are admitted. The Supervisor would note that he would be unaware of an issue of any voter failing to return a voter registration form, individually

<b>Citation</b>	<b>County</b>	<b>Supervisor of Elections</b>	<b>Response Date</b>	<b>Response</b>
				or through an organization.
ECF 462-95	Osceola	Mary Jane Arrington	October 22, 2021	Admit.
ECF 462-96	Palm Beach	Wendy Sartory Link	October 22, 2021	ADMIT.
ECF 462-97	Pasco	Brian Corley	October 21, 2021	Denied.
ECF 462-98	Pinellas	Julie Marcus	October 21, 2021	Deny.
ECF 462-99	Polk	Lori Edwards	October 22, 2021	Not aware, therefore Admit.
ECF 462-100	Putnam	Charles Overturf, III	October 22, 2021	Admit.
ECF 463-1	Santa Rosa	Tappie Villane	October 22, 2021	Admit.
ECF 463-2	Sarasota	Ron Turner	November 1, 2021	Admit to being unaware of any voter who was unable to vote as a result of a 3PVRO submitting a voter registration late. However, I would have no knowledge of persons unable to vote due to a 3PVRO failing to submit a voter registration form.
ECF 463-3	Seminole	Chris Anderson	October 21, 2021	Admitted.
ECF 463-4	St. Johns	Vicky Oakes	October 22, 2021	Denied. This office received 12 late registrations from

Citation	County	Supervisor of Elections	Response Date	Response
				third-party voter organizations in 2020. The registration book closed on February 18, 2020, for the March 17, 2020 election. These voters were not able to vote in the 2020 March election. See documents produced in response to LWV Request for Production item 33 documents are numbered St. Johns 015107- St. Johns 015134.
ECF 463-5	St. Lucie	Gertrude Walker	October 22, 2021	Admit.
ECF 463-6	Sumter	William "Bill" Keen	October 22, 2021	Admit.
ECF 463-7	Suwannee	Jennifer Kinsey	October 22, 2021	Admit.
ECF 463-8	Taylor	Dana Southerland	October 22, 2021	Admit.
ECF 463-9	Union	Deborah Osborne	October 22, 2021	Admit.
ECF 463-10	Volusia	Lisa Lewis	October 22, 2021	Admitted.
ECF 463-11	Wakulla	Joe Morgan	October 22, 2021	Admit.

Citation	County	Supervisor of Elections	Response Date	Response
ECF 463-12	Walton	Bobby Beasley	October 22, 2021	Admit.
ECF 463-13	Washington	Carol Rudd	October 22, 2021	Admit.

27. Lake, Lee, and Miami-Dade counties reported no incidents in which voters were prevented from voting due to 3PVROs turning in untimely voter registration application forms. ECF 549-2, Dep. Designation of Supervisor Alan Hays, 129:15–20; Trial Tr., Doyle Testimony, 3247:20–24; Trial Tr., White Testimony, 1343:7–12.

28. In the rare instances where 3PVROs submitted untimely voter registration application forms in Hillsborough County, applicants were still able to vote in the election by provisional ballot. ECF 549-3, Dep. Designation of Supervisor Craig Latimer, 50:16–23, 56:6–16, 147:25–148:10.

29. The State did not identify any specific voter who was unable to vote in an election in which they wished to vote because of a 3PVRO turning in their form late. *See generally* Trial Tr., Testimony of Director Maria Matthews, 2756:22–2837:18, 3391:13–3481:3. The State did not identify any specific voter who faced any obstacle or barrier in updating their address to vote because of a 3PVRO turning in their form late. *See generally id.*

30. Voter registration in Florida declined when a prior law—HB 1355—imposed restrictions on 3PVROs. Trial Tr., Herron Testimony, 2295:7–2296:15.

**C. SB 90 and the Registration Disclaimer Provision**

31. The Florida Legislature initially passed the statute requiring 3PVROs to register with the State in 2005. Ch. 2005-277 § 7, Laws of Fla. It took effect on January 1, 2006. *Id.* § 79.

32. Since 2006, paragraph (3) of the statute has established deadlines for 3PVROs to return completed registration forms to Supervisors of Elections, as well as fines for forms not submitted by these deadlines. *See id.* § 7.

33. Prior to 2021, Section 97.0575 was last amended in 2011. *See Fla. Laws ch. 2011-40, § 4 (passed as HB 1355).* In 2011, the Legislature consolidated the submission deadlines and fine amounts for untimely submitted forms into paragraph (3)(a). *Id.* It also added an annual aggregate fine cap of \$1,000. *Id.*; ECF 402 at 34–35, ¶ 33.

34. The 2011 amendments to Section 97.0575 also created paragraph (4), which reads: “If the Secretary of State reasonably believes that a person has committed a violation of this section, the secretary may refer the matter to the Attorney General for enforcement. The Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.” *See Ch. 2011-40, § 4, Laws of Fla.*



35. In 2021, the Legislature enacted SB 90, which included amendments to Section 97.0575(3)(a). ECF 461-2 § 7. The bill changed the submission deadline such that 3PVROs must return registration forms “within 14 days after the application was completed by the applicant, but not after registration closes for the next ensuing election.” *Id.*

36. Under Florida law, registration closes 29 days before Election Day Fla. Stat. § 97.055(1)(a); Trial Tr., Matthews Testimony, 2765:12–18 (noting this is referred to colloquially as “book closing”).

37. If Supervisors of Elections receive a voter registration form after the fourteen-day deadline, but before book closing, the voter will still be registered to vote in the election. Trial Tr., Earley Testimony, 2668:16–19; Trial Tr., White Testimony, 3183:19–3184:1.

38. SB 90 added to paragraph (3)(a) the following requirement (“Disclaimer Provision”):

A third-party voter registration organization must notify the applicant at the time the application is collected that the organization might not deliver the application to the division or the supervisor of elections in the county in which the applicant resides in less than 14 days or before registration closes for the next ensuing election and must advise the applicant that he or she may deliver the application in person or by mail. The third-party voter registration organization must also inform the applicant how to register online with the division and how to determine whether the application has been delivered.

Fla. Stat. § 97.0575(3)(a).

39. This Court previously enjoined enforcement of a deadline of fewer than 10 days for 3PVROs to turn in voter registration forms. *League of Women Voters of Fla. v. Detzner*, No. 4:11cv628-RH/WCS, 2012 WL 12810507, at \*1 (N.D. Fla. Aug. 30, 2012) (“2012 Order”); ECF 402 at 26, ¶ 12 n.15. Nothing in the 2012 Order required enactment of the Registration Disclaimer Provision. *Detzner*, 2012 WL 12810507.

40. The required disclaimer is not accurate as to all potential Florida voters. For example, under Florida law, a voter may only submit a registration form online if the person has been issued a driver license or identification card by the Department of Highway Safety and Motor Vehicles. Fla. Stat. § 97.0525(4)(a). Individuals also must have internet access to use this tool.

41. The State’s online voter lookup tool does not contain any information regarding whether a voter registration application has been delivered by a 3PVRO unless the application has been processed. ECF 402 at 32, ¶ 23.

42. If a voter’s registration application is processed but denied, the State’s online voter lookup tool does not provide information regarding whether that application has been delivered to a supervisor of elections office or the Division of Elections. ECF 402 at 32, ¶ 24.

43. SB 90 did not make any changes to Section 97.0575(4)’s language. *See* ECF 461-2 § 7. However, in Division of Elections Director Maria Matthews’s view,

it changed enforcement under paragraph (4) by adding the Registration Disclaimer Provision to those provisions subject to enforcement through it. Trial Tr., Matthews Testimony, 2768: 4–14.

44. The fines set out under Section 97.0575(3)(a) are, on their face, only applicable to untimely submission, not to the Registration Disclaimer Provision. ECF 402 at 30, ¶ 15.

45. On May 6, 2021, Governor DeSantis signed SB 90 into law. ECF 402 at 20, ¶ 1.

46. SB 90 went into effect immediately upon signing on May 6, 2021. ECF 461-2 § 33; ECF 402 at 20, ¶ 2.

47. The Secretary of State promulgates Florida’s voter registration application pursuant to its regulatory authority. Fla. Admin. Code r. 1S-2.040; ECF 402 at 37, ¶ 52.

48. In contrast to the new disclaimer requirement for 3PVROs, Florida’s voter registration form, DS-DE 139, does not reference online voter registration. ECF 402 at 32, ¶ 21. Instead, Florida’s voter registration form states, “The downloadable/printable online form is available at [registertovoteflorida.gov](https://registertovoteflorida.gov). *Id.* at 31–32, ¶ 20.

49. Most 3PVROs utilize the state voter registration form rather than the national mail form. *See* ECF 466-82 (vastly more state than federal applications received).

50. Florida's voter registration form currently contains the following instruction:

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

ECF 402 at 31, ¶ 19.

51. Florida's online voter registration system malfunctioned the night before book closing for the 2018 general election, locking voters out of the site right before the deadline. *See* Trial Tr., Matthews Testimony, 2803:3–10.

52. On the final day of voter registration for the 2020 general election, Florida's online voter registration system again malfunctioned. ECF 402 at 32, ¶ 25; *see also* ECF 466-87, 20:5-6 (Secretary Lee states, "we were aware that there were voters who were attempting to register [on Florida's online voter registration site] on that final night and were unable to do so.").

53. However, the Division of Elections is not required to provide a disclaimer to potential voters about Florida’s online voter registration system. *See* Trial Tr., Matthews Testimony, 2837:14–16.

54. No other state requires an organization conducting voter registration drives to issue a disclaimer to registration applicants that indicates the organization may not follow the law. Trial Tr., McDonald Testimony, 3607:9–3608:25. Indeed, the State has not introduced evidence of any other such law, in any legal or regulatory context, that requires an actor to disclaim compliance with a law to which they are subject.

**D. The 2020 Election**

55. The 2020 general election in Florida was praised as safe and secure by federal, state, and local officials. ECF 402 at 36, ¶ 44.

56. The Secretary of State has stated that the 2020 General Election in Florida “ran as smoothly as possible and inspired confidence on the part of Florida’s voters.” ECF 465-88, RFA No. 33; *see also* ECF 461-54 at 2:13-18.

57. With respect to the 2020 general election, Secretary Lee stated: “[A]ll Florida voters, no matter how they chose to cast a ballot, or who they voted for, could be confident in the integrity of Florida’s elections system and security of their vote.” *Id.* at 36, ¶ 45.

58. Multiple supervisors considered the 2020 elections in Florida successful. ECF 549-2, Dep. Designation of Supervisor Alan Hays, at 38:3–6, 38:18–20, 41:10–14; ECF 549-3, Dep. Designation of Supervisor Craig Latimer, 95:18–25; Trial Tr., Earley Testimony, 2605:16–18; Trial Tr., White Testimony, 1333:18–1334:3; Trial Tr., Doyle Testimony, 3228:25–3229:5.

59. At trial, Director Matthews reiterated that all voters should be confident in the integrity of the election system and the security of their vote in the 2020 election, no matter how they cast their ballots. Trial Tr., Matthews Testimony, 2759:2–8.

60. The Attorney General’s office “rel[ies] on what elections officials have told [it] that the elections results were secure.” ECF 549-1, Dep. Designation of Elizabeth Guzzo, at 29:18–24, 30:9–14.

#### **E. Legislative History of SB 90**

61. Each Supervisor is a member of Florida Supervisor of Elections, Inc. (“FSE”), an association of Florida’s Supervisors of Elections. ECF 402 at 39, ¶ 58. On April 23, 2021, FSE issued a statement that “[FSE] does not support SB90 or HB7041 in their current form, but continues to share information with the legislature,” and FSE never took a position in favor of the Challenged Provisions. ECF 402 at 40, ¶ 59.

62. SB 90 was introduced on February 3, 2021. ECF 466-80 at 2. As introduced, SB 90 had only four sections. ECF 461-57 at 10-11. The Registration Disclaimer Provision was not yet included. *Id.*

63. HB 7041, SB 90's companion bill in the House, was introduced on March 23, 2021. ECF 466-81 at 6.

64. Supervisors of Elections were not consulted in their capacities as election officials before SB 90 or HB 7041 were introduced. Trial Tr., Scott Testimony, 1212:4–7; Trial Tr., Earley Testimony, 2611:16–19; Trial Tr., Doyle Testimony, 3233:18–22; ECF 549-3, Dep. Designation of Supervisor Craig Latimer, 116:25–117:3; ECF 549-2, Dep. Designation of Supervisor Alan Hays, 43:8–11, 138:12–15.

65. SB 90 did not include provisions addressing any of the Supervisors' top-ten priorities. ECF 549-2, Hays Dep. Designation, 46:3–19.

66. Florida Supervisors of Elections did not believe there was a need for the legislation at issue in this case. Trial Tr., Earley Testimony, 3504:11–13.

67. The Registration Disclaimer Provision was repeatedly glossed over and described—spuriously—as intended to comply with a court order, ostensibly the 2012 Order. *See, e.g.*, ECF 461-98 16:16-24. The following chart summarizes the entire legislative record as it pertains to voter registration organizations and the disclaimer:

**Table 2. Legislative Record Discussion of Voter Registration**

<b>Date/Occasion</b>	<b>Speaker</b>	<b>Summary</b>	<b>Citation</b>
2/9/21 PIE Committee Workshop	Antonacci (former Broward SOE) (R)	Supervisor Antonacci states, “In the voting registration word, there's a lot of chaos that occurs as a result of private involvement with voter registration.” As an example, Supervisor Antonacci describes problems with the Voter Participation Center using outdated information and sending “flyers” to people who are deceased.	ECF 466-87, 63:4-17
2/9/21 PIE Committee Workshop	Antonacci (former Broward SOE) (R)	Supervisor Antonacci continues that "this is all an artifact of outsourcing voter registration" and notes that "previous legislatures attempted to tighten up the system with the third-party voter registration system. I can tell you without any question it doesn't work very well. And it doesn't cut down on some of the abuses that I've laid out.	ECF 466-87, 64: 9–16
2/16/21 Senate E&E Committee	n/a	No discussion of voter registration disclaimer	ECF 461-33
3/10/21 Senate Gov. Oversight and Accountability	n/a	No discussion of voter registration disclaimer	ECF 461-34
3/22/21 House PIE Committee	Ingoglia (R)	Rep. Ingoglia says the Registration Disclaimer Provision “requires organizations to inform applicants of a possible registration delay, and that they may register online or deliver the application personally.”	ECF 461-35, 5:5–15
3/22/21 House PIE Committee	Ramba (SOE Lobbyist)	References that “much of the cleanup is based on provisions being struck by a federal judge” and makes a few other comments but does not reference the disclaimer.	ECF 461-35, 98:14–21
4/8/21 House Appropriations Comm. re HB 7041	Ingoglia	Rep. Ingoglia’s summary of the voter registration provisions leaves out the Registration Disclaimer Provision entirely.	ECF 461-36, 5:3–8



<b>Date/Occasion</b>	<b>Speaker</b>	<b>Summary</b>	<b>Citation</b>
4/14/21 Senate Committee on Rules	Powell (D) question; Baxley (R) response	Sen. Powell asks how will the disclaimer “be accomplished”; Sen. Baxley’s response refers to the supervisors for direction, despite that legislation gives supervisors no such specific related authority.	ECF 461-37, 100:6–25
4/14/21 Senate Committee on Rules	Powell (D) question; Baxley (R) response	Discussion of turnaround time changes, which are not challenged here, so as to comply with the federal court order from 2012.	ECF 461-37, 101:22–103:18
4/19/21 House State affairs	Ingoglia (R)	Rep. Ingoglia's summary leaves out the Registration Disclaimer Provision entirely.	ECF 461-38 at 5:5–10
4/20/21 Senate Rules on SB 90	n/a	No 3PVRO discussion	ECF 461-39
4/22/21 Senate Floor Debate, 2 <sup>nd</sup> Reading	Baxley (R)	In his description of the bill, Baxley does not mention the 3PVRO provisions.	ECF 461-98
4/22/21 Senate Floor Debate, 2 <sup>nd</sup> Reading	Shevrin Jones (D)	Amendment is offered to strike the Registration Disclaimer Provision as misleading. Amendment sponsor noted that legislature was “placing an unfair assumption that organizations will not comply with the law” and that legislators know that “this will likely have a chilling effect on the willingness of potential electors to participate in voter registration drives.”	ECF 461-98, 14:21–17:12
4/22/21 Senate Floor Debate, 2 <sup>nd</sup> Reading	Ben Albritton (R)	In discussion of the proposed amendment to remove disclaimer provision, justification offered for the 3PVRO provisions is to comply with the 2012 court order: “what the bill is doing is really implementing that in line with the statute with that ruling.”	ECF 461-98, 16:16–24
4/26/21 Senate Floor Debate, 3 <sup>rd</sup> Reading	n/a	3PVROs were not mentioned	ECF 462-8

Date/Occasion	Speaker	Summary	Citation
4/27/21 House Floor Debate, 2 <sup>nd</sup> Reading	Ingoglia (R)	Says only, "It cleans up third party registration organizational laws to require organizations to submit registrations within 14 days to the correct county."	ECF 462-9, 6:24–7:2
4/28/21 House Floor Debate, 3 <sup>rd</sup> Reading	Tommy Gregory (R)	Justification of the 3PVRO provisions as to comply with the 2012 court ruling: "We shouldn't have private money of individuals or groups coming in upsetting the integrity of our elections with the way that they are registering voters. This is good commonsense regulation which, by the way, is absolutely required by court ruling. It isn't even as if we have a choice to do it."	ECF 462-29, 45:20–46:3
4/28/21 House Floor Debate, 3 <sup>rd</sup> Reading	Eskamani (D)	Rep. Eskamani notes need for voter registration and accessibility, her personal experience with voter registration, in context of her opposition to bill.	ECF 462-29, 56:4–14
4/28/21 House Floor Debate, 3 <sup>rd</sup> Reading	Thompson (D)	Notes in the context of discussing "gaslighting" that bill sponsor is asking people not to believe that "we're shaking confidence in voter registration by having to inform people that the ballot [sic] may not get there in time."	ECF 462-29, 83:11–23

68. In proposing and enacting the Registration Disclaimer, there is no evidence in the record that the Legislature received or considered any fine letters sent to 3PVROs for untimely submitted forms. *See supra* Table 2.

69. There is no evidence in the record that the Legislature discussed the existence of or history of late applications or otherwise considered any evidence on this issue. *Id.*

70. The record is devoid of evidence that the Legislature discussed or heard evidence that potential voters were confused over whether 3PVROs and their canvassers were state officials. *Id.*

71. Director Matthews did not have “an independent recollection” of her office providing information regarding late-submitted applications to the Legislature. Trial Tr., Matthews Testimony, 2795:13–2796:4. No documentary evidence that such information was provided was admitted. *See id.*

72. Supervisors of Elections expressed their opposition to SB 90 and HB 7041 while the bills were being considered in the Legislature. ECF 549-2, Hays Dep. Designation, 42:11–43:7; ECF 543-3 Latimer Dep. Designation, 108:8–16; ECF 608-28 at 2; ECF 608-35; ECF 608-40 at 1; ECF 608-42; ECF 608-49; ECF 608-51; ECF 608-99; ECF 634-7 at 1; Trial Tr., Scott Testimony, 1212:11–1213:4, 1215:2–7; Trial Tr., Testimony of Supervisor Brian Corley, 1273:14–20; Trial Tr., Doyle Testimony, 3234:12–3236:3.

73. While Florida Supervisors of Elections lobbyist David Ramba acknowledged that many of SB 90’s other provisions were altered based on supervisors’ recommendations, Trial Tr., Testimony of David Ramba, 3100:21–3101:4, he notably did not testify or otherwise suggest that the final bill reflected the supervisors’ input on the Registration Disclaimer Provision, *see generally id.* at 3079:20–3135:3.

74. At the February 9 workshop, one former SOE complained that “a lot of chaos [] occurs as a result of private involvement with voter registration” and cites as an example of problems with an organization “using outdated information” and sending “flyers” to people who are deceased.” *See supra* Table 2; ECF 466-87 at 63:4-17. However, nothing in the Registration Disclaimer Provision addresses or would prevent this issue, except perhaps to the extent that it suggests that the true purpose of the law is to limit private involvement with voter registration.

75. SB 90’s sponsors and supporters “didn’t really make much sense” when answering questions from legislative colleagues as to why certain measures were included in the bill. Trial Tr., Earley Testimony, 2614:1–10; *see also* ECF 461-37 at 100:6-25 (misleading answers to questions regarding content of 3PVRO provisions in SB 90, such as reliance on “tremendous confidence” in the supervisors to determine how the disclaimer will be accomplished); ECF 461-98, 16:16–24.

76. From Supervisor Earley’s perspective, supervisors of elections “without a doubt” had a “negative reaction” to SB 90 once a strike-all amendment was adopted. Trial Tr., Earley Testimony, 2611:20–2612:10.

77. The Secretary of State’s office did not draft SB 90 or publicly support it. Trial Tr., Matthews Testimony, 2759:9–14, 3459:24–3460:7.

78. Although Director Matthews testified to “proposals” provided to the Legislature by the Secretary of State’s office, the record is devoid of any such

proposals, or any other documentary evidence demonstrating that the Secretary of State's office provided the Florida Legislature with any information other than raw election data and an answer to a question about voters without a driver license or identification numbers or the last four digits of their Social Security number in their voter records. *See id.* at 3408:9–15, 3462:14–20. Nor did Director Matthews describe the specific content of any such “proposals” and whether and how, if at all, it related to the ultimate provisions included in SB 90. *Id.* at 2794:14–2797:1, 3462:14–20. Her testimony as to “proposals” is vague, uncorroborated and not credible.

79. The Attorney General's office did not follow SB 90's introduction in the Legislature. ECF 549-1, Dep. Designation of Elizabeth Guzzo, 30:18–22.

80. The Attorney General did not take a position on SB 90. *Id.* at 31:10–13.

81. The Attorney General's office did not play any role in shaping SB 90. *Id.* at 31:2–5.

82. No legislator consulted with the Attorney General's office about SB 90 prior to its enactment. *Id.* at 31:6–9, 32:5–9.

83. The Attorney General's office did not communicate with anyone about SB 90 during the legislative process. *Id.* at 31:22–25.

84. Prior to SB 90's enactment, the Attorney General's office did not request that any changes be made to the laws governing 3PVROs. *Id.* at 44:10–13.

85. The Attorney General's office does not have any views as to the state interests served by SB 90's changes to the rules governing 3PVROs. *Id.* at 44:14–23.

86. The Attorney General's office does not have a view on whether the Registration Disclaimer Provision does anything to specifically prevent fraud. *Id.* at 45:15–20.

87. The Attorney General's office could not recall the specifics of any incidents in which a voter was prevented from voting because of a 3PVRO submitting untimely voter registration application forms. *Id.* at 60:8–12, 60:14–61:9.

88. Senator Baxley, the sponsor of SB 90, when asked by Senator Powell how the registration provisions would be “accomplished,” replied only that he would “rely on tremendous confidence that we have in supervisors and what they have accomplished” and added that the Registration Disclaimer Provision provided “authority to establish procedures.” ECF 461-37, 100:6–25. Yet the supervisors are not charged with enforcing the Registration Disclaimer Provision, and the provision provides no authority to supervisors to establish any such procedures or guidance regarding the means for compliance. To the extent any such informal guidance would be created ad hoc, it would likely vary among the 67 counties.

**F. Harriet Tubman Freedom Fighters’ Registration Activities in Low-Income Communities, Relying on Building Trust to Break Down Barriers**

89. HTFF focuses its voter registration activities in “low-income communities.” Trial Tr., McCoy Testimony, 260:1–4. It sends canvassers to “laundromats, bus stations, the courthouse, convenience stores. . . . anyplace [sic] that a group of people might be.” *Id.* at 260:5–11.

90. As Ms. McCoy testified, when speaking to potential voters, HTFF’s canvassers “try to build a conversation with them, and usually [they] start out trying to find out what concerns they would have in their communities. So [they] build a rapport. [They] try to build a trust there with them.” *Id.* at 261:4–7.

91. HTFF has two goals during these interactions: “one, is to get them to fill out that application and register to vote. The other goal . . . is to eliminate the barriers for certain communities to register to vote.” *Id.* at 261:19–22. Such barriers include lack of transportation to travel to a supervisor’s office, lack of materials to register on their own with a paper application or print-out, or lack of internet access. *Id.* at 262:12–16.

92. Conversations with potential voter registrants include conversations to “help them understand the different levels of voting, which is the city council, the state, and the federal government, so they can understand the importance of voting.” *Id.* at 263:20–23.

93. The nature of these interactions varies. *Id.* at 263:2. As Ms. McCoy testified, “Some of them may say no, they’re not interested in registering to vote; they’re not registered to vote; they don’t care to register to vote. Or they might just listen to [HTFF’s canvassers] as [they] explain the importance [of civic engagement].” *Id.* at 263:2–5.

94. Some potential voters respond, “I don’t trust the system and my vote doesn’t matter.” *Id.* at 263:7–8. Ms. McCoy testified that she uses this opportunity to “try to find . . . a commonality” with them. *Id.* at 263:17–18. “[F]or instance, if they are there with a child, then I’ll say, you know, ‘Voting is about your child’s future. . . . we need funding for the school or housing, you know, or jobs. You know, you need a decent pay in order to survive.’” *Id.* at 263:12–16.

95. Some of the voters HTFF assists do not have state IDs. *Id.* at 274:18–20.

96. Not all people eligible to vote in Florida have driver licenses. Trial Tr., Testimony of Supervisor Tommy Doyle, 3249:12–15; 13; ECF 549-3, Dep. Designation of Supervisor Craig Latimer, 179:1–7.

97. HTFF is funded through grants and individual-level donations. Trial Tr., McCoy Testimony, 288:11–289:1.



98. The number of paid workers hired by HTFF “varies” and has fluctuated between six and nine paid staff. *Id.* at 287:17–21. HTFF pays its canvassers by the day, including for training time. *Id.* at 286:7–8, 289:3–4.

99. To date, HTFF has helped 306 people register to vote. ECF 466-82 at 119. All of these applications were turned in on time. Trial Tr., McCoy Testimony, 272:14–18.

100. HTFF cannot track the number of people who decline to register through the help of its canvassers. Ms. McCoy explained, “We are paper and pen, and we do not have the same technology as the voter registration agencies, where they have a button and they can just click decline and can keep their data. So, no, we don’t have the ability to do that.” *Id.* at 271:2–9.

#### **G. The Disclaimer’s Impact on Harriet Tubman Freedom Fighters**

101. Conversations with potential voters can be “long.” *Id.* at 286:21. “It could take 10 minutes, 15 minutes, 20 minutes [before they get to the form]. It just depends on the person as far as what it’s going to take for them to understand the process, the reason [for registering to vote].” *Id.* at 265:6–10.

102. Once a potential voter decides to register with HTFF’s help, the canvasser goes “line per line” of the form with the voter. *Id.* at 265:15–16. According to Ms. McCoy, “We’re going to go line for line because we don’t want to miss any of the required areas, so it takes a while because they have to print out the

information, and we try to make certain that it's legible. So that can take another 10, 15 minutes just for them to fill out the form . . .". *Id.* at 265:17–22.

103. After SB 90's enactment, interactions with potential voters take "a little longer because [canvassers] have to explain [the disclaimer]. . . . [I]t's just more of a burden." *Id.* at 268:13–19.

104. "After the applicant completes the voter registration document, sign[s] it and date[s] it," HTFF provides the applicant with an acknowledgement form, which contains the required disclaimer. *Id.* at 281:18–21; ECF 461-20 (Exhibit 289, Acknowledgment Form). "Either [the applicant] can read the information, or [HTTF will] read it to them, and they print their name; they sign their signature, and if they allowed [HTFF] to turn in the document, then that's it." Trial Tr., McCoy Testimony, 281:24–282:2.

105. "If they decide they want to turn it in, then [HTFF] use[s]" the form to indicate that the applicant chose "to turn the document in themselves." *Id.* at 282:3–4.

106. After applicants entrust their registration forms to HTFF, canvassers provide them with a "receipt" containing the applicant's "name, date, and the canvasser name. And then, again, they can read this statement, the disclaimer, themselves or [HTFF] can read it to them. It also gives the website where they can check their voter registration to see if it's there and then also the disclaimer." *Id.* at

283:19–24; ECF 461-21 (Exhibit 290, Voter Registration Receipt). The receipt also provides “a nonpartisan number where they could reach to if they have any questions concerning voter registration.” Trial Tr., McCoy Testimony, 283:24–284:1.

107. Canvassers can talk to fewer people per shift because part of their time must be used to provide and explain the disclaimer. *Id.* at 268:20–269:10; *see also infra* Table 3 (citing additional testimony of 3PVRO witnesses and others regarding the disclaimer’s impact on the number of voters reached).

108. Ms. McCoy explained, “[O]ur time is important. Time is of the essence . . . So we’re trying to . . . explain to the individual the importance of voting and filling out the application to register to vote. Then we have to do the disclaimer and read the disclaimer, and because we’re trying to obey the law, comply to the law, we also give them a receipt. So it just takes a lot of time, a lot of thinking to make certain that we do comply to the law. So we are doing our best out there, but it’s—it added an extra burden.” Trial Tr., McCoy Testimony, 268:24–269:10.

109. Time is of the essence in part because of the context, for example, because some potential voters have to get on a bus. *Id.* at 268:24–269:3.

110. The Registration Disclaimer Provision forces HTFF to provide a message it would not otherwise deliver to potential voters. *Id.* at 267:12–13 (“We are saying something that I would not say.”).

111. Absent SB 90, HTFF would never tell potential voters it may not submit their forms on time. Ms. McCoy testified that HTFF believes the Registration Disclaimer is contradictory to the legal requirement to turn in registration forms on time and untrue. Further, it undermines potential registrants' trust in HTFF. *Id.* at 267:12–15, 271:16–272:1.

112. Absent SB 90, HTFF would not otherwise tell potential voters about other registration options, because “the purpose of [HTFF] being out there is to get completed voter registration forms to eliminate the barriers” to promote participation “in our democracy and for democracy.” *Id.* at 285:23–286:2.

113. Offering other registration methods to applicants is contrary to HTFF's goals: in Ms. McCoy's experience, giving out registration forms to potential applicants to fill out and return on their own is unlikely to result in that person registering. *Id.* at 276:21–24. Alternate forms of registration are inaccessible to some voters HTFF assists because they either do not have a Florida driver license or identification card and therefore cannot register online. *Id.* at 274:18–20; Fla. Stat. § 97.0525(4)(a). Potential voters also “might not have a stamp, or they might not have transportation to get to the Supervisor of Elections' Office, or they might not have Internet services or even a printer to print out the [voter registration] form.” Trial Tr., McCoy Testimony, 262:12–16. With respect to voters who rely on public

transportation, “there isn’t a bus stop in front of” the Duval County Supervisor of Elections Office. *Id.* at 275:3–6.

### **H. Interference with HTFF’s Mission**

114. The Registration Disclaimer Provision is “confusing” to HTFF’s canvassers and the potential voters with whom it interacts. *Id.* at 267:16–21.

115. Forcing HTFF to give the contradictory Registration Disclaimer undermines the trust HTFF works to build with potential voters and creates a “seesaw” in which after HTFF gives the disclaimer they have to “go back . . . and build back up that trust.” *Id.* at 268:3–9.

116. Record evidence demonstrates that the disclaimer causes 3PVROs to undermine themselves, as shown in the following chart:

**Table 3. Testimony As to Registration Disclaimer Provision Undermining 3PVRO Voter Interactions**

<b>Witness Name</b>	<b>Trial Transcript Citation</b>	<b>Summary of Testimony</b>
Rosemary McCoy	267:5–8, 267:20– 268:12.	<ul style="list-style-type: none"> <li>• Registration Disclaimer is “contradictory” compared with their trainings which emphasize the importance of filing voter registration forms within 14 days and being entrusted with individuals’ voter registration.</li> <li>• The Registration Disclaimer undermines the trust HTFF works to build with potential voters.</li> </ul>
Cecile Scoon	48:18– 49:6, 103:1–7.	<ul style="list-style-type: none"> <li>• The League of Women Voters has established its brand in many communities as trustworthy; giving disclaimer is harmful to their brand.</li> </ul>
Cecile Scoon	49:7–19.	<ul style="list-style-type: none"> <li>• The Registration Disclaimer makes “people distrust us when we are trying to build trust, have those conversations to build</li> </ul>

Witness Name	Trial Transcript Citation	Summary of Testimony
		the trust, and then you have to turn around and kind of break it down.”
Cecile Scoon	52:15–53:14.	<ul style="list-style-type: none"> <li>Registration Disclaimer makes it hard to get over the barrier of people’s suspicions and attitudes about government for people whose peer groups haven’t supported voter registration and participation.</li> </ul>
Cecile Scoon	102:16–22.	<ul style="list-style-type: none"> <li>The way in which 3PVROs are forced to give the Registration Disclaimer implies voters shouldn’t register with them.</li> </ul>
Esteban Garces	206:7–9.	<ul style="list-style-type: none"> <li>The Registration Disclaimer is “reputational harm that we are encountering every time we have a conversation with a voter.”</li> </ul>
Esteban Garces	206:23–207:21	<ul style="list-style-type: none"> <li>“You know, we want to pull these people into the organization, but if this is how we are approaching them, it's harder for us to meet other programs that we have that include community involvement when we are really just shooting ourselves in the foot during these first interactions.”</li> </ul>
Jasmine Burney-Clarke	388:24–389:5.	<ul style="list-style-type: none"> <li>[T]o have to share a disclaimer, that could tarnish the reputation, the work that we have done, and the relationships we’ve built, would send a message that we are incapable of providing a resource to the community that we’ve been providing for numerous years. So that impact directly harms how we deliver programming to the communities that we work in.”</li> </ul>
Frederick Velez Burgos	794:2–4.	<ul style="list-style-type: none"> <li>“[I]t is our belief that the disclaimer will affect people’s trust in the organization and their feeling that we can get that voter registration is completed in time.”</li> </ul>
Frederick Velez Burgos	771:10–772:16.	<ul style="list-style-type: none"> <li>Registration Disclaimer will not only impact Hispanic Federation’s voter registration program, but also lead people to question its programs concerning other issues.</li> <li>Some member agencies "might refrain from registering voters because they also fear that using that disclaimer will harm the trust that people have in them.”</li> <li>Hispanic Federation is concerned that SB 90 can affect the trust of members they have built over the last five or six years.</li> </ul>

Witness Name	Trial Transcript Citation	Summary of Testimony
Jared Nordlund	1423:20–25.	<ul style="list-style-type: none"> <li>• The Registration Disclaimer Provision will have an impact on the reputation and trust that UnidosUS has built in the community. “I think the way it’s worded, it makes it sound that organizations like ours habitually turns in voter registrations late or doesn’t deliver them at all.”</li> </ul>
Andrea Mercado	2038:7–20.	<ul style="list-style-type: none"> <li>• “[Canvassers] have stated that they feel [the disclaimer] disrupts their ability to connect organically” with the potential voter.</li> <li>• Giving the Registration Disclaimer “undermines, you know, their work and the trust and credibility of the organization.”</li> </ul>
Supervisor Joe Scott	1168:2–24.	<ul style="list-style-type: none"> <li>• The Registration Disclaimer Provision will erode trust between 3PVROs and potential voters.</li> </ul>
Prof. Michael McDonald	3608:19–21.	<ul style="list-style-type: none"> <li>• Registration Disclaimer may also have the effect of chilling the relationship between 3PVROs and voters.</li> </ul>
Prof. Herron	2299:21–2300:1; 2332:24–2333:2.	<ul style="list-style-type: none"> <li>• The Registration Disclaimer Provision devalues the use of 3PVROs for purposes of registering individuals to vote.</li> <li>• The Registration Disclaimer Provision sends a message to potential registrants that registering to vote with 3PVROs is a “risky proposition.”</li> </ul>

117. HTFF believes the Registration Disclaimer Provision interferes with what it deems to be the most effective way to communicate with potential voters by forcing it to undermine itself and the trust it builds with potential voters. Trial Tr., McCoy Testimony, 267:20–268:12, 271:23–25. This trust is fundamental to HTFF’s voter registration work and its mission to improve civic engagement in low-income communities. *Id.* at 260:22–261:17, 267:21–268:12.

118. Telling potential voters about other registration options is not an effective means to help voters register in the communities HTFF serves. *Id.* at 272:19–273:2, 274:21–277:6. Ms. McCoy has found through her experience registering voters that there is “[z]ero” likelihood that these potential voters will register without a 3PVRO’s assistance because “voter registration is not on the forefront of people minds. That’s why they haven’t registered to vote.” *Id.* at 276:21–277:6.

119. The Registration Disclaimer Provision is unique in that it is the only statutorily-required disclaimer requiring voter registration organizations to indicate they might not turn in forms on time; indeed, it is the only state law provision in the nation that requires groups to indicate they might be out of compliance with applicable rules. *See* Trial Tr., McDonald Testimony, 3607:9–3608:21; *see also id.* at Kidd Testimony, 3055:10–22 (stating he was uncertain whether any other state has a similar provision to the Registration Disclaimer Provision in its statutes).

120. Georgia has a non-statutory disclaimer requirement in its regulations, but it does not require groups to indicate the possibility of their own noncompliance. Ga. Comp. R. & Regs. 183-1-6-.02(6). Further, Colorado’s disclosure requirement applies only to registration offered through a registration drive after the deadline to submit paper registration applications to vote in an upcoming election, and seeks to



notify potential voters that same day registration remains available, such that they can register and cast a ballot in that next election. Colo. Rev. Stat. § 1-2-702(2.5).

121. Dr. Kidd’s execution of methodologies through which he concluded the disclaimer requirement is “not unique” among states is not reliable, and his findings are not credible. Trial Tr., Testimony of Dr. Michael McDonald, 3614:5–18, 3600:8–16, 3602:18–3603:15, 3603:20–3604:3, 3605:16–3606:1; *see also* Trial Tr., Testimony of Dr. Kenneth Mayer, 3545:17–3546:3 (“[M]y conclusion is that the way that [Dr. Kidd] constructs the categories are – are unclear ... I don’t see any reliability that you can infer from the way that he constructed his categories.”); Kidd Rep., ECF 634-5 at 7; McDonald Decl., ECF 634-3 at 1-2, 9-10, 13-15. The collective effect of the Registration Disclaimer Provision, by including the other “options” available for registration in the same breath as requiring 3PVROs to convey that they might not deliver the forms on time, is dissuasive rather than informational in nature. *See* Trial Trans., Scoon Testimony, 102:16–103:7; *id.* at Herron Testimony, 2299:21–2300:1; 2332:24–2333:2; *id.* at McDonald Testimony, 3608:17-21; *see also supra* Table 3 (testimony regarding undermining relationship with voters); *infra* Table 4 (testimony regarding the reduction in voters registering through 3PVROs).

122. The Registration Disclaimer Provision reduces the number of voters who register through registration drives and the number of volunteers available to conduct voter registration, as summarized by the following chart:

**Table 4. Testimony as to Disclaimer Provision Reducing the Number of Interactions and Registrations with 3Pvro**

<b>Witness</b>	<b>Trial Transcript Citation</b>	<b>Summary</b>
Rosemary McCoy	268:16–17, 268:20–269:10.	<ul style="list-style-type: none"> <li>• After SB 90’s enactment, HTFF’s interactions with potential voters take longer because of the Registration Disclaimer Provision.</li> <li>• When interactions with potential voters take longer, canvassers are unable to talk to as many people.</li> </ul>
Cecile Scoon	162:1–8, 162:12–19, 163:1–2, 160:8–23.	<ul style="list-style-type: none"> <li>• More people turn away on hearing the disclaimer than turned away prior to SB 90.</li> <li>• Some potential voters turn away on hearing the disclaimer.</li> </ul>
Leah Nash	1130:23– 1132:2, 1132:13–17.	<ul style="list-style-type: none"> <li>• The LWV has fewer members available to register voters now than it did before SB 90. The LWV had about 1,000 members take its usual “voter registration quiz” at the end of 2020, and about 600 members take its “updated SB 90 voter registration quiz.”</li> <li>• “[t]he fewer people we have to register voters, the fewer people that get registered to vote; so it has affected our impact.”</li> </ul>
Esteban Garces	206:14–22.	<ul style="list-style-type: none"> <li>• The disclaimer increases the amount of time that canvassers have to spend on each voter registration, which takes time away from “being able to register another voter.”</li> <li>• Poder Latinx keeps “metrics...of what we think is possible, and 2021 has shown us that it’s a little bit slower than what we expect it to be.”</li> </ul>
Jasmine Burney-Clarke	392:8–392:13.	<ul style="list-style-type: none"> <li>• Equal Ground has discontinued its voter registration program entirely as a result of SB 90. “We could not, you know, again, provide a service that we felt like would harm</li> </ul>

Witness	Trial Transcript Citation	Summary
		our community or our reputation as an organization with them if we proceeded.”
Frederick Velez Burgos	819:7–20.	<ul style="list-style-type: none"> <li>Hispanic Federation decreased its goal for 2022 voter registrations from 25,000 to 20,000 after factoring in the increase of time necessary for conversations with each voter registration.</li> </ul>
Jared Nordlund	1423:11–19, 1436:12–18, 1437:5–11.	<ul style="list-style-type: none"> <li>UnidosUS lowered its 2022 voter registration goal by approximately 20,000 registrations based on the anticipated production rate following SB 90.</li> </ul>
Andrea Mercado	2039:9–17, 2044:12–13.	<ul style="list-style-type: none"> <li>Following SB 90 there has been a decrease in the number of voter registration forms canvassers at Florida Rising Together collect in an hour.</li> </ul>
SOE Joe Scott	1213:21–1214:5, 1215:12–18; 1236:13–18, 1237:2–3; 1164:17–1165:10; 1165:20–25.	<ul style="list-style-type: none"> <li>The Registration Disclaimer Provision will make it harder for 3PVROs to help register voters.</li> <li>Voters have declined to register with 3PVROs in Broward County upon hearing the Registration Disclaimer</li> <li>Individuals are less likely to volunteer for a 3PVRO due to the confusion, fear of fines, and fear of legal actions due to the Registration Disclaimer Provision.</li> <li>Changes in 3PVRO laws have resulted in fewer volunteers conducting voter registration drives.</li> </ul>

123. The Registration Disclaimer Provision severely burdens HTFF’s speech and associational rights.

**I. Quality Control’s Improvement to Voter Registration and Lack of Effect on Timeliness**

124. HTFF uses a quality control process because it does not “want to turn in an incomplete form to the Supervisor of Elections.” Trial Tr., McCoy Testimony, 290:21–22.

125. During the first step of this process, HTFF's quality reviewer reviews registration forms collected by the canvassers to ensure they are complete. *Id.* at 290:1–25.

126. In the second step, HTFF uploads scans of the forms—with the voter's signature and identification number redacted—into a voter registration management software for a second review. *Id.* at 291:11–19, 297:21–298:1. The software also helps HTFF determine whether its canvassers are making errors, such that it should retrain them or terminate their employment. *Id.* at 291:14–19.

127. When the quality control process is complete, HTFF submits the registration forms in person to the Duval County Supervisor of Elections. *Id.* at 291:20–22.

128. Florida law gives HTFF 14 days from collection of the registration form or the close of registration, whichever is earlier, to submit completed voter registration forms to the Supervisor of Elections. Fla. Stat. § 97.0575(3)(a). However, HTFF gives itself 10 days to conduct its quality checks and submit them. *Id.* at 316:4–9. HTFF has the ability to complete the process in two days. *Id.* at 316:8–9.

**J. Harriet Tubman Freedom Fighters' Diversion of Resources**

129. As a result of the Registration Disclaimer Provision, HTFF has had to divert the following resources to SB 90 compliance as a result of the Registration Disclaimer Provision:

- a. Use of its existing printing materials to print acknowledgement forms and receipts for voters containing the disclaimer. *Id.* at 269:19–20, 281:18–282:7, 283:11–284:1; ECF 461-20; ECF 461-21.
- b. Use of its existing printing materials to provide canvassers with a list of responses to voters who ask questions in response to receiving the disclaimer. Trial Tr., McCoy Testimony, 284:7–11; ECF 461-22.
- c. Use of canvasser training time to discuss the Registration Disclaimer Provision and provide role-playing exercises to ensure compliance. Trial Tr., McCoy Testimony, 285: 9–21.
- d. Use of time in its interactions with potential voters to issue the mandatory disclaimer, answer questions from potential voters about it, and working to reassure potential voters that HTFF will submit their registration forms on time. Trial Tr., McCoy Testimony, 266:18–269:10.

130. As discussed above, to ensure compliance with the Registration Disclaimer Provision, HTFF produces acknowledgement forms and receipts containing the disclaimer and presents them to potential voters upon completion of a registration form. *See* ECF 461-20; ECF 461-21.

131. In addition to printing materials, this process costs HTFF time. Asked how applicants tend to react to the acknowledgement form, Ms. McCoy said, “[T]his is what my observation is: You know, ‘why is it that they have to sign another document?’ And then we go back again and explain it: Because this is a disclaimer. We are trying to comply with the law, and this—we can verify that we are complying with the law. This is one of the ways we can comply with ... the law.” *Id.* at 282:12–17.

132. Asked if canvassers can talk to as many people during their shift when part of their time must be used to provide and explain the disclaimer, Ms. McCoy answered, “No.” *Id.* at 268:20–22; *see also id.* at 268:24–269:10 (describing that it takes a lot of time and thought to comply with the law, which is an extra burden).

133. Additionally, during canvasser trainings, HTFF provides canvassers with a list of “rebuttal[s] to rejections” potential voters may raise after receiving the disclaimer. *Id.* at 284:9; *see also* ECF 461-22. It also “cover[s] the rebuttal” and offers “role-plays” to practice delivering the disclaimer and interacting with voters,

and to ensure compliance with all voter registration laws, including the Registration Disclaimer Provision. Trial Tr., McCoy Testimony, 285:10–21.

134. HTFF has diverted these resources from the following activities and materials:

- a. Producing handouts for potential voters about “why you need to vote” and “about the primary so that they can come out and vote and to keep democracy in our country.” *Id.* at 287:5–14.
- b. Giving canvassers additional training to “focus more on issues that might matter to potential applicants.” *Id.* at 286:12–13. Such training is important “[b]ecause when [they] are in the field . . . there’s a lot of objections, resistance of why [people] don’t vote. And when [canvassers] can have . . . a reason why you should vote, and that’s what [HTFF] teach[es], why you should vote, then it makes it a lot easier—it make[s] [their] jobs a lot easier because [they]’ll have a certain type of conversation with the potential applicants.” *Id.* at 286: 13–19.
- c. Time speaking with potential voters about the importance of civic engagement and issues that matter to them. *Id.* at 268:24–269:5.

**K. Uncertainty Regarding the Registration Disclaimer Provision and Its Enforcement Provision**

135. HTFF is “basically on pins and needles” because the Registration Disclaimer Provision does not outline the consequences for noncompliance or who may be held liable. *Id.* at 270:15–271:1; *see also id.* at 269: 11–12, 20–22 (lack of knowledge of consequences); *id.* at 269:25–270:11 (lack of knowledge as to whether organization can lose its 3PVRO ID and ability to conduct voter registration); *id.* at 270:12–14 (lack of knowledge of who can be held liable). Other organizations expressed similar concerns. *Id.* at 49:7–8, 50:3-10, Testimony of Cecile Scoon (testifying that many League members have had difficulty explaining the disclaimer and are confused by it); *id.* at 232:19–233:15, Testimony of Esteban Garces (organization tries to “cover [its] bases” with written acknowledgement of disclaimer); *id.* at 790:11–14, Testimony of Frederick Velez Burgos (noting uncertainty as to whether disclaimer must be written or verbal).

136. Esteban Garces of Poder Latinx testified, “I think it would be more logical for SB 90 to have been written in a way to give guidance to organizations – third-party organizations when conducting voter registration efforts so that we’re not in this position that we are in.” *Id.* at 239:4–7, 239:13–17, Testimony of Esteban Garces. Jasmine Burney-Clark of Equal Ground Education Fund noted, “It provides a vague sort of statement that has to happen.” *Id.* at 426:10–13, Testimony of Jasmine Burney-Clark.



137. Like Ms. McCoy, the Attorney General’s office—which is empowered to enforce the provision, *see* Fla. Stat. 97.0575(4)—also did not know whether a 3PVRO’s status could be revoked for violating the Registration Disclaimer Provision. ECF 549-1, Guzzo Dep. Designations, 75:23–76:2. Nor did it know who could be subject to an enforcement action for a violation of the Registration Disclaimer Provision. *Id.* at 76:7–10, 76:15–77:14. Nor could it say whether any type of relief besides an injunction or restraining order would be appropriate for a violation of the Registration Disclaimer Provision. *Id.* at 74:25–75:8, 75:12-16.

138. Secretary Lee has not initiated any rulemaking with respect to the new disclaimer requirement. ECF 402 at 31, ¶ 18.

139. Secretary Lee stated that she intends to initiate rulemaking to promulgate regulations that might “address” the enforcement of the changes to 3PVRO rules in SB 90 but has not drafted any to date and has no requirement to do so. *Id.*; Trial Tr., Matthews Testimony, 2778:8–13.

140. With respect to the enforcement of Section 97.0575(3)(a), the Attorney General does not have any written or unwritten procedures or protocols specifically addressing referrals from the Secretary of State pursuant to 97.0575(4). ECF 402 at 38, ¶ 53.

141. The Attorney General was unable to describe the types of civil actions it can pursue for violations of the Registration Disclaimer Provision beyond what is

provided in the statutory language. ECF 549-1, Guzzo Dep. Designation, 57:18–58:11, 74:10–14.

**L. Arbitrary Enforcement of Existing 3PVRO Regulations**

142. The Secretary of State’s office has the discretion to waive fines for untimely submitted forms pursuant to paragraph (3)(a) “[b]ased on whether they’re first-time offenders or repeat offenders or the egregiousness of the circumstances that delayed the delivery of the applications.” Trial Tr., Matthews Testimony, 2769:18–20.

143. During Secretary of State Detzner’s tenure, the Secretary of State’s office waived a \$400 fine, and instead issued a warning, for a 3PVRO that submitted eight voter registration forms late. *Id.* at 2769:24–2770:23; ECF 608-94.

144. Secretary Detzner also issued a warning to a 3PVRO that delivered 23 applications after the 10-day deadline, rather than assessing a fine of \$1,000. Trial Tr., Matthews Testimony, 2771:3–23; ECF 608-34.

145. In February 2016, Secretary Detzner fined a 3PVRO the maximum \$1,000 annual aggregate amount for delivering 28 applications after the 10-day deadline. ECF 608-113 at 2 n.1. The Secretary of State’s fine letter did not cite previous infractions by the group or egregious circumstances. *See* ECF 608-113.

146. On October 4, 2018, a 3PVRO called Count My Vote submitted 67 applications after the 10-day return deadline. ECF 608-111 at 5. On October 6, Count

My Vote submitted 3 applications after the 10-day return deadline. ECF 608-110 at 4.

147. The Pinellas County Supervisor of Elections reported both incidents to the Secretary of State's office in October 2018. ECF 608-110 at 4; ECF 608-111 at 5. However, Secretary Lee's General Counsel, Colleen O'Brien, did not review the reports until September 4, 2020. ECF 608-110 at 2; ECF 608-111 at 2.

148. Director Matthews recommended further action. Trial Tr., Matthews Testimony, 2773:2–4, 2774:16–17. However, Secretary Lee's General Counsel declined to take action with respect to Count My Vote's untimely submitted forms. *Id.* at 2774:18–20.

149. SB 90 did not alter the Secretary of State's discretion to assess fines for violations of paragraph (3)(a) or to refer suspected violations to the Attorney General pursuant to paragraph (4). *Id.* at 2768:15–20. However, it changed the enforcement power established under paragraph (4) by adding the Registration Disclaimer Provision to those provisions subject to enforcement through paragraph (4). *See id.* at 2768:4–14.

150. The Attorney General's office could not identify any documents setting forth procedures or protocols for assessing referrals from the Secretary of State pursuant to Section 97.0575(4). *Id.* at 65:13–16.

151. The Attorney General’s office could not identify any understanding within its office regarding how referrals are assessed. ECF 549-1, Guzzo Dep. Designation, 65:17–18, 65:24–25.

152. The Attorney General’s office was not aware of any enforcement guidelines it has with respect to violations of the Registration Disclaimer Provision. *Id.* at 73:22–74:1.

153. The Attorney General’s office represented that it bases enforcement decisions on the facts and circumstances of individual cases. *Id.* at 75:12–16.

### **M. Impact of Requested Injunction**

154. An injunction against the Registration Disclaimer Provision would not impact the supervisors of elections’ operations or the work of their staff. Trial Tr., White Testimony, 3165:21–3166:6; *id.* at Earley Testimony, 3501:7–12.

## **II. CONCLUSIONS OF LAW**

### **A. Standing**

155. Under Article III of the Constitution, federal courts only have jurisdiction over “cases and controversies.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016). Accordingly, a plaintiff must hold a “personal stake in the outcome of the controversy.” *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

156. “To establish standing, Plaintiff must show (1) that it has suffered an injury-in-fact that is (2) traceable to Defendant and that (3) can likely be redressed by a favorable ruling.” *Harriet Tubman Freedom Fighters v. Lee*, 4:21-cv-242, ECF 245 at 2 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992))

157. Organizations can sue on behalf of their members (“associational standing”) or in their own right (“organizational standing”). *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). “[O]rganizational standing’ does not depend on the standing of the organization’s members. The organization can establish standing in its own name if it ‘meets the same standing test that applies to individuals.’” *Id.* (quoting *Ass’n of Cnty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 356 (5th Cir. 1999)).

158. Like individuals, organizations can suffer direct harms to their constitutional rights. *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward Cnty.*, 450 F.3d 1295, 1305 (11th Cir. 2006). The Registration Disclaimer Provision violates HTFF’s First Amendment rights of free expression and association and its Fourteenth Amendment right to due process, and it has suffered an injury-in-fact on those bases alone. *See infra* at 58–80, ¶¶ 175–235; *Harriet Tubman Freedom Fighters v. Lee*, 4:21-cv-242, ECF 190 at 14 (“Both HTFF’s alleged diversion of resources and compelled speech are cognizable injuries-in-fact that satisfy the first prong of this Court’s standing analysis.”); *id.* at ECF 245 at 5

(recognizing HTFF’s “First Amendment injury in being compelled to communicate a message that it disagrees with and would not otherwise convey.”).

159. Additionally, organizational standing exists “when a defendant’s illegal acts impair the organization’s ability to engage in its own projects by forcing the organization to divert resources in response.” *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014); *see also Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008) (“*Havens* held that an organization has standing to sue on its own behalf if the defendant’s illegal acts impair its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts.”).

160. HTFF has demonstrated diversion of its existing printing materials, canvasser training time, and time with potential voters. Trial Tr., McCoy Testimony, 266:18–269:20, 281:18–282:7, 283:11–284:1, 284:7–11, 285:9–21; ECF 461-20; ECF 461-21; ECF 461-22; *see also Harriet Tubman Freedom Fighters v. Lee*, 4:21-cv-242, ECF 245 at 3–5 (citing *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1250 (11th Cir. 2020)).

161. HTFF has diverted these resources away from the production of voter education materials, canvasser training time, and time spent registering potential voters, speaking with them on matters of importance to them, and sharing its message on the value of civic engagement. Trial Tr., McCoy Testimony, 268:24–

269:5, 286:12–19, 287:5–14; *see also Harriet Tubman Freedom Fighters v. Lee*, 4:21-cv-242, ECF 245 at 4 (citing *Jacobson*, 974 F.3d 1236 at 1250).

162. An organization need not spend or divert funds to demonstrate standing under the diversion of resources theory; the loss or diversion of its staff and volunteers' time is sufficient. *Arcia*, 772 F.3d at 1341 (“[O]ur precedent provides that organizations can establish standing to challenge election laws by showing that they will have to divert personnel and time to educating potential voters on compliance with the laws and assisting voters who might be left off the registration rolls on Election Day.”); *Scott v. Schedler*, 771 F.3d 831, 837 (5th Cir. 2014) (holding that NAACP had standing because “[e]ven if [its volunteer] had spent none of the NAACP’s money, the NAACP would have still devoted resources to counteract [the defendant’s] allegedly unlawful practices because [the volunteer] devoted his time to the drives.”); *see also* ECF 557 at 6–8. Thus, even if HTFF had suffered only a diversion of its time, it would still have a cognizable injury for standing purposes.

163. “There is no minimum quantitative limit required to show injury; rather, the focus is on the qualitative nature of the injury, regardless of how small the injury may be.” *Salcedo v. Hanna*, 936 F.3d 1162, 1172 (11th Cir. 2019) (quoting *Saladin v. City of Milledgeville*, 812 F.2d 687, 691 (11th Cir. 1987)) (internal quotation marks omitted).

164. This Court previously rejected Defendants' argument that HTFF cannot have diverted resources to comply with the law because it registered and started conducting voter registration after SB 90's enactment. *Harriet Tubman Freedom Fighters v. Lee*, 4:21-cv-242, ECF 245 at 4 n.2.

165. Further, Ms. McCoy testified to the concrete impact on the organization, in the form of compelled speech, impairment of its mission, lack of sufficient notice, risk of arbitrary enforcement, and diverted resources. Trial Tr., McCoy Testimony, 267:12–15, 271:16–272:1 (compelled speech); *id.* at 268:3–9 (impairment of mission); *id.* at 269:20–22, 270:9–17 (lack of notice and risk of arbitrary enforcement); *id.* at 266:18–269:20, 281:18–282:7, 283:11–284:1, 284:7–11, 285: 9–21, 286:12–19, 287:5–14 (diversion of resources); ECF 461-20; ECF 461-21; ECF 461-22.

166. As such, HTFF must comply with the Registration Disclaimer Provision each time it conducts voter registration activities, which violates its constitutional rights and forces it to divert limited resources to counteract these violations and comply with the law. HTFF has therefore suffered concrete, ongoing injuries.

167. Defendants appear to believe the consolidated organizational Plaintiffs have created their own injuries by voluntarily diverting resources in response to SB 90, and that no injury occurs where they have diverted their resources toward



activities they would have conducted in SB 90's absence, such as voter education. *See, e.g.*, Trial Tr. 108:4–6, Scoon Testimony; Trial Tr., Garces Testimony, 231:4–232:12; Trial Tr., McCoy Testimony, 294:9–295:4. Federal appellate courts have already weighed and rejected these arguments.

168. The Eleventh Circuit held that the first argument “finds no support in the law” and “misses the point.” *Browning*, 522 F.3d at 1166. “[W]hen a drain on an organization’s resources arises from the organization’s need to counteract the defendants’ assertedly illegal practices, that drain is simply another manifestation of the injury to the organization’s noneconomic goals.” *Id.* (citation and internal quotation marks omitted); *see also Common Cause Ind. v. Lawson*, 937 F.3d 944, 956 (7th Cir. 2019) (“By way of analogy, when there is an outbreak of the flu, doctors will predictably order more flu vaccines, work longer hours, and educate the public about the danger. The additional work is certainly done willingly or ‘voluntarily’ but it is not self-inflicted—it is caused by the outbreak.”).

169. That an organization diverts its resources to other activities that are consistent with its mission and similar to those it would have conducted without the allegedly unlawful government action does not divest it of standing. *See Common Cause Ind.*, 937 F.3d at 954–56. “The question is what additional or new burdens are created by the law the organization is challenging.” *Id.* at 955.

170. “Any work to undo a frustrated mission is, by definition, something in furtherance of that mission.” *Id.* at 954. HTFF has sustained “an extra burden” on its resources to comply with the law and mitigate the damage done to its mission by the mandatory disclaimer. Trial Tr., McCoy Testimony, 269:10; *see also id.* at 268:16–19.

171. This Court previously concluded that HTFF had established the traceability and redressability elements of standing, and the trial record is consistent with these findings. *See* 4:21-cv-242, ECF 245 at 5 (citing *id.* ECF 190 at 16–23).

172. HTFF has standing to proceed on its First Amendment and Due Process claims challenging the Registration Disclaimer Provision.

### **B. Compelled Speech**

173. Organizations possess First Amendment rights. *Primera Iglesia Bautista Hispana of Boca Raton, Inc.*, 450 F.3d at 1305.

174. “[F]reedom of speech includes both the right to speak freely and the right to refrain from speaking at all.” *Janus v. Am. Fed. Of State, Cnty., and Mun. Emps.*, 138 S. Ct. 2448, 2463 (2018) (citation and internal quotation marks omitted). The government therefore cannot “compel affirmance of a belief with which the speaker disagrees.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. Of Boston*, 515 U.S. 557, 573 (1995) (citation omitted). This rule “applies not only to

expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid.” *Id.* at 573–74 (citations omitted).

**i. The Registration Disclaimer Provision Constitutes a Content-Based Regulation of Speech.**

175. “Speech is speech, and it must be analyzed as such for purposes of the First Amendment.” *Otto v. City of Boca Raton*, 981 F.3d 854, 866 (11th Cir. 2020) (quoting *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1307 (11th Cir. 2017) (footnote omitted)). Thus, which level of scrutiny applies does not depend on whether the speech is communicated verbally or in writing, but whether the regulation constitutes a content-based regulation. *See* ECF 583; *Otto*, 981 F.3d at 861.

176. Laws “compelling individuals to speak a particular message . . . alter the content of their speech.” *Nat’l Inst. of Family & Life Advocates (NIFLA) v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (citation and alterations omitted).

177. “When the government ‘compel[s] speakers to utter or distribute speech bearing a particular message,’ . . . such a policy imposes a content-based burden on speech and is subject to strict-scrutiny review.” *McClendon v. Long*, 22 F.4th 1330, 1337–1338 (11th Cir. 2022) (alteration in original) (citing *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641–42 (1994); *Pacific Gas & Elec. v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1, 19 (1986)); *NIFLA*, 138 S. Ct. at 2371).

178. The Registration Disclaimer Provision requires a 3PVRO to tell potential voters that it may not submit their registration forms within 14 days or before close of registration; that they may submit their own registration forms online, by mail, or in person; and how they can determine if their registration form has been delivered to election officials. *See Fla. Stat. § 97.0575(3)(a)*. It is therefore a content-based regulation.

179. The Registration Disclaimer Provision compels 3PVROs, including HTFF, to engage in speech against their will. The speech required by the Registration Disclaimer Provision is misleading and will interfere with 3PVROs' voter registration activities. *See Trial Tr., McCoy Testimony, 267:10–15, 271:16–272:1, 274:21–24, 275:22–25*. Therefore, the Registration Disclaimer is compelled speech.

180. The fact that a speaker can provide its own message to counter the government-imposed message does not render a content-based regulation constitutional, because the government cannot “require speakers to affirm in one breath that which they deny in the next.” *Pacific Gas & Elec. Co.*, 475 U.S. at 16; *see also McClendon*, 22 F.4th at 1337.

**ii. The Registration Disclaimer Provision is Subject to Strict Scrutiny.**

181. Content-based restrictions on speech are subject to strict scrutiny:

Content-based regulations target speech based on its communicative content.” As a general matter, such laws “are presumptively unconstitutional and may be justified

only if the government proves that they are narrowly tailored to serve compelling state interests.” *Ibid.* This stringent standard reflects the fundamental principle that governments have “no power to restrict expression because of its message, its ideas, its subject matter, or its content.”

*NIFLA*, 138 S. Ct., at 2371, 2375 (internal citations and quotation marks omitted);  
*see also McClendon*, 22 F.4th at 1338.

182. “[E]ncouraging others to register to vote’ is ‘pure speech,’ and, because that speech is political in nature, it is a ‘core First Amendment activity.’” *League of Women Voters of Tenn. v. Hargett*, 400 F. Supp. 3d 706, 720 (M.D. Tenn. 2019) (quoting *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1158 (N.D. Fla. 2012)) (alteration in original); *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1334 (S.D. Fla. 2006) (finding that “the collection and submission of voter registration drives is intertwined with speech and association”); *cf. League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1322 (S.D. Fla. 2008) (holding that challenged law did “not place any direct restrictions or preconditions” on 3PVRs’ protected speech because it “simply regulate[d] an administrative aspect of the electoral process—the handling of voter registration applications by third-party voter registration organizations *after* they have been collected from applicants.”).

183. Because the Registration Disclaimer Provision is a content-based restriction on HTFF’s core political speech, and for the reasons discussed in

Plaintiffs' separate filing in response to the Court's questions (ECF 636), the Registration Disclaimer Provision is subject to strict scrutiny. *See generally* ECF 647; *see NIFLA*, 138 S. Ct., at 2371. Defendants must show that the Registration Disclaimer Provision addresses both a compelling government interest and is narrowly tailored to achieve that interest.

**iii. The State's Asserted Interests in the Registration Disclaimer Provision Are Not Compelling**

184. When assessing legislation under heightened scrutiny, courts look only to the *actual* motivations of the legislature. In *Shaw v. Hunt*, the Supreme Court found irrelevant “what ‘*may* have motivated’ the legislature” to create a redistricting plan; instead, the Court held that “the State must show that the alleged objective was the legislature’s ‘*actual* purpose’” to be considered a “compelling interest.” 517 U.S. 899, 908 n.4 (1996) (emphasis added) (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 730 (1982)). Courts regularly apply *Shaw*'s “actual purpose” requirement to evaluate First Amendment claims. *See, e.g., Haight v. Thompson*, 763 F.3d 554, 562 (6th Cir. 2014); *McLaughlin v. City of Lowell*, 140 F. Supp. 3d 177, 190 (D. Mass. 2015).

185. Because courts are only concerned with the “actual purpose” motivating official action under heightened scrutiny, it follows that only state

interests that were contemporaneously identified by the Legislature are relevant to HTTF's First Amendment claims.<sup>2</sup>

186. The legislative record is utterly devoid of evidence that supports *any* rationale for the Registration Disclaimer Provision, let alone a compelling interest to justify it. *See supra* Table 2. There is no evidence on the record that any specific information was provided to the Legislature to justify the Registration Disclaimer Provision, nor were any relevant statements made on the record that would justify the provision. The most commonly offered rationale for 3PVRO changes offered in the record—that these changes were included to comply with a court order—is spurious as it relates to the Registration Disclaimer Provision. This rationale may be consistent with revisions in SB 90 to Section 97.0575, Florida Statutes, that are unchallenged here, but it does not bear any relation to the Registration Disclaimer. *See* ECF 461-2 § 7 (revising 97.0575(1)(c), (d), and eliminating 48-hour turnaround requirement in (3)(a), (5), in accordance with the *League of Women Voters of Florida v. Browning*, 863 F. Supp. 2d 1155 (N.D. Fla. 2012)).

187. Defendants have asserted only post-hoc interests during litigation to justify the Registration Disclaimer Provision, namely that it serves the role of “informed consent”; it gives voters who may not be “comfortable” the chance to turn

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<sup>2</sup> Because this principle applies to “heightened” scrutiny, this would be true even if the Court concluded that intermediate scrutiny is the applicable standard to any of the claims.

in their own applications; and it gives voters “options,” which allegedly provide voters with “confidence in the process.” Trial Tr., Matthews Testimony, 3417:4–21. But they did not explain how providing misleading information to voters—for example, that they can register to vote online when they do not have a Florida driver license or ID card, or that they can track their application to see if it has been “delivered”—promotes informed consent or confidence in the voter registration process. They also did not explain why the State could not provide this information itself on its registration form, which most 3PVROs use. *See* ECF 466-82 at 120 (more than 2 million state voter registration forms submitted by 3PVROs, compared with thousands of federal forms). They also did not explain why SB 90 did not require a disclaimer on the State’s online voter registration site, given that the site has twice malfunctioned on the eve of recent voter registration deadlines, causing some voters attempting to register to be unable to do so. *See* Trial Tr., Matthews Testimony, 2803:3–10; ECF 402 at 32, ¶ 25; *see also* ECF 466-87, 20:5-6; Matthews Testimony, 2837:14–16. However, to the contrary, the reduction in voters registering through 3PVROs and the testimony that the Registration Disclaimer undermines 3PVROs point to the opposite conclusion: that the Registration Disclaimer *reduces* voter confidence in the voting and registration process among potential voters. *See supra* Table 3, Table 4.



188. Further, there can be no legitimate interest in requiring organizations to provide false or misleading information. *See e.g., League of Women Voters of Florida v. Browning*, 863 F. Supp. 2d 1155, 1164-65 (N.D. Fla. 2012)) (enjoining misleading sworn statement).

189. In earlier briefings, Defendants also offered hypothetical situations in which individuals *might be harmed* by confusion regarding whether a voter registration entity is actually government-affiliated or not. However, they have provided “no evidence that such situations are likely or common.” *Hargett*, 400 F. Supp. 3d at 790 (emphasis added). In order for a compelled disclosure to pass constitutional muster, it must “remedy a harm that is,” at the very least, “potentially real[,] not purely hypothetical.” *Id.* at 730 (quoting *NIFLA*, 138 S. Ct. at 2377). Because Defendants did not present any evidence that voters are actually confused regarding whether 3PVROs are private organizations or the state, they cannot make this required showing.

190. As to other potential post hoc concerns, Defendants also pointed to isolated incidents of attempts by a canvasser to submit registrations on behalf of a deceased person or where voters alleged that a 3PVRO had submitted a party affiliation change request on their behalf without their consent. *See* Trial Tr., Matthews Testimony, 3423:2-20. But it was already unlawful to submit fraudulent voter registration forms; SB 90 did not change that prohibition. *Id.* at 3474:24–

3475:3. If a canvasser submits a registration with the information of a deceased or fictitious voter, the canvasser will not have any interaction with a voter at all and therefore has no opportunity to provide a disclaimer. As to any incidents of unauthorized party changes connected with a voter interaction, Defendants also do not explain why a person intent on committing a crime by altering voter registration information without the applicant's consent would nonetheless comply with the Registration Disclaimer Provision.

191. The record does not establish that 3PVROs systematically return voter registration applications late, nor does it suggest that existing laws—allowing the Secretary of State to impose fines for untimely submission of voter registration applications and refer 3PVROs to the Attorney General for enforcement are insufficient to incentivize timely application return. Director Matthews contested the assertion that the Secretary of State has not referred a 3PVRO to the Attorney General since 2012, but ultimately testified that she “actually [did not] know all that has been referred” and could not “recall any that have been referred to the Attorney General.” Trial Tr., Matthews Testimony, 2768:25–2769:14.

192. The mere existence in the record of 3PVRO complaints made on any topic and for any reason, without more, does not substantiate the existence of an interest in the Registration Disclaimer Provision specifically. *Cf. id.* at 3421:14-

3422:3 (stating that the Department of State receives complaints about late voter registration applications from 3PVROs “[o]n a fairly regular basis”).

193. Defendants have not demonstrated that the State has any actual interest that could be served by enforcing the Registration Disclaimer Provision, let alone a compelling one.

**iv. The Registration Disclaimer Provision Is Not Narrowly Tailored to Achieve Any State Interest.**

194. Even assuming Defendants had offered a properly articulated compelling interest, they cannot demonstrate that the Registration Disclaimer Provision is narrowly tailored to serve its purported interests.

195. The government’s alleged “simple interest in providing voters with additional relevant information does not justify a state requirement that a [speaker] make statements or disclosures she would otherwise omit.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 348 (1995)

196. Assuming for the sake of argument that the rationale advanced for the Registration Disclaimer Provision exceeded mere conjecture, Florida has “more benign and narrowly tailored options” available to serve its interests. *Riley v. Nat’l Fed’n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 800 (1988). The government is *entirely free to speak for itself* and can “communicate the desired information to the public without burdening a speaker with unwanted speech during the course of a solicitation.” *Id.*; *see also NIFLA*, 138 S. Ct. at 2376.

197. First, the state could—but currently does not—inform applicants that Florida law requires 3PVROs to serve as a fiduciary to the applicant and to return completed applications within 14 days or by the registration deadline. *See* ECF 464-13 (Florida Voter Registration Form). The form already informs applicants that they can return their forms by mail or in person at certain government offices and that the voter registration deadline is 29 days before Election Day. This allows applicants to decide for themselves whether to entrust the form to a third party and demonstrates the ease with which the government can communicate its own messages to applicants. *Id.* The state also could—but currently does not—provide information on its registration form concerning the option for those with Florida driver licenses or state identification cards to register online. *See id.* Instead, it ignores online registration in its notice of “Where to Register,” and says only that “the downloadable/printable online form is available at [registertovoteflorida.gov](https://registertovoteflorida.gov)” — ignoring the existence of the online option at the very same website. *See id.*

198. Accordingly, the Registration Disclaimer Provision is not narrowly tailored to a compelling state interest.

**v. This Court Should Reject Defendants’ Proffered Analogies to Mandatory Professional and Campaign Finance Disclosures.**

199. Although federal courts have previously applied lesser scrutiny to content-based regulations of “commercial speech, as well as incidental speech swept up in the regulation of professional conduct,” *Otto*, 981 F.3d at 865, this Court has

already held that voter registration activity is not commercial speech. 4:21-cv-242, ECF 245 at 12–13; 4:21-cv-186, ECF 647 at 6 (responding to Court’s questions at ECF 636); *see also NIFLA*, 138 S. Ct. at 2374 (“[T]he lawyer’s statements in *Zauderer* would have been ‘fully protected’ if they were made in a context other than advertising.” (citation omitted)).

200. For the reasons discussed in Plaintiffs’ separate filing in response to the Court’s questions (ECF 636), 3PVRO voter registration activities are not “professional conduct,” ECF 647 at 6-10, and are not compelled disclosures akin to campaign finance law jurisprudence, *id.* at 2-5.

201. Unlike disclosure requirements imposed on some professionals’ commercial speech to which federal courts have applied lesser scrutiny, the Registration Disclaimer is not “purely factual and uncontroversial information about the terms under which . . . services will be available.” *See NIFLA*, 138 S. Ct. at 2372 (quoting *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985)).

202. Read in its entirety, the Registration Disclaimer Provision serves to dissuade potential voters from registering with a 3PVRO. *See* Trial Tr., Scoon Testimony, 102:16–103:7; Trial Tr., Herron Testimony, 2299:21–2300:1; 2332:24–2333:2; Trial Tr., McDonald Testimony, 3608:17-21; *supra* Table 3 (testimony

regarding undermining relationship with voters); *supra* Table 4 (testimony regarding the reduction in voters registering through 3PVROs).

203. Its individual components are also misleading at best, and at worst, false. The statement that 3PVROs “might not” turn in applications on time falsely suggests to potential voters there is a reasonable likelihood the 3PVRO will turn it in late. *See supra* Table 3. HTFF has turned in every single application on time. Trial Tr., McCoy Testimony, 272:17–18. Other organizations testified they have never or only extremely rarely submitted forms after the registration deadline. *See* Trial Tr., Scoon Testimony, 46:25–47:24 (6 out of thousands); Trial Tr., Garces Testimony, 201:18–202:22 (no forms submitted after book closing), 234:15–20 (99.9 percent of applications submitted on time); Trial Tr., Burney-Clark Testimony, 432:21–24 (no issues with forms turned in late); *see also supra* Table 1. More than two million applications were submitted by 3PVROs since 2009. ECF 466-82 at 120.

204. To the extent portions of the disclaimer do include any factual information, they are not purely factual and uncontroversial, as described below.

205. Only potential voters with internet access as well as a Florida-issued driver license or ID cards can register to vote online, Fla. Stat. § 97.0525(4)(a).

206. In addition, there is no comprehensive tracking system for 3PVROs to which applicants can be referred precisely to check whether the application has been “delivered,” because the statewide registration lookup contains no information

regarding the application unless and until it is processed and the person is added to the voter roll. ECF 402 at 32, ¶¶ 22–24.

207. *NIFLA* also held that the challenged notice requirement did not fall within the category of professional commercial speech subject to lesser scrutiny because “it require[d] these clinics to disclose information about *state*-sponsored services” rather than the terms of their own services. 138 S. Ct. at 2372. Similarly, here, Florida’s Registration Disclaimer Provision requires HTFF to disclose information about other modes of registration offered by the state.

208. Defendants also cite to cases applying intermediate scrutiny to campaign finance disclosure requirements to argue that the same level of scrutiny applies to the Registration Disclaimer Provision. *See* ECF 582. For reasons already addressed by Plaintiffs, the comparison between campaign finance disclosure laws and the Registration Disclaimer Provision are inapposite and strict scrutiny applies to the Registration Disclaimer Provision. *See* ECF 647 at 2-7 (responding to the Court’s order at ECF 636).

**vi. Even Applying a Lower Level of Scrutiny, the Registration Disclaimer Provision Would Still be Invalid.**

209. Even when lesser scrutiny applies because the regulated speech is commercial in nature, the government must cite actual interests or harms redressed by the regulation. *Ibanez v. Fla. Dep’t of Bus. & Pro. Regul., Bd. of Acct.*, 512 U.S. 136, 143 (1994); *see also Tinsley Media, LLC v. Pickens Cnty., Ga.*, 203 F. App’x

268, 273 (11th Cir. 2006) (“[T]he vast majority of courts reject the use of *post hoc* testimony as a means of determining legislative intent.”). “[A] governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.” *Borgner v. Brooks*, 284 F.3d 1204, 1211 (11th Cir. 2002) (quoting *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487 (1995) (citation omitted)).

210. “Unlike rational-basis review,” the standard applied even to regulations of commercial speech “does not permit [courts] to supplant the precise interests put forward by the State with other suppositions. Neither will [they] turn away if it appears that the stated interests are not the actual interests served by the restriction.” *Edenfield v. Fane*, 507 U.S. 761, 768 (1993) (internal citation omitted).

211. Even applying a lesser level of scrutiny, the Registration Disclaimer Provision would be invalid, as it is badly misleading at best, and at worst, false; therefore it lacks even a legitimate interest.

212. As noted above, the Legislature did not identify any legitimate state interest in enacting the Registration Disclaimer Provision, nor did it consider any of the interests now proffered by Defendants. Additionally, and as discussed above, Defendants did not provide any evidence to support its proffered interests.

213. The Registration Disclaimer Provision constitutes compelled speech in violation of the First Amendment.



### **C. Right of Association**

214. “[T]he freedom to associate for the purpose of engaging in activities protected by the First Amendment . . . is protected by the First Amendment as a necessary corollary of the rights that the amendment protects by its terms.” *Gaines v. Wardynski*, 871 F.3d 1203, 1212 (11th Cir. 2017) (quoting *McCabe v. Sharrett*, 12 F.3d 1558, 1563 (11th Cir.1994)).

215. “Where an individual has asserted a First Amendment right, the Supreme Court has held that such person is entitled to exercise such right in an effective manner.” *Cobb*, 447 F. Supp. 2d at 1334 (citing *Meyer v. Grant*, 486 U.S. 414, 424 (1988)). The First Amendment protects 3PVROs’ “right to select what they believe to be the most effective means of conducting their voter registration drives to ensure their voices are heard in the political process.” *Id.* The Registration Disclaimer makes communications between canvassers and potential voters less effective by interfering with the trust that HTFF and other 3PVROs try to build within the community in the course of—and in furtherance of—their voter registration activities. *See supra* Table 3.

216. “Election regulations that impose a severe burden on associational rights are subject to strict scrutiny.” *Wash. Stat. Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008); *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1331 (S.D. Fla. 2008) (“[R]egulations directly burdening the one-

on-one, communicative aspect of [electoral activity] are subject to strict scrutiny.” (quoting *Buckley v. Am. Const. Law Found., Inc.*, 525 U.S. 182, 215 (1999) (O’Connor, J., concurring in part) (internal quotation marks omitted) (alteration in original)). The Registration Disclaimer Provision significantly interferes with and burdens the one-on-one interaction with potential voters that HTFF seeks to engage. *See* Trial Tr., McCoy Testimony, 267:21–268:1 (“We build up this reputation of Harriet Tubman Freedom Fighters . . . [a]nd then we -- after they complete the document -- . . . now we say we might not file this in 14 days.”); *supra* Table 3 (testimony regarding undermining relationship with voters).

217. A law also violates the right of association when it “reduce[s] the quantum of political speech and association.” *Cobb*, 447 F. Supp. 2d at 1333 (citing *Meyer*, 486 U.S. at 422–23). The Registration Disclaimer Provision reduces the quantum of HTFF’s and other 3PVROs’ political speech and association by forcing them to dedicate a portion of their limited time with each potential voter to providing the disclaimer, answering questions about it, and reassuring potential voters that they can be trusted to submit their registration forms on time. Trial Tr., McCoy Testimony, 267:20–269:10; *see supra* Table 4 (testimony regarding reduction in number of voters registered and volunteers available for voter registration interactions).

218. Speech that severely burdens free speech and associational rights in the course of a speaker’s “interactive communication concerning political change” must be narrowly tailored to a compelling government interest. *Meyer*, 486 U.S. at 422; *McIntyre*, 514 U.S. at 346 n.10. As discussed above with respect to HTFF’s compelled speech, Defendants have not met this burden.

**D. Fourteenth Amendment Due Process Violation: Vagueness**

219. “The void-for-vagueness doctrine reflects the principle that ‘a statute which either forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.’” *Harris v. Mex. Specialty Foods, Inc.*, 564 F.3d 1301, 1310 (11th Cir. 2009) (alteration in original) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 629 (1984)).

220. A law is void for vagueness if it (a) “fails to provide a person of ordinary intelligence fair notice of what is prohibited,” or (b) “it authorizes or encourages seriously discriminatory enforcement.” *Dana’s R.R. Supply v. Att’y Gen., Fla.*, 807 F.3d 1235, 1257 (11th Cir. 2015) (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)).

221. “Vagueness within statutes is impermissible because such statutes fail to put potential violators on notice that certain conduct is prohibited, inform them of the potential penalties that accompany noncompliance, and provide explicit

standards for those who apply the law.” *Harris*, 564 F.3d at 1311. When a law implicates the right to free expression, it must be drawn with “rigorous adherence” to the Due Process Clause’s notice requirements “to ensure that ambiguity does not chill protected speech.” *Wollschlaeger*, 848 F.3d at 1320 (quoting *FCC v. Fox Television Stations*, 567 U.S. 239, 253–54 (2012)).

222. The Registration Disclaimer Provision is enforceable through Florida Statutes Section 97.0575(4), which provides that “[i]f the Secretary of State reasonably believes that a person has committed a violation of this section, the secretary may refer the matter to the Attorney General for enforcement.” In turn, “[t]he Attorney General may institute a civil action for a violation of this section or to prevent a violation of this section. An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order.” Fla. Stat. § 97.0575(4).

223. Section 97.0575 does not specify whether inadvertent failure to provide the mandatory disclaimer constitutes a violation or whether a 3PVRO’s staff and volunteers may also be held liable for violations. *See id.* It also does not put 3PVROs on notice as to the potential consequences for noncompliance. *Id.*

224. The statute fails to provide guidance to Secretary of State’s on when to refer a suspected violation to the Attorney General, or to the Attorney General on when to bring an enforcement action and what penalties to pursue. *See Fla. Stat. §*

97.0575. No such administrative rule exists, and Secretary Lee has not initiated a rulemaking process to even attempt to address these deficiencies. ECF 402 at 31, ¶ 18. Trial Tr., Matthews Testimony, 2778:8–13.

225. The Attorney General does not have any written or unwritten procedures or protocols specifically addressing referrals from the Secretary of State pursuant to Section 97.0575(4). ECF 402 at 38, ¶ 53. Her office does not have any standards in place for determining when to pursue enforcement of the Registration Disclaimer Provision and what penalties to pursue. ECF 549-1, Guzzo Dep. Designations, 65:17–18, 65:24–25, 73:22–74:1.

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

227. While they shifted their position mid-litigation, *compare Harriet Tubman Freedom Fighters v. Lee*, 4:21-cv-242, ECF 79-1 at 35–36 with ECF 158 at 2, Defendants now agree that Section 97.0575(3)(a) does not identify the penalties for failing to provide the required Disclaimer, and that the fines therein do not apply to that requirement. ECF 402 at 30, ¶ 15. However, Defendants’ mid-litigation shift exposes, but does not cure, the inherent ambiguity concerning the potential penalties to which 3PVROs like HTFF are subject for noncompliance.

228. Subsection (4) authorizes the Attorney General to seek “a permanent or temporary injunction, a restraining order, or any other appropriate order,” but does not specify the form of a restraining order, the terms of a possible injunction, or any criteria that would give HTFF notice of what would be an “appropriate” order. *See Fla. Stat. § 97.0575(4)*. It also does not specify whether such an injunction could revoke HTFF’s 3PVRO status, which would prohibit it from conducting voter registration activities. *Id.* Further, subsection (4) does not specify whether the Attorney General may take action against individual volunteers in addition to 3PVROs. *Id.*

229. HTFF’s and other 3PVROs’ concerns reflect these deficiencies. *See Trial Tr., McCoy Testimony, 270:17; Trial Tr., Scoon Testimony, 50:3-10; Trial Tr., Velez Burgos Testimony, 790:11-14.*

230. There is a history of inconsistent enforcement of Section 97.0575. At least one 3PVRO that turned in multiple forms late was not fined, even though other 3PVROs that submitted fewer late forms were fined. *Compare* ECF 608-110 & ECF 608-111 (no fine despite 70 applications turned in after the 10-day turnaround time and Director Matthews recommending further action) *with* ECF 608-113 (3PVRO fined for 28 such applications); Trial Tr., Matthews Testimony, 2769:16–2775:18. Notably the 3PVRO that was not fined on either referenced occasion submitted an overwhelming majority of applications from white non-Hispanic voters. ECF 608-110 at 8–58; ECF 608-111 at 12–335; ECF 608-12 at 1–102.

231. This history suggests that paragraph (3)(a)—which now includes the Registration Disclaimer Provision—is prone to arbitrary enforcement, and indeed has been arbitrarily enforced. This provides circumstantial evidence that the Registration Disclaimer Provision in (3)(a) in conjunction with Section 97.0575(4) will also be arbitrarily enforced.

232. Arbitrary enforcement is likely for the following reasons:

- The absence of any internal guidance, written or otherwise, regarding the Registration Disclaimer Provision and its enforcement, combined with complete statutory discretion as to enforcement, means that arbitrarily unequal consequences for the same action is likely. ECF 402

at 38, ¶ 53; ECF 549-1, Guzzo Dep. Designation, 65:17–18, 65:24–25, 73:22–74:1.

- Arbitrary enforcement of pre-SB 90 provisions of Section 97.0575(3)(a).

233. The Court’s decision in *League of Women Voters v. Browning* as to vagueness of Section 97.0575(4) in 2012 does not control. First, the substantive provisions of Section 97.0575(3)(a) have changed since that ruling, and according to Director Matthews, the presence of the Registration Disclaimer Provision did alter enforcement. *See* Trial Tr., Matthews Testimony, 2768:4–14. HTFF here specifically challenges Section 97.0575(3)(a) in conjunction with subsection (4). Second, as this Court noted, *see Harriet Tubman Freedom Fighters v. Lee*, 4:21-cv-242, ECF 245 at 9, the court in 2012 did not have evidence before it indicating arbitrary, disparate enforcement.

234. The Registration Disclaimer Provision in conjunction with Section 97.0575(4) does not sufficiently put 3PVROs on notice of how to comply nor the consequences of noncompliance. *See* Trial Tr., McCoy Testimony, 270:17; Trial Tr., Scoon Testimony, 50:3-10; Trial Tr., Velez Burgos Testimony, 790:11-14;

235. The Registration Disclaimer Provision is therefore unconstitutionally vague in violation of HTFF’s Fourteenth Amendment right to Due Process.



### **E. Injunctive Relief**

236. To obtain a permanent injunction, a plaintiff “must satisfy a four-factor test.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 159 (2010) (internal quotation marks omitted). A plaintiff must show “(1) it has suffered an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction.” *Ga. Advoc. Off. v. Jackson*, 4 F.4th 1200, 1208 (11th Cir. 2021). These requisite elements are satisfied here.

237. First, HTFF has suffered an irreparable injury. Injuries to First Amendment rights establish per se irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”). Additionally, “[a]n injury is ‘irreparable if it cannot be undone through monetary remedies.’” *Jones v. Gov., Fla.*, 950 F.3d 795, 828 (11th Cir. 2020) (quoting *Scott v. Roberts*, 612 F.3d 1279, 1295 (11th Cir. 2010)). Here, HTFF has sustained injuries to its First Amendment rights. Further, no amount of money can compensate it for the Registration Disclaimer Provision’s ongoing lack of sufficient notice, in violation of HTFF’s right to due process.

238. Second, and for the same reasons, HTFF has no adequate remedy at law. “[I]t ‘is not enough that there is a remedy at law; it must be plain and adequate, or in other words, as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity.’” *United States v. Askins & Miller Orthopaedics, P.A.*, 924 F.3d 1348, 1359 (11th Cir. 2019). No form of relief other than an injunction can stop the Registration Disclaimer Provision’s ongoing injuries to HTFF’s First Amendment and due process rights, on which there can be placed no monetary value.

239. Third, the balance of hardships unquestionably favors HTFF. Defendants have not demonstrated that they would suffer any cognizable injury by being prohibited from enforcing an unconstitutional law. Moreover, Defendants have not demonstrated that the Registration Disclaimer Provision serves any of the State’s interests. Conversely, as discussed above, HTFF has important constitutional rights at stake; while SB 90 is in force, HTFF is deprived of its First Amendment rights to free speech and association, as well as its Fourteenth Amendment right to due process.

240. Fourth, injunctive relief would promote—not disserve—the public interest. Indeed, “[t]he vindication of constitutional rights . . . serve[s] the public interest almost by definition.” *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012); *see also Laube v. Haley*, 234 F. Supp. 2d

1227, 1252 (M.D. Ala. 2002) (“[T]here is a strong public interest in requiring that the plaintiffs’ constitutional rights no longer be violated ...”). The Eleventh Circuit has recognized that “the public interest is always served in promoting First Amendment values.” *Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1276 (11th Cir. 2001); *see also* Cobb, 447 F. Supp. 2d at 1340 (“Absent injunctive relief, the amount of First Amendment-protected political speech and activity will be reduced and the public will receive less information about current political issues and have fewer opportunities to associate with Plaintiffs in a meaningful way.”). As another court in this District has recognized, “allowing responsible organizations to conduct voter-registration drives—thus making it easier for citizens to register and vote—promotes democracy.” *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1167 (N.D. Fla. 2012). Contrary to Defendants’ assertions that the Registration Disclaimer Provision promotes voter confidence, the disclaimer is making it *less* likely that voters will be confident in the voter registration process and choose to register. *See, e.g., supra* Table 3, Table 4. And Supervisors of Elections’ work would not be impacted should this Court enjoin the Registration Disclaimer Provision. *See* Trial Tr., White Testimony, 3165:21–3166:6; Trial Tr., Earley Testimony, 3501:7–12.

241. By enjoining Defendants Lee and Moody from using their powers to investigate and prosecute civil enforcement proceedings for suspected violations

under the Registration Disclaimer Provision, HTFF's constitutionally protected, community-based voter registration speech and activities can continue without unlawful interference.

### III. CONCLUSION

For the foregoing reasons, HTFF is entitled to a declaratory judgment and injunctive relief on Counts One, Two, and Three of its Amended Complaint.

Dated: February 26, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 26, 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.

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