

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:08-21243-CIV-ALTONAGA

LEAGUE OF WOMEN VOTERS OF FLORIDA,
FLORIDA AFL-CIO, and MARILYNN WILLS,

Plaintiffs,

vs.

KURT S. BROWNING, in his official capacity
as Secretary of State of the State of Florida, and
DONALD L. PALMER in his official capacity as
Director of the Division of Elections within the
Department of State for the State of Florida,

Defendants.

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants Kurt S. Browning, in his official capacity as Secretary of State for the State of Florida, and Donald L. Palmer, in his official capacity as Director of the Division of Elections, respectfully submit this Notice of Supplemental Authority in opposition to Plaintiffs' pending Motion for Preliminary Injunction.

I. Florida State Conference of the NAACP v. Browning,
Case No. 07-402 (N.D. Fla.)

On June 24, 2008, the United States District Court for the Northern District of Florida denied Plaintiffs' renewed motion for preliminary injunction. (A copy of the

decision is attached as Exhibit “A”).¹ In doing so, the Court rejected Plaintiffs’ claims that the voter registration requirement at issue violated the United States Constitution.

The Court relied in part on the Supreme Court’s recent decision in *Crawford v. Marion County Election Board*, 553 U.S. ___, 128 S. Ct. 1610 (2008), which upheld Indiana’s voter identification law. The District Court rejected Plaintiffs’ argument—also advanced in the case at hand—that to sustain an election law, the state must make an evidentiary demonstration of the existence of a pervasive evil. Instead, the District Court concluded that:

It is well established that, in the election context, there is no need for an “elaborate, empirical verification of the weightiness of the State’s asserted justifications.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997); accord *Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96 (1986) (“Legislatures . . . should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively . . .”). **Indeed, if there was ever any doubt about this position, *Crawford* extinguished it.** See *Crawford*, 128 S. Ct. at 1619 (upholding a voter identification law despite the fact that the record contained “no evidence of any [in-person] fraud actually occurring in Indiana at any time in its history.”).

Order at 27-28 (emphasis added).

The Court also noted that the “feasibility” of Plaintiffs’ proposed alternative to the challenged law was not dispositive as to its constitutionality:

Plaintiffs note that it might be feasible to permit applicants to identify themselves by a passport or military identification. As the Court in *Diaz* recently explained, however, the Constitution does not require election regulations to permit everything that is “feasible” or “doable.” *Diaz*, 2008 WL 793584, at *11. The “question is not whether Plaintiffs’ particular proposal is feasible, but whether an important regulatory interest supports the challenged law.” *Id.* at *12.

Order at 34 n.10.

¹ Plaintiffs in that case are represented by counsel representing Plaintiffs in this case.

II. ACORN v. Cox, Case No. 06-1891 (N.D. Ga.)

Plaintiffs in the case at hand have relied on *ACORN v. Cox*, in which the Court preliminarily enjoined enforcement of a regulation of third-party voter registration organizations. *See* Doc. 24 at 21; Doc. 55 at 5, 11. That case involved a challenge to a regulation prohibiting, among other things, photocopying of voter registration applications collected by third parties. On June 19, 2008, the Court entered an order explaining its earlier decisions regarding discovery.² (A copy of the order is attached as Exhibit “B”.)³ In this order, the Court noted that its “preliminary injunction order was based on the limited evidence presented during a one day hearing, prior to the parties having an opportunity to flesh out their positions during discovery.” Order at 4. The Court then explained that “Defendants’ failure to present any evidence of identity theft or other fraud was an important element in the Court’s balancing of Plaintiffs’ asserted injury with the State’s interest in protecting the integrity and reliability of the electoral process.” *Id.* Notably, the Court recognized that its preliminary decision (issued in 2006) did not have the benefit of the *Crawford* decision:

This Court may have misapplied the standard, which requires a balancing of the burden upon Plaintiffs with the State’s interest in protecting the integrity and reliability of the election process, in view of the Supreme Court’s recent opinion in *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610 (2008). This Court’s preliminary injunction order partly relied on the lack of evidence of actual identity theft and voter fraud in weighing the State’s interest. *See Crawford*, 128 S. Ct. at 1618-19.

² Plaintiffs had petitioned the Eleventh Circuit for a writ of mandamus. The Eleventh Circuit directed the District Court to explain its earlier rulings in greater detail. This Order responded to the Eleventh Circuit’s direction. Order at 1-2.

³ Plaintiffs in that case are represented by counsel representing Plaintiffs in this case.

Id. at 5 n.2. The Court’s citation to *Crawford* points to pages including this language: “The only kind of voter fraud that [the challenged law] addresses is in-person voter impersonation at polling places. The record contains no evidence of any such fraud actually occurring in Indiana at any time in its history. Moreover, petitioners argue that provisions of the Indiana Criminal Code punishing such conduct as a felony provide adequate protection against the risk that such conduct will occur in the future.” *Crawford*, 128 S. Ct. at 1618-19. Notwithstanding these facts, the Supreme Court upheld Indiana’s voter identification law. *Id.* at 1624.

WHEREFORE, Defendants respectfully request that this Court consider these supplemental authorities, neither of which was available at the time of this Court’s hearing on Plaintiffs’ Motion for Preliminary Injunction.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through the Court’s CM/ECF system on all counsel or parties of record on the attached service list this 27th day of June, 2008.

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