

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STATE OF FLORIDA
Office of the Secretary of State
500 S. Bronough Street
Tallahassee, FL 32399-0250,

Plaintiff,

v.

UNITED STATES OF AMERICA and ERIC H.
HOLDER, JR., in his official capacity as Attorney
General of the United States,

Defendants.

Civil No. 1:11-cv-01428-CKK-MG-ESH

THIRD AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

The State of Florida, by and through its Secretary of State Kenneth W. Detzner, seeks a declaratory judgment that recently-enacted changes in the Florida Election Code are entitled to preclearance under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c (“VRA”). The changes have neither the purpose nor will they have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority. Alternatively, the State of Florida seeks a declaratory judgment that the preclearance obligation of Section 5 and the coverage formula of Section 4(b) of the VRA, 42 U.S.C. § 1973b(b), are unconstitutional, as well as a permanent injunction enjoining their enforcement. Subjecting Florida counties and other jurisdictions covered exclusively under the language minority provisions of the VRA to preclearance is not a rational, congruent, or proportional means of enforcing the Fourteenth and/or Fifteenth Amendments and violates the Tenth Amendment and Article IV of the U.S. Constitution.

I. PARTIES

1. Plaintiff, the State of Florida, is a State of the United States of America and brings this action on behalf of itself and its citizens.

2. Kenneth W. Detzner, in his official capacity as the Secretary of State of Florida, is the chief elections officer of the State of Florida. Secretary Detzner has the responsibility, *inter alia*, to obtain and maintain uniform implementation of the election laws, to ensure compliance with federal election laws, and to require the supervisors of elections to perform their official duties.

3. Defendants are the United States of America and Eric H. Holder, Jr., in his official capacity as Attorney General of the United States. Attorney General Holder is charged with certain responsibilities related to Section 5 on behalf of the Department of Justice (“DOJ”), including the defense of Section 5 declaratory judgment actions brought in the United States District Court for the District of Columbia (“DDC”).

II. BACKGROUND

A. The Voting Rights Act

4. In 1965, Congress enacted the VRA to enforce the substantive guarantee of the Fifteenth Amendment. *See* Pub. L. No. 89-110, 79 Stat. 437 (1965).

5. Section 2 of the VRA enforced the substantive guarantee of the Fifteenth Amendment by outlawing any “voting qualification or prerequisite to voting, or standard, practice, or procedure . . . imposed or applied . . . to deny or abridge the right of any citizen of the United States to vote on account of race or color.” *Id.* § 2, 79 Stat. at 437. This prohibition applies nationwide. *Id.*

6. Other provisions of the VRA apply only to certain jurisdictions pursuant to a geographic “coverage formula” established by the statute.

7. Section 4(b) set forth a formula under which “covered” jurisdictions would be subjected to the “preclearance” obligation of Section 5. Section 4(b) covered “any State or any political subdivision of a state which . . . the Attorney General determine[d] maintained on November 1, 1964, any [prohibited] test or device, and with respect to which . . . the Director of the Census determine[d] that less than 50 percentum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percentum of such persons voted in the presidential election of November 1964.” *Id.* § 4(b), 79 Stat. at 438.

8. Under Section 4(b)’s formula, seven States (Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, and Virginia), forty counties in North Carolina, as well as several counties in Arizona, Hawaii, and Idaho, became “covered” jurisdictions.

9. Section 5 required these covered jurisdictions to “preclear” any new law or any change to an existing law involving “any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964.” *Id.* § 5, 79 Stat. at 439. The covered jurisdictions could obtain “preclearance” by submitting the proposed change to DOJ or by filing a declaratory-judgment action before a three-judge panel of the DDC. *Id.*

10. Preclearance could be granted by DOJ or the DDC only if the voting change “[did] not have the purpose and [would] not have the effect of denying or abridging the right to vote on account of race or color.” *Id.*

11. Section 5 was originally a “temporary provision[] . . . expected to be in effect for only five years.” *Nw. Austin Mun. Util. Dist. No. 1 v. Holder*, 129 S. Ct. 2504, 2510 (2009). In

1970, however, Congress reauthorized the VRA for another five years. *See* Voting Rights Act Amendments of 1970, Pub. L. No. 91-285, 84 Stat. 314 (1970).

12. In 1975, Congress reauthorized the VRA for another seven years. Act of Aug. 6, 1975, Pub. L. No. 94-73, 89 Stat. 400.

13. In reauthorizing the VRA in 1975, Congress extended Section 4(b)'s coverage formula—and thus Section 5's preclearance obligation—to any jurisdiction that had maintained a prohibited “test or device” on November 1, 1972, and had voter registration on that date or turnout in the 1972 presidential election of less than 50 percent. *Id.* § 202, 89 Stat. at 401.

14. In 1975, Congress also extended Section 5's preclearance obligation by expanding the definition of “test or device” to include the provision of election materials only in English by jurisdictions in which more than five percent of the voting age citizens were members of “a single language minority.” *Id.* § 203, 89 Stat. at 401-02.

15. In 1982, Congress reauthorized the VRA for another twenty-five years. Voting Rights Act Amendments of 1982, Pub. L. No. 97-205, 96 Stat. 131 (1982).

16. In 2006, Congress again reauthorized the VRA for another twenty-five years. Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, 120 Stat. 577 (2006) (“2006 Reauthorization Act”).

17. In reauthorizing the VRA in 2006, Congress imposed preclearance requirements under the same coverage formulas adopted in 1965, 1970, and 1975.

18. Congress also added new provisions regarding the standard a covered jurisdiction must meet for obtaining preclearance. *See* 42 U.S.C. § 1973c(b)-(d).

19. The 2006 Reauthorization Act amended Section 5 to require covered jurisdictions to prove that a voting change does not have the purpose or effect of “diminishing the ability of any citizens of the United States on account of race or color, or [membership in a language minority group] to elect their preferred candidates of choice.” *Id.* § 1973c(b); *id.* § 1973c(d) (noting that this provision was enacted “to protect the ability of such citizens to elect their preferred candidates of choice”).

20. Before 2006, a covered jurisdiction could obtain preclearance under a more flexible standard: by proving through “the totality of the circumstances,” *Georgia v. Ashcroft*, 539 U.S. 461, 480-85 (2003), that the change would not “lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise.” *Beer v. United States*, 425 U.S. 130, 141 (1976).

21. The 2006 Reauthorization Act further amended Section 5 to require a covered jurisdiction to prove that the voting change does not have “any discriminatory purpose.” 42 U.S.C. § 1973c(c). Prior to this amendment, Section 5 had been interpreted to permit preclearance of voting changes “enacted with a discriminatory but nonretrogressive purpose.” *Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 341 (2000).

22. This prior preclearance standard limited “the substantial federalism costs that the preclearance procedure already exacts” and avoided “raising concerns about § 5’s constitutionality.” *Id.* at 336.

B. Florida and the Voting Rights Act

23. Florida is a “partially covered” state under the VRA because five Florida counties are subject to the preclearance requirements of Section 5. Specifically, Collier, Hardee, Hendry,

Hillsborough, and Monroe Counties have been designated as covered jurisdictions under Section 4 of the Voting Rights Act, 42 U.S.C. § 1973b(b).

24. These five Florida jurisdictions are covered jurisdictions based on the Attorney General's determination that, on November 1, 1972, these jurisdictions provided materials and information relating to the electoral process only in the English language; more than five percent of the citizens of voting age were members of a single language minority; and less than half of the voting-age citizens in these jurisdictions were either registered to vote or voted in the Presidential election of November 1972.

25. Based on the same formula originally adopted in 1975 and still found in Section 4(b) of the Voting Rights Act, these five counties remain covered jurisdictions subject to the preclearance requirements of Section 5.

26. To obtain preclearance, Florida must establish that the voting changes in the five jurisdictions do not have the "purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color . . . to elect their preferred candidates of choice," 42 U.S.C. § 1973c(b), even though Florida is itself not a covered jurisdiction, and even though the five Florida counties are covered only under the VRA's language minority provisions, *see id.*, (f)(2).

C. The 2011 Florida Voting Changes

27. On May 19, 2011, Committee Substitute for Committee Substitute for House Bill No. 1355, an omnibus bill revising the Florida Election Code, became law. This law has been codified at Chapter 2011-40, Laws of Florida (the "Act").

28. The Act contains revisions to Florida statutes governing third-party voter registration organizations (§ 97.0575, Fla. Stat.), state constitutional amendments proposed by

initiative (§ 100.371, Fla. Stat.), election-day address changes (§ 101.045, Fla. Stat.), and early voting (§ 101.657, Fla. Stat.). These provisions are collectively referred to as the “Four Voting Changes.”

29. On May 19, 2011, Florida Secretary of State Kurt S. Browning issued Directive 2011-01 to the State supervisors of elections. The Directive described the changes made by the Act and provided guidance to the supervisors of elections as to their duties under the Act.

30. On June 8, 2011, Secretary Browning submitted the Act to the United States Department of Justice for administrative preclearance. On July 29, 2011, the Four Voting Changes were withdrawn from administrative preclearance, while the other 76 provisions of the Act were kept before the Department of Justice for preclearance. On August 8, the Department of Justice precleared these 76 provisions of the Act.

31. After holding a publicly-noticed rule development workshop and accepting extensive public comment from affected parties, the Florida Department of State adopted Rule 1S-2.042 on October 13, 2011. *See* Third-Party Voter Registration Organizations, Fla. Admin. Code R. 1S-2.042 (2011). This version of Rule 1S-2.042 was an administrative rule that implemented the revisions to the Florida statute governing third-party voter registration organizations. Except in the five covered counties, Rule 1S-2.042 took effect on November 2, 2011.

32. On August 8, 2011, the Department of Justice granted administrative preclearance to all provisions of the Act other than the Four Voting Changes. On March 21, 2012, the Department of Justice granted administrative preclearance to the changes related to the state constitutional amendments proposed by initiative (§ 100.371, Fla. Stat.).

On May 31, 2012, District Judge Robert Hinkle granted in part and denied in part a motion for a preliminary injunction and preliminarily enjoined certain provisions of Fla. Stat. § 97.0575 and Rule 1S-2.042. *See League of Women Voters of Florida v. Browning*, --- F.Supp.2d ----, 2012 WL 1957793, (N.D. Fla. May 31, 2012).

33. On August 7, 2012, the Florida Department of State noticed an emergency rule that modified Rule 1S-2.042 to conform to the terms of Judge Hinkle's preliminary injunction ("Emergency Rule 1SER12-01"). *See* Exhibit A. Emergency Rule 1SER12-01 becomes effective on August 15, 2012. *See* Emergency Rule 1SER12-01(9).

34. In addition, Emergency Rule 1SER12-01 made two minor changes to Rule 1S-2.042 to address concerns raised by the parties in this case and in *Browning*. *See* Emergency Rule 1SER12-01(5)(c) (providing that the Secretary of State "will not refer" a violation to the Attorney General if force majeure or impossibility of performance is shown); Emergency Rule 1SER12-01(8)(d) (providing that the Secretary of State will not refer a violation to the Attorney General "unless there is evidence that the applicant entrusted the voter registration application to a third-party voter registration organization").

35. On August 7, 2012, the Florida Department of State also submitted a proposed rule identical to Emergency Rule 1SER12-01 for publication in the Florida Administrative Weekly and adoption as a final rule according to the rulemaking process set forth in Fla. Stat. § 120.54 ("Final Rule 1S-2.042"). *See* Exhibit B.

36. On August 10, 2012, the parties in *Browning* filed a joint motion for a permanent injunction with Judge Hinkle in the Northern District of Florida. *See* Exhibit C. The parties informed the court that they had resolved their dispute and they asked the court to convert its preliminary injunction to a permanent injunction. As a result, certain provisions of Fla. Stat. §

97.0575 will be permanently enjoined, but the remainder of Fla. Stat. § 97.0575 will be left in place (the “Non-Enjoined Statutory Changes”).

37. The Non-Enjoined Statutory Changes are:

- Fla. Stat. § 97.0575(1)(a)
- Fla. Stat. § 97.0575(1)(b)
- Fla. Stat. § 97.0575(1)(c), except to the extent it requires identification of volunteer registration agents or employee registration agents who solicit but do not collect or handle voter registration applications
- Fla. Stat. § 97.0575(2)
- Fla. Stat. § 97.0575(3)(a), except to the extent it requires delivery of an application within 48 hours—or any period less than 10 days;
- Fla. Stat. § 97.0575(3)(b)
- Fla. Stat. § 97.0575(4)
- Fla. Stat. § 97.0575(5), except to the extent it requires third-party voter registration organizations to report on the number of voter registration applications used by, distributed to, or collected from registration agents
- Fla. Stat. § 97.0575(6)
- Fla. Stat. § 97.0575(7)

38. The Non-Enjoined Statutory Changes and Emergency Rule 1SER12-01 are collectively referred to as the “Third Party Changes.”

39. The Third Party Changes, the changes related to address changes at the polling place (§ 101.045, Fla. Stat.), and the changes related to early voting (§ 101.657, Fla. Stat.) are collectively referred to as the Three Voting Changes.

40. Florida brings this action pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2201, seeking a declaratory judgment that the Three Voting Changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority, thereby allowing the State to uniformly enforce its elections laws.

III. JURISDICTION AND VENUE

41. This Court has subject matter jurisdiction under Section 14(b) of the Voting Rights Act, as amended, 42 U.S.C. § 19731, and under 28 U.S.C. § 1331, because this action

arises under the Constitution and laws of the United States. This Court has jurisdiction to render declaratory relief under 28 U.S.C. § 2201.

42. Venue is proper in this Court pursuant to Section 5 of the Voting Rights Act and 28 U.S.C. § 2284. This action is properly determinable by a three judge district court in accordance with Section 5 and 28 U.S.C. § 2284.

IV. PRECLEARANCE ALLEGATIONS

43. The Act, Chapter 2011-40, Laws of Florida, revises numerous statutes within the Florida Elections Code (Chapters 97-106 of the Florida Statutes). The Act addressed a wide range of subjects, including registration of minor political parties, political advertisement disclaimers, and reporting of election results by supervisors of elections.

44. The State of Florida seeks a declaratory judgment, pursuant to Section 5 of the VRA, related to the Three Voting Changes: Section 4¹ (addressing third-party voter registration organizations) together with Emergency Rule 1SER12-01, which administratively implements that statutory provision; Section 26 (addressing change of residence); and Section 39 (addressing early voting). This action is filed for the purpose of determining an actual controversy between the parties within the Court's jurisdiction, and to allow the State to uniformly enforce duly-enacted amendments to the Florida Election Code.

45. As described below, each of the Three Voting Changes applies uniformly to all Floridians regardless of race, color, or membership in a language minority. These provisions were not adopted with the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

¹ In this Third Amended Complaint, "Section 4" refers to the non-enjoined provisions of Section 4 of the Act.

A. Section 4 (Third-Party Voter Registration Organizations)

(i) Benchmark Practice — Third-Party Voter Registration Organizations

46. Prior to 1995, only state officials and individuals deputized by supervisors of elections as registrars were permitted to collect voter registration applications in Florida. The Florida Legislature's first comprehensive regulation of third-party voter registration organizations came in 2005 with the enactment of section 97.0575, Florida Statutes. This statute, as amended in 2007, represents the "benchmark" practice for purposes of Section 5.

47. Under the benchmark practice, a "third-party voter registration organization" is defined as "any person, entity, or organization soliciting or collecting voter registration applications" other than a person registering, or collecting an application from, that person's spouse, child or parent; or a person who registers to vote or collects voter registration applications as an employee or agent of the Florida Department of State's Division of Elections ("Division"), a supervisor of elections, the Department of Highway Safety and Motor Vehicles, or a voter registration agency. § 97.021(37), Fla. Stat.

48. "Prior to engaging in any voter registration activities," the benchmark practice required each third-party voter registration organization to name a registered agent in the state and submit additional information to the Division. § 97.0575(1), Fla. Stat. Specifically, the benchmark practice required each third-party voter registration organization to submit to the Division a form containing:

the name of the registered agent and the name of those individuals responsible for the day-to-day operation of the third-party voter registration organization, including, if applicable, the names of the entity's board of directors, president, vice president, managing partner, or such other individuals engaged in similar duties or functions.

§ 97.0575(1), Fla. Stat.

49. Because each third-party voter registration organization that collected voter registration applications “serves as a fiduciary to the applicant,” the benchmark practice required each organization to ensure that any application entrusted to the organization, “irrespective of party affiliation, race, ethnicity, or gender,” is “promptly delivered to the division or the supervisor of elections.” § 97.0575(3), Fla. Stat.

50. The benchmark practice provided for fines on any third-party voter registration organization that failed to promptly deliver applications that it collected. § 97.0575(3), Fla. Stat. The applicable fines were \$50 for each application received by a supervisor of elections or the Division more than ten days after the applicant delivered the completed application to the third-party voter registration organization; \$100 for each application collected by a third-party voter registration organization before book closing for any given election for federal or state office and received by a supervisor of elections or the Division after the book-closing deadline for that election; and \$500 for each application collected by a third-party voter registration organization that is not submitted to the Division or a supervisor of elections. § 97.0575(3), Fla. Stat. The amounts of these fines increased to \$250, \$500, and \$1,000, respectively, for willful violations. § 97.0575(3), Fla. Stat. The benchmark practice did not impose any civil or criminal penalties on a third-party voter registration organization solely for failure to register with the Division. § 97.0575(2), Fla. Stat.

51. The benchmark practice capped at \$1,000 the maximum aggregate fine that could be assessed against any third-party voter registration organization (including affiliate organizations) for all violations committed in a calendar year. § 97.0575(3), Fla. Stat. The benchmark practice required the Secretary of State to waive the fines upon a showing that the failure to deliver the application promptly was based upon force majeure or impossibility of

performance and provided for a three-fourths reduction in the applicable fines for third-party voter registration organizations that had complied with the statute's registration requirements. § 97.0575(3), Fla. Stat. Under the benchmark practice, the Division had authority to investigate violations of the third-party voter registration organization statute, assess civil fines imposed under the statute, and enforce the fines "through any appropriate legal proceedings." § 97.0575(4)(b), Fla. Stat.

52. Finally, the benchmark practice required third-party voter registration organizations to submit a report to the Division of Elections on or before the 15th day after the end of each calendar quarter providing the date and location of any organized voter registration drives conducted by the organization in the prior calendar quarter. § 97.0575(1), Fla. Stat.

(ii) Changes Sought to Be Precleared — Third-Party Voter Registration Organizations

53. The benchmark practices described above are largely preserved by Section 4 of the Act, Chapter 2011-40.

54. Section 4 removes the potential for a three-fourth reduction in fines for third-party voter registration organizations that have complied with the registration requirements but provides that force majeure or impossibility of performance is an affirmative defense to a failure to timely deliver a completed application. § 97.0575(3)(b), Fla. Stat. Under Section 4, the Secretary of State may waive the fines assessed against an organization upon a showing of force majeure or impossibility of performance, which is now an affirmative defense. § 97.0575(3)(b), Fla. Stat; *see also* Emergency Rule 1SER12-01(5)(c) (providing that the Secretary of State "will not refer" a violation to the Attorney General if force majeure or impossibility of performance is shown).

55. Section 4 also assigns new administrative responsibilities to the Division and supervisors of elections regarding distribution of and accounting for voter registration

applications (§ 97.0575(2), (5), Fla. Stat.), requires voter registration forms provided to each third-party voter registration organization to contain information identifying the third-party voter registration organization to which the forms are provided (§ 97.0575(2), Fla. Stat.), and requires supervisors of elections to provide information to the Division on voter registration forms provided to and received from each third-party voter registration organization. (§ 97.0575(2), Fla. Stat.)

56. Finally, Section 4 shifts enforcement responsibility of the third-party voter registration statute from the Division to the Florida Attorney General. § 97.0575(4), Fla. Stat. If the Secretary of State reasonably believes that a person has committed a violation of the statute, the Secretary may refer the matter to the Attorney General. § 97.0575(4), Fla. Stat. The Attorney General may institute a civil action for a violation of, or to prevent a violation of, the statute. § 97.0575(4), Fla. Stat.

(iii) Purpose and Effect — Third-Party Voter Registration Organizations

57. The changes to the third-party voter registration statute contained in Section 4 were adopted to address Florida's legitimate interests in: 1) ensuring that all voter registration applications are properly and timely submitted; 2) holding third-party voter registration organizations accountable for the applications they collect; and 3) preventing instances of fraud. The changes were not adopted for the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority.

58. The changes in Section 4 apply equally to every group meeting the definition of a third-party voter registration organization. Moreover, the benchmark requirement that each third-party voter registration organization ensure the prompt delivery of all voter registration applications they collect, "irrespective of party affiliation, race, ethnicity, or gender," — remains unchanged. § 97.0575(3), Fla. Stat. Section 4 therefore protects the right to vote of all Floridians

and does not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

B. Section 26 (Change of Residence)

(i) Benchmark Practice — Change of Residence

59. Under the benchmark practice, a person may only vote in the election precinct or district in which the person has his or her legal residence and in which the person is registered to vote. § 101.045(1), Fla. Stat. An elector who has moved from the address listed on the person's voter registration record must provide notification of the move to the supervisor of elections. § 97.1031, Fla. Stat. An elector who has moved from the precinct in which the elector is registered, but who has not provided notification of the move to the supervisor of elections before the day of an election, may nonetheless be permitted to vote in the precinct to which he or she has moved provided the elector completes an affirmation of change of legal residence. § 101.045(2)(a), Fla. Stat.

60. Under the benchmark practice, an elector who has completed an affirmation of change of legal residence may be permitted to vote in the precinct to which he or she has moved his or her legal residence. § 101.045(2), Fla. Stat. If the elector's registration can be verified, the elector is entitled to vote a regular ballot. § 101.045(2)(d), Fla. Stat. If the elector's eligibility to vote cannot be determined, he or she is entitled to cast a provisional ballot. § 101.045(2)(d), Fla. Stat. As an alternative to the affirmation of change of address, an elector may complete a voter registration application that indicates the change of address of legal residence. § 101.045(2)(c), Fla. Stat.

61. Upon receipt of the affirmation or application certifying a change of address of legal residence, the supervisor of elections shall, as soon as practicable, make the necessary

changes in the statewide voter registration system to indicate the change in address. § 101.045(2)(d), Fla. Stat.

(ii) Changes Sought to Be Precleared — Change of Residence

62. The changes contained in Section 26 preserve the benchmark practice for all electors whose change of residence is within the same county and for active uniformed services voters and members of their families. § 101.045(2), Fla. Stat. Section 26 amended the benchmark practice only for electors who have changed their legal residence, have not previously notified the supervisor of elections of the change of address, and whose change of address is from outside the county. § 101.045(2)(b), Fla. Stat. An elector in these circumstances may not change his or her legal residence at the polls and vote a regular ballot, but is entitled to vote a provisional ballot upon completion of the affirmation of change of legal residence. § 101.045(2)(b), Fla. Stat.

63. The standards for canvassing a provisional ballot are unchanged by the Act. A provisional ballot “shall be counted unless the canvassing board determines by a preponderance of evidence that the person was not entitled to vote.” § 101.048(2)(a), Fla. Stat. In determining whether a person casting a provisional ballot is entitled to vote, the county canvassing board shall review the information provided in the Voter’s Certificate and Affirmation, any written evidence provided by the person casting the ballot, any other evidence presented by the supervisor of elections, and, in the case of a challenge, any evidence presented by the challenger. § 101.048(2)(a), Fla. Stat.

(iii) Purpose and Effect — Change of Residence

64. The changes to the statute governing change of residence provisions contained in Section 26 were adopted as an anti-fraud measure, to protect against the possibility of a single elector casting ballots in more than one county. They were not adopted with the purpose of

denying or abridging the right to vote on account of race, color, or membership in a language minority.

65. The changes in Section 26 apply equally to every elector regardless of race, color, or membership in a language minority. The only electors affected by the changes in Section 26 are those who (1) have changed their legal residence from one county to another county; (2) have failed to notify the supervisor of elections regarding the change of residence (in writing, by telephone, or by electronic means) at any time prior to election day; and (3) are not an active uniformed services voter or a member of his or her family.

66. Even the limited number of electors affected by the changes in Section 26 will not have their right to vote denied or abridged on account of race, color, or membership in a language minority. Each such elector is entitled to cast a provisional ballot, which “shall be counted” by the canvassing board if the elector was registered and entitled to vote at the precinct where the person cast his or her vote. § 101.048, Fla. Stat. Because the canvassing board will have the elector’s certificate and affirmation before it, Secretary Browning does not anticipate any need in the ordinary case for a voter to provide additional information regarding eligibility to the canvassing board (although the option remains available under section 101.048, Florida Statutes). An elector whose regular ballot would have been lawfully cast under the benchmark practice will therefore have his or her provisional ballot counted under the new statute.

67. The rejection of a provisional ballot cast by an elector who was not registered, or who was not entitled to cast the ballot, or who had already voted in the election, does not amount to a denial or abridgement of the right to vote. Section 26 does not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

C. Section 39 (Early Voting)

(i) Benchmark Practice — Early Voting

68. The benchmark practice for early voting in Florida was enacted by the Florida Legislature in 2005 and is codified at Section 101.657, Florida Statutes. Under the benchmark practice, each supervisor of elections shall allow an elector to vote early “as a convenience to the voter.” § 101.657(1)(a), Fla. Stat. The supervisor of elections shall designate each early voting site no later than 30 days prior to an election. § 101.657(1)(b), Fla. Stat. Early voting must be provided at the main office of the supervisor of elections, and may be provided at a branch office, city hall, or permanent public library facility. § 101.657(1)(a), Fla. Stat.

69. The benchmark practice generally provides for early voting to begin “on the 15th day before an election and end on the 2nd day before an election.” § 101.657(1)(d), Fla. Stat. During the applicable period, the benchmark practice requires early voting to be provided “for 8 hours per weekday and 8 hours in the aggregate each weekend at each site” — a total of 96 hours of early voting. § 101.657(1)(d), Fla. Stat. Early voting sites may open no sooner than 7 a.m. and close no later than 7 p.m. on each applicable day. § 101.657(1)(d), Fla. Stat. All early voting sites in a county shall be open on the same days for the same amount of time. § 101.657(1)(c), Fla. Stat. Any person in line at the closing of an early voting site is allowed to vote. § 101.657(1)(c), Fla. Stat.

(ii) Changes Sought to Be Precleared — Early Voting

70. Section 39 preserves the option of early voting as a convenience to the voter and provides increased flexibility to supervisors of elections regarding the scheduling of early voting in each county. Under Section 39, early voting shall now begin on the 10th day before an election that contains state or federal races (rather than the 15th day) and end on the 3rd day before the election (rather than the 2nd day). § 101.657(1)(d), Fla. Stat. Early voting shall be

provided for no less than 6 hours and no more than 12 hours per day at each site. § 101.657(1)(d), Fla. Stat. Section 39 repeals the prior provision requiring that all early voting sites in a county be open on the same days for the same amount of time. § 101.657(1)(c), Fla. Stat. Section 39 also repeals the provision limiting early voting sites to operation between the hours of 7 a.m. and 7 p.m. § 101.657(1)(d), Fla. Stat.

71. For elections not held in conjunction with a state or federal election, the statute provides supervisors of elections the discretion to provide early voting and to determine the hours of operation of early voting sites. § 101.657(1)(d), Fla. Stat.

(iii) Purpose and Effect — Early Voting

72. The changes to the early voting statute contained in Section 39 were adopted to expand access to early voting and provide each supervisor of elections additional flexibility regarding the scheduling of early voting. The changes to the early voting statute contained in Section 39 were not adopted with the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority.

73. Section 39 provides for expanded access to early voting in several ways. Most significantly, Section 39 mandates additional hours of weekend early voting. Under Section 39, weekend early voting is increased from 16 total hours to a minimum of 18 hours and as many as 36 hours. § 101.657(1)(d), Fla. Stat. By more than doubling the maximum number of weekend early voting hours, Section 39 provides for increased accessibility to the convenience of early voting.

74. Section 39 also increases the maximum number of weekday early voting hours: from 8 hours to 12 hours. § 101.657(1)(d), Fla. Stat. This change provides additional early voting opportunities for electors whose work schedules do not allow time to vote during the traditional 8 hour work day.

75. If precleared, Section 39 will also mandate 6-12 hours of Sunday early voting in Florida's five counties covered by Section 5 of the Voting Rights Act. None of the covered counties offered Sunday early voting in the 2008 or 2010 primary or general elections.

76. The changes to early voting contained in Section 39 will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority. Indeed, Section 39 will likely result in the greatest benefit to low-income residents in the covered counties who may have found it more difficult to vote early during the limited 8 hour window allowed under the benchmark practice.

V. CAUSES OF ACTION

COUNT ONE: DECLARATORY JUDGMENT — THIRD-PARTY VOTER REGISTRATION

77. The State of Florida realleges, adopts, and incorporates by reference all paragraphs above.

78. The non-enjoined changes to section 97.0575, Florida Statutes, were adopted for the purpose of 1) ensuring that all voter registration applications are properly and timely submitted; 2) holding third-party voter registration organizations accountable for the applications they collect; and 3) preventing instances of fraud. The changes were not adopted for any discriminatory purpose.

79. The non-enjoined changes to section 97.0575, Florida Statutes, when compared to Florida's existing or "benchmark" practices, do not lead to a "retrogression" in the position of racial minorities in that they do not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

80. The non-enjoined changes to section 97.0575, Florida Statutes, accordingly have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

81. The non-enjoined changes to section 97.0575, Florida Statutes, do not and will not prohibit any citizen of the United States from electing his or her preferred candidate of choice.

82. The non-enjoined changes to section 97.0575, Florida Statutes, apply uniformly to all Floridians regardless of race, color, or membership in a language minority.

83. The non-enjoined changes to section 97.0575, Florida Statutes, do not result in any discriminatory effect that is statistically significant.

84. Emergency Rule 1SER12-01—the implementing regulation of section 97.0575, Florida Statutes—likewise has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

85. The State of Florida is entitled to a judgment that the non-enjoined changes to section 97.0575, Florida Statutes, and Emergency Rule 1SER12-01, neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, and that Florida's covered jurisdictions may administer these covered changes without further delay.

WHEREFORE, the State of Florida respectfully requests that this Court:

A. Convene a three-judge district court to hear the matters raised in this Complaint;

B. Enter a declaratory judgment that the non-enjoined changes to section 97.0575, Florida Statutes (the Non-Enjoined Statutory Changes, *see supra*) together with the section's implementing regulation (Emergency Rule 1SER12-01) neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority and may be administered by Florida's covered jurisdictions without impediment on account of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c; and

C. Award the State of Florida its costs and grant such other relief as the Court may deem just and proper.

COUNT TWO: DECLARATORY JUDGMENT — CHANGE OF ADDRESS

86. The State of Florida realleges, adopts, and incorporates by reference all paragraphs above.

87. The covered changes to section 101.045, Florida Statutes, were adopted for the purpose of preventing fraudulent voting by a single elector casting ballots in more than one county. The covered changes were not adopted for any discriminatory purpose.

88. The covered changes to section 101.045, Florida Statutes, when compared to Florida's existing or "benchmark" practices, do not lead to a "retrogression" in the position of racial minorities in that they do not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

89. The covered changes to section 101.045, Florida Statutes, accordingly have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

90. The covered changes to section 101.045, Florida Statutes, do not and will not prohibit any citizen of the United States from electing his or her preferred candidate of choice.

91. The covered changes to section 101.045, Florida Statutes, apply uniformly to all Floridians regardless of race, color, or membership in a language minority.

92. The covered changes to section 101.045, Florida Statutes, do not result in any discriminatory effect that is statistically significant.

93. The State of Florida is entitled to a judgment that the covered changes to section 101.045, Florida Statutes, neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, and that Florida's covered jurisdictions may administer these covered changes without further delay.

WHEREFORE, the State of Florida respectfully requests that this Court:

A. Convene a three-judge district court to hear the matters raised in this Complaint;

B. Enter a declaratory judgment that the covered changes to section 101.045, Florida Statutes, neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority and may be administered by Florida's covered jurisdictions without impediment on account of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c; and

C. Award the State of Florida its costs and grant such other relief as the Court may deem just and proper.

COUNT THREE: DECLARATORY JUDGMENT — EARLY VOTING

94. The State of Florida realleges, adopts, and incorporates by reference all paragraphs above.

95. The covered changes to section 101.657, Florida Statutes, were adopted for the purpose of expanding access to early voting and providing each supervisor of elections

additional flexibility regarding the scheduling of early voting. The covered changes were not adopted for any discriminatory purpose.

96. The covered changes to section 101.657, Florida Statutes, when compared to Florida's existing or "benchmark" practices, do not lead to a "retrogression" in the position of racial minorities in that they do not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

97. The covered changes to section 101.657, Florida Statutes, accordingly have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

98. The covered changes to section 101.657, Florida Statutes, do not and will not prohibit any citizen of the United States from electing his or her preferred candidate of choice.

99. The covered changes to section 101.657, Florida Statutes, apply uniformly to all Floridians regardless of race, color, or membership in a language minority.

100. The covered changes to section 101.657, Florida Statutes, do not result in any discriminatory effect that is statistically significant.

101. The State of Florida is entitled to a judgment that the covered changes to section 101.657, Florida Statutes, neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, and that Florida's covered jurisdictions may administer these covered changes without further delay.

WHEREFORE, the State of Florida respectfully requests that this Court:

A. Convene a three-judge district court to hear the matters raised in this Complaint;

B. Enter a declaratory judgment that the covered changes to section 101.657, Florida Statutes, neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority and may be administered by Florida's covered jurisdictions without impediment on account of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c; and

C. Award the State of Florida its costs and grant such other relief as the Court may deem just and proper.

**COUNT FOUR: DECLARATORY JUDGMENT —
SECTION 4(B) OF THE VRA IS UNCONSTITUTIONAL**

102. The State of Florida realleges, adopts, and incorporates by reference all paragraphs above.

103. For several reasons, the formula set forth in Section 4(b) of the VRA is not an “appropriate” means of enforcing the Fourteenth and/or Fifteenth Amendments and thus violates the Tenth Amendment and Article IV of the Constitution.

104. Triggering coverage based on voting practices and Presidential election data from 1964, 1968, and 1972 is not a rational, congruent, or proportional means of enforcing the Fourteenth and/or Fifteenth Amendments.

105. The coverage formula differentiates between the States in violation of the doctrine of equal sovereignty without a constitutionally appropriate basis for subjecting some States to the preclearance obligation but not others.

WHEREFORE, the State of Florida respectfully requests that this Court:

A. Convene a three-judge district court to hear the matters raised in this Complaint;

B. Enter a declaratory judgment that Section 4(b) of the VRA is facially unconstitutional;

C. Because Section 4(b)'s coverage formula is facially unconstitutional, issue a permanent injunction against Defendant Attorney General Eric H. Holder, Jr. enjoining the enforcement of Section 5; and

D. Award the State of Florida its costs and grant such other relief as the Court may deem just and proper.

**COUNT FIVE: DECLARATORY JUDGMENT —
SECTION 5 OF THE VRA IS UNCONSTITUTIONAL**

106. The State of Florida realleges, adopts, and incorporates by reference all paragraphs above.

107. For several reasons, the preclearance obligation of Section 5 of the VRA is not an “appropriate” means of enforcing the Fourteenth and/or Fifteenth Amendments and thus violates the Tenth Amendment and Article IV of the Constitution.

108. Subjecting any jurisdiction covered exclusively under the language minority provisions of the VRA, and the five Florida counties in particular, to preclearance is not a rational, congruent, or proportional means of enforcing the Fourteenth and/or Fifteenth Amendments based on the evidence of language-minority discrimination in the legislative record when Congress reauthorized Section 5 in 2006.

109. Requiring jurisdictions covered exclusively under the language minority provisions of the VRA to establish that the relevant voting changes do not interfere with the right to vote on account of race or color is not a rational, congruent, or proportional means of enforcing the Fourteenth and/or Fifteenth Amendments.

110. Section 5's substantive standard violates the non-discrimination requirements of the Fifth and Fourteenth Amendments. *See* 42 U.S.C. § 1973c(b)-(d).

111. To the extent that Section 5 requires Florida to obtain preclearance for voting changes that were enacted by the State, apply uniformly across the State, and were not targeted at or sought by the covered jurisdictions, it is not a rational, congruent, or proportional means of enforcing the Fourteenth and/or Fifteenth Amendments.

WHEREFORE, the State of Florida respectfully requests that this Court:

A. Convene a three-judge district court to hear the matters raised in this Complaint;

B. Enter a declaratory judgment that Section 5 of the VRA is facially unconstitutional;

C. Because Section 5 is facially unconstitutional, issue a permanent injunction against Defendant Attorney General Eric H. Holder, Jr. enjoining the enforcement of Section 5; and

D. Award the State of Florida its costs and grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: August 10, 2012

/s/ William S. Consovoy

Daniel E. Nordby
Ashley E. Davis
FLORIDA DEPARTMENT OF STATE
R.A. Gray Building
500 S. Bronough Street
Tallahassee, FL 32399-0250
Tel: 850-245-6536

William S. Consovoy* (D.C. Bar No. 493423)
J. Michael Connolly (D.C. Bar No. 995815)
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
Tel: (202) 719-7000
Fax: (202) 719-7049

* *Counsel of Record*

Exhibit A

Notice of Emergency Rule

DEPARTMENT OF STATE

Division of Elections

RULE NO.: RULE TITLE:

1SER12-01: Third-Party Voter Registration Organizations

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Pursuant to section 120.54(4)(b), Florida Statutes, this emergency rule is a rule pertaining to the public health, safety, and welfare as it involves the interpretation and implementation of the requirements of chapters 97-102 and 105 of the Florida Election Code. A federal court preliminarily enjoined certain aspects of section 97.0575, Florida Statutes, concerning third-party voter registration organizations. While regular rulemaking will soon occur for Rule 1S-2.042, this emergency rule is necessary to implement the provisions of the court's ruling in a timely manner. The emergency rule removes those procedures that have been enjoined and makes additional clarifications to conform the rule to the court's decision. The emergency rule will provide third-party voter registration organizations and supervisors of elections the direction they need until Rule 1S-2.042 can complete its normal rulemaking cycle.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Division of Elections is aware of the rulemaking procedures prescribed by Section 120.54, Florida Statutes. That process requires advance notice to the public of intended rules and the opportunity to submit comments on the intended rule, prior to the agency's adoption of the rule. The time period for general rulemaking takes at least 60 days and will prevent the timely amendment and adoption of a rule needed to apply to ongoing registration activities conducted by third-party voter registrations organizations. In the interim, the provisions of this emergency rule will ensure that organizations and supervisors of elections will be able to comply with the requirements of law based upon a federal court ruling preliminarily enjoining certain provisions of Section 97.0575, Florida Statutes. The Department of State will soon file a notice of proposed rule development for Rule 1S-2.042 with the intent to incorporate the text of this emergency rule through regular rulemaking.

SUMMARY: This emergency rule revises the procedures used by third-party voter registration organizations to align them a preliminary injunction issued by a federal court. It restricts the registration requirement to only those organizations who actually collect voter registration applications from voters; eliminates the organization's registration agent sworn statement form, DS-DE 120; deletes the requirement for an organization to list its volunteer registration agents on the registration form, DS-DE 119; deletes the requirement for an organization to file a monthly report, DS-DE 123, accounting for voter registration applications; changes the time period from 48 hours to 10 days for the organization to deliver a completed voter registration application to the Division or to a supervisor of elections' office after an applicant delivers the application to the organization; and further refines the procedures for supervisors of elections regarding untimely filed voter registration applications and the procedures for the Secretary of State's referral of a violation to Florida's Attorney General. The emergency rule is necessary to ensure that third-party voter registration organizations and supervisors of elections have the necessary guidance to comply with the preliminary injunction issued by the U.S. District Court.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Gary J. Holland, Assistant General Counsel, Florida Department of State, 500 S. Bronough Street, Tallahassee, Florida 32399; Gary.Holland@dos.myflorida.com; 850-245-6536

THE FULL TEXT OF THE EMERGENCY RULE IS:

ISER12-01 (1S-2.042) Third-Party Voter Registration Organizations.

(1) Forms. The following forms are hereby incorporated by reference and available from the Division of Elections, R. A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by contact at (850)245-6200, or by download from the Division's webpage at: <http://election.myflorida.com/forms/index.shtml>:

(a) Form DS-DE 119 (eff. ~~08/2012~~ 06/2011), (~~<http://www.flrules.org/Gateway/reference.asp?No=Ref-00428>~~), entitled "Third-Party Voter Registration Organization Registration Form."

~~(b) Form DS-DE 120 (eff. 06/2011), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00429>), entitled "Third-Party Voter Registration Organization Registration Agent's Sworn Statement."~~

~~(b)(e) Form DS-DE 121 (eff. 06/2011), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00430>), entitled "Form for Complaint Against Third-Party Voter Registration Organization."~~

~~(d) Form DS-DE 123 (eff. 06/2011) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00431>), entitled "Third-Party Voter Registration Organization's Accounting of Voter Registration Applications."~~

~~(c)(e) Form DS-DE 124 (eff. 06/2011) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00608>), entitled "Supervisor of Elections' Accounting of Third-Party Voter Registration Organization's Voter Registration Applications."~~

(2) Definitions. For purposes of Section 97.0575, F.S., the following definitions apply:

(a) "Affiliate organization" of a third-party voter registration organization means any person, as defined in Section 1.01(3), F.S., that is associated with the third-party voter registration organization as a subordinate, subsidiary, member, branch, chapter, as a central or parent organization, or through direct or indirect ownership or control. Ownership or control means substantial and effective, though not necessarily predominant, ownership or control.

(b) "Engaging in any voter registration activities" means that the organization is ~~soliciting for collection or~~ collecting voter registration applications from Florida voter registration applicants.

(c) "Force majeure" means any event or occurrence of societal significance beyond the reasonable control and without the fault of the third-party voter registration organization which could not have been prevented, avoided, or overcome by the exercise of reasonable care, diligence, or foresight of the third-party voter registration organization, including, but not limited to, civil disturbances or acts of war; extraordinarily severe weather, such as hurricanes, floods, or tornadoes; or shortages of food, electric power, or fuel.

(d) "Impossibility of performance" means an actual impossibility or impracticability of compliance as the result of a condition or circumstance which the third-party voter registration organization did not create and could not reasonably have anticipated.

(e) "Registration agent" means any individual who is employed by or volunteers for a third-party voter registration organization and ~~who solicits for collection or~~ who collects voter registration applications from Florida voter registration applicants on behalf of the organization.

(3) Registration.

(a) Before engaging in any voter registration activities, a third-party voter registration organization (hereinafter "organization") shall complete and file [Form DS-DE 119](#) with the Division. The organization must submit the form as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmit the form to the Division's facsimile machine at (850)245-6291. An affiliate organization which itself independently engages in separate ~~solicits for collection of or or collects~~ voter registration applications from Florida voter registration applicants on behalf of the affiliate must file a [Form DS-DE 119](#) even if its affiliated organization has filed a [Form DS-DE 119](#). An organization shall also use [Form DS-DE 119](#) to update or terminate its registration.

(b) Upon receipt of an organization's initial and completed registration, the Division shall assign the organization a unique third-party voter registration organization identification number that begins with "3P." An organization is not deemed registered as a third-party voter registration organization until the Division issues the organization its identification number.

~~(c) A registration agent must complete, sign, and date [Form DS-DE 120](#) before beginning his or her duties for the organization and the organization must ensure the form is submitted to the Division within 10 days after the form is signed. [Form DS-DE 120](#) may be submitted to the Division when the organization submits its initial [Form DS-DE 119](#). For any addition to the list of its registration agents or change in information about a registration agent other~~

than termination of a registration agent, the organization shall submit an updated [Form DS DE 119](#). For permissible means of notifying the Division of the termination of a registration agent, *See* paragraph (6)(b).

~~(c)(d)~~ A registration agent may be a registration agent for one or more organizations, ~~but each organization must ensure that the registration agent submits a separate [Form DS DE 120](#) for its organization.~~

~~(d)(e)~~ An organization shall submit any change in information previously submitted to the Division, including any addition to the list of its employee registration agents, any termination of an employee registration agent, or change in information about an employee registration agent, within 10 days following the change. A change is not considered filed until the Division receives the change. Notice of termination of an employee registration agent shall be provided as set forth in paragraph (6)(b).

~~(e)(f)~~ Except as otherwise provided in paragraph (6)(b), any forms or amendments or additions to forms required under this subsection must be submitted in the same manner of transmission required for the [Form DS-DE 119](#) used to initially register an organization.

(4) Voter Registration Applications Provided to and Used by Third-Party Voter Registration Organizations.

(a) All voter registration applications provided by the Division and each supervisor of elections to an organization shall include the third-party voter registration organization identification number on the bottom of the reverse side of each voter registration application in a manner that does not obscure any other entry.

(b) The registration agent or the organization shall print the date ~~and time~~ that the voter registration applicant ~~delivered~~ completed the application to the registration agent in a conspicuous space on the bottom portion of the reverse side of the voter registration application ~~it collects from a voter registration applicant~~ in a manner that does not obscure any other entry. The date ~~and time~~ printed by the registration agent or the organization shall be in the following numerical format: MM/DD/YY; hh:mm am/pm. For example, if the voter registration applicant completed the application on May 15, 2014 at 1:30 p.m., the entry on the bottom portion of the reverse side of the application shall be: 5/15/14; 1:30pm. ~~The entry for an application completed on October 11, 2014 at 11:30 a.m., would be printed as 10/11/14; 11:30am on the bottom portion of the reverse side of the application.~~

(c) Each organization shall ensure that its assigned organization identification number is recorded on the bottom portion of the reverse side of any voter registration application it delivers to the Division or a supervisor of elections in a manner that does not obscure any other entry.

(d) Delivery of the voter registration application by the organization to the Division or a supervisor of elections may be accomplished by in-person delivery or mail. All applications must be delivered to the Division or a supervisor of elections or be postmarked within 10 calendar days of collection by an organization or any of its registration agents. If the 10th day falls on a weekend, holiday, or other day on which the Division or the supervisor of elections office is closed, the voter registration application must be delivered to the Division or the supervisor of elections or be postmarked by the following business day. If, however, a book closing deadline for any given election for federal or state office falls within the 10-day period described above, all applications collected by an organization or any of its registration agents before book closing must be delivered to the Division or a supervisor of elections on or before the book closing deadline.

(5) Referral to Attorney General for Enforcement; Waiver of Fines upon Showing of Force Majeure or Impossibility of Performance Monthly Report by Organizations.

(a) In exercising the authority to refer violations of the third-party voter registration law to the Attorney General for enforcement, the Secretary of State's principal concern is the protection of applicants who have entrusted their voter registration applications to a third-party voter registration organization. By law, the organization serves as a fiduciary to those applicants, who have a right to expect that their applications will be timely delivered to an elections official irrespective of party affiliation, race, ethnicity, or gender. By the 10th day of each month, each organization shall submit to the Division a Form DS DE 123 to account for the number of state and federal voter registration application forms provided to and received from each of its registration agents for the preceding month. If the organization had no voter registration activity in the preceding month, the organization shall still submit [Form DS DE 123](#) reflecting that it did not provide voter registration applications to, or receive any from, its registration agents.

(b) Any organization claiming that its failure to deliver a voter registration application within the required timeframe was based upon force majeure or impossibility of performance may provide a sworn statement to the Division explaining the circumstances constituting force majeure or impossibility of performance. [Form DS DE 123](#) required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(c) If the information provided to the Division by the organization demonstrates that the failure to timely deliver a voter registration application was the result of force majeure or impossibility of performance, the Secretary of State will not refer the violation to the Attorney General for enforcement.

(6) Termination of Organization and Employee Registration Agent.

(a) If an organization terminates its status as a third-party voter registration organization, the organization shall submit within 10 days a Form DS-DE 119 reflecting its termination and also a Form DS-DE 123 to report its final accounting of voter registration application forms provided to the organization by the Division or any supervisor of elections. All such voter registration applications remaining in the organization's possession should be returned either to the Division or a supervisor of elections within 10 days of filing Form DS-DE 123. The address for the Division is Bureau of Voter Registration Services, Division of Elections, R. A. Gray Building, Room 316, Tallahassee, Florida 32399 0250. The address for the applicable supervisor of elections may be obtained by telephoning 850 245 6200 or found on the Internet at http://election.dos.state.fl.us/SOE/supervisor_elections.shtml.

(b) If an employee registration agent's employment with, or volunteer services for, an organization is terminated, the organization shall file notice of the terminated status of a the employee registration agent by submitting an updated Form DS-DE 119 or by sending a notification of the termination by email to 3PVRO@dos.myflorida.com or by transmitting the notification to the Division's facsimile machine at (850)245-6291 within 10 days of the termination. If Form DS-DE 119 is not used as the means of notification, the notification shall contain the organization's assigned identification number and the name of the employee registration agent being terminated.

(c) Forms DS-DE 119 and DS-DE 123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(7) Processing of Voter Registration Applications from an Organization by the Division and Supervisors of Elections.

(a) For each non-blank registration application that an organization delivers to the Division or supervisor of elections, a voter registration official shall record the date and time of delivery on the bottom portion of the reverse side of the application in a manner that does not obscure any other entries. For purposes of this rule and not for voter registration purposes, an application is considered delivered to the Division or a supervisor of elections at the time the application is actually delivered by the organization by in-person delivery or, if mailed, the date of delivery shall be the date of a clear postmark, if one is present on the mailing envelope. If a postmark is not present or unclear, the date of delivery to the Division or a supervisor of elections is the actual date of receipt. ~~If the date of delivery is the mail postmark, the applicable 48 hour period for the determination of fines pursuant to Section 97.0575, F.S., shall be based upon a whether the postmark is within two days of the date when the applicant completed the voter registration application, unless the organization provides documentation at the time of mailing the application that the date the applicant completed the application was on an earlier date than when the applicant delivered the application to the organization.~~ For a determination of a fine based upon the application being received by mail after the book closing date, a clear postmark on or before the date of book closing will excuse the fine. If an organization delivers more than one application at the same time, those applications shall bear the same date and time of delivery regardless of when the applications are processed.

(b) An organization's untimely delivery of a voter registration application does not affect the validity of the application. Every Such application must be processed regardless of the timeliness of its delivery.

(c) The Division and supervisors of elections shall record the number of state or federal voter registration applications they provide to, and receive from, each organization. Each supervisor of elections shall report to the Division on Form DS-DE 124 by noon of the following business day the number of voter registration applications provided to and received from each organization the previous business day. Supervisors of Elections are not required to submit Form DS-DE 124 when they did not provide any voter registration applications to, or receive any from, an organization on the preceding business day.

(d) Form DS-DE 124 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(8) Complaints.

(a) Any person claiming to have provided a completed voter registration application to a third-party voter registration organization but whose name does not appear as an active voter on the voter registration rolls shall use Form DS-DE 121 to file the complaint with the Division.

(b) Any other person, except supervisors of elections or their staff, may report allegations of irregularities or fraud involving voter registration by filing an elections fraud complaint with the Division. *See* Rule 1S-2.025, F.A.C.

(c) Supervisors of elections or their staff shall report any untimely filed voter registration application submitted by an organization by sending the Division an explanatory statement in an email and attaching documents which reflect the untimely submission in pdf format to 3PVRO@dos.myflorida.com, ~~or~~ by transmitting the explanatory statement and documentation to the Division's facsimile machine at (850)245-6291, or by having them delivered by express mail or expedited courier service. For any application containing an organization's identification number -- but no other information indicating it was collected by a third-party voter registration organization, such as a cover letter or a "date delivered" mark as required by paragraph (4)(b) and that was received after the book closing date or more than 10 days after the date on which the applicant signed it -- the explanatory statement should include a description of the supervisor's efforts to contact the applicant to confirm that the application was delivered to the organization.

(d) The Secretary of State will not refer a violation to the Attorney General unless there is evidence that the applicant entrusted the voter registration application to a third-party voter registration organization.

(9) Effective Date. This rule is effective on August 15, 2012.

Rulemaking Authority 20.10(3), 97.012(1), (2), (15), 97.0575(1), (2), (5) FS. Law Implemented 97.012(1), (2), (15), 97.021(37), 97.053, 97.0575 FS. History--New 2-26-09, Amended 5-31-10, 11-2-11, 8-15-12.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: August 15, 2012

Exhibit B

Notice of Development of Rulemaking

DEPARTMENT OF STATE

Division of Elections

RULE NO.: RULE TITLE:

1S-2.042: Third-Party Voter Registration Organizations

PURPOSE AND EFFECT: The primary purpose is to conform the rule to an injunction granted by a federal court. The revisions have the effect of removing those provisions have been enjoined and they make additional clarifications to conform the rule to the court's decision. The rule will provide third-party voter registration organizations and supervisors of elections the direction they need to comply with applicable law.

SUBJECT AREA TO BE ADDRESSED: Third-party voter registration organizations.

RULEMAKING AUTHORITY: 20.10(3), 97.012(1), (2), (15), 97.0575(1), (2), (5) FS.

LAW IMPLEMENTED: 97.012(1), (2), (15), 97.021 (37), 97.053, 97.0575 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: September 4, 2012; 10am.

PLACE: Department of State, Room 307, R.A. Gray Building, 500 S. Bronough Street, Tallahassee, Florida.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Gary J. Holland, Assistant General Counsel, Office of General Counsel, Department of State, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, FL 32399-0250; telephone: (850)245-6536; e-mail: gary.holland@dos.myflorida.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Gary J. Holland, Assistant General Counsel, Office of General Counsel, Department of State, R. A. Gray Building, 500 S. Bronough Street, Tallahassee, FL 32399-0250; telephone: (850)245-6536; e-mail: gary.holland@dos.myflorida.com.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

1S-2.042 Third-Party Voter Registration Organizations.

(1) Forms. The following forms are hereby incorporated by reference and available from the Division of Elections, R. A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by contact at (850)245-6200, or by download from the Division's webpage at: <http://election.myflorida.com/forms/index.shtml>:

(a) Form DS-DE 119 (eff. ~~09/2012~~ ~~06/2011~~), (~~<http://www.flrules.org/Gateway/reference.asp?No=Ref-00428>~~), entitled "Third-Party Voter Registration Organization Registration Form."

(b) ~~Form DS-DE 120 (eff. 06/2011), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00429>), entitled "Third-Party Voter Registration Organization Registration Agent's Sworn Statement."~~

(b)(c) ~~Form DS-DE 121 (eff. 06/2011), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00430>), entitled "Form for Complaint Against Third-Party Voter Registration Organization."~~

(d) ~~Form DS-DE 123 (eff. 06/2011) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00431>), entitled "Third-Party Voter Registration Organization's Accounting of Voter Registration Applications."~~

(c)(e) ~~Form DS-DE 124 (eff. 06/2011) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00608>), entitled "Supervisor of Elections' Accounting of Third-Party Voter Registration Organization's Voter Registration Applications."~~

(2) Definitions. For purposes of Section 97.0575, F.S., the following definitions apply:

(a) "Affiliate organization" of a third-party voter registration organization means any person, as defined in Section 1.01(3), F.S., that is associated with the third-party voter registration organization as a subordinate, subsidiary, member, branch, chapter, as a central or parent organization, or through direct or indirect ownership or control. Ownership or control means substantial and effective, though not necessarily predominant, ownership or control.

(b) "Engaging in any voter registration activities" means that the organization is ~~soliciting for collection or~~ collecting voter registration applications from Florida voter registration applicants.

(c) "Force majeure" means any event or occurrence of societal significance beyond the reasonable control and without the fault of the third-party voter registration organization which could not have been prevented, avoided, or overcome by the exercise of reasonable care, diligence, or foresight of the third-party voter registration organization, including, but not limited to, civil disturbances or acts of war; extraordinarily severe weather, such as hurricanes, floods, or tornadoes; or shortages of food, electric power, or fuel.

(d) “Impossibility of performance” means an actual impossibility or impracticability of compliance as the result of a condition or circumstance which the third-party voter registration organization did not create and could not reasonably have anticipated.

(e) “Registration agent” means any individual who is employed by or volunteers for a third-party voter registration organization and ~~who solicits for collection or~~ who collects voter registration applications from Florida voter registration applicants on behalf of the organization.

(3) Registration.

(a) Before engaging in any voter registration activities, a third-party voter registration organization (hereinafter “organization”) shall complete and file [Form DS-DE 119](#) with the Division. The organization must submit the form as an attachment in pdf format in an email to 3Pvro@dos.myflorida.com or transmit the form to the Division’s facsimile machine at (850)245-6291. An affiliate organization which itself independently engages in separate ~~solicits for collection of or collects~~ voter registration applications from Florida voter registration applicants on behalf of the affiliate must file a [Form DS-DE 119](#) even if its affiliated organization has filed a [Form DS-DE 119](#). An organization shall also use [Form DS-DE 119](#) to update or terminate its registration.

(b) Upon receipt of an organization’s initial and completed registration, the Division shall assign the organization a unique third-party voter registration organization identification number that begins with “3P.” An organization is not deemed registered as a third-party voter registration organization until the Division issues the organization its identification number.

~~(c) A registration agent must complete, sign, and date [Form DS-DE 120](#) before beginning his or her duties for the organization and the organization must ensure the form is submitted to the Division within 10 days after the form is signed. [Form DS-DE 120](#) may be submitted to the Division when the organization submits its initial [Form DS-DE 119](#). For any addition to the list of its registration agents or change in information about a registration agent other than termination of a registration agent, the organization shall submit an updated [Form DS-DE 119](#). For permissible means of notifying the Division of the termination of a registration agent, See paragraph (6)(b).~~

~~(c)(d) A registration agent may be a registration agent for one or more organizations, but each organization must ensure that the registration agent submits a separate [Form DS-DE 120](#) for its organization.~~

~~(d)(e) An organization shall submit any change in information previously submitted to the Division, including any addition to the list of its employee registration agents, any termination of an employee registration agent, or change in information about an employee registration agent, within 10 days following the change. A change is not considered filed until the Division receives the change. Notice of termination of an employee registration agent shall be provided as set forth in paragraph (6)(b).~~

~~(e)(f) Except as otherwise provided in paragraph (6)(b), any forms or amendments or additions to forms required under this subsection must be submitted in the same manner of transmission required for the [Form DS-DE 119](#) used to initially register an organization.~~

(4) Voter Registration Applications Provided to and Used by Third-Party Voter Registration Organizations.

(a) All voter registration applications provided by the Division and each supervisor of elections to an organization shall include the third-party voter registration organization identification number on the bottom of the reverse side of each voter registration application in a manner that does not obscure any other entry.

~~(b) The registration agent or the organization shall print the date and time that the voter registration applicant delivered completed the application to the registration agent in a conspicuous space on the bottom portion of the reverse side of the voter registration application it collects from a voter registration applicant in a manner that does not obscure any other entry. The date and time printed by the registration agent or the organization shall be in the following numerical format: MM/DD/YY; hh:mm am/pm. For example, if the voter registration applicant completed the application on May 15, 2014 at 1:30 p.m., the entry on the bottom portion of the reverse side of the application shall be: 5/15/14; 1:30pm. The entry for an application completed on October 11, 2014 at 11:30 a.m., would be printed as 10/11/14; 11:30am on the bottom portion of the reverse side of the application.~~

(c) Each organization shall ensure that its assigned organization identification number is recorded on the bottom portion of the reverse side of any voter registration application it delivers to the Division or a supervisor of elections in a manner that does not obscure any other entry.

(d) Delivery of the voter registration application by the organization to the Division or a supervisor of elections may be accomplished by in-person delivery or mail. All applications must be delivered to the Division or a supervisor of elections or be postmarked within 10 calendar days of collection by an organization or any of its registration agents. If the 10th day falls on a weekend, holiday, or other day on which the Division or the supervisor of elections office is closed, the voter registration application must be delivered to the Division or the supervisor of elections or be postmarked by the following business day. If, however, a book closing deadline for any given election for federal or state office falls within the 10-day period described above, all applications collected by an

organization or any of its registration agents before book closing must be delivered to the Division or a supervisor of elections on or before the book closing deadline.

(5) Referral to Attorney General for Enforcement; Waiver of Fines upon Showing of Force Majeure or Impossibility of Performance Monthly Report by Organizations.

(a) In exercising the authority to refer violations of the third-party voter registration law to the Attorney General for enforcement, the Secretary of State's principal concern is the protection of applicants who have entrusted their voter registration applications to a third-party voter registration organization. By law, the organization serves as a fiduciary to those applicants, who have a right to expect that their applications will be timely delivered to an elections official irrespective of party affiliation, race, ethnicity, or gender. By the 10th day of each month, each organization shall submit to the Division a Form DS-DE 123 to account for the number of state and federal voter registration application forms provided to and received from each of its registration agents for the preceding month. If the organization had no voter registration activity in the preceding month, the organization shall still submit Form DS-DE 123 reflecting that it did not provide voter registration applications to, or receive any from, its registration agents.

(b) Any organization claiming that its failure to deliver a voter registration application within the required timeframe was based upon force majeure or impossibility of performance may provide a sworn statement to the Division explaining the circumstances constituting force majeure or impossibility of performance. Form DS-DE 123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(c) If the information provided to the Division by the organization demonstrates that the failure to timely deliver a voter registration application was the result of force majeure or impossibility of performance, the Secretary of State will not refer the violation to the Attorney General for enforcement.

(6) Termination of Organization and Employee Registration Agent.

(a) If an organization terminates its status as a third-party voter registration organization, the organization shall submit within 10 days a Form DS-DE 119 reflecting its termination and also a Form DS-DE 123 to report its final accounting of voter registration application forms provided to the organization by the Division or any supervisor of elections. All such voter registration applications remaining in the organization's possession should be returned either to the Division or a supervisor of elections within 10 days of filing Form DS-DE 123. The address for the Division is Bureau of Voter Registration Services, Division of Elections, R. A. Gray Building, Room 316, Tallahassee, Florida 32399-0250. The address for the applicable supervisor of elections may be obtained by telephoning 850-245-6200 or found on the Internet at http://election.dos.state.fl.us/SOE/supervisor_elections.shtml.

(b) If an employee registration agent's employment with, or volunteer services for, an organization is terminated, the organization shall file notice of the terminated status of a the employee registration agent by submitting an updated Form DS-DE 119 or by sending a notification of the termination by email to 3PVRO@dos.myflorida.com or by transmitting the notification to the Division's facsimile machine at (850)245-6291 within 10 days of the termination. If Form DS-DE 119 is not used as the means of notification, the notification shall contain the organization's assigned identification number and the name of the employee registration agent being terminated.

(c) Forms DS-DE 119 and DS-DE 123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(7) Processing of Voter Registration Applications from an Organization by the Division and Supervisors of Elections.

(a) For each non-blank registration application that an organization delivers to the Division or supervisor of elections, a voter registration official shall record the date and time of delivery on the bottom portion of the reverse side of the application in a manner that does not obscure any other entries. For purposes of this rule and not for voter registration purposes, an application is considered delivered to the Division or a supervisor of elections at the time the application is actually delivered by the organization by in-person delivery or, if mailed, the date of delivery shall be the date of a clear postmark, if one is present on the mailing envelope. If a postmark is not present or unclear, the date of delivery to the Division or a supervisor of elections is the actual date of receipt. If the date of delivery is the mail postmark, the applicable 48-hour period for the determination of fines pursuant to Section 97.0575, F.S., shall be based upon a whether the postmark is within two days of the date when the applicant completed the voter registration application, unless the organization provides documentation at the time of mailing the application that the date the applicant completed the application was on an earlier date than when the applicant delivered the application to the organization. For a determination of a fine based upon the application being received by mail after the book closing date, a clear postmark on or before the date of book closing will excuse the fine. If an organization

delivers more than one application at the same time, those applications shall bear the same date ~~and time~~ of delivery regardless of when the applications are processed.

(b) An organization's untimely delivery of a voter registration application does not affect the validity of the application. Every ~~Such~~ application must be processed regardless of the timeliness of its delivery.

(c) The Division and supervisors of elections shall record the number of state or federal voter registration applications they provide to, and receive from, each organization. Each supervisor of elections shall report to the Division on [Form DS-DE 124](#) by noon of the following business day the number of voter registration applications provided to and received from each organization the previous business day. Supervisors of Elections are not required to submit [Form DS-DE 124](#) when they did not provide any voter registration applications to, or receive any from, an organization on the preceding business day.

(d) [Form DS-DE 124](#) required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(8) Complaints.

(a) Any person claiming to have provided a completed voter registration application to a third-party voter registration organization but whose name does not appear as an active voter on the voter registration rolls shall use Form DS-DE 121 to file the complaint with the Division.

(b) Any other person, except supervisors of elections or their staff, may report allegations of irregularities or fraud involving voter registration by filing an elections fraud complaint with the Division. *See* Rule 1S-2.025, F.A.C.

(c) Supervisors of elections or their staff shall report any untimely filed voter registration application submitted by an organization by sending the Division an explanatory statement in an email and attaching documents which reflect the untimely submission in pdf format to 3PVRO@dos.myflorida.com, ~~or~~ by transmitting the explanatory statement and documentation to the Division's facsimile machine at (850)245-6291, or by having them delivered by express mail or expedited courier service. For any application containing an organization's identification number -- but no other information indicating it was collected by a third-party voter registration organization, such as a cover letter or a "date delivered" mark as required by paragraph (4)(b) and that was received after the book closing date or more than 10 days after the date on which the applicant signed it -- the explanatory statement should include a description of the supervisor's efforts to contact the applicant to confirm that the application was delivered to the organization.

(d) The Secretary of State will not refer a violation to the Attorney General unless there is evidence that the applicant entrusted the voter registration application to a third-party voter registration organization.

Rulemaking Authority 20.10(3), 97.012(1), (2), (15), 97.0575(1), (2), (5) FS. Law Implemented 97.012(1), (2), (15), 97.021(37), 97.053, 97.0575 FS. History--New 2-26-09, Amended 5-31-10, 11-2-11, _____.

Exhibit C

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

LEAGUE OF WOMEN VOTERS OF
FLORIDA, FLORIDA PUBLIC INTEREST
RESEARCH GROUP EDUCATION FUND,
and ROCK THE VOTE,

Plaintiffs,

v.

KENNETH W. DETZNER, in his official
capacity as Secretary of State for the State of
Florida, PAMELA J. BONDI, in her official
capacity as Attorney General for the State of
Florida, and GISELA SALAS, in her official
capacity as Director of the Division of Elections
within the Department of State for the State of
Florida,

Defendants.

Civil No. 4:11-CV-628-RH-WCS

JOINT MOTION FOR PERMANENT INJUNCTION

The Parties jointly move for entry of a permanent injunction as set forth herein.

The Motion is unopposed and the Parties stipulate as follows.

BACKGROUND

1. On December 15, 2011, Plaintiffs filed a complaint seeking an order and judgment declaring unconstitutional and illegal certain provisions of Florida Statutes § 97.0575 and Florida Administrative Code Rule 1S-2.042, as the statute was amended on May 19, 2011, and as the rule was amended on November 2, 2011¹ (collectively, the “third-party voter registration law”), and enjoining Defendants from implementing these

¹ Unless otherwise specified, all references to the statute and rule in this Motion are to the versions as amended in 2011.

provisions. The third-party voter registration law regulates organizations that conduct voter registration drives. Plaintiffs are organizations that have conducted such drives in the past and contended that the third-party voter registration law violated their constitutional rights, the National Voter Registration Act, and the Voting Rights Act.

2. On December 19, 2011, Plaintiffs moved for a preliminary injunction barring enforcement of the third-party voter registration law. Defendants filed a memorandum in opposition on January 24, 2012; Plaintiffs filed a reply memorandum on February 14, 2012. The Court held a preliminary injunction hearing on March 1, 2012.

3. On May 31, 2012, the Court granted Plaintiffs' motion in part. Specifically, the Court entered an Order enjoining Defendants from enforcing the following provisions of the third-party voter registration law (the "Preliminary Injunction Order"):

- i. Fla. Stat. § 97.0575(1)(c);
- ii. Fla. Stat. § 97.0575(1)(d);
- iii. Fla. Stat. § 97.0575(3)(a), to the extent it requires delivery of an application within 48 hours—or any period less than 10 days;
- iv. Rule 1S-2.042(3)(a), to the extent it requires disclosure of an employee or volunteer who does not actually collect or handle voter-registration applications and to the extent it requires disclosure of a volunteer's termination within 10 days after it occurs;
- v. Rule 1S-2.042(3)(c);
- vi. Rule 1S-2.042(3)(d);
- vii. Rule 1S-2.042(3)(e), to the extent it requires disclosure of a volunteer's termination within 10 days after it occurs;
- viii. Rule 1S-2.042(5);

- ix. Rule 1S-2.042(6)(b);
- x. Rule 1S-2.042(6)(c), to the extent it addresses form DS-DE 123; and
- xi. Rule 1S-2.042(7)(a).

4. The Preliminary Injunction Order concluded that the Plaintiffs were not likely to prevail on the merits of their challenges to Florida Statute § 97.0575(5) and Rule 1S-2.042(4)(c) (requiring identification numbers on collected forms); Florida Statute §§ 97.0575(1) (requiring electronic filing); Florida Statute § 97.0575(4) (providing for referral of possible violations to the Attorney General for enforcement); Florida Statute § 97.0575(3) and Rule 1S-2.042(2)(d) (waiver of fines for violations based on force majeure or impossibility of performance).

5. Subsequent to entry of the Preliminary Injunction Order, the parties engaged in discussions regarding a possible resolution of this matter. On July 2, 2012, Defendants filed a Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit to preserve their appellate rights while continuing the Parties' "productive discussions" toward an orderly and timely final resolution of this action.

6. On August 7, 2012, the Florida Department of State noticed an Emergency Rule conforming Rule 1S-2.042, Florida Administrative Code, to the terms of the Court's Order Granting Preliminary Injunction. The Emergency Rule is attached as Exhibit A. The Florida Department of State has submitted a proposed rule identical to Exhibit A for publication in the Florida Administrative Weekly and adoption as a final rule according to the rulemaking process set forth in Section 120.54, Florida Statutes.

7. Plaintiffs agree that the rule attached as Exhibit A is consistent with the terms of the Court's Order Granting Preliminary Injunction and support the adoption of the rule attached as Exhibit A as a final rule.

8. The Parties have concluded their discussions and have agreed to a resolution of this matter, subject to the Court's entry of a Permanent Injunction as set forth herein.

9. Accordingly, the parties respectfully request that the Court enter a Permanent Injunction and final judgment as follows:

- a. Defendants Kenneth W. Detzner, in his official capacity as Secretary of State for the State of Florida, Pamela Jo Bondi, in her official capacity as Attorney General for the State of Florida, and Gisela Salas, in her official capacity as Director of the Division of Elections within the Department of State for the State of Florida, are hereby permanently enjoined from taking any step to demand compliance with or enforce the following provisions:
 - i. Fla. Stat. § 97.0575(1)(c), to the extent it requires identification of volunteer registration agents or employee registration agents who solicit but do not collect or handle voter registration applications;
 - ii. Fla. Stat. § 97.0575(1)(d);
 - iii. Fla. Stat. § 97.0575(3)(a), to the extent it requires delivery of an application within 48 hours—or any period less than 10 days;
 - iv. Fla. Stat. § 97.0575(5), to the extent it requires third-party voter registration organizations to report on the number of voter registration applications used by, distributed to, or collected from registration agents;
 - v. Rule 1S-2.042(3)(a), to the extent it requires disclosure of: any volunteer registration agent; any employee who does not actually collect or handle voter-registration applications; or a volunteer's termination;
 - vi. Rule 1S-2.042(3)(c);

- vii. Rule 1S-2.042(3)(d);
 - viii. Rule 1S-2.042(3)(e), to the extent it requires disclosure of volunteer registration agents or their termination;
 - ix. Rule 1S-2.042(4)(b), to the extent it requires recording the time of collection of any voter registration applications;
 - x. Rule 1S-2.042(5);
 - xi. Rule 1S-2.042(6)(a), to the extent it requires an accounting of the number of voter registration forms provided to or held by a third party voter registration organization;
 - xii. Rule 1S-2.042(6)(b), to the extent it requires notice of termination of volunteer registration agents;
 - xiii. Rule 1S-2.042(6)(c), to the extent it addresses form DS-DE 123; and
 - xiv. Rule 1S-2.042(7)(a), to the extent it requires delivery of an application within 48 hours—or any period less than 10 days; to the extent it requires recording the time of delivery; and to the extent it imposes a fine for late delivery because of the absence of a ‘clear postmark’ on any organization that actually mailed an application within 10 days after collecting it.
- b. This injunction does not affect any other portion of Florida Statutes § 97.0575 or Florida Administrative Code Rule 1S-2.042. This injunction is binding on the Secretary of State, Attorney General, and Director of the Division of Elections and their successors, officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The court retains jurisdiction to enforce this injunction.
- c. All other claims in this action are dismissed with prejudice.
- d. No costs or attorneys’ fees will be taxed by the Court.
- e. The clerk must enter a judgment with the terms set out in paragraphs a, b, and c above.

Respectfully submitted,

/s/ Farrah R. Berse

Robert A. Atkins
Farrah R. Berse (fberse@paulweiss.com)
N.Y. Bar Registration No. 4129706
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Tel. 212-373-3000
Fax 212-757-3990

Alex Young K. Oh
Zachary A. Dietert
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
2001 K Street NW
Washington, DC 20006-1047
Tel. 202-223-7300
Fax 202-223-7420

Wendy R. Weiser
Diana Kasdan
Lee Rowland
Mimi Murray Digby Marziani
Brennan Center for Justice at New York
University School of Law
161 Avenue of the Americas, 12th Floor
New York City, New York 10013-1205
Tel. 646-292-8310
Fax 212-463-7308

Kendall Coffey
Coffey Burlington, P.L.
2699 S. Bayshore Drive, Penthouse
Miami, Florida 33133-5408
Tel. 305-858-2900
Fax 305-858-5261

Randall C. Marshall
Julie A. Ebenstein
American Civil Liberties Union
Foundation of Florida, Inc.
4500 Biscayne Boulevard, Suite 340

Daniel E. Nordby
General Counsel
Florida Bar No. 014588
Ashley E. Davis
Assistant General Counsel
Florida Bar No. 48032
Florida Department of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, Florida 32399-0250
Tel. 850-245-6536
Fax 850-245-6127
Counsel for Defendants
Secretary of State Kenneth W. Detzner and
Director of Division of Elections Gisela
Salas

Blaine H. Winship
Special Counsel
Florida Bar No. 356913
Office of the Attorney General of Florida
The Capitol, Suite PL-01
Tallahassee, Florida 32399-1050
Tel. 850-414-3300
Fax 850-488-4872
Attorney for All Defendants

Miami, Florida 33137-3227
Tel. 786-363-2700
Fax 786-363-1108

Attorneys for All Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by filing in this Court's CM/ECF system this 10th day of August, 2012, on all attorneys of record.

/s/ Farrah R. Berse
Attorney

Exhibit A

1SER12-01 (1S-2.042) Third-Party Voter Registration Organizations.

(1) Forms. The following forms are hereby incorporated by reference and available from the Division of Elections, R. A. Gray Building, Room 316, 500 South Bronough Street, Tallahassee, Florida 32399-0250, by contact at (850)245-6200, or by download from the Division’s webpage at: <http://election.myflorida.com/forms/index.shtml>:

(a) Form DS-DE 119 (eff. ~~08/2012~~ 06/2011), (~~<http://www.flrules.org/Gateway/reference.asp?No=Ref-00428>~~), entitled “Third-Party Voter Registration Organization Registration Form.”

~~(b) Form DS-DE 120 (eff. 06/2011), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00429>), entitled “Third Party Voter Registration Organization Registration Agent’s Sworn Statement.”~~

~~(b)(e)~~ Form DS-DE 121 (eff. 06/2011), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00430>), entitled “Form for Complaint Against Third-Party Voter Registration Organization.”

~~(d) Form DS-DE 123 (eff. 06/2011) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00431>), entitled “Third Party Voter Registration Organization’s Accounting of Voter Registration Applications.”~~

~~(c)(e)~~ Form DS-DE 124 (eff. 06/2011) (<http://www.flrules.org/Gateway/reference.asp?No=Ref-00608>), entitled “Supervisor of Elections’ Accounting of Third-Party Voter Registration Organization’s Voter Registration Applications.”

(2) Definitions. For purposes of Section 97.0575, F.S., the following definitions apply:

(a) “Affiliate organization” of a third-party voter registration organization means any person, as defined in Section 1.01(3), F.S., that is associated with the third-party voter registration organization as a subordinate, subsidiary, member, branch, chapter, as a central or parent organization, or through direct or indirect ownership or control. Ownership or control means substantial and effective, though not necessarily predominant, ownership or control.

(b) “Engaging in any voter registration activities” means that the organization is ~~soliciting for collection or~~ collecting voter registration applications from Florida voter registration applicants.

(c) “Force majeure” means any event or occurrence of societal significance beyond the reasonable control and without the fault of the third-party voter registration organization which could not have been prevented, avoided, or overcome by the exercise of reasonable care, diligence, or foresight of the third-party voter registration organization, including, but not limited to, civil disturbances or acts of war; extraordinarily severe weather, such as hurricanes, floods, or tornadoes; or shortages of food, electric power, or fuel.

(d) "Impossibility of performance" means an actual impossibility or impracticability of compliance as the result of a condition or circumstance which the third-party voter registration organization did not create and could not reasonably have anticipated.

(e) "Registration agent" means any individual who is employed by or volunteers for a third-party voter registration organization and ~~who solicits for collection or~~ who collects voter registration applications from Florida voter registration applicants on behalf of the organization.

(3) Registration.

(a) Before engaging in any voter registration activities, a third-party voter registration organization (hereinafter "organization") shall complete and file [Form DS-DE 119](#) with the Division. The organization must submit the form as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmit the form to the Division's facsimile machine at (850)245-6291. An affiliate organization which itself independently engages in separate solicits for collection of or collects voter registration applications from Florida voter registration applicants on behalf of the affiliate must file a [Form DS-DE 119](#) even if its affiliated organization has filed a [Form DS-DE 119](#). An organization shall also use [Form DS-DE 119](#) to update or terminate its registration.

(b) Upon receipt of an organization's initial and completed registration, the Division shall assign the organization a unique third-party voter registration organization identification number that begins with "3P." An organization is not deemed registered as a third-party voter registration organization until the Division issues the organization its identification number.

~~(c) A registration agent must complete, sign, and date [Form DS-DE 120](#) before beginning his or her duties for the organization and the organization must ensure the form is submitted to the Division within 10 days after the form is signed. [Form DS-DE 120](#) may be submitted to the Division when the organization submits its initial [Form DS-DE 119](#). For any addition to the list of its registration agents or change in information about a registration agent other than termination of a registration agent, the organization shall submit an updated [Form DS-DE 119](#). For permissible means of notifying the Division of the termination of a registration agent, See paragraph (6)(b).~~

~~(c)(d) A registration agent may be a registration agent for one or more organizations, but each organization must ensure that the registration agent submits a separate [Form DS-DE 120](#) for its organization.~~

~~(d)(e) An organization shall submit any change in information previously submitted to the Division, including any addition to the list of its employee registration agents, any termination of an employee registration agent, or~~

change in information about an employee registration agent, within 10 days following the change. A change is not considered filed until the Division receives the change. Notice of termination of an employee registration agent shall be provided as set forth in paragraph (6)(b).

~~(e)~~(f) Except as otherwise provided in paragraph (6)(b), any forms or amendments or additions to forms required under this subsection must be submitted in the same manner of transmission required for the Form DS-DE 119 used to initially register an organization.

(4) Voter Registration Applications Provided to and Used by Third-Party Voter Registration Organizations.

(a) All voter registration applications provided by the Division and each supervisor of elections to an organization shall include the third-party voter registration organization identification number on the bottom of the reverse side of each voter registration application in a manner that does not obscure any other entry.

(b) The registration agent or the organization shall print the date ~~and time~~ that the ~~voter registration~~ applicant ~~delivered~~ ~~completed~~ the application to the registration agent in a conspicuous space on the bottom portion of the reverse side of the voter registration application ~~it collects from a voter registration applicant~~ in a manner that does not obscure any other entry. The date ~~and time~~ printed by the registration agent or the organization shall be in the following numerical format: MM/DD/YY; ~~hh:mm am/pm~~. For example, if the voter registration applicant completed the application on May 15, 2014 ~~at 1:30 p.m.~~, the entry on the bottom portion of the reverse side of the application shall be: 5/15/14; 1:30pm. ~~The entry for an application completed on October 11, 2014 at 11:30 a.m., would be printed as 10/11/14; 11:30am on the bottom portion of the reverse side of the application.~~

(c) Each organization shall ensure that its assigned organization identification number is recorded on the bottom portion of the reverse side of any voter registration application it delivers to the Division or a supervisor of elections in a manner that does not obscure any other entry.

(d) Delivery of the voter registration application by the organization to the Division or a supervisor of elections may be accomplished by in-person delivery or mail. All applications must be delivered to the Division or a supervisor of elections or be postmarked within 10 calendar days of collection by an organization or any of its registration agents. If the 10th day falls on a weekend, holiday, or other day on which the Division or the supervisor of elections office is closed, the voter registration application must be delivered to the Division or the supervisor of elections or be postmarked by the following business day. If, however, a book closing deadline for any given election for federal or state office falls within the 10-day period described above, all applications collected by an

organization or any of its registration agents before book closing must be delivered to the Division or a supervisor of elections on or before the book closing deadline.

(5) Referral to Attorney General for Enforcement; Waiver of Fines upon Showing of Force Majeure or Impossibility of Performance Monthly Report by Organizations.

(a) In exercising the authority to refer violations of the third-party voter registration law to the Attorney General for enforcement, the Secretary of State's principal concern is the protection of applicants who have entrusted their voter registration applications to a third-party voter registration organization. By law, the organization serves as a fiduciary to those applicants, who have a right to expect that their applications will be timely delivered to an elections official irrespective of party affiliation, race, ethnicity, or gender. By the 10th day of each month, each organization shall submit to the Division a Form DS-DE-123 to account for the number of state and federal voter registration application forms provided to and received from each of its registration agents for the preceding month. If the organization had no voter registration activity in the preceding month, the organization shall still submit Form DS-DE-123 reflecting that it did not provide voter registration applications to, or receive any from, its registration agents.

(b) Any organization claiming that its failure to deliver a voter registration application within the required timeframe was based upon force majeure or impossibility of performance may provide a sworn statement to the Division explaining the circumstances constituting force majeure or impossibility of performance. Form DS-DE-123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(c) If the information provided to the Division by the organization demonstrates that the failure to timely deliver a voter registration application was the result of force majeure or impossibility of performance, the Secretary of State will not refer the violation to the Attorney General for enforcement.

(6) Termination of Organization and Employee Registration Agent.

(a) If an organization terminates its status as a third-party voter registration organization, the organization shall submit within 10 days a Form DS-DE-119 reflecting its termination and also a Form DS-DE-123 to report its final accounting of voter registration application forms provided to the organization by the Division or any supervisor of elections. All such voter registration applications remaining in the organization's possession should be returned either to the Division or a supervisor of elections within 10 days of filing Form DS-DE-123. The address for the

~~Division is Bureau of Voter Registration Services, Division of Elections, R. A. Gray Building, Room 316, Tallahassee, Florida 32399-0250. The address for the applicable supervisor of elections may be obtained by telephoning 850-245-6200 or found on the Internet at http://election.dos.state.fl.us/SOE/supervisor_elections.shtml.~~

(b) If an employee registration agent's employment with, ~~or volunteer services for,~~ an organization is terminated, the organization shall file notice of the terminated status of a the employee registration agent by submitting an updated Form DS-DE 119 or by sending a notification of the termination by email to 3PVRO@dos.myflorida.com or by transmitting the notification to the Division's facsimile machine at (850)245-6291 within 10 days of the termination. If Form DS-DE 119 is not used as the means of notification, the notification shall contain the organization's assigned identification number and the name of the employee registration agent being terminated.

(c) Forms DS-DE 119 and DS-DE 123 required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(7) Processing of Voter Registration Applications from an Organization by the Division and Supervisors of Elections.

(a) For each non-blank registration application that an organization delivers to the Division or supervisor of elections, a voter registration official shall record the date ~~and time~~ of delivery on the bottom portion of the reverse side of the application in a manner that does not obscure any other entries. For purposes of this rule and not for voter registration purposes, an application is considered delivered to the Division or a supervisor of elections at the time the application is actually delivered by the organization by in-person delivery or, if mailed, the date of delivery shall be the date of a clear postmark, if one is present on the mailing envelope. If a postmark is not present or unclear, the date of delivery to the Division or a supervisor of elections is the actual date of receipt. ~~If the date of delivery is the mail postmark, the applicable 48-hour period for the determination of fines pursuant to Section 97.0575, F.S., shall be based upon a whether the postmark is within two days of the date when the applicant completed the voter registration application, unless the organization provides documentation at the time of mailing the application that the date the applicant completed the application was on an earlier date than when the applicant delivered the application to the organization.~~ For a determination of a fine based upon the application being received by mail after the book closing date, a clear postmark on or before the date of book closing will excuse the fine. If an organization

delivers more than one application at the same time, those applications shall bear the same date and time of delivery regardless of when the applications are processed.

(b) An organization's untimely delivery of a voter registration application does not affect the validity of the application. Every Such application must be processed regardless of the timeliness of its delivery.

(c) The Division and supervisors of elections shall record the number of state or federal voter registration applications they provide to, and receive from, each organization. Each supervisor of elections shall report to the Division on [Form DS-DE 124](#) by noon of the following business day the number of voter registration applications provided to and received from each organization the previous business day. Supervisors of Elections are not required to submit [Form DS-DE 124](#) when they did not provide any voter registration applications to, or receive any from, an organization on the preceding business day.

(d) [Form DS-DE 124](#) required under this subsection must be submitted as an attachment in pdf format in an email to 3PVRO@dos.myflorida.com or transmitted to the Division's facsimile machine at (850)245-6291.

(8) Complaints.

(a) Any person claiming to have provided a completed voter registration application to a third-party voter registration organization but whose name does not appear as an active voter on the voter registration rolls shall use Form DS-DE 121 to file the complaint with the Division.

(b) Any other person, except supervisors of elections or their staff, may report allegations of irregularities or fraud involving voter registration by filing an elections fraud complaint with the Division. *See* Rule 1S-2.025, F.A.C.

(c) Supervisors of elections or their staff shall report any untimely filed voter registration application submitted by an organization by sending the Division an explanatory statement in an email and attaching documents which reflect the untimely submission in pdf format to 3PVRO@dos.myflorida.com, ~~or~~ by transmitting the explanatory statement and documentation to the Division's facsimile machine at (850)245-6291, or by having them delivered by express mail or expedited courier service. For any application containing an organization's identification number -- but no other information indicating it was collected by a third-party voter registration organization, such as a cover letter or a "date delivered" mark as required by paragraph (4)(b) and that was received after the book closing date or more than 10 days after the date on which the applicant signed it -- the explanatory statement should include a

description of the supervisor's efforts to contact the applicant to confirm that the application was delivered to the organization.

(d) The Secretary of State will not refer a violation to the Attorney General unless there is evidence that the applicant entrusted the voter registration application to a third-party voter registration organization.

(9) Effective Date. This rule is effective on August 15, 2012.

Rulemaking Authority 20.10(3), 97.012(1), (2), (15), 97.0575(1), (2), (5) FS. Law Implemented 97.012(1), (2), (15), 97.021(37), 97.053, 97.0575 FS. History—New 2-26-09, Amended 5-31-10, 11-2-11, 8-15-12.