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