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

HARRIET TUBMAN FREEDOM FIGHTERS CORP.,

Plaintiff,

Case No. 4:21-cv-00242-MW-MAF

v.

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

Defendants,

and

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, *et al.*,

Intervenors.
_____/

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This Court must deny Plaintiff's Motion for Summary Judgment because Plaintiff fails to cite sufficient evidence to establish standing to bring this action. Furthermore, the evidence that Plaintiff does cite establishes that the challenged notification provision furthers compelling state interests and therefore survives First Amendment scrutiny, whether minimal or heightened. Plaintiff also fails to establish that the challenged law is void-for-vagueness simply because it provides enforcement discretion.

STATEMENT OF FACTS

Senate Bill 90 ("SB90") was introduced on Feb. 3, 2021. ECF 214-8 at 1. After four months of amendments and debate, Governor DeSantis signed SB90 on May 6, 2021. *Id*. at 6.[1] Plaintiff brings summary judgment challenging Section 97.0575(3)(a), Florida Statutes, which now requires third-party voter registration groups to share truthful, cautionary information with prospective voters, and Section 97.0575(4), Florida Statutes, which provides for referral of violations of Section 7 of SB90 by the Secretary to the Attorney General for potential civil enforcement actions (collectively, the "notification provision").

The State of Florida has a significant interest in maintaining the notification provision. The notification provision serves a vital state interest in ensuring registrants are informed of the methods of registration available to them and the very real possibility of late delivered applications. *See* ECF 214-43 at ¶¶ 17-18. In fact, the failure of a 3PVRO to timely deliver a registration form can be quite severe and can prevent that prospective voter from exercising the franchise. *Id*. ¶ 18 ("A new voter whose registration information is received less than 29 days before a given election cannot vote in that election because that voter will have missed the 'book closing' deadline."). Likewise, informing registrants of the availability of other

[1] Fla. Senate, *CS/CS/CS/SB90: Elections*, available at: https://www.flsenate.gov/Session/Bill/2021/90.

registration opportunities is a vital state interest as there have been many reports of irregularities and complaints about how 3PVROs handle voter registration information. *Id.* ¶¶ 19-20. Fundamentally, Florida has an "interest[] in ensuring that as many eligible Floridians as possible timely and accurately register for elections." *Id.* ¶ 21.

Plaintiff Harriet Tubman Freedom Fighters' ("HTFF") own processing of collected voter registration applications underscores the State's interest in ensuring would-be registrants are aware that 3PRVOs sometimes miss deadlines. According to the testimony of HTFF's corporate representative, applications collected by HTTF are uploaded to a third-party organization's software to conduct a second quality check before HTFF ever turns in the applications to supervisors. ECF 214-18 at 61:3-14 ("Canvassers are to turn in completed and blank applications at the end of the day, and the quality control will go over the applications, and then we submit it to – there's another process through Blocks, and then we submit it to the supervisor of elections…"). This "[t]otal QC process and internal timeline is completed within 10 days." *Id.* at 304. More alarming, however, is that the process involves uploading the registrant's application to a third-party, without any idea of what that third party does with that person's data. *See id.* at 200:20-201:1 (Q. "Do you know what State Voices does with the data after the quality control check is complete?… A. No, sir.

I don't know."). HTFF does not tell registrants about this third-party processing. *Id.* at 201:2-8.

Notwithstanding the fact that it was not an approved 3PVRO until after the enactment of the notification provision, Plaintiff also alleges that the notification provision "will require that HTFF divert time and resources to train its staff and volunteers to comply with SB 90, lengthen HTFF's interactions with each prospective registered voter (thereby making it harder to reach the same number of prospective voters in the same amount of time), and will necessitate HTFF diverting time and resources away from its other activities for SB 90-specific trainings and voter registration requirements." ECF 44 ¶ 32.

Furthermore, to ensure that 3PVROs comply with these and other requirements of Section 7, Section 97.0575(4), Florida Statutes provides that violations of "this section" are subject to civil enforcement. *Id.*

RELEVANT LEGAL STANDARD

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Disputes are "'genuine' . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "Material" facts

are those that might affect the outcome of the case under the governing substantive law, not those that "are irrelevant or unnecessary." *Id.*

Plaintiff's Motion fails this standard.

ARGUMENT

1. Plaintiff Lacks Standing Because It Presents No Actual Evidence of Particularized Injury.

To establish standing, Plaintiff "must prove (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision," *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citations omitted), "by affidavit or other evidence 'specific facts,' which for purposes of the summary judgment motion will be taken to be true." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). Because "standing is not dispensed in gross," Plaintiff must establish injury, causation, and redressability for each of its claims. *Davis v. FEC*, 554 U.S. 274, 734 (2008) (citation omitted). "And that burden increase[s] with the successive stages of litigation: although mere allegations suffice[] at the pleading stage, actual evidence [is] required to withstand summary judgment." *City of Miami Gardens v. Wells Fargo & Co.*, 956 F.3d 1319, 1320 (11th Cir. 2020) (citing *Lujan*, 504 U.S. at 561).

Plaintiff does not establish any "concrete and particularized" injury in fact attributable to Section 97.0575's notification provision. *Lujan*, 504 U.S. at 560.

Plaintiff's Motion alleges that Plaintiff "used additional training and materials

over what it otherwise would have … to ensure that its canvassers complied with the [notification provision]" and that it "also diverted funds it would otherwise have used" for other purposes. ECF 216 at 12. But Plaintiff did not become an approved third-party voter registration organization ("3PVRO") until August 2021—three months after the notification provision became law. Because the notification provision was in effect when Plaintiff began operations as a 3PVRO, it is simply not possible that Plaintiff "diverted" funds to comply with it. There was no pre-enactment level of spending from which Plaintiff had to divert to comply with a law that was already in effect.

Furthermore, the only "evidence" cited in support of Plaintiff's conclusory allegations of "diversion of funds" is not evidence at all, but simply deposition testimony or self-serving discovery responses that merely regurgitate the allegations or cite to other "evidence" that is not provided. *See* ECF 216 at 12 n.52, n.53 (citing material from Plaintiff's own filings and responses to discovery requests). Plaintiff provides no explanation why a mere notification requirement would require expenditure of funds, much less a specific dollar amount. Such conclusory allegations might "suffice[] at the pleading stage, [but] actual evidence [is] required to withstand summary judgment." *City of Miami Gardens*, 956 F.3d at 1320. Plaintiff's Motion does not suffice.

Plaintiff also alleges that it "believes" that the notification provision requires it to say something that is "contradictory," "not true," "misinformation or disinformation," or "misleading." ECF 216 at 12-13. Those conclusory allegations are demonstrably untrue as Plaintiff itself acknowledges, albeit flippantly, that Floridians *have been unable* to vote due to late 3PVRO submissions.[2] It also cannot be disputed that Floridians can deliver registration applications in person or by mail, and they can register on-line. And it cannot be disputed that prospective voters can check their registration status online.[3] Furthermore, "[a]bstract injury is not enough." *L.A. v. Lyons*, 461 U.S. 95, 101 (1983). To establish standing, injuries must be "concrete and particularized." *Lujan*, 504 U.S. at 560. Plaintiff's subjective "beliefs" are not enough.

Plaintiff's Motion for Summary Judgment must be denied because Plaintiff lacks standing to bring this action.

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[2] "In 2020, SOEs identified only 12 Floridians in a single county as unable to vote in the March 2020 primary election due to late 3PVRO submissions." ECF 216 at 19. The Secretary disputes this number. Other examples of late-filed registration applications are discussed in the declaration of the Director of the Division of Elections, Ms. Matthews. *See* ECF 214-43 at 5 n.1 (citing "a September 28, 2020, letter to the Voter Participation center detailing 20 voter registration applications delivered after book-closing for the March 17, 2020, Presidential Preference Primary, and 54 voter registration applications delivered after book-closing for the August 18, 2020, Primary Election"). Regardless of the number, any late submissions are too many.

[3] https://registration.elections.myflorida.com/en/CheckVoterStatus/Index.

2. The Notification Provision Does Not Violate the First Amendment.

Contrary to Plaintiff's argument, the notification provision in Section 97.0575(3)(a), Florida Statutes, does not impose a content-based restriction on core political speech. It is narrowly confined to the collection and delivery of governmental forms by governmentally registered organizations. It does not require 3PVROs to express any political message with which they can legitimately disagree, it simply requires them to provide registrants with factual information. *See Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 471 U.S. 626, 651 (1985) (holding that "appellant's constitutionally protected interest in *not* providing any particular factual information in his advertising is minimal" and contrasting with the political speech context). Nor is the notification "inextricably intertwined" with protected First Amendment speech. *Cf. Riley v. Nat'l Fed'n of Blind*, 487 U.S. 781, 796 (1988). As such, the notification provision is subject to and satisfies minimal scrutiny under *Zauderer*. But even if the notification provision is subject to a heightened level of scrutiny, the State readily meets this burden because the required disclosures advance the State's substantial—indeed compelling—interest in ensuring that 3PVROs fulfill their statutory obligation to serve as fiduciaries to the prospective voters they assist with registration so that their voter registration applications are filed on time. *See Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557, 564 (1980).

a. *The notification provision satisfies minimal scrutiny.*

Under the *Zauderer* two-part test for non-controversial factual statements like the ones required here, this Court must first "assess the adequacy of the interest motivating the" required disclaimers, and then "assess the relationship between the government's identified means and its chosen ends." *Am. Meat Inst. v. United States Dep't of Agric.*, 760 F.3d 18, 20, 23, 25 (D.C. Cir. 2014) (holding that "*Zauderer* in fact does reach beyond problems of deception" to reach other disclosure mandates).

As this Court recognized in *League of Women Voters of Florida. v. Browning*, 863 F. Supp. 2d 1155, 1160 (N.D. Fla. 2012), "[t]he state has a substantial interest in seeing that voter-registration applications are promptly turned in to an appropriate voter-registration office." The specific interest underlying the notification provision is simple but compelling: Protecting prospective voters through the dissemination of truthful information so that as many as possible may register on-time in order to vote in the next election.

There is also a direct link between the State's chosen means and ends. As noted above, it is undisputed that 3PVROs sometimes deliver forms late. *See supra* at 7 n.2. Late delivery can result in registrants missing the deadline to register before an election and, as a result, being deprived of the ability to vote in that election. ECF 214-43, ¶18. Providing Florida voters with more information about the registration

process, including referring them to a website so that they can meet fast-approaching registration deadlines, directly furthers the State's interests. *Id.*

The State's chosen means is also consistent with the statutorily imposed fiduciary duty that 3PVROs owe to registrants and which Plaintiff does not challenge here. Specifically, the four disclosures from 3PVROs: (1) inform the applicant that the 3PVRO may fail to deliver the voter registration application to the Division of Elections or appropriate supervisor within 14 days or before registration closes, (2) advise the applicant that he or she may deliver the voter registration application in person or by mail, (3) inform the applicant how to register online, and (4) inform the applicant how to determine whether an application has been delivered. *See* Fla. Stat. § 97.0575(3)(a). All four disclosures empower prospective voters to make informed decisions.

The Plaintiff wrongly argues that the required notifications are a form of compelled political speech. The speech of 3PVROs is in the nature of commercial speech because a registrant's decision to allow a 3PVRO to accept responsibility for his or her registration application is, in effect, a transaction that imposes a fiduciary responsibility on the 3PVRO. *See* Fla. Stat. § 97.0575(3)(a) (2021) ("A [3PVRO] that collects voter registration applications serves as a fiduciary to the applicant[.]").

The notification provision furthers the State's interest in ensuring that 3PVROs meet their fiduciary obligation to inform registrants of risks associated with

relying on a 3PVRO as well as alternative means of registration—all in furtherance of ensuring timely registration. These communications are intended to help *prospective voters* exercise their own political speech rights rather than protected speech on the part of 3PVROs themselves. So, the additional disclosure required by the notification provision is not so "unduly burdensome" that it is "disproportionate to the end the government seeks." *See Borgner v. Brooks*, 284 F.3d 1204, 1214 (11th Cir. 2002).

Florida "only require[s] [Plaintiff] to provide somewhat more information than they might otherwise be inclined to present." *Zauderer*, 471 U.S. at 650. Any organization or individual may encourage individuals to register to vote, may hand out voter registration forms, or may assist individuals with registering online without becoming registered (or even if they are registered) without delivering any disclaimer whatsoever. All the law provides is that, should an organization wish to collect and return registrations on behalf of a prospective voter, that organization must provide the required disclosure to any registrant whose application they accept to turn in.

Plaintiff's reliance on *Riley*, 487 U.S. 781, is also unavailing. The statute at issue in *Riley* required professional fundraisers to disclose to potential donors the gross percentage of funds retained in prior charitable solicitations as part of their future solicitations. *Id.* at 784. The Court held that because the commercial aspects

of the compelled statement were "inextricably intertwined" with core protected speech that could not be parceled out, the compelled statement violated the First Amendment. *Id.* at 796. By contrast, unlike professional fundraisers acting on behalf of charities, here 3PVROs are registered with the State and authorized to collect and deliver government forms. *See* Fla. Stat. § 97.0575(1). Furthermore, the statement that 3PVROs may deliver registration applications late is not intertwined with core protected speech. There is nothing about the relatively mundane activity of filling out or collecting a voter registration application that is inherently political or persuasive. To the contrary, this same "message" is primarily communicated by Florida's Supervisors of Elections when assisting prospective voters with registration, *e.g.*, ECF 228-1 at 172:11-173:5; ECF 228-2 at 31:17-32:15; ECF 228-3 at 15:2-17, and is accomplished in an entirely non-partisan way without advocacy or persuasive speech of the kind at issue in *Riley*. Under *Riley*, advocacy and persuasion are part and parcel of solicitation: *i.e.*, persuading someone to financially support a cause because of agreement with its mission or message. The notification provision does not similarly implicate First Amendment protections in the way solicitation does with its quintessentially persuasive speech and advocacy.[4]

[4] To the extent Plaintiff seeks to rely on *League of Women Voters v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006), that case is both not controlling and inapposite. In deciding *Cobb* at the preliminary injunction stage, the Southern District of Florida applied the *Anderson-Burdick* framework and expressly rejected the Plaintiffs' arguments that the Third-Party Voter Registration Law burdened their core political

b. *The notification provision satisfies heightened scrutiny because it directly advances the State's interest in enforcing the fiduciary duties of 3PVROs.*

Even if this Court determines that more searching scrutiny is merited, Florida's history of regulating each 3PVRO "as a fiduciary to the applicant," Fla. Stat. § 97.0575(3)(a), underscores the State's compelling interest in requiring disclosures.

Florida has a long history of protecting voters by regulating voter registration activity. In 1995, when implementing the provisions of the National Voter Registration Act, Florida permitted 3PVROs to collect applications. "Prior to 1995, only state officials and individuals deputized by supervisors of elections as registrars could collect voter registration applications in Florida." *Cobb*, 447 F. Supp. 2d at 1317 (citation omitted). The 1995 rules included several requirements, such as an oath in writing that was required to be "acknowledged by the supervisor [or deputy] and filed in the office of the supervisor" and included "a clear statement of the penalty for false swearing." Fla. Stat. § 98.271(2)(a) (1993). These requirements evolved into a "fiduciary" relationship, underscoring the State's history of caution and care when allowing third-party volunteers to conduct voter registration activities. *See* H.R. Staff Analysis Fla H.B. 1567 (Apr. 4, 2005).[5]

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speech and was subject to strict scrutiny. *See id.* at 1331 n.21.

[5]https://www.flsenate.gov/Session/Bill/2005/1567/Analyses/20051567HETEL_h1567b.ETEL.pdf.

The notification requirements at issue "directly advance" the State's substantial interest in enforcing the fiduciary duties that 3PVROs owe to registrants. *Central Hudson*, 447 U.S. at 564. "Florida courts recognize a breach of fiduciary duty claim at common law." *Gochnauer v. A.G. Edwards & Sons, Inc.*, 810 F.2d 1042, 1049 (11th Cir. 1987). Fiduciaries have a variety of enforceable duties to their beneficiaries, including "the duty to disclose material facts." *Sallah v. BGT Consulting, LLC*, No. 16-81483-CIV, 2017 U.S. Dist. LEXIS 101639, at *13 n.5 (S.D. Fla. June 29, 2017). Florida courts also recognize fiduciary duties "to inform the customer of the risks involved." *Ward v. Atl. Sec. Bank*, 777 So. 2d 1144, 1147 (Fla. 3d DCA 2001). This duty is particularly important when "one party has information which the other party has a right to know because" one party is a fiduciary. *Friedman v. Am. Guardian Warranty Servs., Inc.*, 837 So. 2d 1165, 1166 (Fla. 4th Dist. Ct. App. 2003). Section 97.0575 ensures that 3PVROs abide by each of these fiduciary duties when registering voters.

Notifications in furtherance of fiduciary duties are not unusual. Routine examples include, among other things, judicial recognition of an airline's fiduciary duty to warn its passengers of potential risks from flying, especially given the need for passengers to trust the airlines transporting them. *See, e.g.*, *Fleming v. Delta*

Airlines, 359 F. Supp. 339, 341 (S.D.N.Y. 1973) (holding that airline was negligent in failing to warn passengers of forecasted turbulence).

3PVROs bear a similar responsibility. 3PVROs know, or should know, of the possibility of late-delivered applications based on historical experience, and, in the case of HTTF, who turns applications over for third-party "processing." ECF 214-18 at 61:3-14. 3PRVOs thus have a duty to warn registrants of that possibility when they entrust 3PVROs with their applications. To be sure, Florida has not prohibited 3PVROs from communicating with prospective voters or collecting their applications; it has simply required them to notify registrants of the possibility of late delivery and of the availability of other options to ensure timely filing of their voter registration applications. The choice of which route to ultimately pursue still lies where it should—with the prospective voter.

Plaintiff attempts to analogize this case to *League of Women Voters v. Hargett*, 400 F. Supp. 3d 706 (M.D. Tenn. 2019), but that case is neither controlling nor on point. In *Hargett*, the law at issue provided:

> [Any] public communication regarding voter registration status made by a political committee or organization must display a disclaimer that such communication is not made in conjunction with or authorized by the secretary of state.

Id. at 712-713. In striking down the law, the district court found that the state's purported interest in preventing "confusion regarding whether a [3PVRO] is actually government-affiliated or not" was not compelling because there was no evidence of

harm resulting from confusion over a 3PVRO's governmental affiliation or lack thereof. *See id*. at 730. Furthermore, the court found that even if the state's interest was compelling, the law was not narrowly tailored to serve that interest because it required the disclaimer requirement to be applied to all "public communications." *Id.* at 730-31.

Here, by contrast, the notification requirements serve compelling state interests for the reasons discussed above and it is narrowly tailored to serve those interests because it is targeted to "the time the application is collected"—the point at which the prospective voter decides whether or not to rely on the 3PVRO to deliver his or her registration application, thereby imposing a fiduciary duty on it to do so timely. *See* Fla. Stat. § 97.0575(3)(a) (2021). Thus, unlike the situation in *Hargett* where the disclaimer was required to be broadcast with any number of "innocuous communications," Florida's notification provision is targeted solely to the transaction that matters. 400 F. Supp. 3d at 731. It provides prospective voters the information they need to make an informed decision when they need it the most.

Plaintiff also argues that the State could accomplish these same purposes through more narrowly tailored means, such as including a disclosure on the state-issued voter registration form or conducting a public awareness campaign. ECF 216 at 23-24. Yet even under heightened scrutiny, a speech regulation does not need to be the least restrictive means to furthering the state's interest; rather, the Court need

only ask whether the notification provision is "narrowly tailored" to serve the state's compelling interests. *See Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018). It simply stands to reason that providing information to prospective voters at the time they are deciding whether to entrust 3PVROs with their registration applications is the best way and time to communicate that information, rather than relying on voters to read the fine print on a form or listen to a public service announcement on television. The notification provision is narrowly tailored.

For these reasons, the disclosure requirement should be upheld under either intermediate or heightened scrutiny. And, therefore, the Court should grant summary judgment denying Count II of Plaintiff's Amended Complaint.

3. The Notification Provision is Not Vague.

A law is unconstitutionally vague under the Fourteenth Amendment's Due Process Clause where it "fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits" or because it "authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). "[R]easonably clear lines" between proscribed and permitted conduct are all that is required to pass muster under the Due Process Clause. *Smith v. Goguen*, 415 U.S. 566, 574 (1974). Courts seek to interpret statutes to avoid issues

of vagueness. *See, e.g.*, *Skilling v. United States*, 561 U.S. 358, 412 (2010); *Buckley v. Valeo*, 424 U.S. 1, 43-44 (1976).

Plaintiff argues that the notification provision is void-for-vagueness because it does not specify the consequences for non-compliance. ECF 44 ¶ 116. Not so. Subsection 97.0575(4) specifies:

> 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.

The reference to "section" in this subsection (which pre-existed the 2021 Law) is to the entirety of Section 97.0575. There is nothing vague about the consequences to 3PVROs for non-compliance with the notification provision. They may be subject to a civil action[6] brought to prevent the violation by means of a permanent or temporary injunction, restraining order, or other appropriate order—all well within the province and expertise of the courts. Indeed, when the constitutionality of

[6] Generally, the U.S. Supreme Court is reluctant to declare statutes void for vagueness. *See, e.g.*, *Parker v. Levy*, 417 U.S. 733, 757 (1974); *Grayned v. City of Rockford*, 408 U.S. 104 (1972). The Court is even more reluctant still to declare civil statutes unconstitutionally vague. *Leib v. Hillsborough Cnty. Pub. Transp. Comm'n,* 558 F.3d 1301, 1310 (11th Cir. 2009). In fact, "a civil statute is unconstitutionally vague only if it is so indefinite as 'really to be no rule or standard at all.'" *Id*. (quoting *Seniors Civil Liberties Ass'n, Inc. v. Kemp*, 965 F.2d 1030, 1036 (11th Cir. 1992)).

subsection 97.0575(4) was challenged shortly after it was enacted in 2011, this Court found that it was "unobjectionable." *Browning*, 863 F. Supp. 2d at 1166-1167. Plaintiff cites no authority for the proposition that any law that does not specify penalties for violation is necessarily void-for-vagueness.

Plaintiff also fails to establish that the challenged law lacks standards so as to "raise[] the risk of arbitrary enforcement." ECF 216 at 28. It is clear that failure to make the necessary disclosures is a violation of Section 97.0575(3)(a).[7] And section 97.0575(4) makes it clear that violations of "this section"—including 97.0575(3)(a)—are subject to referral to the Attorney General for potential enforcement action. Whether the Secretary makes a such a referral or whether the Attorney General proceeds with an enforcement action are within the absolute discretion of the enforcing agency. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."). That a statute provides enforcement discretion does not make it

[7] The cases cited by Plaintiff (*see* ECF 216 at 28) are clearly distinguishable because, unlike Section 97.0575, the statutes at issue in those cases used vague terms to describe the conduct being criminalized or prohibited. *See Papachristou v. City of Jacksonville*, 405 U.S. 156, 158 (1972) (criminalizing "prowling by auto," being a "vagabond," "loitering," being a "common thief"); *Gray v. Kohl*, No. 07-10024-civ, 2007 U.S. Dist. LEXIS 113204, at *11 (S.D. Fla. 2007) (criminalizing failure to conduct a "legitimate business"); *National Abortion Fed'n v. Metro. Atlanta Rapid Transit Auth.*, 112 F. Supp. 2d 1320, 1324 (N.D. Ga. 2000) (prohibiting advertisements relating to matters of "public controversy").

unconstitutionally vague. *See Ga. Outdoor Network, Inc. v. Marion Cnty.*, 652 F. Supp. 2d 1355, 1367 (M.D. Ga. 2009).

Accordingly, the notification provision in Section 97.0575(3)(a), Florida Statutes, is not void-for-vagueness (nor is the related enforcement provision in Section 97.0575(4), Florida Statutes).

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiff's motion for summary judgment.

Dated: December 3, 2021

Respectfully submitted:

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NORTHERN DISTRICT OF FLORIDA
LOCAL RULE CERTIFICATION

I certify that the foregoing complies with the size and font requirements in the local rules. It contains 4,410 words.

/s/ Mohammad Jazil

CERTIFICATE OF SERVICE

I certify that on December 3, 2021, I served the foregoing on all counsel of record through this Court's CM/ECF system.

/s/ Mohammad Jazil