

IN THE CIRCUIT COURT OF THE 2ND  
JUDICIAL CIRCUIT IN AND FOR LEON  
COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 08-CA-3551

CHARLES T. GREEN,  
FREDDIE L. McPHERSON,  
and FLORIDA DEMOCRATIC PARTY,

PLAINTIFFS,

v.

JOHN DOES # 1-2,  
REPUBLICAN PARTY OF FLORIDA and  
REPUBLICAN NATIONAL COMMITTEE,

DEFENDANTS.

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**AMENDED COMPLAINT FOR DECLARATORY RELIEF**

1. This complaint seeks declaratory relief to clarify Florida law in response to an aggressive effort by Defendants to disenfranchise Florida voters and to place an unlawful and unjustified burden on their right to vote. That effort, orchestrated, upon information and belief, by Defendants Republican National Committee (“RNC”) and Republican Party of Florida (“RPOF”), is to be implemented in Florida counties, including Leon County, by Defendant John Does.

2. Defendants RNC and RPOF, working in concert, have mailed a yet-undetermined but significant number of “Party Affiliation Voter Registration Cards” to Democratic voters in counties throughout the State of Florida. These mailings include an official-looking card, entitled “Party

Affiliation Voter Registration Card,” listing the recipient's name, address, congressional district, party affiliation (often falsely listed as “Republican”) and an alleged voter ID number. In an attached letter, Republican Presidential candidate John McCain asks recipients to update the enclosed card, and to contribute to his campaign. A copy of one such mailing is attached as Exhibit A.

3. These mailings have been sent to individuals registered as Democrats. In one well-publicized example, as reported on National Public Radio on September 19, 2008, Floridian and lifelong Democrat Marilyn DiMauro received a letter recently from Republican presidential contender John McCain containing a “Party Affiliation Voter Registration Card.”

4. In light of their well-documented history of vote suppression, Defendants’ mailings bear the hallmarks of a systematic effort to challenge voters, including Plaintiff Green, likely to vote for Democratic candidates. Contrary to Defendants’ public claims that these mailings were made in error, Defendants have access to and possession of lists of Florida registered voters, including those voters’ party affiliations. These mailings were not accidental, nor was the incorrect party listing on the “Party Affiliation Voter Registration Cards” an innocent mistake.

5. The mailing sets up a challenge, based on the voters’ alleged failure to return the “Party Affiliation Voter Registration Cards” to Defendants or their agents, or based on the return of these mailings as undeliverable. Upon information and belief, Defendants plan to cite these alleged “facts” to claim that the voter’s failure to return the partisan mailings proves that the targeted voters do not actually reside in the precincts in which they are registered to vote. The Defendants’ historical practice is to challenge these voters shortly before or on Election Day, in an effort to postpone judicial scrutiny of their unlawful scheme until after the deed is done and the election is

over.

6. The systematic challenge of voters under the Defendants' scheme will unfairly and improperly impair the right to vote of Plaintiffs and other eligible citizens. The alleged failure of a voter to return a "Party Affiliation Voter Registration Card" to Defendants or their agents indicates nothing, precisely because many of the targeted voters, like Plaintiff Green, are not registered as Republicans and therefore would have no reason to return these cards to a political party with whom they have no affiliation. Similarly, the "Do Not Forward" instruction on the envelopes containing these mailings means that they may be returned by the Postal Service to Defendants for reasons having nothing to do with the addressee's lawful residence in the precinct where he is registered. Accordingly, these mailings provide no legitimate basis for challenging a voter's eligibility to vote, and the use of "Party Affiliation Voter Registration Cards" for systematic challenges can have but one purpose: to harass and disenfranchise voters whom Defendants believe are unlikely to vote for their candidates.

7. Another part of the multi-faceted scheme to disenfranchise Florida voters based on frivolous registration-related issues is under way in Glades County. There, a Republican candidate for sheriff has recently filed a mass challenge against voters representing 4.5% of the electorate in the county, on grounds including his claimed inability, as a private party, to "verify" the voter's address using mass lists that appear to be ridden with typographical errors. The success of such a baseless challenge -- throwing the election system into disarray, and jeopardizing the rights of vast numbers of eligible Floridians on fundamentally flawed premises -- is realized as soon as it is filed. On information and belief, the list prepared in Glades County is the first of several such lists prepared by or with the support of Defendants for use elsewhere in the state.

8. Absent the declaratory relief sought, the result of the Defendants' scheme will be denial or abridgement of Plaintiffs' rights, and of others similarly situated, as well as inordinate delays at polling places affecting voters who will have to suffer through a chaotic and baseless challenge process. This burden will also have to be endured by other voters, including members and supporters of Plaintiff Florida Democratic Party, who are in line and forced to wait for unjustifiable periods for the mass challenges to be resolved.

9. Plaintiffs seek a declaration from the court that (a) the failure to return a single piece of mail to Defendants or their agents, or (b) the fact that a single piece of mail has been returned as undeliverable, does not in itself constitute a good faith basis to challenge any Florida voter. Further, Plaintiffs seek a declaration that a mass challenge based on a single challenge oath attaching a list of voters is not a valid challenge because it fails to conform with Fla. Stat. § 101.111, and that any challenge based on the flawed and suspect information contained on the spreadsheet attached to the Glades County challenge, or similar list-matching exercise, is frivolous and does not constitute a good faith basis to challenge eligible voters without individualized support. Finally, Plaintiffs seek a declaration that the County Supervisors of Elections and their designees have the authority to determine that a challenge is facially deficient or not brought in good faith, and to permit a challenged voter to vote a regular ballot in the event that a challenge is asserted on any of the bases described above.

#### **THE PARTIES**

10. Plaintiff Charles Green is an eligible Florida citizen and has been a resident of Duval County, Florida at the same address for the past seven years. He has been registered as a Democrat for decades and is so registered with the Duval County Supervisor of Elections. He is, and at all

times relevant hereto has continuously been, lawfully registered to vote at his current address, and has voted regularly in Duval County elections. He intends to vote in the upcoming general election on November 4, 2008, but fears that his decision not to return the “Party Affiliation Voter Registration Card” he received to Defendants or their agents will result in infringement of his right to vote.

11. Plaintiff Freddie L. McPherson (“McPherson”), also an eligible Florida citizen, is a resident of Glades County, Florida, has resided in Glades County over 20 years, and has resided at his current address since June 2008. He is registered as a Democrat with the Glades County Supervisor of Elections, and has voted in Glades County many times. He voted in the 2004 presidential election, the 2006 primary, the 2006 general election, and the 2008 presidential primary in Glades County. He has not yet voted in this election, but intends to vote on Election Day, November 4, 2008. He also fears that Defendants or their agents will use a flawed challenge list to infringe his right to vote.

12. Plaintiff Florida Democratic Party (“FDP”) is an organization dedicated to the advancement of Democratic candidates for public office on a statewide basis, including candidates for Congress and the Presidency. The FDP represents its members, voters in Florida, who support the election of the Democratic Party candidates in the upcoming November general election.

13. The Republican Party is one of the two major political parties in Florida. It is represented in Florida by Defendant Republican Party of Florida (“RPOF”). The RPOF is located at 420 E. Jefferson Street, Tallahassee, Leon County, Florida.

14. Defendant Republican National Committee (“RNC”) is the governing body of the Republican Party of the United States and is the “national committee” of the Republican Party. The

RNC operates and does business in all 50 states, including the State of Florida, and the District of Columbia. The RNC's headquarters and principal place of business are located at 310 First Street, Washington, D.C.

15. The John Doe Defendants are Florida residents whom Defendants have selected or will soon select to serve either as officially designated Republican or John McCain poll watchers on Election Day or as the agents Defendants have chosen to swear out challenges before or on Election Day, and who will implement the final steps of Defendants' "Party Affiliation Voter Registration Card" scheme to intimidate and disenfranchise voters in Leon County and throughout the State of Florida.

16. Defendants RNC, RPOF, and the John Does (collectively, "Defendants") are acting in concert and with express and implicit agreement to engage in impermissible "election integrity" schemes, including the scheme that is the subject of this Complaint.

17. Press reports indicate that their scheme is having the desired effect. Florida election officials have reported dozens of worried calls from voters resulting from the "Party Affiliation Voter Registration Card" scheme. *See* Republican Mailing Leaves Florida Voters Confused, National Public Radio, broadcast Sept. 19, 2008 (transcript available at <http://www.npr.org/templates/story/story.php?storyId=94818483>).

### **JURISDICTION AND VENUE**

18. This is an action of declaratory relief brought under Fla. Stat. § 86.011 *et seq.*, within the jurisdiction of this Court. Venue is proper in this Court under § 47.021, Fla. Stat., because, *inter alia*, Defendant RPOF has its headquarters and does business in this circuit.

### **FACTUAL ALLEGATIONS**

*History of Defendants' Voter Suppression Tactics*

19. Defendant RNC has a long history of engaging in coordinated, systematic activities to suppress and deny the right to vote of American citizens. Those campaigns are often aimed at various racial groups, language minorities, or individuals of low or modest economic circumstances whom Defendants believe are unlikely to support them in political campaigns.

20. In the past, Defendants have favored mailings and mass challenges as instruments of their suppression. In 1981, Defendant RNC, working with a state party and under the guise of a "Ballot Security Task Force," created lists of voters in predominantly African-American precincts and sent them letters in the mail. If a letter came back as undeliverable (approximately 45,000 letters), Defendant RNC compiled a challenge list to attempt to remove all such individuals from the voter rolls. The "Task Force" allegedly used off-duty sheriffs and police officers to watch polling places and posted signs to warn voters that the "Task Force" was patrolling and that it was a crime to violate the election laws. Following commencement of a federal lawsuit by the Democratic National Committee ("DNC"), Defendant RNC became subject to a consent decree prohibiting them from undertaking such activities where the purpose or significant effect of such activities is to deter qualified voters from voting.

21. Four years later, in 1986, Defendant RNC engaged in similar so-called "ballot security" tactics in Louisiana, attempting to have 31,000 voters removed from the voter registration rolls simply because a piece of mail had been returned. As a result of these voter-suppression tactics, the RNC was again forced into court, and the New Jersey consent decree was re-opened and expanded to prohibit the RNC, its agents, employees, and parties acting in concert from engaging in direct-mail campaigns targeted at voters on voter-registration lists to a) use the letters returned to

compile vote challenge lists; b) make such challenges; and c) deter registered voters from voting. The consent decree prohibits Defendant RNC from engaging in these, and any other “ballot security” activities, without prior approval by the court.

22. In 2004, the Ohio Republican Party, acting in concert with the Defendant RNC, engaged in the same tactics once again, compiling a list of more than 35,000 voters in the State of Ohio; on the eve of the election, the party sought to have all 35,000 removed from the voter-registration rolls. This voter suppression scheme threatened mass chaos in the Ohio election process, with election officials across the State being diverted from activities essential to the orderly administration of elections to hold “hearings” on each of the 35,000 challenges – all of which were based on nothing other than the return of a single postcard (many of which were misaddressed). On the eve of the 2004 election, a court found the Republicans’ mass challenge process to be unlawful, and based on the reasonably anticipated chaos to result, enjoined the conduct of these hearings.

23. In 2008, the Republicans have expanded the strategy, embracing an attempt to sow public fear and confusion concerning challenges even before the challenges are actually issued. Earlier this year, the chair of the Republican Party of Macomb County, Michigan, was quoted as threatening to conduct illegal mass voter challenges to voters whose homes had been subject to foreclosure. Press reports disclose that similar plans were contemplated by Republican officials around the country, including the chair of the Franklin County, Ohio, Republican Party, and the chair of the Marion County, Indiana, Republican Party.

24. Plans to execute mass challenges, in Florida and elsewhere, begin to cause damage as soon as they are disclosed in the press. As the clerk of Macomb County, Michigan explained, the disclosure of the mass challenge scheme caused widespread public confusion and concern, leaving

people uncertain about whether they still have the right to vote and unclear about whether they should show up at the polls on election day. These schemes cause voters, including now Florida voters like Plaintiffs, to reasonably fear that they will lose their fundamental right to vote.

25. Although mass challenge programs such as these are often publicly justified as ostensible attempts to preserve “ballot security” or “election integrity,” in reality, they merely discourage, intimidate, and suppress the vote of individuals whom Defendants believe are unlikely to vote for them. The systematic attempt to engage in voter suppression by creating massive lists of voters and challenging them on the speculative claim that the voters do not reside in the locations listed on the voter registration rolls is known as “caging.” Defendants engage in this conduct precisely because they believe it works: directly or indirectly, it burdens and disenfranchises individuals whom Defendants believe are unlikely to vote for their candidates.

#### *The Challenge Process in Florida*

26. Defendants are likely to implement their scheme by challenging recipients of the “Party Affiliation Voter Registration Cards” either individually or *en masse*. Within 30 days of election day, a challenger may challenge the right of any voter to vote by submitting an “Oath of Person Entering Challenge” to the Supervisor of Elections for any county in the state. Fla. Stat. § 101.111(3). The challenge can be made on election day as well. *See id.*

27. Once a challenge is initiated, whether before or on election day, the challenged voter “shall be allowed to cast a provisional ballot.” Fla. Stat. § 101.111(2). Thereafter, the challenged voter may establish his or her eligibility to vote by presenting written evidence not later than 5 p.m. on the second day following the election. Fla. Stat. § 101.048.

28. Any challenger who files a frivolous challenge to a voter’s eligibility to vote is guilty

of a misdemeanor, subject to a “good faith” defense. Fla. Stat. § 101.111(4).

29. Mere suspicion that a voter has moved from the address on her official voter registration record is not enough to sustain – or even consider – most challenges to the voter’s eligibility. More than 60% of all Floridians who move do so within the same county. U.S. Census Bureau, 2008 Statistical Abstract, Mobility Status of Resident Population by State, tbl. 33. A duly registered voter who moves to a new residence anywhere within the county is entitled to vote a regular ballot if at the polls she fills out a “Change of Legal Residence Affirmation” form set forth in Fla. Stat. § 101.045. Thus, a challenge as to such a voter’s residency cannot stand in the face of such an affirmation.

30. Even if the voter has not moved, there are many reasons why mail is returned as undeliverable. For example, data entry and clerical errors can result in the return of mail. Also, some voters live at addresses where their names are not listed on the mailbox, such as where several roommates share an apartment. Some voters may have been away from their residences temporarily for work or military deployment or otherwise, and an instruction to not forward their mail (like the one Defendants intentionally placed on their mailings) would result in the return of the mail as undeliverable.

31. For that reason, Florida law provides for a detailed process designed to avoid the risk that a voter’s eligibility will be questioned based on unconfirmed and unreliable information like an undeliverable or unreturned piece of mail. Fla. Stat. § 98.065(4) dictates the appropriate means to confront a potential change of address. First, information about a potential change of address must come from either the United States Postal Service or the courts (in the form of a jury notice signed by the voter), or notices sent uniformly to all registered voters, not merely voters of a particular

political party preference. The relevant supervisor of elections must then send a forwardable notice to the voter's last known address to confirm the change. And if, after the second general election, the voter has not updated his registration information or voted, only then may the voter be removed from the registration list. Under Fla. Stat. § 98.065(3), any such list maintenance program must be completed not later than 90 days before any federal election. Florida law does not permit voters' registrations to be changed at the last minute, based on selective and unreliable political mail to a partisan universe. The Defendants' scheme circumvents all of these protections.

32. Furthermore, to the extent Defendants' scheme relies on unreturned mail, rather than mail returned by the Postal Service as undeliverable, there are many reasons why a voter may not return one of Defendant's "Party Affiliation Voter Registration Cards." For example, the voter, like Plaintiff Green, may not favor Defendant's party or preferred candidate. Or he may ignore political mail generally. Or Defendants themselves might have misaddressed the mailing, applied insufficient postage, left insufficient time for the Postal Service to deliver to Defendants' mailing and the response, or even lost or discarded the mailer before it was to be sent out or after it was in fact received back.

33. Given the considerable safeguards against a precipitous decision by a supervisor to remove a voter from the registration books, challenges to voters based on nothing more than a single piece of returned or unanswered non-forwardable political mail are by definition "frivolous." Plaintiff Green received the mail at his legal residence, at which he is lawfully registered to vote, but did not return it because Plaintiff Green is a Democrat and does not support John McCain. Individuals who have either moved within the county or precinct, or who receive mail at a location other than their primary legal residence, will not receive the mail because Defendants' intentionally

marked the envelope “Do Not Forward.” Without more, the lone fact that the voter did not return undesirable mail is not probative of any change of legal residence.

34. Plaintiffs reasonably fear that Defendants’ scheme will nevertheless result in challenges to their voting rights at the polls. Unless this Court declares that a challenge based solely on the failure to return Defendant RNC’s “Party Affiliation Voter Registration Card” does not constitute a challenge in “good faith,” there will be no legal barrier preventing Defendants from challenging the rights of Plaintiff Green and many other Florida voters to vote in the 2008 presidential election.

*The Glades County Challenge Scheme*

35. In Glades County, Florida, Robert O. Wilson (“Wilson”), a Republican candidate for sheriff in the November 2008 election, just filed a mass challenge of almost 300 voters, nearly all Democrats, representing 4.5% of the electorate in the county, on a host of grounds. *Big voter-challenge trouble in little Glades*, THE MIAMI HERALD, October 27, 2008, <http://miamiherald.typepad.com/nakedpolitics/2008/10/big-voter-chall.html>. These mass challenges are frivolous, as many of the voters do in fact live in Glades County, as is clear from the face of the challenge documents themselves.

36. Specifically, on October 24, 2008, Wilson filed a mass challenge, a true and correct copy of which is attached as Exhibit B (the “Glades County challenge”). The Glades County challenge attached a computer generated list of approximately 300 voters, amounting to approximately 4.5% of the Glades County electorate, nearly all of whom are registered as Democrats (the “List”). The List appears to have been prepared by joining Florida’s central voter database with mortgage foreclosure, real-estate and 911-call list information.

37. The Glades County challenge claims voters are ineligible to vote for invalid reasons, including Mr. Wilson’s own inability, as a private party, to “verify” the residence of the voters using an unspecified method. However, as is obvious on the face of the spreadsheet attached to the challenge, the address information upon which it was based is compromised and deeply flawed, and does not stand up to even the most basic scrutiny. Instead, it is quite clear that the spreadsheet attached to the challenge is nothing more than a thin excuse to strike votes inclined to vote for Democratic candidates.

38. Plaintiff McPherson’s name appears on the List of the Glades County challenge, and his situation exemplifies the illegal and frivolous nature of the Glades County challenge. The Glades County challenge states that there is “reason to believe” that Plaintiff McPherson’s vote would be “illegal” because information is “insufficient . . . to verify [his] residence.” The List indicates Plaintiff McPherson has an address of “12.1 Pierce Street,” when that has never been his address. Plaintiff McPherson, who has voted many times in Glades County, has every right to vote a regular ballot, if need be by affirmation under Section 101.045, Florida Statutes. The fact that a private party cannot “verify” by some unknown process a residence incorrectly listed on a mass challenge sheet has absolutely no bearing on the validity of Plaintiff McPherson’s eligibility to vote from the address at which he is properly registered. The Glades County challenge against Plaintiff McPherson is frivolous.

*The “Lose Your Home, Lose Your Vote” Challenge Scheme*

39. Republican operatives also plan to strip the right to vote of individuals who reside in homes for which a notice of foreclosure has been issued by making challenges on Election Day to each such citizen’s right to vote. This “lose your home, lose your vote” program is part of a broader

scheme – misnamed an “election integrity” program – to harass voters and suppress the vote in the upcoming election on November 4.

40. In Volusia County, the Republican Party “is going to challenge every voter that’s being foreclosed on,” according to Ann McFall, Supervisor of Elections of Volusia County (“McFall”). As reported by the *Deland-Deltona Beacon*:

“One party, that we know of, is going to challenge every voter that's being foreclosed on,” McFall said.

People whose homes are in foreclosure may change their addresses and forget to update their voter registrations. Political parties send letters to these people with instructions to the post office not to forward the mail. If the letters are returned to the sender, a challenge is filed, claiming the voter doesn't live where he or she is registered to vote.

...

McFall, a Republican, said afterward the party known to be doing the foreclosure challenges is the Republican Party. A call to the head of the Volusia County Republican Party was not returned.

See <http://www.beacononlinenews.com/news/daily/1170>. McFall also stated that, although she has only “probably seen two challenges to votes” since 2004, she expects the rights of anywhere from 1,000 to 10,000 voters to be challenged in this election. *Id.* On information and belief, this mass-scale challenge will be effectuated through the Defendant Republicans’ scheme.

#### *The Harm to Plaintiffs*

41. Baseless challenges based on the voter’s failure to return “Party Affiliation Voter Registration Cards” to Defendants or their agents or the undeliverability of the same, or the information contained in the spreadsheet attached to the Glades County challenge or similar information compiled for other counties, or the “Lose Your Home, Lose Your Vote” challenge scheme will infringe the voting rights of Plaintiffs and all others similarly situated, including members of the Florida Democratic Party. First, baseless challenges based on unreliable information

are likely to confuse voters and dissuade them from going to the polls. Second, baseless challenges will further clog the polling places, leading to longer lines and making it more difficult for Plaintiffs and all voters to cast their ballots, burdening the right to vote for no legitimate purpose and interfering with the orderly administration of the electoral process.

42. The Defendants' sole purpose for using the "Party Affiliation Voter Registration Card" mailing and the Glades County challenge (and lists similarly compiled) as bases for challenging voters is to dissuade or prevent Democratic voters such as Plaintiff Green from voting and thereby to deprive them, directly or indirectly, of their right to vote.

43. Plaintiff Green received one of the "Party Affiliation Voter Registration Card" mailings, but did not choose to return the mailing to Defendants. Accordingly, Plaintiff Green reasonably fears that (1) he will be challenged as a result; (2) he will be forced to wait in excessively long lines because of such mass challenges, for no purpose commensurate with the burden; and (3) he will be unduly deprived of his right to vote, given that he does not know what evidence will be demanded as proof of residency, or whether there will be any procedures for collecting such evidence at the polls.

44. Republican candidate Wilson has already attempted to challenge Plaintiff McPherson's right to vote, when he lodged the Glades County challenge. Plaintiff McPherson reasonably fears that (1) he will be challenged again; (2) he will be forced to wait in excessively long lines because of such mass challenges, for no purpose commensurate with the burden; and (3) he will be unduly deprived of his right to vote, given that he does not know what evidence will be demanded as proof of residency, or whether there will be any procedures for collecting such evidence at the polls. Indeed, the burden on Plaintiff McPherson is especially severe given that he

suffers from leg and back problems so that standing and travel are difficult, and he has no email or fax machine to deliver information that may be required as a result of the challenges to the Glades County supervisor of elections after the election.

45. On information and belief, other eligible Florida citizens, including members and supporters of Plaintiff Florida Democratic Party, will be challenged as a result of Defendants' unlawful scheme. Plaintiff Florida Democratic Party reasonably fears that its members and supporters will be forced to wait in excessively long lines because of such mass challenges, for no purpose commensurate with the burden; and (3) will be unduly deprived of their right to vote, given that they will not know what evidence will be demanded as proof of residency, or whether there will be any procedures for collecting such evidence at the polls. Furthermore, Plaintiff Florida Democratic Party will be directly harmed in its own right by Defendants' challenges, because in order to effectuate its mission, it will be compelled to divert otherwise devoted resources to mitigating the harmful effects of Defendants' challenge scheme.

*Recent Statements and Actions by Defendants*

46. The RNC and its affiliates have made clear that they intend to engage in "vote caging" before and during this election. *See Melzer, Republicans recant plans to foreclose voters but admit other strategies*, THE MICHIGAN MESSENGER, Sept. 11, 2008, <http://www.michiganmessenger.com/4231/republicans-recant-plans-to-foreclose-voters-but-admit-other-strategies>. Similar concerns in Ohio suggest a national program, and prompted the Ohio Secretary of State to issue instructions that returned mail should not be considered reasonable evidence that someone has moved. *Id.*

47. In fact, in responding to public pressures with a denial of the scheme alleged in

Michigan, which allegedly entailed challenging voters based on their homes being in foreclosure, an attorney for GOP challengers acknowledged to the press that the party intended to engage in “caging”: “I think so. I know this has been done in years past.” *See Melzer, supra. See also Melzer, Lose Your House, Lose Your Vote*, THE MICHIGAN MESSENGER, Sept. 10, 2008, <http://www.michiganmessenger.com/4076/lose-your-house-lose-your-vote>.

48. The Montana Republican Party had also engaged in a similar campaign, in which it had filed challenges against more than 6,000 voters, claiming that those voters are ineligible because they allegedly no longer reside at the address listed on their voter registration forms. This month, the reviewing court’s order deemed the tactic a “partisan ploy” and concluded that “the Montana Republican Party [is] abusing the process the State of Montana has provided to ensure the accuracy of voter rolls (indeed, they are using the process designed to protect the integrity of the political process to undermine it)[.]”

49. There is mounting evidence here in Florida that Defendants are poised to challenge Florida voters. The Volusia County, Florida Supervisor of Elections stated that she has been told to expect a wave of challenges by the Republican Party. *See In Volusia County thousands are newly registered but may be challenged at polls*, DE-LAND DELTONA BEACON, Oct. 10, 2008, <http://www.beacononlinenews.com/news/daily/1170>.

50. Indeed, the recent Glades County challenges show that the challenge program is not merely conjecture, but rather underway. The list prepared in Glades County is, on information and belief, the first of several such lists prepared by or with the support or assistance of Defendants for use elsewhere in the state.

51. Given Defendants’ recent actions in Florida, their pattern of conduct in the past and

the imminence of the election, there is a bona fide, actual, present practical need for a declaration based on the ascertained or ascertainable state of facts set forth above; a power, privilege or right of Plaintiffs and others similarly situated is dependent upon these facts and the law applicable to them; there are persons who have or reasonably may have an actual, present, adverse and antagonistic interest in this subject matter; the antagonistic and adverse interests are all before the court by proper process; and the relief sought is not merely the giving of legal advice by the court or the answer to questions propounded from curiosity. *See* Fla. Stat. § 86.011.

**FIRST CAUSE OF ACTION  
(Declaratory Relief)  
(Fla. Stat. §§ 98.065 and 98.075)**

52. Plaintiffs reallege each allegation contained in paragraphs 1 through 51 above as if fully set forth herein.

53. Upon information and belief, Defendants intend to challenge the eligibility of Plaintiff Green and other similarly situated voters, including members and supporters of Plaintiff Florida Democratic Party, based on their alleged failure to return a “Party Affiliation Voter Registration Card” to Defendants or their agents, or based on such cards that have allegedly been returned as undeliverable at the address listed for the targeted voters in voter registration records.

54. Any challenge made solely on the basis of this piece of mail constitutes a frivolous challenge and cannot be made in good faith. Plaintiffs further believe, and hereby seek a judicial declaration that, Fla. Stat. §§ 98.065 and 98.075 do not permit a challenge based solely on the failure to return a “Party Affiliation Voter Registration Card,” or a challenge based solely on a single mailing that has allegedly been returned as undeliverable at the address listed for a voter in voter registration records.

55. Absent the relief sought in this Complaint, Plaintiff Green reasonably fears that he will be subjected to a frivolous challenge based on the “Party Affiliation Voter Registration Card” or similar mailings, that he will be forced to wait in excessively long lines because of such mass challenges, and that without adequate notice of what will be required to confirm his eligibility, it is substantially likely that he will be unduly deprived of his right to vote. Plaintiff Florida Democratic Party also reasonably fears that its members and supporters will be subjected to the same unlawful conduct, and that it will be compelled as a result to divert otherwise devoted resources to mitigating the harmful effects of Defendants’ challenge scheme.

56. Further, Plaintiff Green is in doubt as to his rights and the rights of similarly situated Florida voters, including members and supporters of Plaintiff Florida Democratic Party, arising from Defendants’ anticipated challenge of their eligibility to vote, as set forth above. *See Fla. Stat. § 86.021.*

**SECOND CAUSE OF ACTION**  
**(Declaratory Relief)**  
**(Fla. Stat. §§ 98.065 and 98.075)**

57. Plaintiffs reallege each allegation contained in paragraphs 1 through 51 above as if fully set forth herein.

58. Upon information and belief, Defendants have facilitated the challenge of voters in Glades County based on a facially frivolous spreadsheet containing alleged voter residence information and an assertion that a private party has been unable to “verify” the alleged residence in question.

59. Any challenge made solely on the basis of the information contained in this spreadsheet or similarly compiled lists constitutes a frivolous challenge and cannot be made in good

faith. Further, a challenge in the form of a single oath followed by a list of challenged voters does not conform to the requirements of Fla. Stat. § 101.111. Plaintiffs seek a declaration that a mass challenge based on a single challenge oath attaching a list of voters is not a valid challenge because it fails to conform with Fla. Stat. § 101.111. Plaintiffs further believe, and hereby seek a judicial declaration that, Fla. Stat. §§ 98.065 and 98.075 do not permit a challenge based solely a facially frivolous document such as the spreadsheet used in the Glades County challenge. Plaintiffs further believe, and hereby seek a judicial declaration that, Fla. Stat. § 101.045 does not permit a challenge based solely on information that a voter no longer resides at a particular address without further information that the voter is no longer eligible to vote at the precinct where he presents himself.

60. Absent the relief sought in this Complaint, Plaintiff McPherson reasonably fears that she will be subjected to a frivolous challenge based on the spreadsheet used in the Glades County challenge or something derived from it, that she will be forced to wait in excessively long lines because of such mass challenges, that she will lose the right to vote a regular ballot and be forced to vote a provisional ballot, and that without adequate notice of what will be required to confirm her eligibility, it is substantially likely that she will be unduly deprived of her right to vote. . Plaintiff Florida Democratic Party also reasonably fears that its members and supporters will be subjected to the same unlawful conduct, and that it will be compelled as a result to divert otherwise devoted resources to mitigating the harmful effects of Defendants' challenge scheme.

61. Further, Plaintiff McPherson is in doubt as to her rights and the rights of similarly situated Florida voters, including members and supporters of Plaintiff Florida Democratic Party, arising from Defendants' anticipated challenge of their eligibility to vote, as set forth above. *See* Fla. Stat. § 86.021.

**THIRD CAUSE OF ACTION  
(Declaratory Relief)  
(Fla. Stat. § 101.111)**

62. Plaintiffs reallege each allegation contained in paragraphs 1 through 51 above as if fully set forth herein.

63. Upon information and belief, Defendants intend to challenge the eligibility of Plaintiff Green and other similarly situated voters, including members and supporters of Plaintiff Florida Democratic Party, based on their failure to return a “Party Affiliation Voter Registration Card” to Defendants or their agents, or based on such cards that have allegedly been returned as undeliverable at the address listed for the voter on the statewide voter registration database.

64. Pursuant to Florida law, once a challenge is initiated, whether before or on election day, the challenged voter “shall be allowed to cast a provisional ballot.” Fla. Stat. § 101.111(2).

65. Frivolous challenges not made in good faith, however, are unlawful. Fla. Stat. § 101.111(4).

66. A challenge that is not made in good faith or that is frivolous is not a “challenge” requiring further action under § 101.111, Fla. Stat. Just as a county Supervisor of Election and his designated poll workers are not legally compelled to force all voters to vote provisionally if they were challenged based on the color of their clothing or the color of their eyes, so too do the local elections officials have the authority to find that other challenges are frivolous and not in good faith, and thus to allow affected voters to vote a regular ballot notwithstanding the frivolous challenges. Plaintiffs seek a judicial declaration that Fla. Stat. § 101.111 permits Supervisors of Elections and the designated poll workers to permit voters to vote a regular ballot if the challenge to the voter is determined by those officials to be frivolous.

67. Absent the relief sought in this Complaint, Plaintiff Green reasonably fears that he will be subjected to a frivolous challenge based on the “Party Affiliation Voter Registration Card” or similar mailings, that he will be forced to wait in excessively long lines because of such mass challenges, and that without adequate notice of what will be required to confirm his eligibility, it is substantially likely that he will be unduly deprived of his right to vote. . Plaintiff Florida Democratic Party also reasonably fears that its members and supporters will be subjected to the same unlawful conduct, and that it will be compelled as a result to divert otherwise devoted resources to mitigating the harmful effects of Defendants’ challenge scheme.

68. Further, Plaintiff Green is in doubt as to his rights and the rights of similarly situated Florida voters, including members and supporters of Plaintiff Florida Democratic Party, arising from Defendants’ anticipated challenge of their eligibility to vote, as set forth above. *See Fla. Stat. § 86.021.*

**FOURTH CAUSE OF ACTION**  
**(Declaratory Relief)**  
**(Fla. Stat. § 101.045)**

69. Plaintiffs reallege each allegation contained in paragraphs 1 through 51 above as if fully set forth herein.

70. Upon information and belief, Defendants intend to challenge the eligibility of Plaintiff Green and other similarly situated voters, including members and supporters of Plaintiff Florida Democratic Party, based on their failure to return a “Party Affiliation Voter Registration Card” to Defendants or their agents, or based on such cards that have allegedly been returned as undeliverable at the address listed for the targeted voters in voter registration records.

71. A duly registered voter who moves to a new residence within the county has the

absolute right to vote a regular ballot if at the polls he or she fills out a “Change of Legal Residence Affirmation” form. Fla. Stat. § 101.045. This right to vote by regular ballot exists notwithstanding a challenge to residency lodged under Fla. Stat. § 101.111.

72. Plaintiffs seek a declaration from the Court, based on these two sections, that a Florida elections official is not compelled automatically to hand a challenged voter a provisional ballot any and every time a challenge is made. It is also clear that Florida elections officials may not force a challenged voter to vote only by a provisional ballot, as opposed to a regular ballot, simply because of an allegation that the voter has moved within the county. The voter has an absolute right to affirm that his or her legal residence has changed and thus to vote via a regular ballot.

73. Absent the relief sought in this Complaint, Plaintiff Green reasonably fears that he will be subjected to a frivolous challenge based on the “Party Affiliation Voter Registration Card” or similar mailings, that he will be forced to wait in excessively long lines because of such mass challenges, and that without adequate notice of what will be required to confirm his eligibility, it is substantially likely that he will be unduly deprived of his right to vote. . Plaintiff Florida Democratic Party also reasonably fears that its members and supporters will be subjected to the same unlawful conduct, and that it will be compelled as a result to divert otherwise devoted resources to mitigating the harmful effects of Defendants’ challenge scheme.

74. Further, Plaintiff Green is in doubt as to his rights and the rights of similarly situated Florida voters, including members and supporters of Plaintiff Florida Democratic Party, arising from Defendants’ anticipated challenge of their eligibility to vote, as set forth above. *See* Fla. Stat. § 86.021.

**FIFTH CAUSE OF ACTION  
(Declaratory Relief)**

**(Fla. Stat. § 104.0515)**

75. Plaintiffs reallege each allegation contained in paragraphs 1 through 51 above as if fully set forth herein.

76. Upon information and belief, Defendants intend to challenge the eligibility of Plaintiff Green and other similarly situated voters, including members and supporters of Plaintiff Florida Democratic Party, based on their failure to return a “Party Affiliation Voter Registration Card” to Defendants or their agents, or based on such cards that have allegedly been returned as undeliverable at the address listed for the targeted voters in voter registration records.

77. Florida law prohibits any person from intimidating or attempting to intimidate any other person for the purpose of interfering with the right of that other person to vote. Fla. Stat. § 104.0515(3).

78. Plaintiffs seek a judicial declaration that Defendants’ “Party Affiliation Voter Registration Card” scheme violates Fla. Stat. § 104.0515(3).

79. Absent the relief sought in this Complaint, Plaintiff Green reasonably fears that he will be subjected to a frivolous challenge based on the “Party Affiliation Voter Registration Card” or similar mailings, that he will be forced to wait in excessively long lines because of such mass challenges, and that without adequate notice of what will be required to confirm his eligibility, it is substantially likely that he will be unduly deprived of his right to vote. Plaintiff Florida Democratic Party also reasonably fears that its members and supporters will be subjected to the same unlawful conduct, and that it will be compelled as a result to divert otherwise devoted resources to mitigating the harmful effects of Defendants’ challenge scheme.

80. Further, Plaintiff Green is in doubt as to his rights and the rights of similarly situated Florida voters, including members and supporters of Plaintiff Florida Democratic Party, arising from Defendants' anticipated challenge of their eligibility to vote, as set forth above. *See Fla. Stat. § 86.021.*

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request from this Court the following declaratory relief:

A. An order declaring, pursuant to the Court's authority under Fla. Stat. § 86.011 *et seq.*, that:

1. County Supervisors of Elections have the authority to disregard frivolous challenges, and to permit a challenged voter to vote a regular ballot despite a frivolous challenge; and
2. Neither (a) the failure of any voter to complete and/or return a piece of mail sent by Defendants nor (b) the fact that a single piece of mail sent by Defendants may have been returned by the Postal Service as undeliverable, constitutes a good faith basis upon which to lodge a challenge to a voter's registration, and both are in fact frivolous;
3. A mass challenge based on a single challenge oath attaching a list of voters is not a valid challenge because it fails to conform with Fla. Stat. § 101.111;
4. Any challenge based on the flawed and suspect information contained on the spreadsheet attached to the Glades County challenge, or similarly compiled lists, is frivolous and does not constitute a good faith basis to

challenge voters there;

5. Any challenge based solely on the fact that the voter's home has been foreclosed upon is frivolous;

6. Defendants' "Party Affiliation Voter Registration Card" scheme violates Fla. Stat. § 104.0515(3).

B. Such other and further relief as this Court may deem necessary or proper.

Dated: October 30, 2008

Respectfully submitted,

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