

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

LEAGUE OF WOMEN VOTERS OF FLORIDA, FLORIDA
AFL-CIO, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 79
(AFSCME), as organizations and as representatives of their
members; and MARILYNN WILLS;

Plaintiffs,

v.

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 within the Department of State for the State of
Florida,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by their attorneys, the Brennan Center for Justice at NYU School of Law,
Debevoise & Plimpton LLP, Advancement Project, and Becker & Poliakoff, P.A., as and for
their complaint against defendants, allege as follows:

INTRODUCTION

1. Plaintiffs bring this action to prevent enforcement of a Florida law—2007 Fla. Laws 30 §§ 1, 2—that has forced the League of Women Voters of Florida (the “**League**” or “**state League**”) to shut down its nonpartisan voter registration activities for just the second time in its seventy-year history. That law amends 2005 Fla. Laws 277 §§ 2, 7, which this Court preliminarily enjoined on August 28, 2006, after the League suspended its registration drives for

the first time. The amended law, which defendants intend to begin enforcing on April 30, 2008, imposes steep fines and onerous reporting requirements on all organizations and individuals registering voters. Plaintiffs challenge this law, which severely burdens efforts by the League and other plaintiffs to encourage civic engagement and strengthen democracy, as unconstitutionally vague and violative of their speech and associational rights.

2. In response to this Court's preliminary injunction, the Florida legislature slightly amended the 2005 law, and the amended law went into effect on January 23, 2008. Before that effective date, defendant Browning and defendant Palmer's predecessor Amy Tuck entered into a standstill agreement with plaintiffs, promising not to enforce the law. On March 31, 2008, defendants abruptly announced their intention to terminate the standstill agreement and begin enforcing the amended law. Absent judicial intervention, enforcement may begin as soon as April 30, 2008.

3. The amended law leaves in place the essential features of the original unconstitutional law that had burdened plaintiffs' speech and association in 2006: escalating fines for failing to meet arbitrary deadlines, nearly strict liability for those fines, and the risk of significant fines for individual volunteers and employees working in plaintiffs' voter registration drives. The amended law imposes civil fines of \$50 for each voter registration application submitted more than ten days after it is collected, \$100 for each application submitted after any voter registration deadline, and \$500 for each application not submitted. These fines increase to \$250, \$500, and \$1,000 per application when an organization or its agents have acted "willfully." Plaintiffs are strictly liable for these fines, with limited exceptions only for "force majeure" or "impossibility of performance." These fines may be reduced, but not eliminated, only if groups submit to a strict regimen of state registration and reporting.

4. Although the amended law includes a \$1,000 annual limit on the aggregate fines that may be assessed against an organization and its affiliate organizations, the law fails to define to whom the \$1,000 annual limit applies. Because, as defendant Browning has acknowledged, the statutory language is unclear, each individual and related entity working with plaintiffs on a voter registration drive could be, and must assume that it is, at risk of incurring up to \$1,000 in fines annually for their First Amendment activity. The law does not give sufficient notice to plaintiffs and others as to how its penalties will be enforced; it prevents plaintiffs and others from determining their financial exposure; it leaves open the possibility of arbitrary enforcement; and it thereby chills plaintiffs' speech and association.

5. The League and the union plaintiffs cannot afford to expose individual voter registration volunteers to \$1,000 in fines; nor can they afford the cumulative fines if each of their related entities is liable for up to \$1,000 in annual fines. The League of Women Voters has 25 separately incorporated local chapters, plus two member-at-large units, making it potentially liable for at least \$28,000 a year, in addition to potential fines for each of its member volunteers; the Florida AFL-CIO (the "**AFL-CIO**") has 450 separately incorporated locals, making it potentially liable for up to \$451,000 a year, in addition to potential fines for each of its member volunteers; and the American Federation of State, County and Municipal Employees, Council 79 ("**AFSCME**" or "**Council 79**") has 90 separately chartered local unions, making it potentially liable for up to \$91,000 a year, in addition to potential fines for each of its member volunteers.

6. Because the amended law imposes substantial fines for even minor errors and, with extremely limited exceptions, innocent mistakes, it creates enormous financial risk for voter registration drives in Florida. Individuals and groups with low incomes and modest budgets simply cannot afford the costs of engaging in such political speech and association.

7. In the face of the uncertainty of their exposure and the potential for enormous fines, plaintiffs have called a halt to their voter registration drives—yet again—until the law is enjoined or clarified so as to substantially reduce their risk.

8. Unless the challenged law is enjoined, constitutionally protected political speech and activity will be chilled. Plaintiffs, as well as many other individuals and groups, will be forced to communicate fewer political messages and to refrain from engaging in associational activity important to advancing their missions and beliefs. The public will receive less information about current political issues and have fewer opportunities to associate with plaintiffs in meaningful political activities.

9. Moreover, unless the challenged law is enjoined, a significant number of Florida citizens, including plaintiffs' members, will not be registered to vote in the upcoming elections. This harm will fall disproportionately on senior citizens, people with disabilities, members of rural, low-income, and predominantly minority communities, and others who rely on plaintiffs and similar groups to help them overcome barriers to registering to vote and to participating in the political process. In 2004, Florida ranked 39th or 40th in the nation in terms of voter registration rates, according to U.S. government data sources; at that time, between 70 and 75 percent of Florida citizens were registered to vote. In November 2006, according U.S. Census Bureau figures, only around 65 percent of Florida's voting-age citizens were registered to vote. The amended law will exacerbate this problem by preventing civic-minded organizations from increasing voter registration and participation.

10. Nothing justifies the burdens imposed by the amended law. Voter registration groups have enabled hundreds of thousands of Floridians to exercise their fundamental right to vote. Moreover, as this Court previously found, and as Florida's voter files show, Florida's voter

registration groups neither hoard voter registration applications nor affect the rate at which those applications are submitted to election officials.

11. For these reasons, plaintiffs respectfully request that the Court declare the challenged law unconstitutional under the First and Fourteenth Amendments, enjoin defendants from enforcing it, and award such other relief as the Court deems just and proper.

JURISDICTION AND VENUE

12. This Court has jurisdiction of the subject matter of this action under 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), 1367(a), 2201, and 2202, and 42 U.S.C. § 1983.

13. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b), on the ground that a substantial part of the events or omissions giving rise to the claims alleged herein occurred, and will continue to occur, in this district.

PARTIES

I. PLAINTIFFS

14. Plaintiffs are private groups (the “**organizational plaintiffs**”) and an individual member of the League of Women Voters (the “**member plaintiff**”) who are engaged in the political process and want to engage other people by registering them to vote. Plaintiffs wish to conduct voter registration drives because those drives are a uniquely effective way to communicate political messages important to plaintiffs’ organizational missions and individual beliefs, and to associate with fellow citizens—including members of plaintiffs’ organizations—to advance those missions and beliefs.

A. Organizational Plaintiffs

1. League of Women Voters

15. Plaintiff League of Women Voters of Florida is the Florida affiliate of the national League of Women Voters (the “**national League**”). The League is a nonpartisan, not-for-profit corporation organized under the laws of Florida, and a tax-exempt charity pursuant to section 501(c)(4) of the Internal Revenue Code. Its mission is to promote political responsibility by encouraging informed and active participation in government, including by registering citizens to vote and influencing public policy through education and advocacy. The League has over 2,800 members in Florida.

16. The national League has conducted voter registration nationwide since 1920, and the League has conducted voter registration in Florida since before 1939. In the past, the League has conducted voter registration drives through the auspices of 25 local Leagues and two member-at-large units located in cities and counties throughout Florida, including Miami-Dade County. Local Leagues and individual League members sometimes do voter registration on their own initiative, without other League members’ assistance, collecting and submitting forms on their own.

17. The League has imposed a moratorium on its voter registration activities because the League, its members, and its volunteers cannot afford to risk paying the severe fines threatened by the vaguely worded amended law. This moratorium will last until the challenged law is enjoined or clarified in such a way as to substantially reduce the financial risk to the League, its members, and volunteers.

18. This is the first time in the League’s seventy-year history that the organization will cease to register voters in a presidential election year. The only other time the League has

ceased to register voters was in 2006 in response to the passage of the earlier version of the challenged law.

2. AFL-CIO

19. Plaintiff Florida AFL-CIO is a voluntary association of unions in Florida. It comprises approximately 450 local unions throughout the state and represents more than 500,000 active and retired Florida workers living in the state. Its mission is to improve the lives of working families. It accomplishes that mission by, among other things, encouraging workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of their local, state and national communities.

20. Each of the local unions in the AFL-CIO's federation is autonomous and is governed by its own internal structures. Each local union is also part of an international union, which is not subject to the command and control of the AFL-CIO.

21. The AFL-CIO typically helps its local unions to conduct nonpartisan voter registration drives each year in an effort to increase by 10% the number of its members registered to vote.

22. The AFL-CIO has suspended its voter registration drives this year because of the risk of serious fines to the organization and its members under the challenged law. It is likely to continue to refrain from engaging in voter registration if it is unable to reduce its risk exposure.

3. AFSCME

23. Plaintiff AFSCME is the Florida council of AFSCME International. Council 79 is a separately incorporated nonprofit 501(c)(5) organization. Council 79 is comprised of more than 90 local unions, representing over 250,000 public employees throughout the state. A central function of AFSCME is to engage in collective bargaining with state and local governments on

behalf of its members. The power and political clout that AFSCME exercises during such bargaining derives in large measure from the significant voting bloc that AFSCME members represent in state and local elections. Consequently, registering its members to vote is a key part of AFSCME's mission and organizing strategy.

24. AFSCME typically assists its local unions to register their members to vote. Its local unions have also engaged in voter registration without participation from AFSCME.

25. Because of the risk of serious fines to the organization and its members under the vaguely worded challenged law, AFSCME has suspended its planning efforts for voter registration drives this year and does not know whether it will be able to engage in voter registration drives under the amended law.

B. Member Plaintiff

26. Marilyn Wills is a Florida resident who has been a member of the Tallahassee League of Women Voters for about thirty years. She is currently on the board of directors of the Tallahassee League and a vice president of the state League. She has been registering voters since she joined the League no later than the early 1970's. In the past, she registered voters with the Tallahassee League at the mall, at the city's Fourth of July celebrations, and at the Tallahassee Saturday downtown market. She did not, however, register voters in 2006 before the injunction was issued, and she will not register voters after the amended law goes into effect because she is afraid that she will be personally subject to serious fines.

II. DEFENDANTS

27. Defendant Kurt S. Browning is the Secretary of State for the State of Florida. He is Florida's chief elections officer. Fla. Stat. § 97.012. His responsibilities include “[o]btain[ing] and maintain[ing] uniformity in the interpretation and implementation of the

election laws” and “[p]rovid[ing] uniform standards for the proper and equitable implementation of the registration laws.” *Id.* Defendant Browning has designated defendant Donald L. Palmer as Director of the Division of Elections of the Florida Department of State.

28. Defendant Donald L. Palmer is the Director of the Division of Elections. The challenged law provides the Division of Elections with authority to investigate violations of the law, assess civil fines under the law, enforce the fines through legal proceedings, and adopt rules to administer the law, among other things. Fla. Stat. § 95.0575(4).

29. Defendants are authorized and required by Florida law to interpret and enforce the challenged law.

FACTS

I. VOTER REGISTRATION IN FLORIDA

30. Voter registration in Florida, like that in other states, is conducted by a variety of government offices, individual citizens, and private groups. Federal and state law require Florida election officials to provide voter registration applications by mail and at the following locations: Department of Highway Safety and Motor Vehicles offices, armed forces recruitment offices, qualifying educational institutions, public assistance offices, public libraries, agencies that serve persons with disabilities, centers for independent living, and supervisors of elections offices.

31. According to data provided by the U.S. Census Bureau’s *Current Population Survey* for November 2006, approximately 7,865,500 Florida citizens were registered to vote as of November 2006, out of a voting eligible population of 12,098,000. Overall, 65% of voting eligible citizens in Florida were registered, down from 72% in 2004. White citizens were registered at significantly higher rates than black and Latino citizens: the rates were 68% for whites, 59% for blacks, and 56% for Latinos. There were also significant disparities in

registration rates by income: only 60% of those earning less than \$25,000 a year were registered, as compared to 79% of those earning over \$100,000. Young people were also disproportionately not registered; only 45% of those under 30 were registered. *See Project Vote, Florida Votes: Civic Engagement in the Sunshine State 2002-2006.*

A. Voter Registration Drives and Political Speech and Association

32. For plaintiffs and other individuals and groups, voter registration is a uniquely effective means to communicate political messages and to associate with fellow citizens to effect political change.

33. Plaintiffs have conducted, and would like to continue conducting, nonpartisan voter registration drives not only to strengthen American democracy, expand the franchise, and promote civic participation generally, but also to: (i) increase the political power of certain communities or groups in Florida, such as union members in the case of the AFL-CIO and AFSCME; (ii) inform other citizens about their views on social and political issues and engage other citizens in discussions about those issues, including issues presented on election ballots; and (iii) urge other citizens to associate with plaintiffs by registering to vote and engaging in meaningful collective action to advance shared political objectives.

34. When plaintiffs conduct these drives, they inevitably engage in interactive speech concerning political change with the citizens they are trying to register. Asking individuals if they would like to register to vote inevitably sparks conversations about the importance of voting, of civic engagement more generally, and of social and political issues of import to the voter.

35. The collective action that plaintiffs promote through voter registration and related activities takes a variety of forms, each of which is protected by the First Amendment. It

includes citizens joining together to register to vote and cast ballots for candidates based not on party affiliation but rather on candidates' support for certain issues. Additionally, it includes citizens joining together to register to vote and sign ballot initiative petitions in support of a state constitutional amendment (which only registered voters may do under Florida law) and to then vote for the amendment. It also includes citizens joining together to register to vote and then contacting elected officials in an effort to convince those officials to support certain policies.

36. Each year, in order to advance these First Amendment objectives, plaintiffs persuade thousands of Florida citizens to register to vote. They do so almost exclusively by talking to potential voters in face-to-face interactions in diverse communities across the state. These conversations occur at community events, religious services, workplaces, schools, malls, bus stops, and other places where citizens congregate. They also occur on citizens' front porches and in their living rooms, when plaintiffs and others like them send members, volunteers, and employees door-to-door to register voters in residential communities.

37. Plaintiffs' success in registering new voters depends not only on their ability to persuade others of the importance of registering to vote. It also depends on their ability to assist others to properly fill in applications, to collect the applications, to deliver them to the appropriate state offices, and, in some cases, to follow up and ensure that the state properly adds the new voters to the rolls. Merely distributing voter registration applications is insufficient to ensure the success of a voter registration drive. When plaintiffs merely distribute applications to members of the public, citizens are far less likely to properly complete the applications and deliver them to a supervisor of elections.

B. Third-party Groups and Individuals Register Significant Numbers of Florida Voters

38. Third-party voter registration drives register significant numbers of citizens to vote in Florida. Indeed, a substantial percentage of registered voters in Florida have been registered by plaintiffs and other groups.

39. According to the U.S. Census's Current Population Survey for the November 2004 election, at least 750,000 voters, representing over 9% of all registered voters, were registered through third-party voter registration drives in Florida. Those numbers are higher for certain communities: as of 2004 in Florida, 17% of black voters, almost 19% of Hispanic voters, and 22% of voters from Spanish-speaking households were registered through voter registration drives. The percentage of Florida citizens who registered through third-party voter registration drives has risen substantially in recent years.

40. On information and belief, more than 524,000 Florida citizens were registered to vote in 2004 by one coalition of non-profit groups that conducted nonpartisan voter registration activities in Florida. *See* The Center for Civic Participation, Florida-Workspace, <http://ccp2.greenriver.org/states/FL/workspace.html> (last visited Apr. 27, 2008).

41. In addition, according to Florida Division of Elections statistics, the state received 1,202,036 voter registration applications from organized voter registration drives and in-person registrations at the offices of supervisors of elections in 2004. Div. of Elections, Fla. Dep't of State, Voter Registration Statistics, New Registration by Method and Location of Registration, *available at* <http://election.dos.state.fl.us/voterreg/sources> (last visited Apr. 27, 2008). This figure represents 42% of the total applications received by Florida election officials for the 2004 general election, the remainder having been received by mail and at various other government offices. This is more than double the percentage of voters who registered with third-parties or

in-person than in any other presidential election year (26% registered by these methods in 2000 and 28% did so in 1996) and reflects, in significant part, the recent successes of third-party voter registration efforts. Moreover, in 2006, a year in which third-party voter registration efforts were curtailed due to the earlier version of this law, only 20% of new voters registered with third-parties or in-person—the lowest percentage of voters registered by this method in a state-wide election year.

42. Florida citizens who live in predominantly low-income communities rely more heavily on plaintiffs' voter registration activities than do members of more affluent communities. These citizens will be disproportionately harmed by the burdens the new law imposes on plaintiffs. Nationwide, those with annual incomes of less than \$10,000 are more likely to have been registered through a voter registration drive, with over 10% registering through that method. U.S. Census Bureau, *Current Population Survey*, November 2004. In Florida, that number was 14% for the November 2004 election. The rates in recent years are even higher.

43. Voter registration rates for low-income citizens, who are disproportionately people of color, are dramatically lower than the rates for more affluent citizens. According to a recent report by the United States Census Bureau, “[c]itizens with higher incomes were more likely to register and to vote. The voting rate among citizens living in families with annual incomes of \$50,000 or more was 77 percent, compared with 48 percent for citizens living in families with incomes under \$20,000.” See U.S. Census Bureau, *Voting and Registration in the Election of November 2004* (Mar. 2006), available at <http://www.census.gov/prod/2006pubs/p20-556.pdf>.

44. This disparity arises, in part, because low-income citizens change addresses more frequently, visit state motor vehicles offices less frequently (where many other Florida citizens

register to vote), have lower literacy rates, less internet access (and thus less ability to register to vote on-line), and are more dependent on public transportation (which makes it more difficult to travel to register at a local supervisor of elections' office).

45. Plaintiffs' efforts to register these and other voters in prior years, and their desire to register voters in future years, are consistent with the goals of the federal National Voter Registration Act of 1993 ("NVRA"). The NVRA was enacted by Congress to "increase the number of eligible citizens who register to vote in elections for Federal office," 42 U.S.C. § 1973gg(b)(1), and the Eleventh Circuit has recognized that it impliedly encourages private voter registration drives like those conducted by plaintiffs. *See Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1353 (11th Cir. 2005).

46. Plaintiffs' efforts are also consistent with the purposes of the Florida Voter Registration Act. *See Fla. Stat. § 97.052(b)(2)* (requiring the Department of State to provide copies of voter registration applications to "[i]ndividuals or groups conducting voter registration programs"); *id.* § 97.053(1) (requiring certain state offices to accept voter registration applications hand-delivered by "a third party during the hours that office is open").

47. Plaintiffs' prior voter registration efforts, along with similar efforts by other individuals and private groups, have resulted in a significant expansion of the franchise in Florida and a strengthening of the state's and the nation's democracy. The success of these efforts underscores the harm imposed by the challenged law not only to plaintiffs' constitutional rights but also to the public interest. On information and belief, Florida is one of only three states that impose civil fines on group and individuals for each form they fail to submit within an arbitrary deadline and one of only nine that impose any penalties on such behavior.

II. THE CHALLENGED LAW

48. The challenged law, 2007 Fla. Laws 30, §§ 1, 2 (codified at Fla. Stat. §§ 97.021(36), 97.0575), an act relating to elections and containing amendments to the Florida Voter Registration Act, is an amended version of 2005 Fla. Laws 277 §§ 2, 7, which plaintiffs previously challenged in this Court.

A. Procedural Background

49. The original version of the challenged law, 2005 Fla. Laws 277 §§ 2, 7 (codified at Fla. Stat. §§ 97.021(36), 97.0575), went into effect on January 1, 2006. The Secretary of State issued a proposed rule implementing the law on or about February 21, 2006 and held a public hearing on that rule on March 13, 2006, but never issued a final rule.

50. Plaintiffs and others filed an action challenging the prior version of the law on May 18, 2006. *League of Women Voters v. Browning*, No. Civ. 06-21265 (S.D. Fla.). In that action, plaintiffs complained that the law unconstitutionally burdened the speech and association intrinsic to their voter registration drives and thus violated the First Amendment. Because the law had forced them to shut down or dramatically scale back their voter registration drives, plaintiffs moved for a preliminary injunction to enjoin its enforcement.

51. After extensive briefing and three days of testimony and argument on the motion, this Court granted plaintiffs' motion for a preliminary injunction and denied defendants' motion to dismiss in part in an opinion dated August 28, 2006. This Court rejected defendants' argument that a law that regulates the collection and submission of voter registration forms in a manner that reduces accompanying speech and association does not implicate the First Amendment. This Court found that the law burdened plaintiffs' First Amendment activity, which was intertwined with their voter registration drives, and caused them to reduce their

speech and association. Several features of the law were responsible for this effect, including its onerous fines, its arbitrary deadlines, and its strict and joint and several liability. Taken as a whole, the law made it extremely risky to engage in voter registration because it threatened expensive fines for both groups and individuals that do so. This Court also found that the law unconstitutionally discriminated in favor of political parties by exempting them from its reach. Finally, this Court found that the burdens the law imposed were not justified by the state's alleged interests. In doing so, the Court found that there was no significant problem in Florida of nonpartisan voter registration groups submitting voter registration forms in an untimely fashion, and that the defendants had not shown that the existing criminal penalties were insufficient to address concerns about misconduct or fraud, among other things.

52. On August 28, 2006, defendants appealed the grant of the preliminary injunction under 28 U.S.C. § 1292(a)(1).

53. After the appeal was briefed, on May 21, 2007, Florida enacted amendments to the original version of the challenged law. The amendments were scheduled to go into effect on January 1, 2008.

54. After the parties agreed that the amendment to the challenged law would moot defendants' appeal once the amended law went into effect (on January 1, 2008 or after pre-clearance of the law by the Department of Justice, whichever came later), the Eleventh Circuit cancelled oral argument.

55. On November 29, 2007, plaintiffs and defendants in the original actions entered into a standstill agreement in which defendants agreed not to enforce the amended version of the law and plaintiffs agreed not to press forward with their litigation in this Court.

56. On January 22, 2008, the Justice Department pre-cleared the amended version of the challenged law under Section 5 of the Voting Rights Act.

57. On February 19, 2008, the Eleventh Circuit Court of Appeals dismissed defendants' appeal of the preliminary injunction as moot.

58. The standstill agreement remained in force, preventing the law from being enforced, until defendants elected to terminate the agreement on March 31, 2008. Under the terms of the standstill agreement, defendants can begin enforcing the amended law against voter registration groups on April 30, 2008, unless the law is enjoined.

B. Tight Deadlines, Heavy Fines, and Strict Liability Left Virtually Unchanged From Prior Unconstitutional Law

59. The law as amended leaves in place the essential features of the prior version of the law that interfered with plaintiffs' voter registration drives—escalating fines for failing to meet arbitrary deadlines, nearly strict liability for those fines, and the risk of significant fines for individual volunteers and employees of plaintiffs' voter registration drives.

60. The amended law continues to impose heavy fines on third-party voter registration organizations who do not submit applications they collect within an unnecessarily restrictive ten-day deadline or within the other periods prescribed by the law.

61. In particular, the amended law imposes the following mandatory fines on third-party voter registration organizations:

(a) A fine in the amount of \$50 for each application received by the division or the supervisor of elections more than 10 days after the applicant delivered the completed voter registration application to the third-party voter registration organization or any person, entity, or agent acting on its behalf. A fine in the amount of \$250 for each application received if the third-party registration organization or person, entity, or agency acting on its behalf acted willfully.

(b) A fine in the amount of \$100 for each application collected by a third-party voter registration organization or any person, entity, or agent acting on its behalf, prior to book closing for any given election for federal or state office and received by the division or the supervisor of elections after the book closing deadline for such election. A fine in the amount of \$500 for each application received if the third-party registration organization or person, entity, or agency acting on its behalf acted willfully.

(c) A fine in the amount of \$500 for each application collected by a third-party voter registration organization or any person, entity, or agent acting on its behalf, which is not submitted to the division or supervisor of elections. A fine in the amount of \$ 1,000 for any application not submitted if the third-party registration organization or person, entity, or agency acting on its behalf acted willfully....

Fla. Stat. § 97.0575(3).

62. The challenged law imposes these fines on a near-strict liability basis with respect to each voter registration application. If a third-party voter registration organization does not deliver a voter registration application to the state within the manner prescribed by the law, the Division of Elections must impose fines. Fla. Stat. § 97.0575(3). The only exception the law provides is that the “secretary shall waive the fines . . . upon a showing that the failure to deliver the voter registration application promptly is based upon force majeure or impossibility of performance.”

63. Section 2 of the law reduces by three-fourths any fines imposed on a third-party voter registration organization that has pre-registered with the state and timely submitted quarterly reports disclosing their prior voter registration activities. *Id.* § 95.0575(1). This fine reduction is not available if a third-party voter registration organization has not submitted a timely quarterly report.

64. The challenged law purports to include a \$1,000 cap on fines per calendar year for each covered voter registration organization. The statute provides:

The aggregate fine pursuant to this subsection which may be assessed against a third-party voter registration organization, including affiliate organizations, for violations committed in a calendar year shall be \$1,000.

Fla. Stat. § 97.0575(3).

65. The statute does not define “affiliated organization.”

66. The statute defines “third-party voter registration organization” as “any person, entity, or organization soliciting or collecting voter registration applications.” Fla. Stat. § 97.021(36). The only individuals excepted from the statute’s strictures are those who register their parents, children or spouses and those who register voters as part of their work for certain government agencies. *Id.*

C. Vagueness in the Amended Law

67. The amended law is vague in two key respects. First, it fails to make clear when an individual working on a voter registration drive will be held personally liable for up to \$1,000 in fines a year. The statutory requirements apply to each “third-party voter registration organization,” which includes “any *person* ... soliciting or collecting voter registration applications” (emphasis added). But the amended law nowhere makes clear when an individual working on a voter registration drive will be treated as a “third-party voter registration organization” unto him- or herself, individually subject to fines, or when the individual will be treated as part of a larger registration organization that is liable for all fines caused by the individual’s acts or omissions. Nor does the amended law make clear when an individual

working on a voter registration drive run by a group will receive the benefit of the \$1,000 cap on fines for that group.

68. Second, the amended law fails to make clear when an entity that is related to a third-party voter registration organization will be treated as a separate entity and thus potentially liable for an additional \$1,000 in fines. Although the law includes a \$1,000 annual cap on fines for a “third-party voter registration organization” and its “affiliate organizations,” nowhere does the statute define “affiliate organizations” or give any other indication when an organization will be considered “affiliated” with another under the law for the purposes of receiving the benefit of the \$1000 cap in annual fines.

69. On information and belief, defendant Browning has publicly admitted that the amended law is vague and unclear. Specifically, an article that appeared in the New York Times on the day this Complaint was filed states that defendant Browning’s office “acknowledged that the law is vague on whether the cap of \$1,000 would apply to an entire organization, a chapter or individual volunteers.” Damien Cave, *Election Day in Florida May Look Familiar*, N.Y. TIMES, April 28, 2008, at A1.

D. The Proposed Rules and Forms

70. On April 25, 2008, the Department of State published a Notice of Development of Rulemaking with proposed rule text and the following proposed forms for use in the administration of the challenged law: (1) a Third-Party Voter Registration Organization Registration Form; (2) a Quarterly Report Form for Organized Voter Registration Drives by Third-Party Voter Registration; and (3) a Form for Complaint Against Third-Party Voter Registration Organization, for reporting alleged violations of the law. In the notice, the Secretary of State scheduled a Rule Development Workshop for Monday, May 12, 2008.

71. The proposed rule and forms do nothing to clarify or ameliorate the vague provisions of the amended law, nor do the proposed rule and forms lessen the burdens imposed by the amended law.

72. To the contrary, the proposed rule and forms reinforce the vagueness of the applicability of the law to individuals who engage in voter registration activities. For example, the proposed Form for Complaint Against Third-Party Voter Registration Organization indicates that a complaint can be filed against a “person, entity, or organization” but does not clarify which “person, entity, or organization” should be included. If, for example, a complaint is based on an act or omission by plaintiff Marilyn Wills, it is not clear whether the complaint would be lodged against Ms. Wills individually, against the Tallahassee League, against the state League, or against any of the above. Nor is it clear which person or entity would be held liable for her acts or omissions. The proposed complaint form also reinforces fears that plaintiffs could be held liable for errors, acts, or omissions by state officials since the form suggests that a complaint may be based solely on claims that a person submitted a voter registration application to a third-party voter registration organization and then subsequently did not appear on the voter rolls.

73. Were the proposed rule enacted, it would introduce an additional unconstitutional element: the proposed rule requires third-party voter registration organizations to put the name and mailing address of their organization on each form they collect and submit, unless they’ve registered with the state, in which case they can use an identification number. A similar provision forcing disclosure of association on a voter registration form has already been found unconstitutional by one federal court. *Project Vote v. Blackwell*, 455 F.Supp 2d 694, 706-07 (N.D. Ohio 2006).

III. THE LAW'S BURDENSOME IMPACT

A. The Law Chills Plaintiffs' Exercise of Their Constitutional Rights

74. Each of the organizational and member plaintiffs has restricted its speech and association because the vaguely worded challenged law puts plaintiffs and their members or volunteers at serious risk of unreasonably high fines.

1. Strict Liability

75. The challenged law's strict liability provision requires the Division of Elections to fine plaintiffs and other third-party voter registration organizations even when they have acted reasonably and have a valid excuse for not submitting a voter registration application in the manner prescribed by the law. It holds plaintiffs strictly liable for innocent mistakes, a third party's malicious acts (including those of disgruntled employees or political opponents), and potentially the state's mishandling or loss of applications.

76. The law's strict liability makes plaintiffs liable for other people's conduct. It also makes them liable when they have no knowledge that the law has been violated. For example, an organizational plaintiff that exercises all reasonable care in operating a voter registration drive will not always know if a volunteer or employee has not submitted an application within the manner prescribed by law. Conversely, a member plaintiff that exercises all reasonable care in collecting applications and giving them to an organizational plaintiff will not always know if the organization submitted the applications within the manner prescribed by law. In addition, plaintiffs will not always know whether a supervisor of elections or the Division of Elections has properly recorded and processed an application, leaving plaintiffs unfairly exposed to public charges and civil fines for the state's misconduct.

77. The law’s strict liability provisions will not prevent reasonably careful individuals and organizations from making innocent mistakes, and therefore it threatens to penalize plaintiffs merely for registering others to vote.

78. Although the law requires the Secretary of State to waive the fines for situations involving “force majeure or impossibility of performance,” that limited exemption does not appreciably mitigate the harm caused by the law’s strict liability regime. Under Florida law, “force majeure” and “impossibility of performance” cover only extraordinary events, like a hurricane or the destruction of forms by fire. Short of those situations, the law provides no exceptions, even for a third-party voter registration organization that has exercised all reasonable care in collecting and delivering voter registration applications. Like the original version of the law, the amended law requires fines regardless of fault.

2. Severe Fines and Personal and Widespread Liability

79. The fines imposed by the challenged law are severe and threaten to impose massive and potentially ruinous liability on the member and organizational plaintiffs. The law’s respective \$50, \$250, and \$500 fines are multiplied by each voter registration application that is not submitted within the manner prescribed by the law. Government officials charged with the task of registering voters will often make mistakes. While plaintiffs work to train their volunteers, mistakes will nevertheless occur, virtually guaranteeing that each voter registration organization that registers a significant number of voters will be fined the maximum \$1,000. Meanwhile, government officials making similar mistakes will not face the same consequences.

80. Moreover, the vaguely worded statutory language creates a serious risk that each voter registration drive can incur many multiples of the \$1,000 annual fine: one for each individual volunteer, and one for each organization or entity that is related to plaintiffs.

81. The law’s vagueness with respect to “affiliate organizations” puts plaintiffs at risk for astronomically high fines. If, for instance, the local chapters of the League of Women Voters—which are all separately incorporated—are not considered “affiliate organizations” of the state League, the Leagues could face as much as \$28,000 in fines annually, almost a third of the state League’s yearly budget.

82. The AFL-CIO works with more than 450 local unions to register voters that are all separately governed and have total autonomy from the AFL-CIO. Each of these unions is a local union part of a separate international union, which in turn is a member of AFL-CIO International. If those locals are not considered “affiliate organizations” of the state AFL-CIO, they could collectively face \$451,000 in annual fines, dwarfing the AFL’s annual budget for program expenses. Moreover, local unions, whose annual budgets are typically less than \$1,000, may have to stop registration of their members entirely. AFSCME faces similar concerns.

83. The organizational plaintiffs are each non-profit organizations with limited budgets. They cannot afford to risk such severe fines, which would drain a substantial portion of their finances, if not bankrupt them.

84. The law’s vagueness with respect to individual liability will have a similar chilling effect on plaintiffs and others. If individual members, volunteers, or employees of plaintiffs are treated as separate voter registration organizations under the law, those individuals may face personal liability of up to \$1,000 per year for exercising their rights to speech and association.

85. This risk of personal financial liability has also deterred individuals from registering voters, including Marilyn Wills. Ms. Wills is concerned about her liability both

when registering voters independently and when doing so as part of a third-party voter registration organization.

86. The law's chilling effect on the member plaintiffs and on the organizational plaintiffs' other members, volunteers, and employees, has harmed the organizational plaintiffs by deterring the number of people willing to register voters on their behalf. Consequently, it has reduced the organizational plaintiffs' capacity to engage in First Amendment-protected speech and activity.

**B. The Law Burdens Certain Plaintiffs'
Constitutional Rights to Speech and Association**

87. Regardless of how the law is interpreted, it will act as an unconstitutional burden on the League's speech and association.

88. If the law allows up to \$1,000 in fines to be assessed against each local League, the League would overall be subject to up to \$28,000 in fines annually. Those fines would be imposed on the basis of failure to meet its tight deadlines, including a ten-day deadline totally unjustified by any state interest. These fines can be imposed even when the League or other third-party voter registrations have acted reasonably and has a valid excuse for not submitting a voter registration application in the manner prescribed by the law. The League would be held strictly liable for innocent mistakes.

89. If the law were interpreted to treat individual League members as "third-party voter registration organizations," individual League members could also be liable for up to \$1,000 in fines annually per person. Many League members, some of whom are retired and live on a fixed income, could simply not afford such fines and would have to cease registering voters.

If the League were to be held responsible for these fines, with 2,800 members it could potentially face a liability of up to \$2,800,000.

90. Even if the law were clarified to allow only \$1,000 in fines per year against the League of Women Voters, its local Leagues, and its volunteers in total, it would still amount to an annual tax on speech and association, a fee the League must pay simply for the privilege of engaging in political activity.

91. Even if the League takes all reasonable care in conducting their voter registration drives, it is still likely to incur fines for the untimely delivery of forms under the amended law.

92. As a result of these potential burdens, the League has decided again to take the necessary step of ceasing all voter registration in the state of Florida.

93. Because these fines are not justified by any state interest, it unconstitutionally burdens plaintiffs' First and Fourteenth Amendment rights to speech and association.

IV. IMPACT OF THE LAW ON EACH ORGANIZATIONAL PLAINTIFF

A. League of Women Voters

94. The challenged law has forced the board of directors of the League of Women Voters to impose a moratorium on voter registration activities sponsored by the 25 local Leagues and two member-at-large units in Florida. The League typically works with its local Leagues to conduct voter registration drives throughout the year, with increased activity in the summer and fall months immediately prior to voter registration deadlines for fall primary and general elections.

95. The League has imposed a moratorium on its voter registration activities because the League, its members, and its volunteers cannot afford to risk paying the severe fines threatened by the vaguely worded amended law. This moratorium will last until the challenged

law is enjoined or clarified in such a way as to substantially reduce the financial risk to the League, its members, and volunteers.

96. The League cannot afford the of risk exposing each of its volunteers and members who participate in its voter registration drives to \$1,000 in fines, nor can the League afford cumulative fines of tens or hundreds of thousands of dollars if each of its local Leagues and member-at-large units and its individual members is liable for up to \$1,000 in annual fines.

97. The state League's budget is approximately \$86,000 for fiscal year 2007-2008 and approximately \$81,000 for fiscal year 2008-2009. These funds are already dedicated to paying staff salaries, office expenses, and the costs of the League's voter registration activities, educational programs, and publications. The League cannot afford to risk potential liability of up to \$27,000 a year, in addition to potential fines for each of its member volunteers, which could threaten the viability of its operations.

98. The budgets of the local Leagues are similarly modest, ranging from \$1,000 to \$12,000, and cannot withstand \$1,000 in fines.

99. Moreover, the League cannot afford to indemnify itself and its members, volunteers, and employees, against liability for the threatened fines.

100. The League cannot afford to hire additional staff to supervise more closely the activities of its 27 local chapters and member-at-large units in order to eliminate or reduce the risk that the League would be fined for missing a 10-day deadline or any of the other deadlines, either by honest mistake or otherwise through no fault of its own.

101. Some League members who registered voters in previous years, and who would like to register voters in 2008, have been forced by the challenged law to refrain from participating in the League's voter registration activities out of fear of personal financial liability.

This has reduced the amount of First Amendment-protected speech and activity the League can engage in.

102. The League has also determined that it cannot register with the state and provide quarterly reports under the new law because it does not have sufficient staff and resources, nor can it impose the burden on its member volunteers, to collect and compile the detailed information from each of the 27 local Leagues and member-at-large units about every voter registration drive in order to report on a quarterly basis to the Division of Elections.

B. AFL-CIO

103. The AFL-CIO has traditionally conducted voter registration drives among its members by helping its local unions to conduct non-partisan voter registration drives. These drives are intended to increase by at least 10% each year the number of its members who are registered to vote. Over the past five years, the percentage of the members of unions affiliated with the AFL-CIO that are registered to vote has increased from 40% to 65%.

104. Under the new law, the AFL-CIO does not know whether the local unions that are part of its federation, and with which the AFL-CIO works to register voters, will be considered “affiliate organizations” and thus subject to up to \$450,000 in potential fines.

105. The law’s vague and ambiguous statutory language also creates a serious risk that the AFL-CIO could be liable for up to \$1,000 in fines each year imposed upon each of its member volunteers who works on one of its voter registration drives and does not comply with the law’s requirements.

106. Because of the risk of enormous fines under the vaguely worded law, the AFL-CIO has suspended its voter registration operations for this year and will likely continue to refrain from engaging in voter registration drives if it is unable to reduce its risk exposure.

C. AFSCME

107. AFSCME's voter registration activities have primarily focused on registering AFSCME's members. AFSCME seeks to ensure that between 75% and 85% of the members of its bargaining unit are registered to vote.

108. In past years, AFSCME has engaged in extensive member-to-member voter registration drives to try to meet this goal. Using data files of unregistered members, the Florida Council focuses its registration efforts on members in particular local unions and regions of the state. The Council trains local volunteers, who are dues-paying members of AFSCME, in the legal and technical rules of voter registration and advises them on transmitting the message to their fellow workers that voting is a key way to have a voice in the workplace.

109. Once volunteers are trained, AFSCME allows them significant autonomy in doing voter registration. Typically, however, volunteers target unregistered members in one-on-one visits at work sites. They regularly submit completed applications to election supervisors and send copies to AFSCME to ensure accurate records of the registration status of its members and to follow-up with election officials.

110. Although AFSCME helps its local unions to register their members to vote, AFSCME is unsure whether its local unions will be considered "affiliate organizations" under the law and thus subject to up to \$91,000 in potential fines..

111. The law's vague and ambiguous statutory language also creates a serious risk that up to \$1,000 in fines each year could be imposed upon each of its member volunteers who works on one of its voter registration drives and does not comply with the law's requirements. AFSCME could not afford to indemnify each of its member volunteers.

112. As a result of the new law, AFSCME has suspended its planning efforts for voter registration drives this year and does not know whether it will be able to engage in voter registration drives.

**V. THE CHALLENGED LAW DOES NOT SERVE
A COMPELLING OR LEGITIMATE STATE INTEREST**

113. There is no legitimate, much less compelling, state interest in restricting the voter registration and related speech and associational activities of plaintiffs and other third-party voter registration organizations in the manner provided in 2007 Fla. Laws 30. The new law burdens far more speech and associational activity than is necessary to accomplish any legitimate government interest.

114. The challenged law is not necessary to address voter registration fraud or misconduct. Section 76 of 2005 Fla. Laws 277 separately imposes criminal penalties on persons who “knowingly destroy, mutilate, or deface a voter registration form or election ballot or *obstruct or delay the delivery of a voter registration form or election ballot.*” Fla. Stat. § 104.0615(4) (emphases added). A person who violates this section commits a felony of the third degree, *id.* § 104.0615(5), and may be punished by up to five years in jail, a \$5,000 fine, or both. *Id.* §§ 775.082(3)(d), 775.083(1)(d).

115. There is no significant problem in Florida of voter registration groups submitting voter registration forms in an untimely fashion. Nor is there a problem of voter registration drives hoarding voter registration applications. To the contrary, in 2004, voter registration groups increased the total number of voter registration applications submitted, but they continued to submit those applications at the same rate at which the lesser number of applications were submitted in years prior, when there was less third party voter registration activity.

CAUSES OF ACTION

COUNT I

Violation of the First and Fourteenth Amendments
(Void for Vagueness)

116. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 115 as if fully set forth herein.

117. The amended law, in failing to define the liability of individuals and the status of “affiliate organizations” is unconstitutionally vague.

118. The law does not give fair notice of the liability plaintiffs and others risk by conducting voter registration drives.

119. The law gives too much discretion to state officials and thus risks arbitrary or discriminatory enforcement against disfavored groups.

120. The law chills plaintiffs and others in the exercise of their freedom of speech.

121. By reason of the foregoing, defendants, acting under color of state law, have deprived and will deprive plaintiffs of the rights, privileges, and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution and protected by 42 U.S.C. § 1983.

COUNT II

Violation of the First and Fourteenth Amendments **(Burden on Speech; Asserted by Plaintiffs League of Women Voters and Marilyn Wills Only)**

122. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 115 as if fully set forth herein.

123. The amended law unconstitutionally burdens the speech and association that are intertwined with the plaintiffs' voter registration drives, threatening plaintiffs' with debilitating fines.

124. The law's strict liability and arbitrary time limits will result in the League having to pay a fee for the privilege of engaging in protected speech and association. No governmental interest compels or even legitimates such a penalty.

125. The law chills plaintiffs and others in the exercise of their freedom of speech.

126. By reason of the foregoing, defendants, acting under color of state law, have deprived and will deprive plaintiff League of Women Voters of the rights, privileges, and immunities secured to it by the First and Fourteenth Amendments to the United States Constitution and protected by 42 U.S.C. § 1983.

COUNT III

Violation of the First and Fourteenth Amendments **(Burden on the Rights to Vote and to Participate in the Political Process)**

127. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 115 as if fully set forth herein.

128. The First and Fourteenth Amendments protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process.

129. Plaintiffs AFL-CIO and AFSCME have members who will not be registered to vote absent their voter registration efforts. These members include senior citizens, people with disabilities, and members of rural, low-income, and predominantly minority communities, for whom it is difficult either to travel to a government office to register to vote or to obtain an application on-line.

130. The challenged law will prevent these members from exercising their right to vote and to participate in the political process by forcing third-party groups to stop registering voters or by seriously limiting their voter registration activities.

131. As a result, these members' fundamental right to vote and to participate in the political process is severely burdened by the challenged law.

132. Defendants have no compelling interest that justifies this severe and unequal burden on the fundamental rights of the organizational plaintiffs' members.

133. By reason of the foregoing, defendants, acting under color of state law, have deprived and will deprive plaintiffs of the rights, privileges, and immunities secured to them by

the First and Fourteenth Amendments to the United States Constitution and protected by 42 U.S.C. § 1983.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request this Court to:

(1) enter judgment declaring and determining that the provisions of Fla. Stat. §§ 97.021(36) and 97.0575 regulating the voter registration activities of third-party voter registration organizations, and any rules promulgated by the Department of State and the Division of Elections implementing these provisions, violate the United States Constitution, specifically the First and Fourteenth Amendments thereto, both facially and as applied to plaintiffs;

(2) grant appropriate preliminary, and permanent, equitable relief enjoining defendants from enforcing these provisions of Fla. Stat. §§ 97.021(36) and 97.0575 and any rules promulgated by the Department of State and the Division of Elections implementing these provisions; and

(3) grant such other and further relief as the Court shall deem proper, including the award of costs and disbursements associated with the filing and maintenance of this action, and an award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

Dated: April 28th, 2008

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