Nos. 23-12308 & 23-12313

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FLORIDA STATE CONFERENCE OF BRANCHES AND YOUTH UNITES OF THE NAACP, *et al.*
Plaintiffs-Appellees,

v.

CORD BYRD, *et al.*,
Defendants-Appellants.

HISPANIC FEDERATION, *et al.*
Plaintiff-Appellee,

v.

CORD BYRD, in his official capacity as FLORIDA SECRETARY OF STATE, *et al.*,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Florida
No. 4:23-cv-215 (Walker, C.J.)

MOTION TO INTERVENE ON APPEAL BY LEAGUE OF WOMEN VOTERS OF FLORIDA

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**Application for Admission to the 11th Circuit Forthcoming*

Counsel for Proposed Intervenors

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Ongoing Cases

Statutes, Rules, and Other Authorities

INTRODUCTION

Intervention on appeal is proper in this case because the League of Women Voters of Florida (the League) has an indisputably strong interest in the outcome of this appeal, and is prevented from participating as a party only because of the case's atypical procedural posture.

In May, the League and two other plaintiff groups challenged SB 7050, a law restricting voter registration activities. All three groups moved for a preliminary injunction on various provisions of the law, and the court consolidated the cases. First, the district court granted the motions filed by two of the plaintiff groups, enjoining two of SB 7050's provisions. Later, the court denied the League's motion as to those same two provisions, holding that the motion was moot because the provisions had already been enjoined in the two companion cases.

Because the League's motion was denied as moot, it is not a party to this appeal. But intervention is appropriate here because upholding the injunction is critical to the League. And the League has met the requirements for intervention: this motion is timely and will lead to no prejudice, because the League will simply participate in briefing and

argument on the same schedule as existing appellees. Further, deciding the appeal without the League's participation would impair its interests, and no party to the appeal will adequately represent those interests.[1]

PROCEDURAL HISTORY

On May 24, 2023, Governor Ron DeSantis signed into law SB 7050, a bill that imposed severe new restrictions on third-party voter registration organizations (3PVROs). That same day, the League filed a complaint challenging six provisions in SB 7050. *See League of Women Voters of Florida v. Moody*, Case No. 4:23-cv-216, Doc. 1. Two other plaintiff groups, referred to here as the *Hispanic Federation* plaintiffs and the *NAACP* plaintiffs, challenged some of those same provisions shortly after the bill was signed.[2]

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[1] In the alternative, the League moves to file a brief *amicus curiae* and participate in oral argument as *amicus*. Appellees do not oppose the League's motion to intervene. Appellant Secretary of State Cord Byrd opposes the League's motion to intervene and takes no position on its motion to participate as *amicus* if oral argument time is split between the appellees and the League. Appellant Attorney General Ashley Moody opposes the motion to intervene.

[2] *See Hispanic Federation v. Byrd*, Case No. 23-cv-218, Doc. 1; *Fla. State Conf. of Branches & Youth Units of the NAACP v. Byrd*, Case No. 4:23-cv-215, Doc. 1.

All three plaintiff groups quickly moved to preliminarily enjoin parts of the new law. The League asked the district court to enjoin four provisions, including the two at issue on this appeal: (1) the provision that fines 3PVROs $50,000 each time one of their volunteers who is not a U.S. citizen assists with voter registration (the Non-U.S. Citizen Volunteer Restriction, Fla. Stat. § 97.0575(1)(f)); and (2) the provision making it a third-degree felony for 3PVRO volunteers to retain any "personal information" of a voter registration applicant (the Voter Information Restriction, Fla. Stat. § 97.0575(7)). *See League of Women Voters*, Doc. 27, Mot. for Prelim. Inj. at 6-8. The *NAACP* plaintiffs moved to enjoin those same two provisions, while the *Hispanic Federation* plaintiffs moved to enjoin only the Non-U.S. Citizen Volunteer Restriction. *See NAACP*, Doc. 55-1, Mem. In. Supp. of Prelim. Inj. at 2; *Hispanic Federation*, Doc. 32, Mot. for Prelim. Inj. at 1.

The district court consolidated the three cases for purposes of the preliminary injunction hearing. *League of Women Voters*, Doc. 33.[3] On

[3] The court later fully consolidated the cases. *See League of Women Voters*, Doc. 52 at 1.

June 28, the court held consolidated argument on the motions, at which all three plaintiff groups appeared. *Id.*, Doc. 42.

On July 3, the district court granted the *NAACP* and *Hispanic Federation* preliminary injunction motions. It held that both plaintiff groups had shown a substantial likelihood of success on the claim that the Non-U.S. Citizen Volunteer Restriction violated the Equal Protection Clause[4] and that the *NAACP* plaintiffs had shown a substantial likelihood of success on the claim that the Voter Information Restriction was impermissibly vague. *See* Exhibit A at 37, 50.

Eight days later, the district court denied the League's preliminary injunction motion as to all four provisions it challenged. It held that the challenges to the Non-U.S. Citizen Volunteer Restriction and Voter Information Restriction were moot, concluding that its injunction in the *Hispanic Federation* and *NAACP* cases "provide facial relief and apply to the same Defendants." Exhibit B at 3. The court denied the motion on the remaining two challenged provisions for lack of standing. *Id.* at 18.

[4] The League's complaint did not challenge the Non-U.S. Citizen Volunteer Restriction on Equal Protection grounds, but alleged that the provision violated the First Amendment and was impermissibly vague. *See League of Women Voters*, Doc. 1 at 32, 38, 42, 46.

On July 11, appellants filed a notice of appeal in the *Hispanic Federation* and *NAACP* cases. *See Hispanic Federation*, Doc. 71; *NAACP*, Doc. 102. The League has not appealed the court's denial of its preliminary injunction motion.

ARGUMENT

I. Intervention on appeal is appropriate in this case, especially due to its uncommon procedural posture

Due to the League's unique position in this case as a party below that will otherwise be unable to participate in an appeal that affects the outcome of its claims, this Court should grant the League's motion to intervene.

The U.S. Supreme Court recently reiterated that "[n]o statute or rule provides a general standard to apply in deciding whether intervention on appeal should be allowed." *Cameron v. EMW Women's Surgical Ctr.*, 142 S. Ct. 1002, 1010 (2022). Due to the absence of a rule, the Court has "considered the 'policies underlying intervention' in the district courts," and Federal Rule of Civil Procedure 24 in particular, when determining whether appellate intervention is appropriate. *Id.* (quoting *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. AFL-CIO, Loc. 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965)).

Consideration of those policies has led the Supreme Court, this Court, and others to grant intervention on appeal in various circumstances. *Cf. United States v. City of Detroit*, 712 F.3d 925, 932 (6th Cir. 2013) ("[C]ourts often permit intervention even after final judgment, for the limited purpose of appeal . . ."). In *Cameron*, for example, the Court held that the Court of Appeals for the Sixth Circuit should have granted the Kentucky attorney general's intervention motion because of the state's interest in defending its own laws and because intervention would not create excessive disruption. 142 S. Ct. at 1011-13; *see also Arizona v. Mayorkas*, 143 S. Ct. 1312 (2023) (vacating appellate court's order denying motion to intervene). In *Gonzalez v. Reno*, No. 00-11424-D, 2000 WL 502118 at *1 (11th Cir. Apr. 27, 2000), this Court granted a motion to intervene on appeal despite doubts about its timeliness because the plaintiff was a child, and the movant was the plaintiff's father who had recently arrived in the United States and gained custody of the child. *See also United States v. Laraneta*, 700 F.3d 983, 986 (7th Cir. 2012); *Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1121 n.2 (11th Cir. 2005).

The unusual procedural posture of this case weighs heavily in favor of granting the League's motion to intervene. As explained in detail above, the League moved to preliminarily enjoin the two provisions at issue on this appeal, and the court consolidated all three plaintiff groups' preliminary injunction motions and held a joint hearing on them. The court then ruled on the two provisions at issue in this appeal in the *Hispanic Federation* and *NAACP* cases; it later denied as moot the League's challenges to those same two provisions because the provisions had already been enjoined. Thus, while the League was effectively granted relief on those two claims, the nominal denial means that it is not a party to this appeal. Without intervention, the League will be unable to protect its interests in ensuring the preliminary injunction remains in place.

Further, while some decisions suggest that appellate intervention should be granted only in "exceptional case[s]" if a litigant has not moved to intervene before the district court, *Hall v. Holder*, 117 F.3d 1222, 1231 (11th Cir. 1997), that principle plainly does not apply here. In contrast to the typical case, here the League was a *party* below in a case that was consolidated with the pending appeals, meaning that a motion to

intervene at the district court would have been nonsensical. Similarly, there is no concern about "procedural gamesmanship" in this case that should lead this Court to view the motion to intervene with skepticism. *Richardson v. Flores*, 979 F.3d 1102, 1105 (5th Cir. 2020).

II. Plaintiffs have met the requirements of FRCP 24

Because the Supreme Court has held that "the policies underlying" Federal Rule of Civil Procedure 24 "may be applicable in appellate courts," *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. AFL-CIO, Loc. 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965), courts of appeals have often referred to that rule when deciding appellate intervention motions. *See, e.g.*, *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1102 (10th Cir. 2005); *Warren v. Comm'ner of Internal Revenue,* 302 F.3d 1012, 1015 (9th Cir. 2002); *Massachusetts Sch. of L. at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997). Rule 24's requirements for both intervention as of right and permissive intervention are unmistakably satisfied here.

A. The League has a right to intervene

Rule 24(a) provides that "[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property

or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

1. *The League's motion is timely*

First, the League's motion is timely. "[T]imeliness is to be determined from all the circumstances" of the case. *Cameron*, 142 S. Ct. at 1012 (quotation marks omitted). In this circuit, "[t]he most important consideration in determining timeliness is whether any existing party to the litigation will be harmed or prejudiced" by any delay created by intervention. *Comm'r, Alabama Dep't of Corr. v. Advance Loc. Media, LLC*, 918 F.3d 1161, 1171 (11th Cir. 2019) (quotation marks omitted). "In fact, this may well be the only significant consideration when the proposed intervenor seeks intervention of right." *Id.* (quotation marks omitted).

In addition to prejudice to the existing parties, courts consider: (1) when the would-be intervenor should have known of his or her interest in the case; (2) "the prejudice that the would-be intervenor may suffer if

denied the opportunity to intervene"; and (3) "the existence of unusual circumstances weighing for or against a determination of timeliness." *Id.*

Here, no existing party will be harmed or prejudiced by the League's intervention, primarily because that intervention will create no delay. *See Salvors, Inc. v. Unidentified Wrecked & Abandoned Vessel*, 861 F.3d 1278, 1294 (11th Cir. 2017) (holding that intervention did not prejudice existing parties because scheduled hearing took place without delay). If intervention is granted, the League will file its appellate brief on the same day as the other appellees, and nothing about the League's participation will cause the appeal to move more slowly.[5] Indeed, the existing appellees have consented to the League's intervention, confirming that it will not prejudice them. While the appellants have opposed intervention, they can make no plausible claim that simply responding to the League's legal arguments (which they did in the preliminary injunction briefing below), will prejudice them.[6] *See*

[5] Because the League will file a brief on the same schedule as appellees, this case differs starkly from cases such as *Craig v. Simon*, 980 F.3d 614, 618 n. 3 (8th Cir. 2020), in which intervention on appeal was denied because the motion was filed after briefing was completed.

[6] Nor can appellants plausibly claim that their opening briefs would have been materially affected if the League had moved to intervene before

Cameron, 142 S. Ct. at 1013 (holding that intervention on appeal should have been granted because it would not have created excessive disruption to the case).

By contrast, the League will suffer significant prejudice if it is precluded from protecting its interests on this appeal. The preliminary injunction granted in the *Hispanic Federation* and *NAACP* cases effectively provided the same relief the League had sought. Because of that injunction, the League may now conduct voter registration without an unconstitutional restriction on its members who are not United States citizens and without concern that it will face $50,000 fines if it inadvertently violates that restriction. Likewise, the League's members may retain voter registration applicants' names and contact information for purposes of encouraging them to vote or become a League member without risking felony prosecution. If the district court's decision is reversed, the League will lose that relief, just like the *Hispanic Federation* and *NAACP* appellees.

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those briefs were filed. As with many appellate briefs, they focused on the district court's reasoning. Nothing about the League's participation would have changed that, and appellants will have the chance to respond to the League's arguments in their reply brief.

Moreover, the League's intervention motion comes shortly after its awareness of its existing interest in the case. *See Advance Loc. Media, LLC*, 918 F.3d at 1171. The League's motion comes just eight days after the Court's briefing order was issued, and just over six weeks after this appeal was docketed. *See Georgia v. U.S. Army Corps of Engineers*, 302 F.3d 1242, 1259-60 (11th Cir. 2002) (a delay of six months did not "in itself constitute[] untimeliness" where the "intervention did not delay the proceedings and the court had yet to take significant action"); *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989) (intervention motion was timely when filed seven months after original complaint and three months after defendant's motion to dismiss because discovery had not begun and no party was prejudiced). And the motion is filed only four days after the appellants' briefs were filed — a review of those briefs confirmed that the legal arguments raised by appellants squarely aligned with those litigated by the League below and that the League's involvement is necessary. For example, rather than disputing the district court's determination that the *Hispanic Federation* and *NAACP* plaintiffs had standing, appellants' briefs (1) depict 3PVROs as inherently problematic; (2) argue that 3PVRO volunteers serve a

"political function" and that non-U.S. citizens can therefore be prevented from volunteering; and (3) contend that the definition of "personal information" is not vague. *NAACP v. Byrd*, Case No. 23-12308, Appellants' Initial Brief, Doc. 29 at 2-5, 17-29.

2. *The League meets the remaining requirements for intervention as of right in FRCP 24(a)(2)*

Under this Court's precedent, "[a]ll that is required under Rule 24(a)(2) is that the would-be intervener be practically disadvantaged by his exclusion from the proceedings." *Salvors,* 861 F.3d at 1295 (quotation marks omitted). Here, that disadvantage is clear. As explained above, the League has a direct and vital interest in this case: its preliminary injunction motion challenged the two provisions that are at issue in this appeal. And the League's ability to protect that interest hinges solely whether it can participate in this appeal — if the district court's decision is reversed, the League will have effectively lost its preliminary injunction motion without a decision on the merits, either from the district court or this Court, and will need to comply with a law that severely burdens its core activity of voter registration. *See Huff v. Comm'r of IRS*, 743 F.3d 790, 796 (11th Cir. 2014) (examining "practical impact" that an adverse decision would have on intervenors); *Stone v.*

First Union Corp., 371 F.3d 1305, 1310 (11th Cir. 2004) (considering "negative stare decisis effects" when determining practical impairment intervenors could face).

Nor do any of the existing parties adequately represent the League's interests, which are distinct from those of the *Hispanic Federation* and *NAACP* plaintiff groups. Importantly, the League need only show that representation by other groups "*may* be inadequate . . . and the burden for making such a showing is minimal." *Stone*, 371 F.3d at 1311-12 (quotation marks omitted) (emphasis added) (noting that presumption of adequate representation is weak and holding that inadequate representation showing was met when intervenors might want "to emphasize different aspects" of defendant's employment policies). And this Court has explained that "[t]he fact that [litigants'] interests are similar does not mean that approaches to litigation will be the same." *Chiles*, 865 F.2d at 1214.

While the League and the other plaintiff groups each seek affirmance of the district court's injunction, their claims in the lawsuits differ, meaning their approaches to litigation may differ as well. For instance, the League's challenge to the Non-U.S. Citizen Volunteer

Restriction is based principally on a First Amendment claim, while the district court enjoined that provision on Equal Protection grounds. *See* Exhibit A at 37. While the Equal Protection and First Amendment analyses overlap, the League has an independent interest in ensuring that First Amendment principles are considered when this Court assesses the propriety of the injunction. Further, the League has challenged the provision in SB 7050 requiring that 3PVROs provide a receipt to each voter registration applicant (the Receipt Requirement). *See League of Women Voters*, Doc. 1 at 32, 35. Neither of the other plaintiff groups have challenged that requirement. And while that provision of SB 7050 is not one of the two directly at issue on this appeal, the League's vagueness arguments concerning the Voter Information Restriction and the Receipt Requirement are intertwined, meaning that its argument in favor of the injunction of the Voter Information Restriction could differ from that of the other appellees. *See League of Women Voters*, Doc. 27 at 43-44.

Aside from differences in legal strategy, the League maintains a distinct interest in this appeal because of its longstanding status as a volunteer-run organization whose core activity is voter registration and

turnout that has litigated many cases to protect voters in the state. For years, the League has sought federal and state court intervention when it believes state law has infringed on voters' rights. *See*, *e.g.*, *League of Women Voters of Fla. Inc. v. Fla. Sec'y of State*, 66 F.4th 905 (11th Cir. 2023); *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155 (N.D. Fla. 2012); *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015). The League's decades of work seeking to protect voters in court has left it uniquely positioned to participate here, especially considering that the challenged provisions of SB 7050 directly implicate the viability of its voter registration program.

B. Permissive intervention is also appropriate

A court may permit anyone to intervene in a case if they file a timely intervention motion and have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). This Court has held that permissive intervention is "wholly discretionary," *Purcell v. BankAtlantic Fin. Corp.*, 85 F.3d 1508, 1513 (11th Cir. 1996) (citation omitted), although courts should consider the same factors when assessing permissive intervention that they do when

assessing intervention as of right. *Walker v. Jim Dandy Co.*, 747 F.2d 1360, 1366 (11th Cir. 1984).

The court should exercise its discretion to grant permissive intervention here. As explained in Section II.A.1., *supra*, the League's motion is timely, and its case unquestionably shares common questions of law with the main action here. And because of the anomalous procedural posture of this case, intervention is necessary to serve the ends of justice: the League is a party to the consolidated case below, and the district court's preliminary injunction provided the relief it requested. To preclude the League from protecting its interests by playing a role in this appeal would severely undermine fundamental fairness principles.[7]

CONCLUSION

For these reasons, this Court should grant the League's motion for intervention on appeal. In the alternative, the Court should grant the

[7] The League does not separately address standing in this motion because "'a party seeking to intervene need not demonstrate that he has standing in addition to meeting the requirements of Rule 24 as long as there exists a justiciable case or controversy between the parties already in the lawsuit.'" *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1336 (11th Cir. 2007) (quoting *Chiles*, 865 F.2d at 1213).

League permission to file a brief *amicus curiae* and participate in oral argument as *amicus*.

Respectfully Submitted,

/s/Danielle M. Lang

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Brent Ferguson* (D.C. Bar No. 1782289)
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**Application for Admission to the 11th Circuit Forthcoming*

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CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because it contains 3,464 words as counted by the word-processing system used to prepare it.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font.

Dated: August 25, 2023

/s/ Danielle M. Lang
Danielle M. Lang
Counsel for Proposed Intervenors

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on August 25, 2023. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 25, 2023

/s/ Danielle M. Lang
Danielle M. Lang
Counsel for Proposed Intervenors

ATTACHMENT 1

CERTIFICATE OF INTERESTED PERSONS AND DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 and 26.1-2, the undersigned counsel for Proposed Intervenors submit the following statement of their corporate interests:

1. Proposed Intervenors the League of Women Voters of Florida, Inc. neither has a parent corporation nor issues stock. There are no publicly held corporations that own ten percent or more of the stock of the League of Women Voters of Florida, Inc. The League of Women Voters of Florida, Inc. is an affiliate of the League of Women Voters of the United States.
2. Proposed Intervenors the League of Women Voters of Florida Education Fund neither has a parent corporation nor issues stock. There are no publicly held corporations that own ten percent or more of the stock of the League of Women Voters of Florida Education Fund. The League of Women Voters of Florida Education Fund is an affiliate of the League of Women Voters of the United States.

Under Circuit Rule 26.1-1(a)(3), Proposed Intervenors further certify that the following persons have an interest in the outcome of this case, which reflects those identified in Defendant-Appellants' and Plaintiff-Appellees' Certificate of Interested Persons:

1. Adkins, Janet, *Defendant*
2. Alianza Center, *Plaintiff*
3. Alianza for Progress, *Plaintiff*
4. Andersen, Mark, *Defendant*
5. Anderson, Chris, *Defendant*
6. Anderson, Shirley, *Defendant*
7. Arnold, Melissa, *Defendant*
8. Arrington, Mary, *Defendant*
9. Artasanchez, Santiago, *Former Plaintiff*
10. Babis, Olivia, *Declarant for Plaintiffs*
11. Baird, Maureen, *Defendant*
12. Bardos, Andy, *Counsel for Defendants*
13. Barton, Kim, *Defendant*
14. Beato, Michael, *Counsel for Defendant*

15. Bell, Daniel, *Counsel for Defendant*

16. Benda, Kyle, *Counsel for Defendant*

17. Bennett, Michael, *Defendant*

18. Blazier, Melissa, *Defendant*

19. Bledsoe, William, *Counsel for Defendant*

20. Bobanic, Tim, *Defendant*

21. Boettcher, Ellen Margaret, *Counsel for Plaintiffs at consolidated hearing and Proposed Intervenors*

22. Boltrek, William, III, *Counsel for Defendants*

23. Brown, Tomi, *Defendant*

24. Byrd, Cord, *Defendant*

25. Cannon, Starlet, *Defendant*

26. Cepeda Derieux, Adriel I., *Counsel for Plaintiffs-Appellees*

27. Chambless, Chris, *Defendant*

28. Chappell, W. David, *Counsel for Defendant*

29. Chason, Sharon, *Defendant*

30. Conyers, Grant, *Defendant*

31. Corley, Brian, *Defendant*

32. Cowles, Bill, *Defendant*

33. Darlington, Andrew, *Declarant for Defendants*

34. Davis, Ashley, *Counsel for Defendant*

35. Davis, Vicky, *Defendant*

36. Diaz, Jonathan Michael, *Counsel for Plaintiffs at consolidated hearing and Proposed Intervenors*

37. Disability Rights Florida, *Plaintiff*

38. Doyle, Tommy, *Defendant*

39. Driggers, Heath, *Defendant*

40. Dunaway, Carol, *Defendant*

41. Earley, Mark, *Defendant*

42. Edwards, Jennifer, *Defendant*

43. Edwards, Lori, *Defendant*

44. Equal Ground Education Fund, *Former Plaintiff*

45. Erdelyi, Susan, *Counsel for Defendants*

46. Farnam, Aletris, *Defendant*

47. Feiser, Craig, *Counsel for Defendants*

48. Ferguson, Robert Brent, *Counsel for Plaintiffs at consolidated hearing and Proposed Intervenors*

49. Florez, Johana, *Declarant for Plaintiffs*

50. Florida Alliance for Retired Americans, *Plaintiff*

51. Florida State Conference of Branches and Youth Units of the NAACP, *Plaintiff*

52. Glickman, Jessica, *Counsel for Defendant*

53. Griffin, Joyce, *Defendant*

54. Guzzo, Sophia, *Counsel for Defendant*

55. Hankins, Christi, *Counsel for Defendant*

56. Hanlon, John, *Defendant*

57. Hart, Travis, *Defendant*

58. Hays, Alan, *Defendant*

59. Healy, Karen, *Defendant*

60. Herrera-Lucha, Veronica, *Former Plaintiff*

61. Herron, Mark, *Counsel for Defendant*

62. Hispanic Federation, *Former Plaintiff*

63. Hogan, Mike, *Defendant*

64. Hoots, Brenda, *Defendant*

65. Hutto, Laura, *Defendant*

66. Jarone, Joseph, *Counsel for Defendant*

67. Jazil, Mohammad, *Counsel for Defendant*

68. Johnson, Diana, *Counsel for Defendant*

69. Johnson, Melinda, *Counsel for Plaintiffs*

70. Jonas, Sarah, *Counsel for Defendant*

71. Jones, Tammy, *Defendant*

72. Joshi, Raghav Vikas, *Declarant for Plaintiffs*

73. Kahn, Jared, *Counsel for Defendant*

74. Keen, William, *Defendant*

75. Khanna, Abha, *Counsel for Plaintiffs*

76. Kinsey, Jennifer, *Defendant*

77. Klitsberg, Nathaniel, *Counsel for Defendant*

78. Knight, Shirley, *Defendant*

79. Lang, Danielle Marie, *Counsel for Plaintiff at consolidated hearing and Proposed Intervenors*

80. Latimer, Craig, *Defendant*

81. Lavia, John, III, *Counsel for Defendants*

82. League of Women Voters of Florida Education Fund, Inc., *Plaintiff at consolidated hearing and Proposed Intervenors*

83. League of Women Voters of Florida, Inc., *Plaintiff at consolidated hearing and Proposed Intervenors*

84. Leeper, Simone Tyler, *Counsel for Plaintiffs at consolidated hearing and Proposed Intervenors*

85. Lenhart, Kaiti, *Defendant*

86. Lewis, Lisa, *Defendant*

87. Link, Wendy, *Defendant*

88. Lux, Paul, *Defendant*

89. Madduri, Lalitha, *Counsel for Plaintiffs*

90. Marcus, Julie, *Defendant*

91. Mari, Frank, *Counsel for Defendants*

92. Markarian, David, *Counsel for Defendant*

93. Martinez, Norka, *Former Plaintiff*

94. McNamara, Caroline Andrews, *Counsel for Plaintiffs-Appellees*

95. McVay, Bradley R., *Counsel for Defendant*

96. Meadows, Therisa, *Defendant*

97. Messer, Ryan, *Defendant*

98. Milligan, Michelle, *Defendant*

99. Milton, Christopher, *Defendant*

100. Moody, Ashley, *Defendant*

101. Morgan, Joseph, *Defendant*

102. Morse, Stephanie, *Counsel for Defendant*

103. Negley, Mark, *Defendant*

104. Nordlund, Jared, *Declarant for Plaintiffs*

105. Nweze, Adora Obi, *Declarant for Plaintiffs*

106. O'Donnell, Renata, *Counsel for Plaintiffs*

107. Oakes, Vicky, *Defendant*

108. Osborne, Deborah, *Defendant*

109. Overturf, Charles, *Defendant*

110. Perez, Devona, *Counsel for Defendant*

111. Pico, Elizabeth, *Plaintiff-Appellee*

112. Poder Latinx, *Former Plaintiff*

113. Pratt, Joshua, *Counsel for Defendant*

114. Riley, Heather, *Defendant*

115. Rudd, Carol, *Defendant*

116. Rutahindurwa, Makeba, *Counsel for Plaintiffs*

117. Sanchez, Connie, *Defendant*

118. Sanchez, Esperanza, *Former Plaintiff*

119. Schenck, Robert Scott, *Counsel for Defendant-Appellant Moody*

120. Scott, Dale, *Counsel for Defendant*

121. Scott, Joe, *Defendant*

122. Seyfang, Amanda, *Defendant*

123. Shannin, Nicholas, *Counsel for Defendant*

124. Shaud, Matthew, *Counsel for Defendant*

125. Sjostrom, Noah, *Counsel for Defendant*

126. Slater, Cynthia, *Declarant for Plaintiffs*

127. Smith, Diane, *Defendant*

128. Southerland, Dana, *Defendant*

129. Stafford, David, *Defendant*

130. Stewart, Gregory, *Counsel for Defendant*

131. Swain, Robert, *Counsel for Defendant*

132. Swan, Leslie, *Defendant*

133. Todd, Stephen, *Counsel for Defendant*

134. Turner, Ron, *Defendant*

135. UnidosUS, *Plaintiff*

136. Valdes, Michael, *Counsel for Defendant*

137. Valenti, Leah, *Defendant*

138. Van De Bogart, Joseph, *Counsel for Defendant*

139. Vilar, Marcos, *Declarant for Plaintiffs*

140. Villane, Tappie, *Defendant*

141. Voters of Tomorrow Action, Inc., *Plaintiff*

142. Walker, Gertrude, *Defendant*

143. Walker, Mark E., *U.S. District Court Judge*

144. Wermuth, Frederick, *Counsel for Plaintiffs*

145. Whitaker, Henry, *Counsel for Defendant*

146. White, Christina, *Defendant*

147. Wilcox, Wesley, *Defendant*

Per Circuit Rule 26.1-2(c), Proposed Intervenors certify that the CIP contained herein is complete.

Dated: August 25, 2023

/s/ Danielle M. Lang
Danielle M. Lang
Counsel for Proposed Intervenors

EXHIBIT A

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

FLORIDA STATE CONFERENCE OF BRANCHES AND YOUTH UNITS OF THE NAACP, et al.,

***Plaintiffs*,**

v. **Case Nos.: 4:23cv215-MW/MAF**
4:23cv218-MW/MAF

CORD BYRD, in his official capacity as Florida Secretary of State, et al.,

***Defendants*.**
_____/

PRELIMINARY INJUNCTION[1]

This case arises from Florida's latest assault on the right to vote. Plaintiffs move to preliminarily enjoin two amendments to section 97.0575, Florida Statutes. One new provision bars noncitizens from registering citizens to vote, thus discriminating based on alienage, one of the most questionable classifications in equal protection jurisprudence. The other exposes individuals working for third-

[1] This Court is issuing a truncated order with respect to two of the three motions before this Court based on the parties' evidence demonstrating that they intended to conduct voter registration work on the Fourth of July but for the challenged provisions. Given that the Plaintiffs in Case No.: 4:23cv216 raised some overlapping claims against the same challenged provisions, but under different theories, in addition to claims against two other amended statutes not at issue in these cases, this Court will address their motion by separate order so as not to delay granting relief that is warranted in Case Nos.: 4:23cv215 and 4:23cv218.

party voter registration organizations to felony prosecutions for retaining voter information without telling them to whom the prohibition applies, what they can retain, and when they can retain it.

Florida may, of course, regulate elections, including the voter registration process. Here, however, the challenged provisions exemplify something Florida has struggled with in recent years; namely, governing within the bounds set by the United States Constitution. When state government power threatens to spread beyond constitutional bounds and reduce individual rights to ashes, the federal judiciary stands as a firewall.[2] The Free State of Florida is simply not free to exceed the bounds of the United States Constitution.

For the reasons that follow, Plaintiffs are entitled to a preliminary injunction.

[2] The meaning of "firewall" here— "a wall or partition designed to inhibit or prevent the spread of fire"—has featured in legal documents in the United States since the Early Republic. *Firewall*, def. 2, *Oxford English Dictionary* (3d ed. 2015); *see, e.g.*, 1797 N.Y. Laws 99 (requiring that "the exterior walls of [certain] dwelling houses, stores and other buildings . . . shall be made, erected and constructed either of stone or brick or of timber faced with brick, with party or fire walls rising twelve inches above the roof, and shall be covered . . . with . . . safe materials against fire, and not with boards or shingles . . . ."). In world literature, however, "firewall" tends to denote a wall *made of* fire, or "an unbroken line of flames forming a barrier." *Firewall*, def. 1, *Oxford English Dictionary* (3d ed. 2015). For example, the thirteenth-century Old Norse *Saga of the Völsungs* recounts that the legendary Germanic hero Sigurd (or Siegfried) passed through a wall of flame to seek the hand of Brynhild (or Brunhilda) on Gunnar's behalf. *Cf. Django Unchained* (2012) (recounting, in a conversation between Django and Dr. King Schultz, how Siegfried walks through "a circle of hellfire" to rescue Brunhilda). Both definitions have shaped more recent, figurative definitions of "firewall," including that in the computer science context.

I

These cases involve multiple constitutional challenges to newly enacted changes to section 97.0575, Florida's statute regulating third-party voter registration organizations (3PVROs).[3] These organizations offer a convenient alternative for Florida citizens to complete and submit voter registration applications so that they can participate in our democratic system. Based on the evidence they submitted in support of their motions, Plaintiffs' organizations are driven to serve their communities, connect with Floridians—particularly some of the most marginalized citizens in our state—about the importance of voting, and properly register as many new voters as possible. Now, Plaintiffs assert, their jobs, operations, and missions will be disrupted, if not frustrated entirely, because of the challenged provisions. Accordingly, Plaintiffs in both cases filed these actions almost immediately after the challenged provisions were signed into law. Plaintiffs have now moved for preliminary injunctive relief to prevent Defendants from enforcing these provisions once they take effect on July 1, 2023.

[3] In Case No.: 4:23cv215, Plaintiffs include several 3PVROs, including the Florida State Conference of Branches and Youth Units of the NAACP (Florida NAACP), and individuals who work for two of the Plaintiff 3PVROs. For purposes of this Order, this Court will refer to these Plaintiffs as the "Florida NAACP Plaintiffs." In Case No.: 4:23cv218, Plaintiffs also include different 3PVROs, including the Hispanic Federation, and individuals who work for other 3PVROs. This Court will refer to these Plaintiffs as the "Hispanic Federation Plaintiffs."

The Hispanic Federation Plaintiffs assert in their motion, ECF No. 32 in Case No.: 4:23cv218, that the new "citizenship requirement" for collecting or handling voter registration applications on behalf of 3PVROs violates the First and Fourteenth Amendments for multiple reasons. *See* § 97.0575(1)(f), Florida Statutes (2023). Likewise, the Florida NAACP Plaintiffs assert in their motion, ECF No. 55 in Case No.: 4:23cv215, that the citizenship requirement violates the Constitution for some of the same reasons, in addition to other constitutional infirmities. As the record evidence demonstrates, Plaintiffs in both cases rely heavily on noncitizens[4] to assist or lead voter registration efforts, including collecting or handling voter registration applications on behalf of the 3PVROs with which they work or volunteer. In addition, several individual Plaintiffs are themselves noncitizens and will be prohibited from continuing their voter registration work because of the citizenship requirement.

[4] Because this challenged provision includes a classification for all "noncitizens," this Court uses the same language here. However, this Court recognizes that the individual Plaintiffs in these cases are legally permitted to work in the United States, and that the 3PVROs in these two cases who employ noncitizens to work as canvassers employ only those who are legally permitted to work in the United States. *See, e.g.*, ECF No. 54-5 ¶ 17 in Case No.: 4:23cv215 ("UnidosUS conducts background checks on its canvassers and only hires canvassers who are U.S. citizens or legal permanent residents in the United States."); ECF No. 54-10 ¶¶ 15–16 in Case No.: 4:23cv215 (noting that between sixty and seventy of employed canvassers are noncitizens; stating that "Alianza conducts background checks on canvassers and only hires canvassers who are legally able to work in the United States."); ECF No. 32-1 ¶ 23 in Case No.: 4:23cv218 ("Many of Hispanic Federation's canvassers are non-citizens. Canvassers are citizens of Venezuela, the Dominican Republic, Colombia, or Mexico, but all our employees are authorized to work in the United States."); ECF No. 32-2 ¶ 23 in Case No.: 4:23cv218 ("The majority of Poder Latinx's canvassers are non-citizens. Many of our canvassers are citizens of Venezuela or Colombia, but all of our employees are authorized to work in the United States.").

The Florida NAACP Plaintiffs also assert that a new "information retention ban" violates the First and Fourteenth Amendments for multiple reasons. This provision makes it a third-degree felony for someone collecting voter registration applications on behalf of a 3PVRO to copy a voter's application or retain "a voter's personal information" for "any reason other than to provide such application or information to the [3PVRO] in compliance with [the] section." § 97.0575(7), Fla. Stat. (2023). The Florida NAACP Plaintiffs argue that this provision violates their First Amendment speech and association rights because it "severely limits 3PVROs' ability to communicate a pro-voting message by eliminating the most organic way to obtain and retain voters' contact information." ECF No. 55-1 at 45. Further, the NAACP Plaintiffs argue that the information retention ban is overbroad in violation of the First Amendment and impermissibly vague in violation of the Fourteenth Amendment.

On the parties' request, this Court consolidated these preliminary injunction motions for purposes of briefing and scheduling a hearing. This Court held a hearing on the motions on June 28, 2023, after which this Court took the motions under advisement. This Order follows.[5]

[5] As noted *supra*, note 1, this Court will address the third motion before this Court in Case No.: 4:23cv216 by separate order.

II

At the outset, this Court must address Defendants' abstention arguments. Specifically, Defendants assert that this Court should (A) abstain from hearing these cases under *Burford v. Sun Oil Co*., 319 U.S. 315 (1943); or (B) defer ruling on these cases until after September 30, 2023—when, in the Defendants' view, the Plaintiffs will be on the hook for statutory violations. For the following reasons, this Court will do neither.

A

First, Defendants' *Burford* argument. Defendants assert that *Burford* abstention is warranted because the State of Florida "is in the process of rulemaking," which "has the potential to resolve many of the issues—such as vagueness and overbreadth" and "streamline" the remaining issues. ECF No. 92 at 15 in Case No.: 4:23cv215. Defendants insist that "[f]ederal courts should abstain from deciding cases where doing so furthers the 'paramount interests of another sovereign' and the 'principles of comity and federalism.' " *Id.* (citing *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 723 (1996)). "If ever a case called for abstention." Defendants claim, "this is it." *Id.*

The Florida NAACP Plaintiffs raise four arguments against *Burford* abstention. First, the Florida NAACP Plaintiffs contend that "[a]bstention is improper when a party alleges that certain [federal constitutional] rights are

threatened." ECF No. 94 at 4 in Case No.: 4:23cv215 (quoting *League of Women Voters of Fla., Inc. v. Detzner*, 354 F. Supp. 3d 1280, 1283 (N.D. Fla. 2018)). Second, they argue that "[c]ourts have long recognized that abstention is particularly inappropriate in an overbreadth or vagueness case grounded upon the First Amendment." ECF No. 94 at 5 (quoting *Hobbs v. Thompson*, 448 F.2d 456, 462 (5th Cir. 1971)).[6] Third, "Defendants' promised rulemaking will not inform judicial review of the statute" because, as the Florida NAACP Plaintiffs note, "Florida law prohibits courts from "deferr[ing] to an administrative agency's interpretation of [a] statute"; they "must instead interpret such statute or rule de novo." ECF No. 94 at 6 (quoting Fla. Const. art. V, § 21). Fourth, the Florida NAACP Plaintiffs insist that Defendants' proposed rulemaking "will neither address nor alleviate the statute's facial discrimination against noncitizens . . . or its restriction on noncitizens' ability to make and enforce employment contracts . . . ." ECF No. 94 at 6. The Hispanic Federation Plaintiffs raise similar arguments. *See* ECF No. 62 at 6–9 in Case No.: 4:23cv218.

"Under the '*Burford* abstention' doctrine, a federal court can decline to adjudicate—and can dismiss—a case that is otherwise within its jurisdiction, but only in a very particular, and 'narrow,' set of circumstances." *Deal v. Tugalo Gas*

[6] This Court notes that in *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

Co., Inc., 991 F.3d 1313, 1326 (11th Cir. 2021). The Supreme Court explained the parameters of *Burford* abstention as follows.

> Where timely and adequate state-court review is available, a federal court sitting in equity must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar"; or (2) where the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *Colorado River Water Conservation Dist. v. United States, supra,* 424 U.S., at 814, 96 S.Ct., at 1245.

New Orleans Pub. Serv., Inc. v. Council of City of New Orleans, 491 U.S. 350, 361 (1989). "Any way you slice it, *Burford* is 'an extraordinary and narrow exception,' to a federal court's 'virtually unflagging obligation' to exercise jurisdiction . . . ." *Deal*, 991 F.3d at 1327 (internal citations omitted). The decision to abstain under *Burford* rests in the sound discretion of the district court. *See id.*

This Court declines Defendants' invitation to shirk its "virtually unflagging obligation" to hear these cases for three reasons. First, as Plaintiffs note, Defendants make no showing as to how this Court's resolution of some of Plaintiffs' claims—in particular, their equal protection challenge to the citizenship requirement—would in any way *interfere* with an "ongoing administrative proceeding or action." *See Deal*, 991 F.3d at 1326. In other words, Defendants have not explained how they plan to "regulate away" the alleged suspect classification on the face of section 97.0575(1)(f)'s citizenship requirement.

Second, even for the claims that *are* implicated in Defendants' proposed rulemaking, *Burford* abstention is inappropriate because neither (1) difficult questions of state law in an area of substantial public import, nor (2) any disruption to the State of Florida's attempt to achieve uniform regulations in an area of substantial public concern, outweighs the importance of this Court resolving Plaintiffs' federal constitutional claims.

This Court recognizes the public importance of regulating 3PVROs. Even so, these cases do not present difficult questions of state law bearing on public policy problems whose importance transcends any result in these cases. The importance of the Department of State's eventual interpretation and application of the challenged provisions does not overcome Plaintiffs' interest in this Court's prompt ruling on their federal constitutional claims—claims which concern, among other things, their rights to be free from invidious discrimination and to reasonable notice of what actions may result in their staff's, members', and volunteers' criminal prosecution. The Eleventh Circuit has ruled similarly in past cases challenging Florida's election laws. *Cf. Siegel v. LePore*, 234 F.3d 1163, 1173 (11th Cir. 2000) (finding *Burford* abstention inappropriate where candidates for the offices of President and Vice President of the United States challenged the State of Florida's manual election recount procedures).

Nor is abstention warranted in these cases to avoid disrupting state efforts to

establish a coherent policy with respect to a matter of substantial public concern. As the Eleventh Circuit explained, a "central purpose furthered by *Burford* abstention is to protect complex state administrative processes from undue federal interference." *Siegel*, 234 F.3d at 1173. And here, like in *Siegel*, the constitutional claims at issue do "not threaten to undermine all or a substantial part" of Florida's regulatory scheme. Rather, Plaintiffs' claims "target certain discrete" provisions "set forth in a particular state statute." *See id.* Plaintiffs' discrete challenges to one of Florida's laws regulating 3PVROs does not threaten to undermine all—or even a substantial part—of the state's regulatory scheme.

Third, the specific circumstances of these cases make abstention inappropriate. The federal constitutional rights at issue are vital, and Plaintiffs' potential injuries are serious. Moreover, as Plaintiffs note, any delay to permit Defendants to regulate away any constitutional concerns may well be barred by the Florida Constitution. Specifically, article V, section 21 of the Florida Constitution mandates that "a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo." Finally, Defendants have identified no legal principle supporting their notion that a state agency can cure an otherwise unconstitutional statute and that a federal court, as a result, should abstain from ruling on a federal constitutional challenge to the statute's

text.

To sum up, Defendants urge this Court to dismiss these cases under *Burford* and allow state courts to eventually decide Plaintiffs' claims with the benefit of a rulemaking to which state courts can afford *no* deference—all the while allowing Plaintiffs to suffer ongoing irreparable harm, lose their livelihoods, and risk felony prosecutions. This turns comity into comedy. This Court declines to abandon its "virtually unflagging obligation" to exercise jurisdiction, *see Deal*, 991 F.3d at 1327. *Burford* abstention is not appropriate here.

B

Next, Defendants request that this Court defer ruling on the motions for preliminary injunction until September 30, 2023. This Court declines to exercise its discretion to do so for many of the same reasons it declines to abstain under *Burford*—namely, the importance of the federal constitutional rights at issue and the unlikelihood that further rulemaking can or will resolve the issues here. Additionally, as the Florida NAACP Plaintiffs note, *see* ECF No. 94 at 7 in Case No.: 4:23cv215, section 97.0575(12) arguably allows for retroactive punishments for any violations of the section after July 1, 2023—not September 30, 2023, as Defendants claim.[7]

[7] Defendants invoke *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984) in support of their argument that this Court should defer ruling on Plaintiffs' motions for preliminary injunction. At the hearing, Defendants asserted that they do not interpret section

* * *

For the reasons set out above, this Court declines to abstain from addressing Plaintiffs' federal constitutional claims under *Burford* or to defer ruling until after September 30, 2023. Having addressed Defendants' arguments in favor of delay, this Court turns to the merits of Plaintiffs' motions.

III

A district court may grant a preliminary injunction if the movant shows: "(1) it has a substantial likelihood of success on the merits;" (2) it will suffer irreparable injury "unless the injunction issues; (3) the threatened injury to the movant

97.0575(12) to impose any requirements on 3PVROs until September 30, 2023. Tr. at 99. Defendants believe it would "create[] a *Pennhurst* issue" if this Court were to grant the motions for preliminary injunction now, as if section 97.0575 imposed liabilities on Plaintiffs on the statute's effective date of July 1, 2023. Tr. at 100. As best as this Court can discern, Defendants believe *Pennhurst* calls for deferral here because an injunction "would enjoin a state official from doing something that he is not doing based on what [Plaintiffs] say is the appropriate interpretation of state law . . . ." Tr. at 10.

Defendants' *Pennhurst* argument fails for several reasons. First, *Pennhurst*'s holding concerns the Eleventh Amendment's bar on federal courts' jurisdiction over state law claims. *Pennhurst*, 465 U.S. at 106. What *Pennhurst* unequivocally *does not* prevent is exactly what Plaintiffs are doing here—seeking prospective relief for a violation of federal constitutional law against a state official in their official capacity under *Ex parte Young*. *See id.* at 102. Second, to the extent Defendants call upon "the spirit" of *Pennhurst*—presumably, general notions of federalism and comity—where state officials promise not to violate individuals' rights for a few months, this Court is unpersuaded. Section 97.0575(12) allows Defendants to punish Plaintiffs for conduct that occurs on July 1, 2023. Regardless, Plaintiffs begin to suffer irreparable harm starting on July 1, 2023. The challenged provisions go into effect on that date, and Plaintiffs must begin to order their lives and organizational activities—including hiring, firing, and retraining employees and volunteers—to avoid impending fines and felony prosecutions. Indeed, failure to comply with the law's requirements within ninety days of notice from the Department of State results in *automatic* cancellation of the organizations' registrations, an imminent injury that is affecting Plaintiffs *now*.

outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *Siegel*, 234 F.3d at 1176. Although a "preliminary injunction is an extraordinary and drastic remedy," it should be granted if "the movant 'clearly carries the burden of persuasion' as to the four prerequisites." *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1519 (11th Cir. 1983) (quoting *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974)). No one factor, however, is controlling; this Court must consider the factors jointly, and a strong showing on one factor may compensate for a weaker showing on another. *See Fla. Med. Ass'n, Inc. v. U.S. Dep't of Health, Educ., & Welfare*, 601 F.2d 199, 203 n.2 (5th Cir. 1979). Finally, "[a]lthough the initial burden of persuasion is on the moving party, the ultimate burden is on the party who would have the burden at trial." *FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017) (citing *Edenfield v. Fane*, 507 U.S. 761, 770 (1993)).

This Court begins with whether Plaintiffs have shown a substantial likelihood of success on the merits. This Court addresses this factor first because, typically, if a plaintiff cannot "establish a likelihood of success on the merits," this Court "need not consider the remaining conditions prerequisite to injunctive relief." *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1247 (11th Cir. 2002). And because standing is always "an indispensable part of the plaintiff's case,"

this Court begins its merits analysis with standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

A

The "affirmative burden of showing a likelihood of success on the merits . . . necessarily includes a likelihood of the court's reaching the merits, which in turn depends on a likelihood that [a] plaintiff has standing." *Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 328 (D.C. Cir. 1987) (Williams, J., concurring and dissenting). Any evaluation of Plaintiffs' claims, thus, necessitates an inquiry into Plaintiffs' ability to bring such claims.

Over time, the Supreme Court has developed a three-part test for determining when standing exists. Under that test, a plaintiff must show (1) that they have suffered an injury-in-fact that is (2) traceable to the defendant and that (3) can likely be redressed by a favorable ruling. *See Lujan*, 504 U.S. at 560–61. And "where a plaintiff moves for a preliminary injunction, the district court . . . should normally evaluate standing 'under the heightened standard for evaluating a motion for summary judgment.' " *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 255 (6th Cir. 2018) (quoting *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 912 (D.C. Cir. 2015)); *see also Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011). Thus, "a plaintiff cannot 'rest on such mere allegations [as would be appropriate at the pleading stage], but must set forth by affidavit or other evidence

specific facts, which for purposes of the summary judgment motion will be taken to be true.' " *Cacchillo*, 638 F.3d at 404 (some alteration in original) (quoting *Lujan*, 504 U.S. at 561).

Plaintiffs fall into two categories: individuals and organizations. This Court will address each category's standing, in turn, with respect to each of the challenged provisions. This Court starts with the individual Plaintiffs' standing to challenge the citizenship requirement.

1

As to the citizenship requirement, both the Florida NAACP Plaintiffs and the Hispanic Federation Plaintiffs consist of (1) individuals who are noncitizens and, thus, injured directly by the citizenship requirement and (2) 3PVROs asserting organizational and associational injuries, among other theories of standing. This Court first addresses the individual Plaintiffs' standing.

The Florida NAACP Plaintiffs include Esperanza Sánchez, an individual, who submitted a sworn declaration attesting to her asserted injuries. ECF No. 54-8 in Case No.: 4:23cv215. This Court has reviewed Ms. Sánchez's declaration and finds it credible.

Ms. Sánchez asserts she is originally from Colombia but is now a permanent resident of the United States. ECF No. 54-8 ¶¶ 6, 10 in Case No.: 4:23cv215. She is currently studying to take the citizenship exam, *id*., and works for Plaintiff

UnidosUS to supervise a team of fifteen canvassers, *id*. ¶¶ 2–3. Ms. Sánchez's team helps people register to vote. *Id*. ¶ 3. Her employer, UnidosUS, is a registered 3PVRO in the State of Florida. ECF No. 54-5 ¶ 10 in Case No.: 4:23cv215.[8]

As an organizer, Ms. Sánchez makes sure that everyone on her team knows the requirements for voter registration organizations in Florida and that they follow the law. ECF No. 54-8 ¶ 17 in Case No.: 4:23cv215. As part of her duties, Ms. Sánchez distributes voter registration applications to her canvassing team and picks them up after they are finished canvassing. *Id*. ¶¶ 3, 14. Additionally, she ensures that the applications her team receives from voters are complete and that they are returned to the correct county offices on time. *Id*. ¶ 8.

According to Ms. Sánchez, were it not for the citizenship requirement, she would continue her work as an organizer in 2023 and 2024. *Id*. ¶ 7. Ms. Sánchez asserts she will not be able to collect voter registration applications or otherwise participate in voter registration due to possible fines imposed on her employer, Plaintiff UnidosUS. *Id*. In addition, she asserts that over eighty percent of her canvassing team are also noncitizens. *Id*. ¶ 9. She is concerned about losing her job as an organizer for UnidosUS, as the law restricts her ability to register voters, and

[8] This Court has also considered Jared Nordlund's declaration, ECF No. 54-5 in Case No.: 4:23cv215, and finds it credible. Mr. Nordlund is the Florida State Advocacy Director for Plaintiff UnidosUS, "a nonprofit organization and one of the nation's largest Latino civil rights and advocacy organizations." *Id*. ¶ 2.

she is concerned that UnidosUS will not be able to carry out its voter registration efforts as effectively without the help of their noncitizen canvassers. *Id*. ¶¶ 18–19.

Similarly, the Hispanic Federation Plaintiffs include another individual noncitizen, Veronica Herrera-Lucha, who submitted a sworn declaration attesting to her asserted injuries. ECF No. 32-3 in Case No.: 4:23cv218. This Court has also reviewed Ms. Herrera-Lucha's declaration and finds it credible.[9]

Ms. Herrera-Lucha is a lawful permanent resident and has lived in Florida since 2016. *Id*. ¶ 2. She obtained a law degree in El Salvador and a Masters in International Law in Spain. *Id*. ¶ 4. She is currently employed as the Florida State Field Director for Mi Vecino, Inc., a 3PVRO, and is responsible for overseeing the organization's voter registration activities. *Id*. ¶¶ 8–10. Ms. Herrera-Lucha is paid a salary of $55,000 per year for this work and supports four family members with it. *Id.* ¶ 11. Her work is important to her as a way to serve her community, raise

[9] At the hearing, Defendants did not object to the Hispanic Federation Plaintiffs supplementing the record with certified translations of their individual Plaintiffs' declarations, including Ms. Herrera-Lucha's declaration. Tr. at 109 ("[T]o the extent that the translations are materially the same and there's an attestation, we do not object."). This Court gave the Hispanic Federation Plaintiffs until noon on Friday, June 30, 2023, to supplement the record with the certified declarations and gave Defendants until 5:00 p.m. on Friday, June 30, 2023, to file any objections to them. *Id*. at 110. The Hispanic Federation Plaintiffs timely filed duplicates of their translated declarations, including Ms. Herrera-Lucha's declaration, along with a certification as to their translations. ECF No. 66-1 in Case No.: 4:23cv218. Defendants did not file any objections to the certified translations. This Court has also reviewed the certified translation, *id*., and finds it to be both credible and substantially the same as the original translation of the declaration.

awareness about Spanish-speaking candidates, and increase the number of eligible voters originally from Puerto Rico and Haiti. *Id*. ¶ 25.

Ms. Herrera-Lucha's work has her canvassing throughout the year. *Id*. ¶ 12. For instance, in July 2023, she is scheduled to participate in Independence Day events and right-to-vote celebrations in Osceola, Orange, and Polk Counties. *Id*. During voter registration events, Ms. Herrera-Lucha asserts that she always interacts with multiple individuals and collects voter registration forms. *Id*. ¶ 13. Before the citizenship requirement was enacted, she had planned to continue conducting voter registration activities in the future, with the goal of engaging with as many community members as possible and expanding Mi Vecino, Inc.'s voter registration work. *Id*. ¶¶ 15–17. However, she believes the citizenship requirement will prohibit her from collecting or handling voter registration applications on behalf of Mi Vecino, Inc. *Id*. ¶ 18. She fears the citizenship requirement will impact her ability to continue to earn a steady income in the field of voter registration and will frustrate her career trajectory and professional development by prohibiting her from doing the voter registration work that she loves. *Id*. ¶¶ 19–21.

Ms. Sánchez's and Ms. Herrera-Lucha's declarations demonstrate that both individuals face concrete, particularized, actual, and imminent injuries. Simply put, effective July 1, 2023, these individuals can no longer collect or handle voter registration applications on behalf of the 3PVROs for which they currently work

because they are noncitizens. The provision facially discriminates against these Plaintiffs because they are noncitizens, forces them to halt their efforts to communicate with would-be voters and properly register as many applicants as possible for fear of incurring devastating liability for their employers, and directly interferes with their employment. These concrete injuries are sufficient for purposes of challenging the citizenship requirement under each theory they raise in their motions.

These injuries, namely the disruption to their employment, their livelihoods, and their mission to register voters on behalf of the organizations they work for, are also fairly traceable to the Defendants in both of these motions. Section 97.0575 itself authorizes the Defendant Secretary of State to investigate alleged violations of the statute and refer them to the Attorney General for prosecution. § 97.0575(8), Fla. Stat. (2023) ("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."). On top of this, 3PVROs that fail to comply with the citizenship requirement within ninety days of the Department of State providing notice of the requirements of the law "shall automatically result in the cancellation of the [3PVRO's] registration." *Id*. § 97.0575(12).

Relatedly, the Defendant Attorney General is specifically authorized to "institute a civil action for a violation of" the citizenship requirement. *Id*. §

97.0575(8). "An action for relief may include a permanent or temporary injunction, a restraining order, or any other appropriate order." *Id*. Were it not for the $50,000 penalty for each noncitizen who violates the citizenship requirement and Defendants' authority to penalize 3PVROs for such violations, the individual Plaintiffs would continue collecting or handling voter registration applications on behalf of the 3PVROs for which they work.

Finally, Plaintiffs have also demonstrated why an order enjoining these Defendants from enforcing the citizenship requirement is substantially likely to redress their injuries. Removing the threat of enforcement—the risk of a $50,000 fine, automatic cancellation of the 3PVROs' registrations, and further civil enforcement by the Attorney General—would directly redress Plaintiffs' injuries. In other words, they could continue the voter registration work that they have been hired to do, without fear of Defendants penalizing their organizations with devastating fines, automatic cancellation of their registrations, and other civil enforcement actions.

"At least one plaintiff must have standing to seek each form of relief requested in the complaint." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017). Thus, if there is one plaintiff in each case who demonstrates standing "to assert these rights as his own," this Court "need not consider whether the other individual and corporate plaintiffs have standing to maintain the suit." *Vill. of*

Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264 & n.9 (1977). With respect to the citizenship requirement, this Court concludes that at least one individual Plaintiff from each case has standing for purposes of pursuing preliminary injunctive relief against each Defendant. Consequently, the Florida NAACP Plaintiffs and the Hispanic Federation Plaintiffs have established standing to seek an order enjoining Defendants from enforcing the citizenship requirement.[10]

This Court now turns to the Florida NAACP Plaintiffs' standing to challenge enforcement of the information retention ban.

2

With respect to the Florida NAACP Plaintiffs' challenge to section 97.0575(7)'s information retention ban, only the organizational plaintiffs raise these claims. Accordingly, this Court first addresses whether they have demonstrated organizational standing to challenge this provision.

[10] By focusing the analysis in this Order on the individual Plaintiffs' standing to challenge the citizenship requirement, this Court in no way suggests that the remaining Plaintiffs have failed to establish standing for purposes of a preliminary injunction. On the contrary, this Court is satisfied that most, if not all, of the Florida NAACP Plaintiffs and the Hispanic Federation Plaintiffs have standing to pursue preliminary injunctive relief with respect to the citizenship requirement. Both groups of Plaintiffs have submitted lengthy briefs addressing the contours of their standing in this regard, along with multiple declarations that set out with precision the imminent injuries they face based on the challenged provision. Nonetheless, given the need for expediency at this juncture, this Order focuses on the individual plaintiffs discussed above. Satisfied that these Plaintiffs have standing to challenge the citizenship requirement, this Court need not address the remaining Plaintiffs in this Order. *See Arlington Heights*, 429 U.S. at 264 & n.9.

"To establish standing, an organization, like an individual, must prove that it either suffers actual present harm or faces a threat of imminent harm." *City of S. Miami v. Governor*, 65 F.4th 631, 638 (11th Cir. 2023) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). Organizational standing allows an organization to assert claims based on injuries to the organization itself. *See Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1079 (N.D. Fla. 2004) ("An organization has standing to challenge conduct that impedes its ability to attract members, to raise revenues, or to fulfill its purposes.") (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). Organizations can establish standing by demonstrating a direct injury to the organization or an injury based on a diversion-of-resources theory. For standing based on a diversion of resources, "[a]n organization suffers actual harm 'if the defendant's illegal acts impair [the organization's] ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts.' " *City of S. Miami*, 65 F.4th at 638 (alteration in original) (quoting *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008)). The Florida NAACP Plaintiffs assert that they have suffered both a direct organizational injury and a diversion-of-resources injury.

This Court, however, need not address their diversion-of-resource theory because the record is clear that the Florida NAACP Plaintiffs have directly suffered

a concrete, particularized, actual, and imminent injury.[11] Take, for example, Marcos Vilar's declaration on behalf of Alianza for Progress and Alianza Center (the "Alianza organizations"), which this Court has reviewed and finds credible. As Florida-registered 3PVROs, the Alianza organizations carry out their mission of increasing civic engagement by registering voters. ECF No. 54-10 ¶¶ 3, 4, 7 in Case No.: 4:23cv215. When the Alianza organizations register voters, they ordinarily retain their contact information and "engage with these voters in the future, to encourage them to get out to vote, and to make sure they have all necessary voting information." *Id.* ¶ 12. But now that section 97.0575(7) threatens their staff, members, and volunteers *with felony prosecutions* if they copy or retain a voter's personal information, the Alianza organizations will no longer be able to carry out their mission of increasing political participation by contacting voters they have registered. The information retention ban directly impedes the Alianza

[11] Although this Court need not address it, this Court also concludes that the Florida NAACP Plaintiffs have established an injury under a diversion-of-resources theory as well. Specifically, these organizations demonstrate that they will divert resources to mitigate the risk that *their own staff, members, and volunteers* will face felony prosecutions for carrying out the organizations' practice of retaining voter information so that they can later encourage them to vote in the future. The Florida NCAAP Plaintiffs' "diversion of personnel and time" to counteract section 97.0575(7)'s "negation of the organizations' efforts" to fulfill their purpose is exactly the type of cognizable diversion-or-resources injury. *See Browning*, 522 F.3d at 1166.

organizations'—as well as the other Florida NAACP Plaintiffs'—ability to accomplish their missions.[12]

This injury is imminent. Starting on July 1, 2023, section 97.0575 takes effect and starts a ninety-day clock for 3PVROs to reorder their operations to comply with, among other requirements, the information retention ban. And although section 97.0575(12) contemplates a ninety-day window for 3PVROs to comply with the section's new requirements, it does not mention a similar grace period for *individuals* facing a felony conviction for violating the information retention ban. It is no answer to say that the Florida NAACP Plaintiffs' injury—the impairment of their ability to reengage voters after registration—occurs only when they seek to reengage them. Given the singular opportunity the Florida NAACP Plaintiffs have to retain a voter's information upon registration, their injury is realized when they forego that opportunity to retain a voter's information.

This injury is neither speculative nor self-inflicted. For standing purposes, the Florida NAACP Plaintiffs have shown that two phrases in the challenged provision—"personal information" and "in compliance with this section"—are at

[12] While Defendants may posit that the Florida NAACP Plaintiffs can still conduct general voter outreach. But these organizations have demonstrated that the *targeted* voter outreach made possible by retaining a voter's contact information is central to their purpose of increasing civic engagement. Even if the Florida NAACP Plaintiffs can conduct similarly targeted outreach through more burdensome measures, like using the voter rolls at a local Supervisor of Elections Office to look up voters' contact information by name, they have still suffered an injury. The fact that a statute leaves open a more burdensome avenue of communication does not relieve its burden on the targeted group. *See Meyer v. Grant*, 486 U.S. 414, 424 (1988).

least arguably vague. *See Harrell v. The Fla. Bar*, 608 F.3d 1241, 1254 (11th Cir. 2010). And despite Defendants' insistence that their own interpretation of section 97.0575(7) and the Florida Department of State's proposed rulemaking permit the sort of information retention that Florida NAACP Plaintiffs' staff, members, and volunteers have conducted in the past, these promises offer little solace to individuals facing a felony prosecution for violating the statute. Defendants have made no showing that their interpretation or rulemaking would save an individual from being formally charged under section 97.0575(7).[13]

The Florida NAACP Plaintiffs make clear that before the challenged provision was passed, they had a practice of retaining information from the voters they register and that, but for the information retention ban, they would continue to do so. These organizations have also demonstrated that the alleged vagueness of section 97.0575(7) leaves them to guess at whether their staff, members, or volunteers will be criminally prosecuted for continuing to retain information to reengage voters as part of their organizations' get-out-the-vote mission. And Defendants make clear they intend to enforce this provision against these organizations' individual staff, members, and volunteers—an inference permitted by

[13] As this Court noted on the record, the Florida NAACP Plaintiffs' injury comes from not only the risk that their staff, members, and volunteers could be convicted of a felony, but also from the *threat* of their arrest and felony prosecution. *See* Tr. at 91. Defendants conceded this point at the hearing, acknowledging that when someone "is subject to arrest, that's a pretty big deal." *Id.*

their defense of this provision, *see Harrell*, 608 F.3d at 1257, and evidenced by their stated intent to start the deadline for compliance as soon as possible, *see* ECF No. 92 at 12 in Case No.: 4:23cv215. This Court concludes that these organizations have established a substantial likelihood of success in proving a cognizable injury sufficient for standing to challenge section 97.0575(7) as vague.[14]

For the same reasons that Ms. Sánchez's and Ms. Herrera-Lucha's injuries are fairly traceable to Defendants and redressable with an injunction from this Court, these organizations meet those standing requirements as well. The challenged statute authorizes the Defendant Secretary of State to investigate alleged violations of section 97.0575(7) and refer them to the Defendant Attorney General for felony prosecution. § 97.0575(7)–(8), Fla. Stat. (2023). Removing the threat of Defendants' investigation and felony prosecution would directly redress these organizations' injuries—namely, their inability to retain voter information to reengage them in the future. Accordingly, the Florida NAACP Plaintiffs have established standing to pursue preliminary injunctive relief with respect to their void-for-vagueness claim.

B

This Court now turns to the substance of Plaintiffs' claims. The Hispanic

[14] Because this Court only reaches the merits of the Florida NAACP Plaintiffs' vagueness challenge, it need not determine whether they have standing to bring their First Amendment challenges at this juncture. To be sure, though, this Court does not suggest that the Florida NAACP Plaintiffs have failed to establish standing for their First Amendment claims.

Federation Plaintiffs challenge the citizenship requirement. The Florida NAACP Plaintiffs challenge both the citizenship requirement and the information retention ban. Both groups of Plaintiffs raise overlapping claims with respect to these provisions. This Court will address the claims asserted with respect to each challenged provision, starting with the citizenship requirement.

1

This Court starts with Plaintiffs' challenges to the citizenship requirement. Effective July 1, 2023, section 97.0575(1)(f) requires 3PVROs to provide to the Department of State's Division of Elections an affirmation stating that each person collecting or handling voter registration applications on behalf of that organization is a United States citizen. They must provide this affirmation in the required format *before* engaging in any voter registration activities. § 97.0575(1), Fla. Stat. (2023). Third-party voter registration organizations will be liable for a $50,000 fine for each noncitizen who collects or handles voter registration applications on behalf of that organization. *Id*. § 97.0575(1)(f). The Florida NAACP Plaintiffs and the Hispanic Federation Plaintiffs assert this provision amounts to a facially discriminatory law in violation of the Equal Protection Clause of the Fourteenth Amendment, as it impermissibly discriminates based on alienage.

"It is established, of course, that an alien is entitled to the shelter of the Equal Protection Clause." *Sugarman v. Dougall*, 413 U.S. 634, 641 (1973). "Under the

Equal Protection Clause, 'No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.' " *Estrada v. Becker*, 917 F.3d 1298, 1308 (11th Cir. 2019) (quoting U.S. Const. amend. XIV, § 1). And, "[a]s a general matter, a state law that discriminates on the basis of alienage can be sustained only if it can withstand strict judicial scrutiny." *Bernal v. Fainter*, 467 U.S. 216, 219 (1984).

Defendants do not dispute that the citizenship requirement, on its face, discriminates against all noncitizens. In response, however, they argue this Court must look beyond the face of the statute and parse the text into two subgroups to determine the applicable standard of review. Defendants assert that within the noncitizen classification, this Court should apply rational basis review to noncitizens who are here illegally. And as for noncitizens who are here legally—namely, lawful permanent residents, also known as "green card" holders, and lawful temporary residents—Defendants argue that the classification is permissible because it falls within the "political function" exception. This Court will address each argument in turn.

First, this Court rejects Defendants' argument that this Court should subject the challenged provision to varying levels of scrutiny based on subgroups that exist nowhere in the statute. Defendants cite no authority—binding or persuasive—suggesting that this Court should take a scalpel to the statutory text and divide a sub-

classification of "illegal aliens" from separate sub-classifications of lawful residents when the Florida Legislature declined to be so precise.

To be sure, this Court understands why Defendants insist this Court should ignore the statute's plain language so that, perhaps, some aspect of the classification at issue might survive judicial review. When a state discriminates against "undocumented aliens"—or noncitizens who are here illegally—and the classification at issue burdens no fundamental rights, rational basis review applies. *See Estrada*, 917 F.3d at 1308–10. For example, in *Estrada*, the Eleventh Circuit held that rational basis review applied to an equal protection challenge to Georgia's policy that prevented any person who was "not lawfully in the United States" from attending specific state schools within Georgia's university system. *Id*. at 1301. But when the classification on its face applies to *all* noncitizens, *regardless* of their documentation or immigration status, the classification is subject to strict scrutiny. *See, e.g.*, *Sugarman*, 413 U.S. at 642, 646 (applying "close scrutiny" and holding that state statute "which denies *all* aliens the right to hold positions in New York's classified competitive civil service" violated the Fourteenth Amendment's equal protection guarantee (emphasis added)); *Bernal*, 467 U.S. at 227–28 (applying strict scrutiny to Texas statutory requirement that prevented *all* noncitizens from becoming notaries public). Here, the Florida Legislature means what it says—*all* noncitizens, not just illegal aliens, are subject to this provision. Accordingly, this

Court agrees with Plaintiffs that *Bernal* provides the appropriate analytical framework with respect to their challenge to Florida's ban on *all* noncitizens from collecting or handling voter registration applications on behalf of 3PVROs. That is, absent some other exception, this Court must apply strict scrutiny to the classification to determine if it violates the Equal Protection Clause.

Second, Defendants assert that an exception to strict scrutiny applies here—namely, the "political function" exception. Both sides agree that *Bernal* provides the test this Court must use to determine whether the "political function" exception applies in this case. They disagree, however, as to its application.

In *Bernal*, the Supreme Court articulated a two-pronged test to determine a "political function" exception. "To determine whether a restriction based on alienage fits within the narrow political-function exception," this Court must first examine "the specificity of the classification." *Bernal*, 467 U.S. at 221 (citation omitted). "[A] classification that is substantially overinclusive or underinclusive tends to undercut the governmental claim that the classification serves legitimate political ends." *Id.* (citation omitted). "Second, even if the classification is sufficiently tailored," it may be applied "only to persons holding state elective or important nonelective executive, legislative, and judicial positions, those officers who participate directly in the formulation, execution, or review of broad public policy, and hence perform

functions that go to the heart of representative government." *Id*. at 221–22 (internal quotation marks and citation omitted).

As to the first prong, like in *Bernal*, the classification here "does not indiscriminately sweep within its ambit a wide range of offices and occupations but specifies only one particular post with respect to which the State asserts a right to exclude aliens." *Id*. at 222. The citizen requirement is not overinclusive—"it applies narrowly to only one category of persons: those wishing to [collect or handle voter registration applications on behalf of third-party voter registration organizations]." *Id*.

"Less clear is whether [the citizenship requirement] is fatally underinclusive." *Id*. As counsel for the Florida NAACP Plaintiffs argued at the hearing, United States postal workers also collect and handle voter registration applications submitted by mail, and noncitizens are allowed to be postal workers. Moreover, at the hearing, Defendants had no response to the Hispanic Federation Plaintiffs' argument that noncitizens are also permitted to serve on Florida's Elections Commission and work for other state agencies. *See* ECF No. 62 at 15 in Case No.: 4:23cv218.

Instead, Defendants suggest that the law is not underinclusive solely because it discriminates only against those noncitizens who would otherwise "undergo[] the fiduciary duty of handling and collecting completed applications." ECF No. 60 at 28 in Case No.: 4:23cv218. But employees of several state agencies are also responsible

for handling completed voter registration applications, and the State of Florida apparently has not decided to exclude all noncitizens from these positions. *See* § 97.053(1), Fla. Stat. (2023) ("Voter registration applications, changes in registration, and requests for a replacement voter information card must be accepted in the office of any supervisor, the [Division of Elections], a driver license office, a voter registration agency, or an armed forces recruitment office when hand delivered by the applicant or a third party during the hours that the office is open or when mailed."); § 448.09, Fla. Stat. (2023) (prohibiting public and private employment only for noncitizens who are not authorized to work under the immigration laws of the United States). Thus, it is a closer call as to whether the citizenship requirement is fatally underinclusive. But that is not the end of the inquiry.

Even assuming, without deciding, that Florida's ban on all noncitizens from collecting or handling voter registration applications is not fatally underinclusive, the law fails the second prong of the "political function" test. That is, the citizenship requirement does not apply only to persons holding state elective or important nonelective executive, legislative, and judicial positions and, thus, participating directly in the formulation, execution, or review of broad public policy. Without dispute, 3PVRO staff, members, and volunteers are not public employees of any branch of state government. Nor do they participate directly in the formulation, execution, or review of broad public policy.

The focus of the inquiry for this second prong is "whether a position was such that the officeholder would necessarily exercise broad discretionary power over the formulation or execution of public policies importantly affecting the citizen population—power of the sort that a self-governing community could properly entrust only to full-fledged members of that community." *Bernal*, 467 U.S. at 223–24. Here, Defendants expressly concede that "those who collect and handle completed applications aren't vested with discretion or engage in policy making." ECF No. 60 at 28 in Case No.: 4:23cv218.

In short, Defendants urge this Court to deviate from settled law and construe this exception far more broadly than the Supreme Court has ever permitted. Their request runs counter to the Supreme Court's admonition that "the political-function exception must be *narrowly* construed; otherwise *the exception will swallow the rule* and depreciate the significance that should attach to the designation of a group as a 'discrete and insular' minority for whom heightened judicial solicitude is appropriate." *Bernal*, 467 U.S. at 222 n.7 (emphasis added). Accordingly, the "political function" exception does not apply here. Full stop.

Because the political function exception does not apply here and Defendants come forward with no other applicable exception, this Court must apply strict scrutiny. *Id*. at 227. "To satisfy strict scrutiny, the State must show that [the challenged provision] furthers a compelling state interest by the least restrictive

means practically available." *Id*. Even at the preliminary injunction stage, Defendants carry the burden of proving that the challenged provision satisfies strict scrutiny. *Otto v. City of Boca Raton, Florida*, 981 F.3d 854, 868 (11th Cir. 2020) (applying strict scrutiny in First Amendment challenge to local ordinance and reversing denial of preliminary injunction based, in part, on government's failure to prove ordinance satisfied strict scrutiny).

In their briefs, Defendants do not even attempt to demonstrate how the citizenship requirement satisfies strict scrutiny. At the hearing, Defendants focused on the state's legitimate interest in ensuring voter registration applications are turned in on time and the risk that noncitizens may leave the country before they can turn in such applications on behalf of the 3PVROs for which they work or volunteer. *See* Tr. at 84 ("And timeliness is the bucket under which it falls . . . . Timeliness is a concern for 3PVROs, and timeliness we try to tie to the issues that come with resident alien and illegal alien [sic], someone here on a temporary basis . . . . Timeliness is a broad heading."). But Defendants point to no record evidence indicating that noncitizens, as a class, have such a fleeting presence in this country as to justify a wholesale ban on their collecting or handling voter registration applications. *See Bernal*, 467 U.S. at 2319 ("There is nothing in the record that indicates that resident aliens, as a class, are so incapable of familiarizing themselves with Texas law as to justify the State's absolute and classwide exclusion.").

This Court is in no way dismissing the gravity of the problem posed by late-filed voter registration applications. If 3PVROs turn applications over to the appropriate election officials too late, would-be voters who chose to register with those 3PVROs may be precluded from voting in the next election based on the untimely submission of their applications. This is a serious issue. And Defendant Byrd filed evidence demonstrating that untimely submissions occur. *See* ECF No. 60-1 at 93 ¶ 7 in Case No.: 4:23cv218 ("The Office reviewed approximately 3,077 voter registration applications that were collected and submitted untimely by 3PVROs, in violation of section 97.0575, Florida Statutes. The Office assessed statutory fines in the amount of $41,600.00 against those 3PVROs that did not comply with the statutory requirements."). Indeed, several 3PVROs have been fined for turning in late applications this year, including the Republican Party of Duval County (ten late applications, *id*. at 385), the Clay County Democratic Executive Committee (one late application, *id*. at 383), and Plaintiff Alianza Center, Inc. (five late applications, *id*. at 408).

Thus, the State of Florida has identified a problem with respect to untimely submission of voter registration applications. The hard part for Defendants is identifying any connective tissue between the problem and the state's proposed solution—namely, banning *all* noncitizens from collecting or handling voter registration applications on behalf of 3PVROs. At the hearing, Defendants

acknowledged the dearth of evidence connecting noncitizens to late-filed voter registration applications. And their papers don't even attempt to justify the law under strict scrutiny. At the very least, Defendants must be able to marry the solution to the problem. But Defendants have failed to do that here.

Relatedly, the citizenship requirement is also *not* the least restrictive means to tackle the problem of late voter application submissions. Indeed, along with the citizenship requirement, Florida also enacted higher fines for late submissions, while also reducing the amount of time available for 3PVROs to submit such applications ahead of the book closing deadline. *See* § 97.0575(5), Fla. Stat. (2023). With respect to this provision, increasing the penalties for late submissions is at least rationally related to solving the problem of late submissions. It is certainly less restrictive than banning an entire class of people from collecting or handling voter registration applications. In short, Defendants' attempt to justify the citizenship requirement based on "timeliness" is simply not enough to meet strict scrutiny's "stringent requirements." *Bernal*, 467 U.S. at 2319.

The same is true with respect to Defendants' secondary argument in defense of the citizenship requirement. At the hearing, Defendants also sought to justify the classification under the "broad heading" of "voter integrity," based on the state's concern that noncitizens are illegally voting. Tr. at 84–85. But Defendants conceded that banning all noncitizens from collecting or handling voter registration

applications is not a perfect fit to alleviate the state's concern about "voter integrity." *Id*. at 85. Nonetheless, Defendants erroneously asserted this imperfect fit is "good enough" because rational basis review should apply. *Id*. As this Court has already explained at length, the classification at issue is subject to strict scrutiny. Therefore, this Court rejects Defendants' "good enough" approach to justifying discrimination in this case. Defendants must come forward with proof that the provision is the least restrictive means to furthering the state's interest. This they have not done.

"Without a factual underpinning, the State's asserted interest lacks the weight [the Supreme Court has] required of interests properly denominated as compelling." *Bernal*, 467 U.S. at 228. Accordingly, Defendants have not demonstrated that the citizenship requirement furthers a compelling state interest by the least restrictive means practically available.

This Court concludes that Plaintiffs are substantially likely to succeed on their claim that the citizenship requirement violates the Equal Protection Clause of the Fourteenth Amendment. At this juncture, because they are substantially likely to succeed on the merits of their equal protection claim, this Court need not address the merits of the balance of the Florida NAACP Plaintiffs' and Hispanic Federation Plaintiffs' claims as to the citizenship requirement. Next, this Court turns to the merits of Plaintiffs' challenge to the information retention ban.

2

This Court now turns to the Florida NAACP Plaintiffs' vagueness challenge to section 97.0575(7), the information retention ban. "Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement." *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999) (plurality opinion); *accord Kolender v. Lawson*, 461 U.S. 352, 357 (1983). For the reasons set out below, this Court concludes that section 97.575(7) is unconstitutionally vague because it suffers from the twin evils of (1) failing to provide notice of what is prohibited and (2) authorizing or encouraging arbitrary and discriminatory enforcement.

This Court starts, as it must, by looking at the statute at issue. This Court has a duty to construe statutes as constitutional if it can. *See Boos v. Barry*, 485 U.S. 312, 330 (1988). However, the nature of this Court's duty to narrowly construe a challenged statute varies depending on whether the challenged statute is state or federal law. When a federal law is at issue, this Court has a "duty to avoid constitutional difficulties by [adopting a limiting construction] if such a construction is *fairly possible*." *Boos*, 485 U.S. at 331 (emphasis added). If, on the other hand, a state law is at issue, this Court cannot "adopt a narrowing construction . . . unless

such a construction is *reasonable and readily apparent*." *Id.* at 330 (emphasis added); *accord Stenberg v. Carhart*, 530 U.S. 914, 944 (2000). Only a state court can supply the requisite construction to save an otherwise vague state statute. *Gooding v. Wilson*, 405 U.S. 518, 520 (1972).

"The distinction is an important one" because "[w]hen a state statute has unconstitutional applications and has not been given a narrowing construction by the state court that saves it from those applications, federal courts 'must be careful not to encroach upon the domain of a state legislature by rewriting a law to conform it to constitutional requirements.' " *Toghill v. Clarke*, 877 F.3d 547, 556 (4th Cir. 2017) (quoting *Legend Night Club v. Miller*, 637 F.3d 291, 301 (4th Cir. 2011)); *see also Dimmitt v. City of Clearwater*, 985 F.2d 1565, 1572 (11th Cir. 1993) ("[A]s a federal court, we must be particularly reluctant to rewrite the terms of a *state* statute.") (emphasis in original); *Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 833 (7th Cir. 2014) (explaining that "the 'unless' clause" in "unless such construction is reasonable and readily apparent" is an "important federalism principle [that] should be invoked sparingly and with caution").

So, the question before this Court is not whether there is *any* reading that would render the statute constitutional. Nor is it whether there is a possible, plausible, or simply reasonable reading that would render the statute constitutional. Instead, the question is whether there is a constitutional reading of the statute that is

both *reasonable* and *readily apparent* and, thus, does not require this Court to rewrite the statute. *See Citizens for Responsible Gov. State Pol. Action Comm. v. Davidson*, 236 F.3d 1174, 1194–95 (10th Cir. 2000) (declining state's invitation to give statute at issue "a construction more restrictive than that provided by [its] plain language") (quoting *Wilson v. Stocker*, 819 F.2d 943, 948 (10th Cir. 1987)).

With that in mind, this Court turns to the text of the challenged provision. Section 97.0575(7) provides:

> If a person collecting voter registration applications on behalf of a third-party voter registration organization copies a voter's application or retains a voter's personal information, such as the voter's Florida driver license number, Florida identification card number, social security number, or signature, for any reason other than to provide such application or information to the third-party voter registration organization in compliance with this section, the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

§ 97.0575(7), Fla. Stat. (2023) (emphasis added).

To understand what this section prohibits, a person of ordinary intelligence must know three things: (1) to whom does the statute apply; (2) which information falls within its reach; and (3) what is the person prohibited from doing with that information. Knowing the answers to each of these questions is critical to avoiding arrest for a third-degree felony.

Plaintiffs assert that the phrase "personal information" is vague. That is, Plaintiffs argue the statute provides no notice of what information falls within its

reach. ECF No. 55-1 at 51 in Case No.: 4:23cv215. In addition, Plaintiffs assert the phrase "in compliance with this section" likewise renders the statute vague. *Id*. This phrase implicates both (1) to whom the statute applies and (2) what that person is prohibited from doing with the information at issue. Defendants, for their part, argue that the meaning of the phrase "personal information" is clear, and that the Florida Department of State's rulemaking will obviate any vagueness concerns with this term or the phrase "in compliance with this section." ECF No. 92 at 31–32 in Case No.: 4:23cv215.

With respect to Defendants' suggestion that the Department of State can "clarify" the statute, they are mistaken. Rewriting state statutes is the sole province of the state's legislative branch. Likewise, assigning authoritative constructions to a state's statutory text is the sole province of the state's judicial branch. Rewriting the laws it enforces is not within the purview of the executive branch, and Defendants' assurance that the Department of State will fix the problem is a nonstarter.

What the Defendants can do—and what they have attempted to do in this case—is propose a construction of the statute for this Court to consider. Indeed, this Court must "consider any limiting construction" that the "enforcement agency has proffered." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 494 n.5 (1982). But Defendants cannot propose a possible reading of the statute and assert that their construction is authoritative while rejecting Plaintiffs' possible

reading of the statute. Again, absent clarification from the Florida Legislature or an interpretation by Florida's state courts, this Court can only adopt Defendants' proposed construction if it is both reasonable and readily apparent from the face of the statute.

This Court must make clear the question before it. The question is not how the statute *actually applies.* That is to say, this Court is not construing the statute to apply it in a particular, well-defined context. Rather, the question is whether a person of ordinary intelligence can understand what the statute prohibits and to whom it applies. Thus, the canons of construction, while still relevant, take on less significance. And while this is a Court of law—not of grammar—the "ordinary principles of English prose" are not "irrelevant" to the definition's construction. *See Flora v. United States*, 362 U.S. 145, 150 (1960). This is especially true here, where the question is how a person of ordinary intelligence would read the statute.

This Court acknowledges the obvious up front. Clearly, the challenged provision prohibits individuals who engage directly with voters and collect completed applications from the voters from copying those completed applications for their own personal use. Perhaps they plan to contact these voters later to advertise their personal business or solicit donations for their church. But retention of information for such personal reasons, on the face of section 97.0575, is "not in

compliance with this section." Another possible reading is that *anyone* who works for a 3PVRO and receives collected applications is prohibited from retaining certain information—and therein lies the rub.

The statute does not necessarily limit its prohibitions only to people who are collecting information directly from voters out in the community. Arguably, the statute applies to all persons who collect voter registration applications on behalf of 3PVROs. This includes the chain of command and the chain of custody within a given 3PVRO, from the canvasser to the field organizer, to the quality control personnel, to the person who finally delivers the completed applications to the appropriate elections officials. At every step in this chain, individuals are collecting voter registration applications on behalf of a 3PVRO, and thus, they are subjecting themselves to the threat of prosecution under this statute.[15] The problem here is that the statute offers no readily apparent construction as to whom it applies. Is it limited solely to folks who are directly engaging with voters and collecting completed applications from them? Or does it apply to anyone further up the chain who would

[15] For example, Plaintiff Esperanza Sánchez attested in her declaration that (1) she supervises a team of 15 canvassers on behalf of UnidosUS, a 3PVRO, (2) she distributes voter registration applications to her canvassing team and picks them up when they are done, and (3) she checks that applications her canvassing team receives from voters are complete and turned into the correct county offices on time. *See* ECF No. 54-8 in Case No.: 4:23cv215. Thus, Ms. Sanchez is not always simply engaging directly with voters to fill out applications and then turning them over to the 3PVRO. Instead, she is acting as an agent of the 3PVRO in various capacities—canvasser, supervisor, quality control, and the final link in the chain of custody prior to delivery to the appropriate elections official.

retain voter information for get-out-the-vote purposes? What about a 3PVRO employee who collects completed applications from volunteers in the community?

The statute also contemplates that such persons are permitted to copy voter registration applications or other "personal information" for a specific purpose—"to provide such application or information to the third-party voter registration organization in compliance with this section." *See* § 97.0575(7), Fla. Stat. (2023). Aside from turning the applications over to the 3PVRO for delivery to the appropriate elections official within the time afforded by the statute, there does not appear to be any other way for an individual "to provide such application or information to the [3PVRO] in compliance with this section." That seems consistent with this aspect of the Department of State's proposed gloss:

> Each voter registration application contains a voter's personal information that is not generally available to the public. For purposes of section 97.0575(7), F.S., a person collecting a voter registration application on behalf of a 3PVRO for the reason of providing such application (including the voter's personal information contained therein) to the 3PVRO shall be deemed to be "in compliance with this section" with respect to providing such application to the 3PVRO if the person:
>
> 1. Provides such application to the 3PVRO and
>
> 2. Does not retain such application after providing it to the 3PVRO.

ECF No. 92-1 at 73 in Case No.: 4:23cv215.

This Court reiterates that it must "consider any limiting construction" that the "enforcement agency has proffered." *Flipside*, 455 U.S. 489, 494 n.5. But this Court

is without power to impose a narrowing construction on a state law "unless such a construction is *reasonable and readily apparent*." *Boos*, 485 U.S. at 330 (emphasis added). And while the proposed rule, cited above, attempts to answer the question about what individuals are prohibited from doing with voter information, the Department's additional "clarifications" call this interpretation into serious doubt. As explained below, this only underscores the statute's vagueness.

Section 97.0575(7)'s plain language only applies to individuals, not the 3PVRO as an organization. Thus, it is reasonable to read the statute as prohibiting only individuals who collect such information from copying or retaining that information, except for purposes of providing the information to the 3PVRO. In other words, the plain language of the provision includes no similar prohibition on copying or retaining information for the 3PVRO itself. But this reveals an inherent ambiguity of the statute in the context to which it applies. 3PVROs are, of course, made up of individuals—staff, members, volunteers, etc. And these individuals work together in various ways to collect voter registration applications at various points along the chain of custody until they are finally delivered to the appropriate elections official. *See* ECF No. 54-8 in Case No.: 4:23cv215. Accordingly, the Department of State's proposed definition of "in compliance with" this statute only leads to further ambiguity as it fails to address what individuals working for the 3PVRO may do

with the voter registration applications or voter information once they receive it from those individuals who collected it directly from voters.

Seemingly recognizing this ambiguity, the Department of State has also proposed prohibiting 3PVROs, as organizations, from copying voter registration applications or retaining certain voter information after they have delivered the applications to the appropriate elections official. ECF No. 92-1 at 74 in Case No.: 4:23cv215. But this prohibition is found nowhere in section 97.0575(7), nor is it reasonable or readily apparent that the statute's prohibitions extend so broadly. Indeed, the Department of State's proposed rule serves only to contradict an intuitive reading of the statute; namely, that it applies solely to those individuals who are directly engaging with voters in the community as opposed to the 3PVROs as organizations or those who work for them and collect completed applications from further up the chain of custody.

The vagueness of the challenged provision is only underscored by the Department of State's attempt to redefine what the statute actually applies to—"personal information." In the context of the statute itself, "personal information" is described as including—but not limited to—"the voter's Florida driver license number, Florida identification card number, social security number, or signature." Based on these examples, Defendants argue that "personal information" means "private, non-public information." ECF No. 92 at 31 in Case No. 4:23cv215 (internal

quotation marks omitted). Of course, had the Florida Legislature intended to include only "private" or "non-public information," it could have said so directly. Instead, the statute leaves open a broad universe of what could be considered "personal" information and does not, on its face, limit that reach to only "information that is not generally available to the public."

The Department of State's attempt at limiting the universe of information is but one possible interpretation. Nonetheless, even if the Florida Legislature intended for "personal information" to mean "private, non-public information," in this day and age, the possibilities for what constitutes "private" or "non-public" information are both sweeping and shifting. Defendants' suggestion that such information *necessarily excludes* voters' email addresses, telephone numbers, or mailing addresses is not readily apparent from the statute's text. And Defendants' proposed construction begs the question of whether something is private or "not generally available to the public" depends upon the efforts to which someone must go to locate the information. For example, what about home addresses or phone numbers? What about private email addresses? This Court cannot pretend we live in a different era when everyone still had a phonebook with phone numbers and addresses for nearly everyone in town. While someone's home phone number and home address may have been publicly available in the 1990s, a person of ordinary intelligence would have good reason to think such information is "private" nowadays inasmuch as

phonebooks are no longer widely disseminated, if at all. But even if this Court accepts Defendants' proffered construction of "personal information," this only answers one question posed by the statute—that is, to which information the statute applies. Defendants' construction offers no answers for the fundamental questions of to whom the statute applies and when their conduct—retention of information—becomes a felony.

This Court must give meaning to all terms in a statute. *Dream Defs. v. DeSantis*, 559 F. Supp. 3d 1238, 1273 (N.D. Fla. 2021). But on its face, section 97.0575(7) offers only a standardless prohibition on retention of voter information—whatever that information may be. This indiscernible standard provides no notice of the conduct prohibited by the section and encourages arbitrary enforcement.

It bears repeating that the Fourteenth Amendment tolerates a lower degree of vagueness for laws, like section 97.0575(7), that impose *criminal liability*. *See Flipside*, 455 U.S. at 498 ("The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement—depends in part on the nature of the enactment."). Here, under the standard set by the Florida Legislature and proposed by Defendants, a person of ordinary intelligence would not be able to understand when they could copy voters' applications or retain their personal information, if at all. And while a "scienter requirement may mitigate a law's vagueness," *Flipside*, 455 U.S. at 499, the challenged provision lacks even

that. Even more troubling, this indiscernible standard lends itself to arbitrary enforcement. Without a reasonable and readily apparent meaning for what is prohibited and who is subject to that prohibition, section 97.0575(7) fails to provide "any standard by which [the law's enforcers] can judge whether an individual" improperly retained a voter's personal information. *See Morales*, 527 U.S. at 66. In short, the Florida NAACP Plaintiffs' staff, members, and volunteers are left to guess when they may violate section 97.0575(7) and risk arrest and felony prosecution. [16]

Here, the Florida Legislature has drafted a criminal statute that contemplates *some* individuals retaining *some* information for *some* undefined purpose. The penalties for running afoul of these illusory standards include arrest, prosecution, and ultimately a felony conviction. Even Defendants conceded at the hearing that the threat of arrest is "a pretty big deal." Tr. at 91.[17] The statute's text is so devoid

[16] "[P]erhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights." *Id* at 499. "If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply." *Id.* While this Court recognizes that the question of whether the law does, in fact, interfere with First Amendment rights is a nuanced one, the Florida NAACP Plaintiffs have made a colorable argument that their get-out-the-vote activities are imbued with First Amendment protection and that this provision directly interferes with their corresponding free speech and association rights. But because the challenged provision runs afoul of the Due Process Clause's fair notice requirement for criminal statutes, this Court need not determine if it would likewise violate the more stringent vagueness standard for laws that interfere with First Amendment rights.

[17] At the hearing, Defendants made the dubious argument that their proposed rulemaking would provide a legal defense to avoid conviction. However, it certainly offers no shelter from arrest or prosecution, which, as noted above, Defendants agreed "is a pretty big deal."

of meaning that it cannot possibly give people of ordinary intelligence fair notice of what information they are allowed to retain and for what purposes they may do so. And it is no answer for Defendants to suggest they won't take any action against these Plaintiffs based on the Florida Department of State's "clarification" of the statute. Simply put, neither the Department nor this Court is permitted to rewrite section 97.0575(7) to cure its vagueness.[18] This Court concludes that the Florida NAACP Plaintiffs have established a substantial likelihood of success on the merits of their vagueness challenge to the information retention ban in section 97.0575(7). As such, this Court need not address the merits of the balance of the Florida NAACP Plaintiffs' claims with respect to this statute.

[18] Although this Court would appreciate the opportunity to certify this important question of state law construction to the Supreme Court of Florida, it is without authority to do so. *See* Fla. R. App. P. 9.150 (permitting only "the Supreme Court of the United States or a United States court of appeals" to certify a question of law to the Supreme Court of Florida); *see also Dream Defs. v. Gov. of the State of Fla.*, 57 F.4th 879, 890 (11th Cir. 2023) (certifying question of statutory construction to Florida Supreme Court and noting that "certification affords the State's highest court an opportunity to interpret [Florida's amended riot statute] in a way that may obviate the plaintiffs' constitutional concerns"). Thus, clarification from the Florida Supreme Court is unavailable at this juncture. To be sure, though, it is no answer to suggest this Court should abstain from ruling on the Florida NAACP Plaintiffs' vagueness claim until a Florida state court assigns some limiting construction to the challenged provision or the Florida Supreme Court answers a certified question regarding the statute's construction. Voter registration is happening *now*, individuals' rights and liberty are at stake *now*, and the statute's enforcers have yet to finalize their own construction of the statute. Accordingly, this Court must address the issue *now* rather than leave individuals guessing as to whether they will be subject to arrest or felony prosecution until the Florida Legislature amends the statute or the state courts assign some limiting construction to the statute as written.

C

Recall that the remaining preliminary injunction factors are (1) that Plaintiffs will suffer irreparable injury absent an injunction, (2) that the harm not granting an injunction causes to Plaintiffs outweighs the harm an injunction would cause to Defendants, and (3) that the injunction would not be adverse to the public interest. *Siegel*, 234 F.3d at 1176. Here, the remaining preliminary injunction factors are thoroughly intertwined with considerations already discussed regarding the merits of Plaintiffs' claims. On balance, these factors weigh in favor of granting Plaintiffs' motion for preliminary injunction.

First, absent an injunction, Plaintiffs will suffer irreparable injury because their voter registration operations will be substantially interrupted once the challenged provisions take effect. For example, the Organizational Plaintiffs stand to lose the ability to have their noncitizen canvassers—in some instances, the vast majority of their canvassing workforces—continue collecting or handling voter registration applications, thus limiting their ability to register new voters, or immobilizing their voter registration efforts altogether, until they can recruit and hire new employees and volunteers. And the individual Plaintiffs are explicitly banned from collecting or handling voter registration applications, thus extinguishing their opportunities to directly register new voters. "[W]hen a plaintiff loses an opportunity to register a voter, the opportunity is gone forever." *League of Women Voters of Fla.*

v. Browning, 863 F. Spp. 2d 1155, 1167 (N.D. Fla. 2012) (Hinkle, J.). "If an injunction does not issue now, there will be no way to remedy the plaintiffs' continuing loss through relief granted later in this litigation." *Id*.

Second, weighing Plaintiffs' injuries against Defendants' interest, the scale tips decisively in Plaintiffs' favor. *See KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). That is because the state "has no legitimate interest in enforcing an unconstitutional ordinance." *Id.* Third, and finally, this Court is persuaded that an injunction would not be adverse to the public interest. After all, as noted above, "[t]he public has no interest in enforcing an unconstitutional ordinance." *Id.* at 1272–73.

In sum, because Plaintiffs have carried their burden as to all four of the preliminary injunction factors with respect to their equal protection and vagueness claims, this Court finds that they are entitled to a preliminary injunction with respect to these claims.

IV

This Court next considers whether Plaintiffs must secure a bond in furtherance of the preliminary injunction. Rule 65(c) provides that a "court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). But "it is well-

established that 'the amount of security required by the rule is a matter within the discretion of the trial court . . . [, and] the court may elect to require no security at all.' " *BellSouth Telecomms., Inc. v. MCImetro Access Transmission Servs.*, 425 F. 3d 964, 971 (11th Cir. 2005) (alteration in original) (quoting *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. Unit B 1981)). Moreover, "[w]aiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right." *Curling v. Raffensperger*, 491 F. Supp. 3d 1289, 1326 n.25 (N.D. Ga. 2020) (quoting *Complete Angler, LLC v. City of Clearwater*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009)). Here, considering that the challenged provision's unlawful impact on Plaintiffs' Fourteenth Amendment rights weighs against requiring a bond, this Court waives the bond requirement.

V

Finally, having determined a preliminary injunction is warranted, this Court addresses whether it will stay that injunction pending appeal. Stays pending appeal are governed by a four-part test: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see also Venues Lines Agency*

v. CVG Industria Venezolana De Aluminio, C.A., 210 F.3d 1309, 1313 (11th Cir. 2000) (applying the same test). Considering that this test is so similar to that applied when considering a preliminary injunction, courts rarely stay a preliminary injunction pending appeal. That rings true here. Because no exceptional circumstances justify staying this Order pending appeal, *see Brenner*, 999 F. Supp. 2d at 1292 (issuing a rare stay of a preliminary injunction given the public interest in stable marriage laws across the country), this Court refuses to do so. Defendants have every right to appeal, and this Court sees no reason to delay Defendants in seeking an appeal by requiring them to move to stay under Rule 62.

VI

Tomorrow, Floridians across the state will commemorate our Nation's birthday. They will endure the heat of the Florida summer to celebrate the Fourth of July with family and friends at barbecues and picnics. They will gather with their communities at public parks for music and fireworks. They will cheer and sweat at parades and block parties. And amid these patriotic festivities, some may feel moved, for the first time, to embrace their solemn privilege as citizens by registering to vote.

That's where Plaintiffs come in. Absent the challenged provisions at issue in these cases, individuals like Ms. Herrera-Lucha and 3PVROs like the Florida NAACP and Hispanic Federation would be engaging with their communities and

registering new voters. In doing so, they would embody those democratic ideals that, for nearly two hundred forty-seven years, have made our system the envy of the world.

The importance of the interests at stake in these cases cannot be overstated. As counsel for the Florida NAACP Plaintiffs put it, "the very nature and purpose of the 3PVROs, in this case and generally, is to reach communities and exist in a space that is outside of the government, that is to reach marginalized voters who have traditionally lacked that kind of connection and access to the state government . . . ." Tr. at 104. "These 3PVROs exist precisely to address the voters who do not feel taken care of by the government and who have been marginalized by these traditional means . . . ." *Id*. In a land that professes deliverance of the "tired," the "poor," the "huddled masses yearning to breathe free,"[19] 3PVROs encourage those who join us as citizens to also join in citizenship's highest right and cardinal task: voting. We have "a Republic" only if we "keep it"[20]; our government remains "of," "by," and "for the people"[21] only if the people are heard. And to vote is to lift one's voice and sing in our vast, clamoring chorus of democracy.

[19] Emma Lazarus, *The New Colossus*.

[20] Attributed to a conversation between Elizabeth Willing Powel and Benjamin Franklin.

[21] Abraham Lincoln, *Gettysburg Address*.

The State of Florida is correct to seek integrity in our electoral system. Sound election laws ensure the people are heard without distortion from negligent and bad-faith actors. Here, however, Florida's solutions for preserving election integrity are too far removed from the problems it has put forward as justifications. It is no answer to assert the Florida Legislature's work here was "good enough." Tr. at 85. Such shoddy tailoring between restriction and government interest presents a dubious fit under rational basis review, and it falls woefully short of satisfying the strict scrutiny this Court must apply. And a provision as vague as the information retention ban, notwithstanding the Secretary of State's *post-hoc* intent to clarify its reach, can serve no end but arbitrary punishment. The United States Constitution demands more than "good enough."

Ms. Herrera-Lucha, a noncitizen who, herself, lacks the right to vote, has spent years registering and encouraging citizens to exercise that solemn right. She may, at least for now, continue to do so and add more voices to the millions of others singing a more perfect Union into existence.

Accordingly,

IT IS ORDERED:

1. The Florida NAACP Plaintiffs' motion for a preliminary injunction, ECF

No. 55 in Case No.: 4:23cv215, is **GRANTED**.[22]

2. Defendant Secretary of State Cord Byrd, in his official capacity, and Defendant Attorney General Ashley Moody, in her official capacity, must take no steps to enforce the following until otherwise ordered:

    a. Section 97.0575(1)(f), Florida Statutes (2023); and

    b. Section 97.0575(7), Florida Statutes (2023).

3. The preliminary injunction binds the above-listed Defendants and their officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

4. The Hispanic Federation Plaintiffs' motion for a preliminary injunction, ECF No. 32 in Case No.: 4:23cv218, is **GRANTED**.

5. Defendant Secretary of State Cord Byrd, in his official capacity, and Defendant Attorney General Ashley Moody, in her official capacity, must take no steps to enforce the following until otherwise ordered:

    a. Section 97.0575(1)(f), Florida Statutes (2023).

6. The preliminary injunction binds the above-listed Defendants and their

[22] As this Court noted above, given that the Florida NAACP Plaintiffs and the Hispanic Federation Plaintiffs are entitled to relief based on their equal protection and vagueness claims, this Court need not address the balance of their asserted constitutional infirmities with respect to the challenged provisions.

officers, agents, servants, employees, and attorneys—and others in active concert or participation with any of them—who receive actual notice of this injunction by personal service or otherwise.

SO ORDERED on July 3, 2023.

s/Mark E. Walker
Chief United States District Judge

EXHIBIT B

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

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

***Plaintiffs*,**

v. **Case No.: 4:23cv216-MW/MAF**

CORD BYRD, in his official capacity as Florida Secretary of State, et al.,

***Defendants*.**
_____/

ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION[1]

This case involves multiple constitutional challenges to newly enacted changes to section 97.0575, Florida's statute regulating third-party voter registration organizations (3PVROs). As this Court noted in other cases, these organizations offer a convenient alternative for Florida citizens to complete and submit voter registration applications so that they can participate in our democratic system. Based on the evidence in support of their motions, Plaintiffs, the League of Women Voters of Florida, Inc., and the League of Women Voters of Florida Education Fund, Inc.

[1] This Order addresses one of three motions for preliminary injunction before this Court. By separate Order, this Court granted the motions for preliminary injunction in Case Nos.: 4:23cv215 and 4:23cv218. *See Florida State Conference of Branches and Youth Units of the NAACP v. Byrd*, --- F. Supp. 3d. ---, 2023 WL 4311084, *1 (N.D. Fla. July 3, 2023) ("*Florida NAACP*")

(collectively, "League Plaintiffs"), are driven to serve their communities, connect with Floridians about the importance of voting, and properly register as many new voters as possible. Now, the League Plaintiffs assert their operations and missions will be disrupted, if not sidelined entirely, because of the challenged provisions. Accordingly, the League Plaintiffs filed this action almost immediately after the challenged provisions were signed into law. The League Plaintiffs have now moved to preliminarily enjoin Defendants from enforcing these provisions now that they have taken effect.

The League Plaintiffs' motion, ECF No. 27, asserts the new "Felon Ban" and "Citizenship Requirement" for collecting or handling voter registration applications on behalf of 3PVROs violate the First and Fourteenth Amendments for multiple reasons. *See* § 97.0575(1)(e)–(f), Fla. Stat. (2023). They also assert the new "Information Retention Ban" and the "Receipt Requirement" violate the First and Fourteenth Amendments for multiple reasons. *See id.* § 97.0575(4), (7).

By separate order in two related cases,[2] this Court preliminarily enjoined Defendants from enforcing both the Citizenship Requirement and the Information Retention Ban. This Court found, in those cases, that the plaintiffs had demonstrated entitlement to preliminary injunctive relief based on their equal protection claims

[2] On July 3, 2023, this Court entered preliminary injunctions in Case Nos.: 4:23cv215 and 4:23cv218. *See Florida NAACP*, 2023 WL 4311084.

challenging the Citizenship Requirement and their vagueness claims challenging the Information Retention Ban. This Court recognizes that the League Plaintiffs have challenged these two provisions based on some overlapping and some distinct theories. Nonetheless, while the preliminary injunctions remain in place, the League Plaintiffs do not face irreparable harm with respect to the Citizenship Requirement or the Information Retention Ban, as those injunctions provide facial relief and apply to the same Defendants. In other words, the preliminary injunctions this Court has already entered in two other cases moot the League Plaintiffs' motion as to the Citizenship Requirement and Information Retention Ban. Accordingly, their motion, ECF No. 27, is **DENIED in part as moot** based on the preliminary injunctions that are already in place.

What remains for this Court is to address the League Plaintiffs' motion, ECF No. 27, with respect to their challenges to the Receipt Requirement and the Felon Ban. As set out in more detail below, the League Plaintiffs have not demonstrated standing with respect to either for purposes of a preliminary injunction. Accordingly, the balance of their motion, ECF No. 27, is due to be denied. But before this Court reaches the substance of the League Plaintiffs' motion, this Court again addresses Defendants' arguments for abstention or delay.

I

At the outset, this Court must address Defendants' abstention arguments.

Defendants raised the same arguments in one of the companion cases. *See Florida NAACP*, 2023 WL 4311084, at *3–5. For the same reasons that this Court explained in that case, *id*., abstention is not appropriate here. Accordingly, this Court declines to abstain from or otherwise delay ruling on the pending motion for preliminary injunction.

II

A district court may grant a preliminary injunction if the movant shows: "(1) it has a substantial likelihood of success on the merits;" (2) it will suffer irreparable injury "unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *Siegel*, 234 F.3d at 1176. Although a "preliminary injunction is an extraordinary and drastic remedy," it should be granted if "the movant 'clearly carries the burden of persuasion' as to the four prerequisites." *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1519 (11th Cir. 1983) (quoting *Canal Auth. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974)). No one factor, however, is controlling; this Court must consider the factors jointly, and a strong showing on one factor may compensate for a weaker showing on another. *See Fla. Med. Ass'n, Inc. v. U.S. Dep't of Health, Educ., & Welfare*, 601 F.2d 199, 203 n.2 (5th Cir. 1979). Finally, "[a]lthough the initial burden of persuasion is on the moving party, the ultimate burden is on the party who would

have the burden at trial." *FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017) (citing *Edenfield v. Fane*, 507 U.S. 761, 770 (1993)).

This Court begins with whether Plaintiffs have shown a substantial likelihood of success on the merits. This Court addresses this factor first because, typically, if a plaintiff cannot "establish a likelihood of success on the merits," this Court "need not consider the remaining conditions prerequisite to injunctive relief." *Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc.*, 299 F.3d 1242, 1247 (11th Cir. 2002). And because standing is always "an indispensable part of the plaintiff's case," this Court begins its merits analysis with standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

The "affirmative burden of showing a likelihood of success on the merits . . . necessarily includes a likelihood of the court's reaching the merits, which in turn depends on a likelihood that [a] plaintiff has standing." *Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 328 (D.C. Cir. 1987) (Williams, J., concurring and dissenting). Any evaluation of Plaintiffs' claims thus necessitates an inquiry into Plaintiffs' ability to bring such claims.

Over time, the Supreme Court has developed a three-part test for determining when standing exists. Under that test, a plaintiff must show (1) that they have suffered an injury-in-fact that is (2) traceable to the defendant and that (3) can likely be redressed by a favorable ruling. *See Lujan*, 504 U.S. at 560–61. And "where a

plaintiff moves for a preliminary injunction, the district court . . . should normally evaluate standing 'under the heightened standard for evaluating a motion for summary judgment.' " *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 900 F.3d 250, 255 (6th Cir. 2018) (quoting *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 912 (D.C. Cir. 2015)); *see also Cacchillo v. Insmed, Inc.*, 638 F.3d 401, 404 (2d Cir. 2011). Thus, "a plaintiff cannot 'rest on such mere allegations, [as would be appropriate at the pleading stage] but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.' " *Cacchillo*, 638 F.3d at 404 (some alteration in original) (quoting *Lujan*, 504 U.S. at 561). This Court will address the League Plaintiffs' standing to challenge each of the provisions at issue, starting with the Receipt Requirement.

A

The League Plaintiffs assert they have associational and organizational standing to challenge the Receipt Requirement at the preliminary injunction stage. This Court disagrees.

1

To start, the League Plaintiffs argue that they have associational standing because their members' voter registration efforts—which the League Plaintiffs frame as "core political speech, associational activity, and expressive conduct," ECF No. 27 at 29 (quotation omitted)—are chilled. They assert that the Receipt

Requirement chills their members' speech because their members wish to avoid providing their full names on the receipts and, as a result, are less willing to continue registering voters. ECF No. 27 at 28; ECF No. 27-9 ¶ 3.

An organization has associational standing to sue on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Greater Birmingham Ministries v. Sec'y of State of Ala.*, 992 F.3d 1299, 1316 (11th Cir. 2021). To have standing to sue in their own right, individuals 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. *Lujan*, 504 U.S. at 560–61.

In the context of a pre-enforcement First Amendment challenge, the plaintiff establishes an injury by showing that the "operation or enforcement . . . of the government policy would cause a reasonable would-be speaker to self-censor . . . even where the policy falls short of a direct prohibition against the exercise of First Amendment rights." *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1120 (11th Cir. 2022) (citations omitted). "The fundamental question . . . is whether the challenged policy objectively chills protected expression." *Speech First*, 32 F.4th at 1120 (citations omitted). "Allegations of a subjective chill," in contrast, "are not an

adequate substitute for a claim of . . . specific future harm . . . . [A] party's subjective fear that she may be prosecuted for engaging in expressive activity will not be held to constitute an injury for standing purposes unless that fear is objectively reasonable." *Pittman v. Cole*, 267 F.3d 1269, 1284 (11th Cir. 2001) (citations omitted).

Here, the League Plaintiffs assert that their members fear that providing their names would result in "being targeted by the Florida Office of Election Crimes and Security" and subjected to wrongful accusations of illegally registering voters. ECF No. 27-1 ¶ 27; ECF No. 27-8 ¶ 8. The League Plaintiffs also assert that their members fear targeting by other individuals not before this Court. ECF No. 27-7 ¶ 6. Their declarations recount that members are hesitant to "provid[e] their personal information on an official document . . . due to the polarized political climate in the state of Florida" and are concerned that "once the receipt is given, it is impossible to know who else will see it or how they will use it," leading to potential "nefarious alterations of receipts by those intentionally targeting volunteers" *Id.* ¶¶ 6–7; ECF No. 27-9 ¶ 6.

Assuming, without deciding, that their voter registration activities implicate the First Amendment, the League Plaintiffs have not shown that the Receipt Requirement's chill on their members' speech is reasonable. They have demonstrated that their members fear engaging in voter registration efforts because

their members believe it may expose them to harm from both individuals and the government now that they must provide their full names on receipts given to the voters they register. These subjective fears, however, depend on assumptions that the League Plaintiffs' evidence does not support. Their members' fears of abuse of the information they must provide assume that either the people they help register to vote or an unknown third party will misappropriate the information. And their fears of both "nefarious alterations of receipts" and targeting by the Office of Election Crimes and Security for wrongful accusations assume (1) that the people they register to vote will report them on false grounds and (2) that the Florida Office of Election Crimes and Security will, based on those false grounds, bring actions against them. Yet the League Plaintiffs have come forward with no evidence of bad-faith actors who register to vote or of Office of Election Crimes and Security personnel who credit those bad-faith actors.

Absent any evidence that their fears are grounded in reality, the League Plaintiffs cannot establish associational standing. As noted above, a plaintiff at the preliminary injunction stage "cannot 'rest on such mere allegations [as would be appropriate at the pleading stage], but must set forth by affidavit or other evidence specific facts, which for purposes of the summary judgment motion will be taken to be true.' " *Cacchillo*, 638 F.3d at 404 (some alteration in original) (quoting *Lujan*, 504 U.S. at 561). The League Plaintiffs are well familiar with this burden, having

litigated motions for preliminary injunctions before this Court in the past and defended other preliminary injunctions at the appellate level. They have not met their burden here—at best, they have provided mere allegations.

Because the League Plaintiffs' theory of injury to their members relies on assumptions unsupported by evidence, they have failed to show an objectively reasonable chill on their members' speech. Thus, the League Plaintiffs have not shown that their members would have standing in their own right. In other words, the League Plaintiffs have not established associational standing to challenge the Receipt Requirement for purposes of a preliminary injunction.

2

As for organizational standing, the League Plaintiffs assert they are injured under a diversion-of-resources theory.[3] This theory provides that "[a]n organization suffers actual harm 'if the defendant's illegal acts impair [the organization's] ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts.' " *City of S. Miami v. Governor*, 65 F.4th 631, 638 (quoting *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008)) (alteration in original).

[3] This Court recognizes that organizational standing can take many forms. In a related case, the organizational plaintiffs demonstrated a direct injury to the organization itself. *See Florida NAACP*, 2023 WL 4311084, at *10. Here, the League Plaintiffs raise only a diversion-of-resources theory of organizational standing, and not a direct-injury theory. This Court's standing analysis is limited to only the arguments the parties have raised.

"Resource *diversion* is a concrete injury," but an organization asserting diversion-of-resources standing must also "explain[] what activities [it] would divert resources away *from* in order to spend additional resources on combatting" the challenged law. *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1250 (11th Cir. 2020) (citations omitted). Furthermore, because a plaintiff challenging multiple provisions of a law must show standing as to each provision she challenges, *see Harrell v. Fla. Bar*, 608 F.3d 1241, 1253–54 (11th Cir. 2010), the plaintiff must show from where and to where she would divert the resources because of each challenged provision. In other words, *Jacobson* requires the League Plaintiffs to specify the types and sources of their diversions, and *Harrell* requires the League Plaintiffs to specify how their diversions relate to each challenged provision.

"In the same way that [individuals cannot] 'manufacture standing' by inflicting harm on themselves based on 'highly speculative' fears, neither can . . . organizations do so." *City of S. Miami*, 65 F.4th at 640 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 402, 410 (2013)). Instead, "to establish an injury based on resource diversion, an organization must 'present . . . concrete evidence to substantiate [its] fears,' not commit resources based on 'mere conjecture about possible governmental actions' " or on apprehension of "future harm that is not certainly impending." *City of S. Miami*, 65 F.4th at 638–39 (citing *Clapper*, 568 U.S. at 416, 420).

Here, the League Plaintiffs assert the Receipt Requirement will force them to divert resources in three ways. First, the League Plaintiffs will have to spend time and resources training their members on how to provide receipts to voter registration applicants. ECF No. 27 at 25; ECF No. 27-1 ¶ 21. Second, the League Plaintiffs will have to spend time and resources developing their own receipt form, because the State need not develop a receipt template until October 2023. ECF No. 27 at 15, 19; ECF No. 27-1 ¶ 28. Third, the League Plaintiffs plan to switch to exclusively online voter registration if enforcement of the challenged amendments to section 97.0575 (discussed as a collective) is not enjoined. ECF No. 27 at 11, 16–17, 21–22, 54, ECF No. 27-1 ¶¶ 21, 34. This, too, will force the League Plaintiffs to spend money, as Ms. Scoon states in her declaration:

> We would have to purchase tablets, laptops, and Wi-Fi hot spots so that voters could access online forms. We have a fixed budget, and the amount of technology the League could purchase would limit the number of people who could register to vote at one time, decreasing the effectiveness and efficiency of voter registration drives at large events.

ECF No. 27-1 ¶ 35. But the League Plaintiffs do not provide any details about where its resources are diverted from.

According to the League Plaintiffs, section 97.0575's new "requirements"—among them the Receipt Requirement—will force them "to divert funds, staff time, and resources from other programs and activities. . . ." *Id.* ¶ 41. They have also "already had to cancel programs, including a [Diversity, Equity & Inclusion]

program, at [their] annual convention to discuss [their] response" to section 97.0575's new requirements. *Id.* ¶ 20. Importantly, this evidence does not tie any diversion of resources to the challenged provision—the Receipt Requirement—at issue. Instead, Ms. Scoon refers only to a collective response to "the Law" as a whole.

These generalizations are insufficient to satisfy the requirement that an organization specify not only how it will "spend additional resources on combatting" the challenged law, but also "what activities [it] would divert resources away *from* . . . ." *Jacobson*, 974 F.3d at 1250 (citations omitted). Merely gesturing to "funds, staff time, and resources from other programs and activities" is not enough at the preliminary injunction stage. Moreover, the League Plaintiffs fail to identify those resources they would divert to combat the Receipt Requirement *specifically* as opposed to *all* provisions they challenge. *See Harrell*, 608 F.3d 1253–54 (requiring that a plaintiff establish standing as to each challenged provision). To be clear, this Court is not being nitpicky for the sake of being nitpicky. As the League Plaintiffs should understand by now, *Jacobson* and *Harrell* mandate a granular standing analysis.

For these reasons, the League Plaintiffs have failed to establish organizational standing as to the Receipt Requirement, just as they have failed to establish associational standing as to the Receipt Requirement. Therefore, they lack standing

to challenge the Receipt Requirement at the preliminary injunction stage. Accordingly, their motion, ECF No. 27, is **DENIED in part** with respect to their request to preliminarily enjoin enforcement of the Receipt Requirement.

B

Similarly, with respect to the Felon Ban, the League Plaintiffs argue they have both associational and organizational standing. Both arguments also fail because the League Plaintiffs rely on substantially the same deficient evidence in support of their challenges to this provision.

1

As to associational standing, Plaintiffs assert their members are injured because they will be able to associate with fewer members and volunteers with qualifying felony convictions. ECF No. 27 at 28 ("[A]ll of them will be able to associate with fewer volunteers, because they will know that working with . . . people with disqualifying felonies would create financially ruinous liability for the League."). The problem with this argument is that the League Plaintiffs have submitted no evidence indicating that any members or volunteers with qualifying convictions were planning to engage in voter registration work after July 1, 2023, but for the challenged provision. The closest they come to demonstrating that any of their members or volunteers would be prevented from engaging in voter registration drives as a result of the Felon Ban is in the declaration of Debra A. Chandler, one of

the League Plaintiffs' co-presidents. In her declaration, Ms. Chandler attests that some of the League's members who have been convicted of felonies have "expressed to [her] that they are heartbroken because helping to register voters is the only way they can tangibly take part in the voting process," but now they are barred from doing so. ECF No. 27-4 ¶ 6.

While this Court does not mean to diminish how these members may *feel*, these feelings are not relevant to standing. Instead, at this stage, the League Plaintiffs' evidence must demonstrate that their members are likely to incur a future injury, which this declaration fails to do. *See, e.g.*, *LaCroix v. Lee Cnty.*, 819 F. App'x 839, 843–44 (11th Cir. 2020) ("LaCroix has failed to provide the location of his future free speech activity with the requisite specificity to demonstrate a substantial likelihood of future injury . . . . He has not averred that he intends to preach specifically at permitted events in Lee County in the future [where he would be subject to the challenged ordinance or where there is a likelihood that trespass laws would be unconstitutionally enforced].").

Here, the League Plaintiffs submitted declarations indicating that their organizations have members with qualifying felonies who have registered voters in the past. They do not specify how many members are subject to the Felon Ban—just that Ms. Chandler spoke with at least one member, who said that they are heartbroken. Now, Plaintiffs ask this Court to fill in the gaps in their deficient

declarations to infer that when Ms. Chandler says these members are "heartbroken," that means they would have continued registering voters but for the challenged restriction. But this Court declines to fill in the gaps in the evidence for the League Plaintiffs. This may have been a different case had the League Plaintiffs submitted a declaration establishing that any number of members with qualifying felonies had registered voters in the past and planned to do so in the future, but for the challenged provision. But that is not this case. In short, with respect to associational standing, the League Plaintiffs' evidence fails to demonstrate that any member is substantially likely to be injured because of the Felon Ban.[4]

2

As for the League Plaintiffs' organizational standing to challenge the Felon Ban, they have also failed to meet their burden at this stage to prove that they are injured specifically by the Felon Ban under a diversion-of-resources theory.[5] Rather

[4] Of course, assuming the League Plaintiffs can identify a member with a qualifying conviction who had planned to register voters in the future but for the challenged provision, this is a "fixable" problem. At this juncture, however, this Court cannot make that assumption for the League Plaintiffs. At this point, the League Plaintiffs should be well aware of what the Eleventh Circuit requires for standing, especially when they ask this Court to grant extraordinary relief in the form of a preliminary injunction. Nonetheless, this Court reiterates that their burden of proof increases at each stage in the case. The League Plaintiffs should prepare accordingly.

[5] As noted above, organizational standing can take many forms. *See Florida NAACP*, 2023 WL 4311084, at *10. Here, with respect to the Felon Ban, the League Plaintiffs raise only a diversion-of-resources theory of organizational standing, and not a direct-injury theory. As it was with the Receipt Requirement, this Court's standing analysis is limited to only the arguments the parties have raised.

than explaining with more detail what activities they would divert their resources from to combat this challenged provision in particular, the League Plaintiffs rely on generalizations. For example, Ms. Scoon's declaration describes a diversion of resources "from other programs and activities . . . . [i]n response to the Law." ECF No. 27-1 ¶ 1. Although *Jacobson* does not require Plaintiffs to submit something so detailed as a spreadsheet setting out each anticipated cost and the source of the funds with which it will be covered, Plaintiffs must do more than simply state, in conclusory fashion, that they are diverting resources from other programs to respond to a law that includes, among other challenged provisions, the Felon Ban. In other words, to establish organizational standing to challenge the Felon Ban under a diversion-of-resources theory, the League Plaintiffs must explain, with more detail, what resources they are diverting, where those resources would have gone before they were diverted, and why they are being diverted to combat the Felon Ban in particular—not "the Law" as a whole.

Here, the League Plaintiffs fall short of what *Jacobson* and *Harrell* demand. They rely on generalizations with respect to the diversion itself and with respect to the reason for the diversion. Specifically, Ms. Scoon's declaration lumps all the challenged provisions, including the Felon Ban, together in discussing the League Plaintiffs' response to "the Law," rather than discussing the League Plaintiffs' responses to each challenged provision. The League Plaintiffs' submissions fail to

specify the types and sources of their diversions, as *Jacobson* requires, and to specify how their diversions relate to each challenged provision, as *Harrell* requires. Thus, the League Plaintiffs have failed to demonstrate a substantial likelihood of success at establishing standing to challenge the Felon Ban. For these reasons, their motion, ECF No. 27, is **DENIED** with respect to the Felon Ban.

Accordingly,

IT IS ORDERED:

The League Plaintiffs' motion for a preliminary injunction, ECF No. 27, is **DENIED as moot** with respect to Plaintiffs' request to preliminarily enjoin the Citizenship Requirement and the Information Retention Ban. The motion is **DENIED for lack of standing** with respect to the Receipt Requirement and the Felon Ban.

SO ORDERED on July 11, 2023.

s/Mark E. Walker
Chief United States District Judge