

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

HARRIET TUBMAN FREEDOM  
FIGHTERS, CORP. *et al.*,

*Plaintiffs,*

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’**  
**RESPONSE IN OPPOSITION TO DEFENDANTS’**  
**MOTION FOR SUMMARY JUDGMENT**

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Defendants Secretary of State Laurel Lee (“the Secretary”), Attorney General Ashley Moody (“the AG”) (collectively “State Defendants”), and Intervenor<sup>1</sup> (collectively, “Defendants”) Motion for Summary Judgment (“the Motion”), makes several critical errors. *First*, they incorrectly apply the law regarding diversion of resources standing, ignoring the resources Harriet Tubman Freedom Fighters (“HTFF”) diverts to comply with SB 90. *Second*, Defendants ignore uncontroverted record evidence of the harms SB 90 inflicts on HTFF.<sup>2</sup> *Third*, they misconstrue the nature of the First Amendment injuries at stake, and apply the incorrect standards. *Finally*, genuine issues of material fact preclude summary judgment on HTFF’s associational claim.

### LEGAL STANDARD

A party is only entitled to summary judgment “if 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) (emphasis added). The substantive law applicable to the case determines which facts are material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The movant bears the burden of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, (1986). “A dispute is

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<sup>1</sup> Intervenor-Defendants did not join State Defendants’ Motion with respect to dismissal for lack of standing. ECF 217.

<sup>2</sup> HTFF incorporates its Motion for Summary Judgment, ECF 216, and the Exhibits filed with the same, ECF 212.

genuine if ‘a reasonable trier of fact could return judgment for the non-moving party.’” *Flournoy v. CML-GA WB, LLC*, 851 F.3d 1335, 1337 (11th Cir. 2017) (quoting *Anderson*, 477 U.S. at 247–48).

“[T]he Court’s review of the parties’ submissions is limited to the portions to which they have specifically cited . . . [and] those legal arguments expressly advanced. . .” *Preis v. Lexington Ins. Co.*, 508 F. Supp. 2d 1061, 1068 (S.D. Ala. 2007). The court must “view all of the evidence in a light most favorable to the nonmoving party and draw all reasonable inferences in that party’s favor.” *Williamson v. Brevard Cnty.*, 928 F.3d 1296, 1304 (11th Cir. 2019) (quoting *Procaps S.A. v. Patheon, Inc.*, 845 F.3d 1072, 1079 (11th Cir. 2016)). “If the party moving for summary judgment fails to discharge the initial burden, then the motion must be denied and the court need not consider what, if any, showing the non-movant has made.” *Fitzpatrick v. City of Atlanta*, 2F.3d 1112, 1116 (11th Cir. 1993); *see also Mullins v. Crowell*, 228 F.3d 1305, 1313 (11th Cir. 2000).

## ARGUMENT

### **I. The Undisputed Material Facts Demonstrate HTFF’s Standing and Confirm This Court’s Prior Ruling**

A plaintiff has standing where it has “(1)...suffered an injury-in-fact that is (2) traceable to Defendants and that (3) can likely be redressable by a favorable judicial decision.” ECF 190 at 11 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555,

560–61 (1992)). This Court already held HTFF’s allegations sufficient to maintain standing. ECF 190 at 14. (citing *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341 (11th Cir. 2013); *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018)) (“Both HTFF’s alleged diversion of resources and compelled speech are cognizable injuries-in-fact...”). HTFF has now supported its allegations with “sufficient, detailed, and relevant evidence at summary judgment,” *see id.* at 14–15 n.4, and therefore has demonstrated its standing to maintain its claims.

Here, Defendants challenge HTFF’s standing only as to the injury prong. *See* ECF 215-1 at 9–10. They do not assert that HTFF’s injury is not traceable to them or that it cannot be redressed by a favorable ruling of this Court. *See id.* Further, Courts “apply the injury-in-fact requirement most loosely where First Amendment rights are involved” and should do so here because Defendants’ Motion overlooks myriad case law and record evidence supporting HTFF’s injury. *Harrell v. Fla. Bar*, 608 F.3d 1241, 1254 (11th Cir. 2010).

**A. HTFF suffers actionable First Amendment injuries**

It is undisputed that SB 90 mandates that HTFF “(1) inform voters that the 3PVRO may fail to deliver the voter’s registration application to the appropriate supervisor within 14 days or before registration closes, (2) inform voters how to register to vote online, and (3) inform voters how to check the delivery status of the

voter’s application.” ECF 215-1 at 13. HTFF is also required to inform applicants that they may turn in the application themselves. Fla. Stat. 97.0575(3)(a).

To attack HTFF’s standing, Defendants assert that HTFF cannot support its allegation that the Requirement “undermines the credibility they have established in the communities in which they work” because it is “not aware of any voters who did not register as a result of the” Requirement. ECF 215-1 at 9. That Defendants did not seek—and HTFF did not produce—any records identifying specific, eligible voters HTFF failed to register due to the Requirement is not fatal to HTFF’s standing because Defendants ignore the injuries to *HTFF’s* speech and association rights and the number of voters who register is not the only barometer for HTFF’s injuries.

HTFF “disagrees with the message of the new disclaimer requirement and would otherwise not convey that message absent the new law which requires it.”<sup>3</sup> *See* ECF 190 at 13–14. Because the right to free expression includes the right to not speak, *Janus*, 138 S. Ct. at 2463, a law compelling someone to speak injures a plaintiff’s right to free expression. That the Requirement compels HTFF to speak when it otherwise would not is injury enough.

The Requirement also injures HTFF because it forces them to “say something that is not true[.]”<sup>4</sup> Although HTFF makes every effort to turn in the applications

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<sup>3</sup> ECF 227-2 at 32:24–33:2, 86:15–16, 90:13–19.

<sup>4</sup> *Id.* at 86:15–16

they collect and has timely returned every one of the more than three hundred applications it has submitted,<sup>5</sup> it must still warn prospective voters that it may not and inform them how to register and check the application's delivery status online, and that they may turn in the application themselves. HTFF testified that the Requirement compels them to convey "misinformation or disinformation"<sup>6</sup> because many people lack internet access, the identification necessary to register online, and ability or willingness to understand and successfully complete the process without HTFF's assistance.<sup>7</sup> See ECF 190 at 13 (citing ECF 44 ¶ 130).

Being forced to convey this misleading information, in turn, undermines the credibility HTFF attempts to establish in the communities in which it works<sup>8</sup> because it takes "away the spirit that we build as far as...these applicants trusting that we're going to do what we say we're going to do."<sup>9</sup> HTFF also testified that compliance with the Requirement diverts its limited resources away from personnel, time, and money it could use for other First Amendment-protected activities—such as issue-canvassing and mobilization—and, ultimately, results in fewer registered voters.<sup>10</sup>

Defendants' assertion that HTFF's claims fail because it cannot provide records for every prospective voter who was discouraged by the Requirement,

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<sup>5</sup> *Id.* at 86:4–87:1; ECF 212-29 at 99.

<sup>6</sup> ECF 227-2 at 90:13–19.

<sup>7</sup> ECF 227-2 93:16–94:12; 94:16–95:2; 95:15–23.

<sup>8</sup> ECF 227-2 at 82:24–83:18, 84:19–85:4, 85:15–87:1.

<sup>9</sup> ECF 227-2, at 86:23–25.

<sup>10</sup> ECF 227-1, HTFF Decl. ¶¶ 6, 12, 15–19, 24–32; ECF 227-6.

misses the point entirely. As this Court already recognized, “[w]henver the Federal Government or a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines [the] ends [that free speech serves].” ECF 190 at 14 (quoting *Janus*, 138 S. Ct. at 2464) (alterations in original).

Defendants also argue—with no legal support whatsoever—that because HTFF was not a 3PVRO prior to the Requirement’s enactment and has thus always been required to comply with it, it cannot have diverted resources in order to comply. ECF 215-1 at 9. But the operable question is not whether a plaintiff must divert pre-designated resources differently than it did prior to the law’s enactment, but whether it must divert resources away from other preferred activities to comply with the law. See *Jacobsen v. Fla. Sec’y of State*, 974 F.3d 1236, 1250 (11th Cir. 2020); *Ga. Latino All. for Hum. Rts. v. Governor of Ga.*, 691 F.3d 1250, 1260 (11th Cir. 2012) (observing that an immigration organization “cancelled citizenship classes to focus on” increased inquiries about a new law); *Common Cause Ga. v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009) (explaining that resources would be diverted “from ‘getting [voters] to the polls’ to helping them obtain acceptable photo identification”); *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1166. (11th Cir. 2008) (“These resources would otherwise be spent on registration drives and election-day education and monitoring.”).



HTFF diverts time and resources away from “its other activities for SB 90-specific trainings and voter registration requirements.”<sup>11</sup> See ECF 190 at 13 (citing ECF 44 ¶ 32). It diverts funds to pay staff to train on the Requirement<sup>12</sup> and to generate printed forms,<sup>13</sup> to ensure that its canvassers comply with the Requirement. HTFF otherwise would use these diverted funds to generate educational materials, hire more canvassers, and build community capacity.<sup>14</sup> Moreover, the Requirement will “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) . . . .”<sup>15</sup> See ECF 190 at 13 (citing ECF No. 44 ¶ 32).

In sum, HTFF testified that it believes these messages are misleading, disagrees with their content, and would not convey them absent the Requirement.<sup>16</sup> HTFF further testified to its diversion of resources necessary to comply with the Requirement. As such, the record is replete with evidence to support at the summary judgment stage the Court’s earlier conclusion that HTFF has standing to bring its compelled speech and associational claims. ECF 190 at 14 and n.4.

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<sup>11</sup> *Id.* ¶¶ 10, 12, 15–19, 21, 23–32; ECF 227-2 at 45:21–47:7, 48:6–10, 50:2–18, 62:20–63:7, 70:25–71:6, 123:24–124:8; ECF 227-6.

<sup>12</sup> ECF 227-2 at 45:21–47:7, 70:25–71:6; ECF 227-1, ¶¶ 10, 15–18.

<sup>13</sup> ECF 227-2 at 43:3–16, 44:25–45:13, 45:21–46:19, 62:20–63:7, 121:8–15, 122:10–16, 123:24–124:8; ECF 227-5 at 3, Pl.’s Supp. Resp. to SoS Interrogs., No.8; ECF 227-7 at 4–5, 9–10, Pl.’s Resp. to Intervenor-Defs.’ Interrogs., Nos. 3(ii–iii), 10(ii); ECF 212-24 at 3–5, Pl.’s Supp. Resp. SoS Request for Prod. (RFP), Nos. 5, 9, 12, & 13; ECF 227-6.

<sup>14</sup> ECF 227-2 at 43:3–11, 46:1–11.

<sup>15</sup> *Id.* at 121:8–15, 123:16–124:8; ECF 227-1, ¶¶ 26–32, 35.

<sup>16</sup> See, e.g., ECF 227-2 at 32:24–33:2, 86:15–16, 90:13–19.

**B. HTFF’s exposure to a vague law constricting speech is a cognizable Fourteenth Amendment injury**

For the same reasons, HTFF demonstrates standing for its void for vagueness claim. Void laws regulating speech have the potential to chill protected speech, which can constitute “an actual injury.” *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1320 (11th Cir. 2017); *McDonough v. Fernandez-Rundle*, 862 F.3d 1314, 1318 n.2 (11th Cir. 2017). HTFF suffers a cognizable injury because it must expose itself to unknown risks in order to conduct voter registration activities under a law that does not put it on adequate notice as to what it forbids and the consequences for noncompliance. *See* ECF 216 at 32. As HTFF testified, the law does not communicate the precise means to comply and the penalties for any alleged violations of the law, putting the organization “on pins and needles”.<sup>17</sup> *See* ECF 190 at 13 (citing ECF 44 ¶ 31). Despite this challenge, HTFF continues to use its resources in ways it otherwise would not to comply as best as it can.<sup>18</sup>

A vague law also creates an actionable injury by forcing one “to restrain one’s everyday behavior without knowing what will trigger a[n] [enforcement] action” and to “being daily subjected to the threat of retaliatory or arbitrary construction of the rule.” *Sweet v. McDonough*, No. 4:06-cv-321, 2007 WL 567289, at \*3 (N.D. Fla. Feb. 16, 2007). That is precisely the situation confronting HTFF. It continues to

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<sup>17</sup> *Id.* at 74:14-76:25, 77:20-23, 118:1-18, 120:15-25.

<sup>18</sup> *Id.*

convey a government-mandated message and has spent resources in a manner contrary to its wishes and mission, in order to avoid violating the Requirement and minimize the risk of enforcement for inadvertent violations. However, as discussed in HTFF's summary judgment motion, it is not on notice as to the extent of possible consequences of a violation, and could suffer punishment while other groups do not for comparable or worse conduct. ECF 216 at 28–33. For this reason, too, HTFF has an actionable injury under its vagueness claim.

## **II. Defendants Cannot Meet Their Burden for Summary Judgment on HTFF's Constitutional Claims.**

For the reasons set forth in its motion for summary judgment, ECF 216, and below, HTFF, and not Defendants, is entitled to summary judgment as to its compelled speech and void for vagueness claims (Counts I and II, *See* ECF 44 ¶¶ 111–143). Genuine issues of material fact preclude summary judgment on HTFF's Count III, its associational claim.

Defendants' arguments supporting the Requirement's constitutionality fail. First, without any supporting facts or law, they claim the AG's broad enforcement powers rescue the Requirement from HTFF's void for vagueness claim. ECF 215-1 at 10–11. Second, they misconstrue the nature of the First Amendment injuries at stake, relying on inapplicable exceptions for content-based, government regulations to urge the Court to afford HTFF diminished First Amendment protections. *Id.* at 11–17. Third, Defendants advance completely new rationales for the Requirement

that are unsupported by undisputed material facts and binding precedent, and ultimately bereft of any specific, undisputed state interest advanced by the Requirement. *Id.* at 12–17. Lastly, in lieu of presenting *any* undisputed material facts supporting their position, they ignore contrary record evidence, merely recite HTFF’s claims, and respond “not so.” *Id.* at 10, 18–19. Such conclusory statements cannot support summary judgment for Defendants. *See* Fed. R. Civ. P. 56(c).

**A. Fla. Stat. § 97.0575(3)(a) and (4) fail to provide clear enforcement mechanisms and penalties for non-compliance with the Requirement.**

Defendants assert that Fla. Stat. § 97.0575(4), the State’s enforcement vehicle for the Requirement, is not unconstitutionally vague because it identifies the types of orders the AG may pursue in seeking enforcement. By focusing on these procedural vehicles, Defendants tacitly admit that the statute does not adequately notify HTFF of the *penalties* the State may ultimately obtain.

The Requirement impedes HTFF’s speech by forcing it to take on extensive and time-consuming compliance procedures to mitigate unknown risks to conduct voter registration activities. The only other alternative would be to refrain from these activities. The Constitution forbids the government from putting this choice to speakers. *Wollschlaeger*, 848 F.3d at 1320.

Defendants argue—without citation to any facts whatsoever—that the Requirement is not vague. First, they do so by conflating the methods by which the AG may seek enforcement of the Requirement with the penalties for noncompliance.

They write: “[3PVROs] may be subject to a civil action 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.” ECF 215-1 at 11. But Defendants do not identify what potential *relief* the State may achieve through such orders. For example, it is unclear whether the AG could secure an order revoking 3PVRO status, or whether an “appropriate order” could include monetary penalties<sup>19</sup> nor does the statute identify a maximum penalty amount or clarify whether individuals affiliated with a 3PVRO could be subject to enforcement actions. *See also* ECF 216 at 29.

Second, Defendants cite a case in which this Court rejected a vagueness claim pertaining to Section 97.0575(4) nearly a decade ago, but that case predates the Requirement. ECF 215-1 at 11 (*League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1166–67 (N.D. Fla. 2012)). Even so, HTFF presented evidence that Fla. Stat. § 97.0575 risked arbitrary enforcement even before SB 90, as the Secretary has inconsistently fined groups for untimely submitting forms under paragraph (3)(a). ECF 216 at 31–32. SB 90 merely tacked the Requirement onto this statute without identifying the penalties for noncompliance, thereby exacerbating the risk of arbitrary enforcement. The statute also fails to constrain Defendants’

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<sup>19</sup> *Id.* at 77:20-23, 117:7-13, 118:1-15.

substantial discretion to enforce the Requirement, and the Secretary has yet to initiate a rulemaking process. *Id.* at 29–31.

In short, Defendants’ shifting and non-specific position about the Requirement’s enforcement mechanisms only reinforce HTFF’s void for vagueness claims.

**B. The Requirement is subject to strict scrutiny because it does not meet the criteria for exceptions Defendants cite.**

Courts recognize that voter registration activities, such as HTFF’s, are core political speech. *See League of Women Voters of Fla. (“LWVFL”) v. Cobb*, 447 F. Supp. 2d 1314, 1334 (S.D. Fla. 2006) (holding that “the collection and submission of” applications gathered in a voter registration drive “is intertwined with speech and association.”); *Browning*, 863 F. Supp. 2d at 1158 (“[E]ncouraging others to register to vote” is “pure speech” and “core First Amendment activity.”); *see also Meyer v. Grant*, 486 U.S. 414, 422 (1988); ECF 216 at 19. Defendants concede that the Requirement forces HTFF to convey specific messages, ECF 215-1 at 13, rendering it a content-based regulation targeted at a specific group of speakers—3PVROs—and thus subject to strict scrutiny. *Nat’l Inst. of Fam. & Life Advoc. (“NIFLA”) v. Becerra*, 138 S. Ct. 2361, 2371 (2018). Though courts recognize limited exceptions to this rule for certain forms of business-related speech, Defendants misclassify HTFF’s voter registration work as professional speech subject to *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471

U.S. 626 (1985) (“*Zauderer* exception”) or, alternatively, commercial speech subject to *Central Hudson Gas & Electric Corporation v. Public Service Commission of New York*, 447 U.S. 557 (1980). Since HTFF engages in neither professional nor commercial speech, both exceptions are inapplicable and strict scrutiny remains the operative standard for its compelled speech claim. ECF 216 at 17–27.

i. The *Zauderer* exception is inapplicable

The *Zauderer* exception involves regulations “requir[ing] professionals to disclose factual, noncontroversial information in their ‘commercial speech.’” *NIFLA*, 138 S. Ct. at 2372. Such commercial speech disclosures are invalid if “they are ‘unjustified or unduly burdensome.’” *Id.* (quoting *Zauderer*, 471 U.S. at 651). It does not apply to speech made outside the course of business. *Id.* at 2374 (“[T]he Court emphasized that the lawyer’s statements in *Zauderer* would have been ‘fully protected’ if they were made in a context other than advertising.”); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995). The Supreme Court warned that “[t]he dangers associated with content-based regulations of speech are also present in the context of professional speech.” *NIFLA*, 138 S. Ct. at 2374; *Reed v. Town of Gilbert*, 576 U.S. 155, 167 (2015). “As with other kinds of speech, regulating the content of professionals’ speech ‘pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.’” *NIFLA*, 138 S. Ct. at 2374 (quoting *Turner*

*Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994) (alteration in original)). Consequently, courts are loathe to apply lesser scrutiny to laws regulating professional speech. See *NIFLA*, 138 S. Ct. at 2375; *Wollschlaeger*, 848 F.3d at 1311.

*Zauderer* is inapplicable here because HTFF's speech is not commercial, it is not an entity traditionally associated with the exception, and the Requirement does not involve factual, uncontroversial information.

*First*, it is undisputed that HTFF's speech "is not strictly commercial." ECF 215-1 at 13. Nor is it an advertisement for voter registration services or professional counsel; HTFF does not offer to register eligible voters for compensation or economic benefit,<sup>20</sup> or advertise such services in newspapers, mailers, online, or any other media traditionally associated with commercial speech. HTFF's speech is also not confined to assistance in registering; it represents one aspect of HTFF's non-profit engagement which includes building relationships with community members, educating registrants about voting and issues of community interest, and mobilizing voters to foster democratic civic engagement.<sup>21</sup>

*Second*, 3PVROs are not licensed professionals, like lawyers or doctors, whose professional speech courts accord diminished First Amendment protection.

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<sup>20</sup> *Id.* at 31:3–6, 31:18–21, 40:18–24, 42:20–43:1; ECF 227-1 ¶ 6.

<sup>21</sup> ECF 227-2 at 35:25–15; ECF 227-1 ¶¶ 5, 24-25.



*See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 884 (1993) (abortion providers); *Zauderer*, 471 U.S. at 651 (attorneys); *Borgner v. Brooks*, 284 F.3d 1204 (11th Cir. 2002) (dentists). Unlike 3PVROs, these professionals must meet specific educational and training requirements and receive state licensure. *See Fla. Stat. § 458.311(1)*; Fla. Stat. Bar R. 4-5.5; Rules of the Fla. Sup. Ct. Relating to Admis. to the Bar r. 4-13.1(b); *see also Falanga v. State Bar of Ga.*, 150 F.3d 1333, 1344 (11th Cir. 1998) (noting the “‘possibilities for overreaching, invasion of privacy, the exercise of undue influence, outright fraud’ and other ‘unique features of in-person solicitation by lawyers[.]’” (quoting *Zauderer*, 471 U.S. at 641)). HTFF is a private entity led and staffed by community members who engage fellow citizens on the significance of civic participation.<sup>22</sup> While 3PVROs register with the state, Fla. Stat. § 97.0575(1), this is distinct from licensure which requires a professional degree and/or skills criteria, standardized examinations, and approval from a state licensing body, or, for example, the pre-1995 deputy registrar process, *see* ECF 215-1 at 15. 3PVROs are not state officials, nor do they make decisions as to who is qualified to register to vote. *Cf.* Fla. Stat. § 97.053.

*Third*, the Requirement does not qualify for lesser scrutiny because it does not involve “purely factual and uncontroversial information.” *NIFLA*, 138 S. Ct. at 2372 (quoting *Zauderer*, 471 U.S. at 651)). It is not “indisputable that potential registrants

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<sup>22</sup> ECF 227-1 ¶¶ 7–9, 13–14.

can deliver their applications in person, by mail, or online; and they can track the status of their applications.”<sup>23</sup> ECF 215-1 at 7. As discussed *supra* I.A, the Requirement compels HTFF to engage in false and misleading speech. Likewise, the theoretical possibility that 3PVROs may untimely submit a completed voter registration form does not render the disclaimer “purely factual.”

Nor is the information mandated by the Requirement “uncontroversial.” To mitigate the injuries caused by the Requirement, HTFF must refute it or place it into fuller context.<sup>24</sup> See *Masterpiece Cakeshop Ltd. v. Colo. C.R. Comm’n*, 138 S. Ct. 1719, 1745 (2018) (“Because the government cannot compel speech, it also cannot ‘require speakers to affirm in one breath that which they deny in the next.’” (quoting *Pacific Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1, 16 (1986))). Indeed, the plethora of lawsuits the Requirement engendered reflect its controversial nature.

ii. The *Central Hudson* standard is inapplicable

In the alternative, Defendants assert that *Central Hudson* provides the correct standard of review. ECF 215-1 at 12. This exception only applies to “restrictions on commercial speech,” which is “expressive communication that is related solely to the economic interests of the speaker and its audience . . . or that does no more than propose a commercial transaction.” *Ocheesee Creamery LLC v. Putnam*, 851 F.3d

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<sup>23</sup> ECF 216 at 23–24; ECF 227-4 at 173:19–174:8.

<sup>24</sup> ECF 227-1 ¶¶ 29–31.

1228, 1234 n.6 (11th Cir. 2017) (quoting *Dana's R.R. Supply v. Att'y Gen.*, 807 F.3d 1235, 1246 (11th Cir. 2015))). It also only applies to commercial speech involving unlawful activity or “false or inherently misleading” information. *Id.* at 1235 (citing *Zauderer*, 471 U.S. at 638). Further, *Central Hudson's* exception applies to laws *prohibiting* rather than compelling the conveyance of certain content during the course of commercial speech. *See id.* (challenging state's refusal to permit dairy to advertise its product as “skim milk”); *see also Edenfield v. Fane*, 507 U.S. 761 (1993) (ban on certain solicitations by certified public accountants); *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293 (11th Cir. 2017) (law barring physicians from “unnecessarily harassing” patients about gun ownership); *Abramson v. Gonzalez*, 949 F.2d 1567 (11th Cir. 1992) (law banning unlicensed persons from advertising themselves as psychologists). Such prohibitions are subject to intermediate scrutiny. *See Ocheesee Creamery*, 851 F.3d at 1235–36.

Under the *Central Hudson* test,

“[courts] ask whether the asserted governmental interest is substantial.”  
 In the remaining two prongs, “[they] must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.”  
 A regulation that fails to pass muster violates the First Amendment.

*Id.* at 1236 (internal citations omitted). It is the State's burden to justify the restriction. *Ibanez v. Fla. Dep't of Bus. & Pro. Regul., Bd. of Acct.*, 512 U.S. 136, 143 (1994); *Ocheesee*, 851 F.3d at 1236. “[M]ere speculation or conjecture’ will

not suffice; rather the State ‘must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.’” *Ibanez*, 512 U.S. at 143 (quoting *Edenfield*, 507 U.S. at 770–71) (alternation in original); *see also Edenfield*, 507 U.S. at 768 (“[T]he *Central Hudson* standard does not permit us to supplant the precise interests put forward by the State with other suppositions. Neither will we turn away if it appears that the stated interests are not the actual interests served by the restriction.” (internal citation omitted)); *Wollschlaeger*, 848 F.3d at 1314.

As discussed *supra* II.B.i (discussing *Zauderer*), HTFF’s speech is not commercial and HTFF alleges that the State impermissibly forces it to speak, rather than outright prohibiting it from doing so. *See also* ECF 215-1 at 17 (“To be sure, Florida has not prohibited 3PVROs from communicating with voters or collecting their applications...”). Therefore, *Central Hudson* is inapplicable.

iii. Defendants cannot establish sufficient undisputed material facts to advance their asserted state interests under either exception

Even assuming that Defendants met their burden of establishing that the Requirement implicated HTFF’s professional or commercial speech and is subject to either the *Zauderer* or *Central Hudson* exceptions, they cannot establish that the asserted state interests it advances are substantial, justified, or impose only necessary burdens. *See Zauderer*, 471 U.S. at 651; *Ocheese*, 851 F.3d at 1236.

*a. The Requirement is unjustified or unduly burdensome under Zauderer*

Defendants claim that they can prevail under the *Zauderer* exception because their “interest is simple but compelling: protecting its voters through the dissemination of truthful information so that as many voters as possible may register and vote. There is also a direct link between the means and chosen ends.” ECF 215-1 at 12. As grounds for this, they assert that “it is undisputed that 3PVROs sometimes deliver forms late” and that the additional information in the Requirement will give voters more information and opportunities to timely register. *Id.* The undisputed facts show otherwise.

First, as discussed *supra* I.A., the information the Requirement forces 3PVROs to disclose is, at best, misleading. Therefore, the Requirement actually undermines the State’s interest “in preventing deception[.]” *Zauderer*, 471 U.S. at 651; *see also* ECF 216 at 15.

Second, the Requirement forces HTFF to advertise alternative voter registration options offered *by the State* despite some risk of delayed submission or failed registration with those methods; these may be unreliable at critical times and the Requirement could cause applicants to falsely believe that submitting their own applications does not involve the risk of delayed submission or failed registration. *See NIFLA*, 138 S. Ct. at 2372 (invalidating law that required plaintiffs “to disclose information about *state-sponsored services*” (emphasis in original)). In the most

recent statewide election, Florida’s online voter registration website crashed on the final day of registration,<sup>25</sup> and nationally, the U.S. Postal Service has experienced delivery delays.<sup>26</sup> Yet, Florida’s registration form does not warn applicants of these risks<sup>27</sup> or require election officials to provide such a warning. *Cf. NIFLA*, 138 S. Ct. at 2374 (“Tellingly, many facilities that provide the exact same services as covered facilities...are not required to provide the licensed notice.”).

Third, although Defendants assert that it is “not uncommon” for 3PVROs to deliver voter registration applications late, ECF 215-1 at 7, the undisputed facts show that this is exceptionally rare.<sup>28</sup> In 2020, SOEs reported that only twelve people could

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<sup>25</sup> See, e.g., Samantha J. Gross & Ana Ceballos, *Florida’s online voter registration site crashes on final day of sign up*, THE LEDGER (Oct. 6, 2020, 11:39 AM), <https://www.theledger.com/story/news/state/2020/10/06/floridas-online-voter-registration-site-crashes-last-day-sign-up/3637348001/>.

<sup>26</sup> Aimee Picchi, *Postmaster DeJoy says USPS is ‘ready’ for the holidays. But it’s already missing delivery standards.*, CBS NEWS (Nov. 12, 2021, 12:03 PM), <https://www.cbsnews.com/news/postmaster-dejoy-says-the-usps-is-ready-for-the-holidays-but-its-already-missing-delivery-standards/> (“In October...91% of mail was delivered on time — lower than its goal of delivering 95% on time. And those missed standards already represent the USPS’ new lower delivery guidelines, which went into effect in October and slowed delivery for 4 out of 10 pieces of mail.”); Kiely Westhoff & Veronica Stracqualursi, *Virginia Democrats sue USPS over delayed delivery of election-related material*, CNN (Oct. 24, 2021, 2:47 PM), <https://www.cnn.com/2021/10/23/politics/virginia-democrats-postal-service-election-related-material-delays/index.html>.

<sup>27</sup> See ECF 212-22 at 2, Form DS-DE 39, *Florida Voter Registration Application*, FLA. DEP’T OF STATE (Oct. 2013) (“Fla. Voter Reg. Form”) (Produced as HTFF00440-41), *available at* <https://files.floridados.gov/media/704795/dsde39-english-pre-7066-20200914.pdf>.

<sup>28</sup> ECF 216 at 6–8; ECF 212-12 at 5–6, 11-12, 17, 23, 30, 38, 48, 54, 60, 66, 77, 87, 100, 111, Resps. of Cnty. SoEs to LWVFL Pls.’ Interrogs., No. 7 (Baker, Bay, Bradford, Calhoun, Collier, Columbia, DeSoto, Dixie, Franklin, Hamilton, Hardee, Hendry, Hernando Glades); ECF 212-13 at 10, 15, 22, 30, 37, 46, 60, 67, 72, 79, 87, 93, 99, 105, 117, 122, Resps. of Cnty. SoEs to LWVFL Pls.’ Interrogs., No. 7 (Holmes, Jackson, Lee, Nassau, Manatee, Miami-Dade, Palm Beach, Putnam, Sarasota, St. Lucie, Sumter, Suwannee, Taylor, Wakulla, Walton, Washington, Liberty Counties) (Bay, Hendry Lee, Miami-Dade (documents referenced for Bay, Hendry, Lee, Miami-

not vote in an election because a 3PVRO failed to submit their registration forms on time.<sup>29</sup> Numerous SOEs testified they either were unaware of applications being turned in late<sup>30</sup> or were aware of only small numbers of applications being turned in sufficiently late that an applicant was not able to vote.<sup>31</sup> Defendants assert that HTFF's quality control process, which HTFF testified is completed within 10 days, is "alarming" and makes missed deadlines likely, but this purported concern is immaterial because HTFF's perfect record of timely submissions and testimony demonstrate without question that its process ensures successful voter registrations

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Dade Counties do not indicate existence of 2020 late forms); ECF 212-14 at 5, 12, 21, Resps. of Cnty. SoEs to LWVFL Pls.' Interrogs., No. 7 (Lafayette, Indiana River, Monroe); ECF 227-12, Dep. of Joe Scott, Broward Cnty. SoE, 79:25-80:6, 86:25-87:4; ECF 212-33 at 11, Lake Cnty. SoE Supp. Resp. to LWVFL Pls.' RFP No. 33; ECF 212-34 at 6-7, 12-13, 19, 27-28, 39, 51, 58, 68-69, 76, Resps. of Cnty. SoEs to LWVFL Pls.' Interrogs., No. 7 (Duval, Escambia, Highlands, Leon and Polk); ECF 212-35 at 3-12, 25-27, Documents Produced by Cnty. SOEs to LWVFL Pls.' RFP No. 33 (Brevard, Pasco); ECF 212-36 at 5, St. John's Cnty. SoE Resp. to LWVFL Pls.' RFA No. 10; ECF 212-38 at 3, 14-15, 22-23, 30-31, 38-39, 54, 79-80, 88, 99, 108-09, 118, 127-28, 135-36, 152, 161, 170 Resps. of Cnty. SoEs to LWVFL Pls.' RFA, No. 10 (Alachua, Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Duval, Dixie, Escambia); ECF 212-39 at 4-5, 20-21, 28-29, 36-37, 54, 66-67, 82-83, 106, 117, 122-23, 138, 157 Resps. of Cnty. SoEs to LWVFL Pls.' RFA, No. 10 (Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes); ECF 212-40 at 5, 15-16, 24, 39-40, 48, 58, 69, 81-82, 89-90, 106, 116, 126, 134, 142, 151 Resps. of Cnty. SoEs to LWVFL Pls.' RFA, No. 10 (Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Levy, Liberty, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Leon); ECF 212-41 at 4-5, 13, 25, 38, 47, 65, 91, 100-01, 108-09, 116-17, 130, Resps. of Cnty. SoEs to LWVFL Pls.' RFA, No. 10 (Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Polk, Putnam, Santa Rosa, Sarasota, Seminole); ECF 212-42 at 5, 14-15, 22-23, 30-31, 38-39, 46, 55-56, 63-64, 71-72 Resps. of Cnty. SoEs to LWVFL Pls.' RFA, No. 10 (St. Lucie, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington Counties).

<sup>29</sup> ECF 212-36 at 5, St. Johns County SOE Resp. to LWVFL Pls.' RFA No. 10.

<sup>30</sup> ECF 227-9, Bennett Dep. 106:4-107:4; ECF 227-13, Doyle Dep. 96:23-97:2; ECF 227-8, Hays Dep. 129:4-129:20; ECF 227-12, Scott Dep. 86:25-87:4.

<sup>31</sup> ECF 227-15, Corley Dep. 165:6-165:21; ECF 227-10, Earley Dep. 92:17-92:24; ECF 227-11, Latimer Dep. 147:25-148:10; ECF 227-14, Lenhart Dep. 90:20-25; ECF 227-16, Link Decl. ¶¶ 33-34; ECF 227-17, Cowles Decl. ¶¶ 30-31.

without causing delay. ECF 216 at 12. HTFF’s additional and timely quality control process<sup>32</sup> accomplishes the state’s interest in successfully registering as many voters as possible, *id.* at 12 (citing ECF 214-34 ¶¶ 17-21), more effectively than the Requirement.

Lastly, Defendants attempt to distinguish this case from *NIFLA* because the Requirement lacks an explicit script. ECF 215-1 at 14 (citing 138 S. Ct. at 2371). However, that does not save it, because HTFF must still convey a government-imposed message containing certain content that it otherwise would not.<sup>33</sup> *See Pacific Gas & Elec. v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1 (1986)); *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241 (1974); *Stuart v. Camnitz*, 774 F.3d 238, 246 (4th Cir. 2014) (requiring physicians to convey a fetus’ description prior to an abortion was compelled speech despite not prescribing a specific script).

*b. The Requirement fails to directly advance Defendants’ asserted governmental interest and is more extensive than necessary*

Defendants argue they can prevail under the *Central Hudson* exception because they have a “substantial interest in enforcing the fiduciary duties that 3PVROs owe to voters.” ECF 215-1 at 16. The cases Defendants cites in support of this proposition are not binding and do not include—nor could Plaintiff locate—any federal court recognizing that a state law fiduciary duty is a government interest

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<sup>32</sup> ECF 227-2 at 65:6-9, 108:20-24; ECF 227-3 at 198:7-199:3.

<sup>33</sup> ECF 227-4 at 130:5–132:4.



justifying restrictions on First Amendment rights. Rather, binding precedent dictates that “a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights.” *NAACP v. Button*, 371 U.S. 415, 439 (1963) (prohibiting organizations from finding or retaining lawyers for individual litigants and paying those attorneys a per diem fee for their professional services, violated the First Amendment because state did not advance any substantial regulatory interest to justify the same). It would be a disturbing result indeed if governments could strip speakers of First Amendment protections simply by thrusting a fiduciary duty upon them. *See NIFLA*, 138 S. Ct. at 2375; *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796 (1988).

Although Defendants concede that “the State does not allege that Plaintiffs’ [sic] communications with voters are misleading” they claim that the Requirement is a continuation of “Florida’s history of regulating each 3PVRO ‘as a fiduciary to the applicant.’” ECF 215-1 at 14 (citing Fla. Stat. 97.0575(3)(a)). This ignores that “Florida’s history of regulating” 3PVROs includes regulations struck down by this Court for violating the First Amendment. ECF 206 ¶¶ 67-73.

It also ignores that the pre-existing system was sufficiently comprehensive to be effective. *See* ECF 216 at 3–5 (describing 3PVRO requirements unchallenged here). First, Florida requires 3PVROs to register with the State and establishes civil penalties for untimely-returned voter registration applications and other enforcement

mechanisms. Fla. Stat. § 97.0575(1), (3)(a), (4); *see also* ECF 216 at 3–5. Florida also mandates that the Secretary establish a complaint process for people who allege to have registered through a 3PVRO but do not appear on the rolls. *See* Fla. Stat. § 97.0575(5) (effective May 19, 2011). However, the State has chosen to use its enforcement power inconsistently, failing to hold at least one repeat violator accountable. ECF 216 at 31–32.

Moreover, since at least 2013, the State’s voter registration form has informed applicants how they can submit their registration forms themselves, advises applicants of some registration options,<sup>34</sup> and the Division of Elections has posted online a four-page guide for 3PVROs, including a section outlining their duties.<sup>35</sup> However, the registration form does not tell applicants they can register online.<sup>36</sup>

Consequently, prior to SB 90, Florida already had adequate means to enforce 3PVROs’ obligations and, before resorting to the Requirement, could adopt more effective measures for protecting voter registration applicants including:

1. Communicating 3PVROs’ submission deadlines and/or fines applicable for noncompliance directly to applicants on the voter registration form and through a comprehensive public education campaign;
2. Offering voters more free resources, such as social media posts and materials posted on the Department of

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<sup>34</sup> *See* ECF 212-22 at 1.

<sup>35</sup> *Third-Party Voter Registration Organization Summary*, FLA. DIV. OF ELECTIONS 2 (May 2021), available at <https://files.floridados.gov/media/704338/de-guide-0012-third-party-voter-registration-organizations.pdf>.

<sup>36</sup> *See* ECF 212-22 at 1.

State's website, to further familiarize them with their rights and options;

3. Revising the voter registration form to advise applicants of the online registration option, the specific timeframe in which 3PVROs must submit forms, and the process for filing complaints against any group that fails to do so and provide this information through a public education campaign.

Therefore, the Requirement is far “more extensive than is necessary to serve that interest.” *Ocheese*, 851 F.3d at 1236; *see also* ECF 216 at 20-27.

Lastly, Defendants' argument ignores that the fiduciary duty only applies *after* an applicant entrusts the application to the organization, 97.0575(3)(a), but applicants who ultimately turn in their applications without the 3PVRO do not establish any fiduciary relationship. Protecting a non-existent fiduciary relationship cannot justify the Requirement. As such the Requirement—at best—appears to be based on “speculation and conjecture” about the risk that 3PVROs have misled voters or fail to meet their fiduciary duties. *Ibanez*, 512 U.S. at 143. However, Defendants present no evidence that 3PVROs have confused or misled eligible voters, ECF 215-1 at 6–8, and such conjecture is not enough to survive minimal scrutiny, much less *Central Hudson*'s intermediate scrutiny test.

In short, even if Defendants could avail themselves of either *Zauderer* or *Central Hudson*, they could not advance, as undisputed material facts, sufficient state interests to prevail.

**C. Genuine issues of material fact preclude summary judgment on HTFF’s associational claim.**

Defendants move for summary judgment on HTFF’s associational claim, relying wholly on unsupported conclusory statements that entirely fail to engage with the factual record or precisely define the overriding state interest that the Requirement addresses. ECF 215-1 at 18–19. Genuine disputes of material fact preclude summary judgment as to HTFF’s First Amendment associational claim.

1. HTFF’s voter registration efforts constitute core political activity

Defendants claim that the Requirement is not unduly burdensome because it “is information intended to help the *voters* exercise their own political speech rights rather than protected speech on the part of 3PVROs themselves.” ECF 215-1 at 13. Tellingly, Defendants provide no legal support for this proposition, nor can they; precedent dictates that voter registration is itself protected associational and expressive activity. *See League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155, 1158 (N.D. Fla. 2012) (“encouraging others to register to vote” is “pure speech,” and, because that speech is political in nature, it is a “core First Amendment activity”); *LWVFL v. Cobb*, 447 F. Supp. 2d 1314, 1334 (S.D. Fla. 2006) (“the collection and submission of” the applications gathered in a voter registration drive “is intertwined with speech and association”); *see also League of Women Voters v. Hargett*, 400 F. Supp. 3d 706, 721 (M.D. Tenn. 2019) (“voter registration drives...

include central elements of expression and advocacy”); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006) (“participation in voter registration implicates a number of both expressive and associational rights which are protected by the First Amendment. These rights belong to—and may be invoked by—not just the voters seeking to register, but by third parties who encourage participation in the political process through increasing voter registration rolls.”). Voter registration is “the type of interactive communication concerning political change that is appropriately described as ‘core political speech’” and a “matter of societal concern that [Plaintiffs] have a right to discuss publicly without risking criminal sanctions.” *See Meyer v. Grant*, 486 U.S. 414, 421, 422 (1988); *Kusper v. Pontikes*, 414 U.S. 51, 56–57 (1973) (“freedom to associate with others for the common advancement of political beliefs and ideas is a form of orderly group activity protected by the First and Fourteenth Amendments”). HTFF has a right to associate with voters through registration activities: its core political speech and expressive association.

2. Genuine issues of material fact remain concerning the burden the Requirement imposes on HTFF’s First Amendment rights

This Court should apply “exacting scrutiny” because the Requirement interferes with core political speech. *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995); *Meyer*, 486 U.S. at 422; *Hargett*, 400 F. Supp. 3d 706 at 720–21. Voter registration activities “involve[] the direct regulation of communication and political association, among private parties, ‘advocat[ing] for’ a particular change,

namely the creation of new registered voters and, by extension, a change in the composition of the electorate.” *Hargett*, 400 F. Supp. 3d at 725. “Because the regulation of First Amendment-protected activity is not some downstream or incidental effect of the Act, *Meyer* and *Buckley* [*v. Valeo*, 424 U.S. 1, 45 (1976)] provide the appropriate standard.” *Id.* Such a regulation can be upheld only if it is “substantially related to important governmental interests. *See Meyer*, 486 U.S. at 422; *Hargett*, 400 F. Supp. 3d at 725 (citing *id.*).

Defendants’ arguments also fail under the framework this District applied to voter registration regulations challenged as a burden on expressive association and speech, set out in *Anderson v. Celebrezze*, 460 U.S. 780, 788–90 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992); *see Browning*, 863 F. Supp. 2d at 1159, *Cobb*, 447 F. Supp. 2d at 1331. Under *Anderson-Burdick*, courts first consider the injury to the rights protected by the First and Fourteenth Amendments. *Anderson*, 460 U.S. at 789. Then the state must identify its precise interests and the extent to which those interests justify the burden imposed by the law. *Id.* Only after reviewing all these factors can a court decide whether the challenged provision is constitutional. *Id.*

Under this test, “the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *See New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1280 (11th Cir. 2020). Laws that severely burden

associational rights must satisfy strict scrutiny. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). “[R]egulations directly burdening the one-on-one, communicative aspect of [electoral activity] are subject to strict scrutiny.” *Browning*, 575 F. Supp. 2d 1298, 1331 (S.D. Fla. 2008) (quoting *Buckley v. Am. Const. Law Found.*, 535 U.S. 182, 215 (1999) (O’Connor, J., concurring)) (alteration in original).

Addressing HTFF’s associational claim from this correct posture, the record establishes that there are at the very least material disputes regarding the associational harms caused by the Requirement, and the magnitude of the burden it places on HTFF and other voter registration organizations. As a result, Defendants are not entitled to summary judgment on HTFF’s associational claim because in light of the record evidence, a reasonable fact finder could rule in favor of HTFF on this claim at trial. *See supra* I.A, II.B.iii; *Flournoy v. CML-GA WB, LLC*, 851 F.3d 1335, 1337 (11th Cir. 2017)

First, Defendants argue, somewhat contradictorily, that the Requirement “simply provides more information to potential registrants as to how to ensure their registration applications will be received on time. . . Plaintiff has the same ability to associate with potential registrants as it did before the enactment of” SB90. ECF 215-1 at 19. But the Requirement to convey *additional content*, does not mean HTFF’s associational abilities remain unchanged. Defendants posit that unlike

*Meyer*, the notification provision does not “limit[] the number of voices who will convey [Plaintiff’s] message and the hours they can speak and, therefore, limit[] the size of the audience they can reach.” ECF 215-1 at 15. *But this is precisely what HTFF testifies the provision will do.*<sup>37</sup> Defendants further argue that this burden is minimal “because it only applies when 3PVROs have contact with potential registrants and it simply requires 3PVOs [*sic*] advises [*sic*] the potential registrants of truthful information.” ECF 215-1 at 15.

In fact, the Requirement alters the value and nature of HTFF’s political expression, undermining HTFF’s mission, credibility, and lawfulness<sup>38</sup>—and deters individuals from associating with it—in the very moments<sup>39</sup> that it seeks to engage in core political speech and expression.<sup>40</sup> Specifically, the Requirement alters the content of HTFF’s organizational message and how it is communicated with their chosen audience. It thereby impedes HTFF’s ability to associate with eligible voters, help them register to vote, and express their collective belief in the capacity of the popular will to shape the composition and direction of the government. These harms are bolstered by other record evidence including testimony of Supervisors of Elections.<sup>41</sup>

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<sup>37</sup> ECF 227-2 at 59:18–24, 83:2–18, 86:1–86:3, 86:20–87:1, 88:7–15, 121:8–15, 123:24–124:8; ECF 227-1 ¶¶ 21, 23–26, 27–32, 35.

<sup>38</sup> ECF 227-2 at 88:3–15.

<sup>39</sup> *Id.* at 82:24–83:18.

<sup>40</sup> *Id.* 35:25–38:16, 44:25–45:13; ECF 227-1 ¶¶ 28–32, 35.

<sup>41</sup> ECF 227-10 at 175:5–176:5; ECF 227-12 at 32:21–33:3, 155:5–13.



Second, Defendants assert that the Requirement does not “diminish Plaintiff’s ability to communicate with potential registrants.” ECF 215 at 18. HTFF’s registration activities are part and parcel of their message of civic engagement, building community voices, and building power as a community: the conversations with prospective voters are not simply filling out voter registration forms; instead, they are intertwined with conversations about why voting is important, how democracy works, and how people can advocate for changes in their community, which is all part of HTFF’s integrated civic engagement mission.<sup>42</sup> *See Cobb*, 447 F. Supp. 2d at 1334; *Hargett*, 400 F. Supp. 3d at 721; *Project Vote*, 455 F. Supp. 2d at 700. In effect, contrary to Defendants’ assertions, the Requirement imposes additional burdens that will reduce the number of interactions, opportunities to convey their message of political participation, and the number of individuals with whom HTFF and other 3PVROs can reach and build relationships given their limited resources.

The State’s asserted interests do not justify the burdens the Requirement imposes upon HTFF. As discussed in HTFF’s Motion for Summary Judgment, Defendants cannot point to any state interest advanced by the Requirement beyond strained, post-hoc rationalizations unmoored from any applicable precedent or undisputed material facts. ECF 216 at 10, 12-13, 17-22. Analyzing the Requirement

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<sup>42</sup> ECF 227-1 ¶¶ 5, 20–25.

under any standard of scrutiny, Defendants utterly fail to identify any *precise* interests advanced by the Requirement. *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293, 1314 (11th Cir. 2017); *Anderson*, 460 U.S. at 789. Accordingly, taking all reasonable inferences in HTFF's favor, the undisputed material facts do not warrant summary judgment on HTFF's associational claim. Moreover, assuming Defendants could muster sufficient legal and factual support for their Motion with respect to HTFF's associational injuries, because HTFF's requested relief is also grounded in the compelled speech and due process injuries the Requirement imposes, the Court may grant HTFF its requested relief without relying on its associational claims.

### CONCLUSION

WHEREFORE, Plaintiff respectfully requests this Court deny Defendants' Motion for Summary Judgment.

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**CERTIFICATE OF WORD COUNT**

The undersigned certifies on this 3rd day of December, 2021, that this document complies with word limits set forth in Rule 7.1(F), N.D. Fla. Loc. R., and contains 7,986 words which includes the headings, footnotes, and quotations, but does not include the case style, table of contents, signature block or Certificates of Word Count and Service.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 3rd day of December, 2021, a true and correct copy of the foregoing was electronically filed in the US District Court, Northern District of Florida, using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

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