

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA**

FLORIDA STATE CONFERENCE OF THE  
NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE  
(NAACP), as an organization and representative  
of its members; *et al.*,

Civil No. 4:07cv402 SPM/WCS

Plaintiffs,

vs.

KURT S. BROWNING, in his official capacity as  
Secretary of State for the State of Florida,

Defendant.

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**PLAINTIFFS' RENEWED MOTION FOR PRELIMINARY INJUNCTION AND  
MOTION FOR SCHEDULING ORDER FOR RESOLUTION OF SAME AND  
INCORPORATED MEMORANDUM OF LAW CONCERNING SCHEDULING**

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Plaintiffs renew their *Motion for Preliminary Injunction* [Doc. 4] to the extent necessary to resolve the remaining constitutional issues therein. Given impending voter registration deadlines in anticipation of the Florida Primary on August 26 and the General Election on November 4, 2008, Plaintiffs also seek an order scheduling expedited supplemental briefing and argument on those remaining constitutional issues. In support of this motion, Plaintiffs state:

1. On September 17, 2007, Plaintiffs filed a nine count complaint alleging that Florida's "no match, no vote" law, Section 97.053(6), Fla. Stat. ("Subsection 6"), violates rights granted to Plaintiffs and their members by, and conflicts with preempting provisions of, the Help America Vote Act of 2002, 42 U.S.C. § 15301 *et seq.*, the Voting Rights Act, 42 U.S.C. §§ 1971(a)(2)(B) and 1973, the National Voter Registration Act, 42 U.S.C. § 1973gg, and the First and Fourteenth Amendments to the United States Constitution. *See* Complaint [Doc. 1].<sup>1</sup>

2. On that same date, Plaintiffs moved for entry of a preliminary injunction on their claims under HAVA (Counts I-III), the materiality provision of the VRA (Count IV), and the Constitution (Counts VII-VIII). [Doc. 4, 5].<sup>2</sup> On October 10, 2007, the Secretary moved to dismiss the Amended Complaint. [Doc. 23]

3. After expedited discovery, the Court heard Plaintiffs' motion for preliminary injunction and the Secretary's motion to dismiss on December 11, 2007. On December 18, 2007, the Court issued two orders: (1) finding that Plaintiffs have standing to prosecute this action [Doc. 106]; and (2) issuing a preliminary injunction, finding that Plaintiffs demonstrated a strong likelihood of success on the merits of their statutory claims that Subsection 6 conflicted with and was preempted by HAVA (Counts, I, III, III) and the materiality provision of the VRA (Count IV) [Doc. 105]. The Court dismissed

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<sup>1</sup> On September 21, 2007, the complaint was amended to add the Southwest Voter Registration and Education Project as a plaintiff. *See* Amended Complaint [Doc. 12].

<sup>2</sup> In part because of the need for additional discovery to prosecute their due process claim (Count IX), Plaintiffs have not moved for preliminary injunctive relief with respect to this claim, which remains to be adjudicated. *See* Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction 11 [Doc. 5].

Plaintiffs' claims that Subsection 6 violated Section Two of the VRA (Count V) and the National Voter Registration Act (Count VI) [Doc. 105].

4. In granting the preliminary injunction, the Court recognized that:
  - i. “as a result of natural and expected human errors in data entry and possible computer glitches in the matching process, [Subsection 6] has **resulted in more than 14,000 otherwise eligible voter being kept off the voter rolls**”;
  - ii. that such “impact [was] **not minimal**”;
  - iii. that such “harm to a disenfranchised voter would be **impossible to repair**”;
  - iv. such disenfranchisement outweighed any concern of voter fraud (particularly given the Secretary’s inability to present any evidence of voter fraud);
  - v. the “**public interest is strongly in favor of ensuring that every eligible person in Florida is guaranteed the right to vote**”

[Doc. 105 at 2, 25-27] (emphasis added).

5. Because the Plaintiffs “demonstrated a likelihood of success on the HAVA and VRA claims,” the Court declined to reach their constitutional arguments (under Counts VII and VIII) on the preliminary injunction motion, *e.g.*, that Subsection 6 will deprive otherwise eligible voters of the fundamental rights secured to them by the First and Fourteenth Amendments of the U.S. Constitution. Recognizing that Plaintiffs’ constitutional “argument[s] may have merit,” [Doc. 105 at 20], however, the Court addressed all of the constitutional claims for the limited purpose of the Secretary’s

motion to dismiss, and concluded that Counts VII, VIII and IX sufficiently stated claims upon which relief could be granted [Doc. 105 at 21-24]. Accordingly, the Court denied the Secretary's motion to dismiss those Counts [Doc. 105 at 21-25].

6. The Secretary filed an expedited appeal of the order on standing and the order granting the preliminary injunction. On April 3, 2008, after expedited briefing and oral argument, the Eleventh Circuit affirmed this Court's order on standing, yet reversed the order granting preliminary injunction on the grounds of statutory preemption. As in the District Court, the Eleventh Circuit did not reach the constitutional issues raised vis-à-vis Counts VII and VIII; accordingly, Plaintiffs' motion for preliminary injunction remains pending with respect to those claims.

7. Although the Secretary has recently stated publicly that "operation of [Subsection 6] will not immediately resume" in light of the Eleventh Circuit's ruling [*see* Press Release dated 4/7/08, available at: <http://oss.dos.state.fl.us/communications/press-releases/2008-04-07.cfm>], it remains unclear when the Secretary will begin enforcing the statute again in the absence of the injunction once the Eleventh Circuit's mandate is issued.

8. While significant constitutional issues remain to be decided in this case, two important voter registration deadlines loom: July 28, 2008, the registration book closing deadline for Florida's Primary Election, and October 6, 2008, the registration book closing deadline for the General Election, which includes the Presidential election.

9. As this Court has recognized, there is large spike in voter registrations experienced immediately before a Presidential election [Doc. 105 at 25]. Thus, Plaintiffs believe that expeditious resolution of the constitutional issues that remain pending on the

motion for preliminary injunction is in the best interest of justice, the parties in interest (including voter applicants intending to register for those elections), and the 67 county supervisors of elections (who must conduct the upcoming elections free from doubt as to the application of Subsection 6).

10. Accordingly, Plaintiffs' hereby renew their *Motion for Preliminary Injunction* [Doc. 4] to the extent necessary to resolve the unaddressed constitutional issues raised by Counts VII and VIII. *See, e.g., Transamerica Leasing, Inc. v. Institute of London Underwriters*, 430 F.3d 1326 (11th Cir. 2005) (trial court is free to address on remand, as a matter of first impression, those issues not disposed of on appeal); *see also Pharmaceutical Research and Mfrs. of America v. Walsh*, 538 U.S. 644, 671, 123 S.Ct. 1855 (2003) (discussing possibility of renewed motion after injunction based upon preemption was reversed); *Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522, 1524 (11th Cir. 1996) (discussing renewed motion for preliminary injunction after appeal).

11. Due to the above, and because the Court has broad discretion under Fed. R. Civ. P. 16 to schedule and efficiently adjudicate matters, Plaintiffs seek an order setting an expedited briefing and hearing schedule to timely resolve the constitutional issues raised in Counts VII and VIII that remain on Plaintiffs' motion for preliminary injunction.

12. Plaintiffs request that the hearing be set for no later than thirty (30) days from the date of the order on this motion, or as soon thereafter as the Court's schedule allows.

13. Because the parties have previously addressed the constitutional issues to some extent and in order to order to accommodate expedited scheduling and resolution,

Plaintiffs request simultaneous submissions of supplemental memoranda of law by the parties fifteen (15) days prior to the hearing and that such memoranda not exceed fifteen (15) pages each.

14. In the alternative, the following briefing schedule is suggested:
  - i. Plaintiffs shall file and serve their supplemental memorandum of law on the constitutional issues raised in Counts VII and VIII twenty (20) days prior to the hearing and that said memorandum shall not exceed fifteen (15) pages;
  - ii. Defendant shall file and serve his opposing memorandum on the remaining constitutional issues raised in Counts VII and VIII ten (10) days prior to the hearing and that said memorandum shall not exceed fifteen (15) pages;
  - iii. Plaintiffs shall file a reply memorandum, not to exceed 7 pages, no later than 5 days prior to the hearing.<sup>3</sup>

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request entry of a scheduling order with respect to briefing and hearing the constitutional issues raised in Counts VII and VIII.

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<sup>3</sup> While a reply may not be necessary, Plaintiffs incorporate this request now to avoid having to engage in additional motion practice under N.D. Loc. R. 7.1(c)(2).

**N.D. FLA. LOC. R. 7.1 CERTIFICATION**

Pursuant to N.D. Fla. Loc. R. 7.1(B), undersigned counsel states that on this date he has conferred with Defendant's counsel, Peter Antonacci and Allen Winsor, and that Defendant does not agree to the motion.

Dated: April 15, 2008.

**GREENBERG TRAUIG, P.A.**

s/Glenn T. Burhans, Jr.

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**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that a copy of the foregoing *Motion* was served via the Court's CM/ECF electronic filing system this day, April 15, 2008, upon the following counsel of record:

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