

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

FLORIDA STATE CONFERENCE  
OF BRANCHES AND YOUTH  
UNITS OF THE NAACP,  
DISABILITY RIGHTS FLORIDA,  
and COMMON CAUSE,

*Plaintiffs,*

v.

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

*Defendants.*

Case No. 4:21-cv-187-MW-MAF

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT  
SECRETARY OF STATE'S MOTION TO DISMISS**

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Plaintiffs Florida State Conference of Branches and Youth Units of the NAACP, Disability Rights Florida, and Common Cause (collectively, “Plaintiffs”) oppose the motion to dismiss (Dkt. No. 36) submitted by Defendant Florida Secretary of State Laurel M. Lee (“Defendant Lee” or the “Secretary”). Defendant Lee’s motion to dismiss has been mooted by Plaintiffs’ timely filing of an amended complaint (attached hereto as Exhibit A), which amply addresses any perceived deficiencies alleged in Defendant Lee’s motion. Accordingly, the Court should deny the Secretary’s motion to dismiss.

### **INTRODUCTION**

Defendant Lee’s motion to dismiss Plaintiffs’ original complaint fails for the threshold reason that the motion is now moot. That motion is directed at a complaint that, as of today, has been superseded and replaced by a timely-filed amended complaint. Because it targets a now-defunct pleading, Defendant Lee’s motion should be denied on that basis alone.

And when measured against the amended complaint, the motion to dismiss also fails on the merits. Defendant Lee presses two theories for dismissal—namely, that Plaintiffs have pled a shotgun complaint and lack standing (due to an alleged lack of traceability and redressability) as against the Secretary. Neither argument withstands scrutiny.

As to the first point, the shotgun label is ill-fit for Plaintiffs' clear and well-organized amended complaint. That complaint provides Defendants ample notice of the claims alleged against them. Each of its counts specifies the applicable legal basis and re-asserts the pertinent supporting factual allegations for that count.

Further, Defendant Lee's argument that Plaintiffs are suing the wrong defendant is not tenable under the amended complaint, which adds as defendants Florida's 67 county Supervisors of Elections (the "Defendant Supervisors" or the "Supervisors"). Plaintiffs' amended complaint alleges constitutional and statutory violations against Defendant Lee in connection with challenged election laws that her office enforces and administers. Meanwhile, Plaintiffs plead as against the Defendant Supervisors regarding matters in their respective enforcement domain. Because both the Secretary and the Supervisors are sued in connection with laws that their respective offices enforce, and which this Court can thus enjoin them from enforcing, the standing elements of traceability and redressability are both satisfied here.

## BACKGROUND

On May 6, 2021, Governor Ron DeSantis signed SB 90<sup>1</sup> into law, immediately imposing substantial limitations on voting rights in Florida, particularly for Black and Latino voters and voters with disabilities. Plaintiffs, who advocate for and promote voter participation for these historically disadvantaged groups, promptly filed a complaint in this Court challenging various restrictive provisions in SB 90 (the “Challenged Provisions”). *See* Dkt. No. 1.

On May 28, 2021, Defendant Lee, Florida’s Secretary of State, moved to dismiss Plaintiffs’ original complaint for supposed defective pleading and lack of standing. *See* Secretary’s Motion to Dismiss (“Mot.”), Dkt. No. 36. Earlier today, on June 11, 2021, Plaintiffs filed an amended complaint that superseded their original pleading and, as detailed below, cured any purported defects that the Secretary contends existed in the same. *See* Ex. A; Dkt. No. 45. Among other things, Plaintiffs’ amended complaint carefully connected each of the allegations supporting particular counts to their respective counts, and also added Florida’s 67 Supervisors of Elections as defendants to this action.

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<sup>1</sup> Senate Bill 90, An Act Relating to Elections, 2021 Fla. Sess. Law Serv. ch. 2020-11 (West) (“SB 90”).

Plaintiffs' amended complaint challenges the following, particularly restrictive provisions of SB 90:

- **Drop Box Restrictions** (SB 90 Section 28): Curtails the locations, availability, and operating hours of ballot drop boxes;
- **Volunteer Assistance Ban** (SB 90 Section 32): Effectively bars volunteer organizations from helping voters return their vote-by-mail ballots;
- **Vote-by-Mail Application Restrictions** (SB 90 Section 24): Halves the lifespan of “standing” vote-by-mail requests by requiring voters to submit new vote-by-mail applications every general election cycle rather than every two cycles;
- **Voting Line Relief Restrictions** (SB 90 Section 29): Exposes volunteers to potential criminal liability for giving food or water to voters waiting in line.

Ex. A ¶ 75.

### **ARGUMENT**

Defendant's motion to dismiss should be denied as moot in light of Plaintiffs' amended pleading, or in the alternative, denied because Plaintiffs have adequately alleged specific facts to support each claim and have standing to do so.



## **I. The Amended Complaint Moots Defendant Lee’s Motion to Dismiss.**

As an initial matter, Defendant Lee’s motion to dismiss fails because it is directed to a complaint that has since been superseded by Plaintiffs’ amended complaint. Put simply, Defendant Lee’s motion is now moot.

Earlier today, Plaintiffs timely amended their complaint as a matter of right. Pursuant to Federal Rule of Civil Procedure 15, “[a] party may amend its pleading once as a matter of course within . . . 21 days after service of a motion under Rule 12(b), (e), or (f).” Fed. R. Civ. P. 15(a)(1)(B). And in keeping with Rule 15, Plaintiffs filed their amended complaint within 14 days of Defendant Lee’s motion—*i.e.*, a motion expressly made under or otherwise governed by Rule 12(b) and (e).<sup>2</sup>

In light of Plaintiffs’ timely-filed *amended* complaint, Defendant Lee’s motion to dismiss the *original* complaint is entirely moot. In this Circuit, “[t]he law is well-settled that an amended complaint supersedes and replaces the original complaint, becoming the operative complaint in the action.” *Phoenix Ent. Partners, LLC v. Jellyfish, LLC*, 2018 WL 10517181, at \*1 (N.D.

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<sup>2</sup> See Mot. at 2, 9 (seeking dismissal under 12(b)(1) for lack of standing); *id.* at 2-4 (challenging original complaint as a shotgun pleading); *Weiland v. Palm Beach Cnty. Sheriff’s Off.*, 792 F.3d 1313, 1321 n.10 (11th Cir. 2015) (“[A] defendant faced with a shotgun pleading should move the court, pursuant to Rule 12(e), to require the plaintiff to file a more definite statement.”) (emphasis added) (citation omitted).

Fla. Apr. 12, 2018) (citing, *inter alia*, *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1345 n.1 (11th Cir. 1996)). Consequently, “the amended complaint renders moot a motion to dismiss the original complaint because the motion seeks to dismiss a pleading that has been superseded.” *Id.*; accord *Gulf Coast Recycling, Inc. v. Johnson Controls, Inc.*, 2008 WL 434880, at \*1 (M.D. Fla. Feb. 14, 2008) (“The filing of the amended complaint renders Defendants’ earlier filed Motion to Dismiss moot.”); *Caring People, Inc. v. Dunn*, 2015 WL 12720331, at \*1 (S.D. Fla. Nov. 4, 2015) (same).

Because Defendant Lee’s motion to dismiss is moot, it is appropriately denied on that basis alone. *See, e.g., Phoenix*, 2018 WL 10517181, at \*1; *Caring People*, 2015 WL 12720331, at \*1. In any event, and as set forth more fully below, Defendant Lee’s motion to dismiss also fails on the merits, because it challenges perceived deficiencies that do not exist in Plaintiffs’ amended pleading.

## **II. The Amended Complaint Is Not a Shotgun Pleading; Rather, It Provides Ample Notice of the Claims Alleged.**

The Eleventh Circuit defines a shotgun complaint as a pleading that fails “to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Weiland*, 792 F.3d at 1323. Defendant Lee’s attempt to label Plaintiffs’ (now amended) complaint as a

shotgun pleading misses the mark. “Although lengthy, the factual allegations in the [amended] Complaint are clearly stated and well-organized; the [amended] Complaint is not a shotgun pleading.” *Villarino v. Pacesetter Pers. Serv., Inc.*, 481 F. Supp. 3d 1252, 1255 (S.D. Fla. 2020).

Relevant here, the amended complaint makes clear in each of its counts the specific bases (identified by particular paragraph numbers) underlying the respective counts. The amended complaint sets forth nine counts, with “each claim for relief” from SB 90 “clearly labeled” by legal theory and “separate[d] into a different count.” *Surgery Ctr. of Viera, LLC v. Meritain Health, Inc.*, 2020 WL 7389987, at \*9 (M.D. Fla. June 1, 2020). Furthermore, “counts are not re-alleged and re-incorporated into successive counts.” *Villarino*, 481 F. Supp. 3d at 1255. Additionally, the factual bases for each count are concisely stated in the body of the count, often with a citation to the pertinent general allegations that support each respective basis. And, “each count in the [Plaintiffs’] amended complaint identifies which defendant it applies to.” *Dressler v. Equifax, Inc.*, 805 F. App’x 968, 972 (11th Cir. 2020).

For example, Count I expressly challenges the discriminatory impact of SB 90 under Section 2 of the Voting Rights Act. Ex. A at Count I. Per its heading, Count I focuses on the following Challenged Provisions: the Drop

Box Restrictions, the Vote-by-Mail Application Restrictions, the Volunteer Assistance Ban, and the Voting Line Relief Restrictions. *Id.* Count I then describes various grounds for finding discriminatory impact—such as Florida’s history of discriminatory voting restrictions, conditions that make it likely that SB 90 will disproportionately impact Black and Latino voters, and deviation from procedural norms and lack of justification for SB 90—and for each ground cites specific, supporting factual allegations from the body of the amended complaint. *See, e.g., id.* ¶¶ 130-37. Moreover, Count I identifies the particular defendants (the Secretary and/or the Supervisors) against which each portion of the count is aimed. *See id.* at ¶¶ 139-40. The same mapping of legal theories to Challenged Provisions, and the assertion of the necessary factual predicates for Plaintiffs’ claims, follows for each of the counts in the amended complaint.

To the extent certain counts cite to overlapping allegations, it is because those allegations “are generally relevant to each count.” *Middleton v. Morgan*, 2018 WL 11202672, at \*4 (N.D. Fla. Mar. 1, 2018). As an example, allegations of severe burdens on minority voters are pled both in Count I’s discriminatory impacts claim and in Count II’s claim for undue burden on the right to vote because those allegations support both counts. *See, e.g., Ex. A* ¶¶ 137, 146. *See also Davis v. City of Lake City, Fla.*, 2011 WL

13295721, at \*3 (M.D. Fla. Nov. 14, 2011) (sustaining complaint that re-alleged identical factual allegations for discrimination and retaliation counts, and noting that “the facts set forth in the general allegations are relevant to both types of claims”).

Because the amended complaint gives Defendant Lee, as well as the Defendant Supervisors, ample “notice of [the] plaintiff[s]’ allegations and claims” against them, it cannot be deemed a shotgun pleading. *Charudattan v. Darnell*, 2019 WL 12043587, at \*4 (N.D. Fla. Feb. 7, 2019) (Walker, C.J.) (citing *Weiland*, 792 F.3d at 1323). By contrast, a shotgun pleading dismissal is appropriate only where “it is *virtually impossible* to know which allegations of facts are intended to support which claim(s) for relief,” and “[n]o such virtual impossibility exists” here given Plaintiffs’ meticulous amended complaint. *Weiland*, 792 F.3d at 1325 (citation omitted).

### **III. Secretary of State Lee and the Supervisors of Elections Are Proper Defendants Under Their Corresponding Counts.**

Defendant Lee’s motion to dismiss the original complaint concedes that her office is properly named as a defendant as to certain counts concerning Challenged Provisions within her purview, but otherwise insists that Plaintiffs must sue Florida’s 67 Supervisors of Elections to obtain relief from the balance of SB 90’s Challenged Provisions. The amended complaint does just that. The amended complaint pleads as against Defendant Lee for

matters over which her office exercises enforcement authority (*i.e.*, the Drop Box Restrictions), and pleads as against the Defendant Supervisors for matters in their respective domain.

A litigant adequately pleads standing where it alleges an “injury in fact [that] is ‘fairly traceable to the challenged conduct of the defendant’ and ‘is likely to be redressed by a favorable judicial decision.’” *Taylor v. Polhill*, 964 F.3d 975, 981 (11th Cir. 2020) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016)). It is well settled that the harmful effects of a challenged election law are fairly traceable to election officials that “possess the authority to *enforce* the complained-of provision,” and courts can offer meaningful redress by barring such “officials from taking steps to enforce” the challenged law. *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1255-57 (11th Cir. 2020) (citations and alteration omitted). Under this established law, Plaintiffs have standing to proceed with this lawsuit.

As detailed in the amended complaint, under Florida law, Defendant Lee is the “chief elections officer in the State” in her capacity as Secretary of State, and is responsible for “[o]btain[ing] and maintain[ing] uniformity in the interpretation and implementation of the election laws.” Ex. A ¶ 25 (quoting Fla. Stat. § 97.012(1)). Moreover, with regard to the Challenged Provision that Plaintiffs seek relief from as against Defendant Lee—namely,

the Drop Box Restrictions—“Defendant Lee has more than a supervisory authority.” *Namphy v. DeSantis*, 493 F. Supp. 3d 1130, 1137 (N.D. Fla. 2020) (Walker, C.J.). As the amended complaint makes clear, Defendant Lee’s “office imbues [her] with the responsibility to *enforce*” that provision, and so “Defendant Lee is undoubtedly a proper party to this lawsuit.” *Id.* (quoting *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011)) (emphasis added).

Defendant Lee’s office is empowered to implement the Drop Box Restrictions through the enforcement mechanism of stiff monetary penalties. Supervisors that make drop boxes accessible “other than as authorized” by SB 90 are “subject to a civil penalty of \$25,000,” to be “enforce[d]” by Florida’s Division of Elections, *see* Fla. Stat. § 101.69(3). And the Division of Elections is by law a division of the Department of State, *see* Fla. Stat. § 20.10(a)(2). *See generally* Ex. A ¶¶ 26-29.

This power to fine non-complying Supervisors sets this case apart from *Jacobson*, where standing was found lacking as to the Secretary because “the *only* means of control the Secretary ha[d] over the Supervisors” regarding the challenged law was “resort to judicial process.” 974 F.3d at 1253 (emphasis added). Here, the power to directly coerce compliance with the Drop Box Restrictions through fines readily connects Defendant Lee to the subject restrictions, and this Court can afford Plaintiffs relief if it enjoins

Defendant Lee from wrongfully exercising that power.

Finally, to the extent the Secretary argues that the Supervisors should be added as defendants in this case as to subject matters in which they possess joint or exclusive enforcement authority, the amended complaint does precisely that. *See* Ex. A ¶ 30; *see also id.* at Counts I through IX (naming the Supervisors as defendants in relation to the Drop Box Restrictions, the Vote-by-Mail Application Restrictions, the Volunteer Assistance Ban, and the Voting Line Relief Restrictions).

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully ask the Court to deny Defendant Lee's motion to dismiss the original complaint as moot, or in the alternative, deny the motion on the merits.



Respectfully submitted, this 11th day of June 2021.

/s/ Jad H. Khazem

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULES**

The undersigned certifies that the foregoing complies with the size, font, and formatting requirements of Local Rule 5.1(C), and that the foregoing complies with the word limit in Local Rule 7.1(F); this motion and memorandum of law contains 2,399 words, excluding the case style, signature block, and certificates.

Dated: June 11, 2021

COVINGTON & BURLING LLP

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing was served to all counsel of record through the Court's CM/ECF system on this 11th day of June, 2021.

Dated: June 11, 2021

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