

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. **08-21243-CV-ALTONAGA/Brown**

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LEAGUE OF WOMEN VOTERS OF FLORIDA, FLORIDA  
AFL-CIO, as organizations and as representatives of their  
members; and MARILYNN WILLS;

Plaintiffs,

v.

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

Defendants.

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**AMENDED DECLARATION OF DIANNE WHEATLEY GILIOTTI**

I, DIANNE WHEATLEY GILIOTTI, declare:

1. I am a resident and citizen of the United States and of the State of Florida. I reside at 2842 Country Woods Lane, Palm Harbor, Florida 34683. I submit this amended declaration in support of plaintiffs' motion for a preliminary injunction.
2. I am the president of the League of Women Voters of Florida (the "League of Women Voters," "state League," or "League"), a plaintiff in the above-captioned action.

3. The League of Women Voters seeks to prevent enforcement of Fla. Laws 2007-30 §§ 1 and 2 (the “Amended Law”), which the Secretary of State has announced will be enforced, absent injunctive relief, as soon as regulations implementing the law take effect, which could be as soon as early July 2008. Unless the implementing regulations clarify the term “affiliate,” as used in the statute, and determine what individuals or groups may be held liable for violations of the law in such a way as to reduce the potential liability for the League and the individuals and entities who work with the League on voter registration drives, the League will be forced to suspend its voter registration drives entirely once the Amended Law starts to be enforced. The League cannot risk the potentially severe and ruinous fines to which the Amended Law, due its vagueness and the burdens it imposes, may subject the League, its local affiliate organizations in Florida (“local Leagues”), and its members who register voters.

### **The League of Women Voters**

4. The national League of Women Voters (“national League”) was founded by Carrie Chapman Catt in 1920 during the convention of the National American Woman Suffrage Association. The convention was held just six months before the 19th amendment to the U.S. Constitution was ratified, giving women the right to vote after a 57-year struggle.

5. The national League began as a “mighty political experiment” designed to help 20 million women carry out their new responsibilities as voters. It encouraged them to use their new power to participate in shaping public policy. From the beginning, the national League was an activist, grassroots organization whose leaders

believed that citizens should play a critical role in advocacy. Because of its origins, the national League, the state League, and the local Leagues all strive to involve people in the political process that have generally not had the opportunity to participate. In this way, inasmuch as women were disenfranchised in 1920, we seek out those who are, for all practical purposes, disenfranchised today.

6. The League has always been a nonpartisan organization. National League founders believed that maintaining a nonpartisan stance would protect the fledgling organization from becoming mired in the party politics of the day. However, national League members are encouraged to be political themselves, by educating citizens about, and lobbying for, government and social reform legislation.

7. The League of Women Voters of Florida is a non-partisan, not-for-profit corporation organized under the laws of Florida. It was founded in 1939 and has more than 2,800 members. Its only office is located at 40 Beverly Court, Tallahassee, Florida, 32301-2506. Its mission is to promote political accountability through informed and active participation in government. It is a 501(c)(4) tax exempt charity pursuant to the Internal Revenue Code.

8. The League currently comprises 25 local Leagues located in the following cities and counties throughout Florida: Miami-Dade County, Alachua County/Gainesville, Jacksonville/First Coast (Duval, Nassau and St. Johns counties), the St. Petersburg Area, Polk County, Orange County, North Pinellas County, Lee County, Seminole County, Hillsborough County, Pensacola Bay Area (Escambia and Santa Rosa counties), Volusia County, St. Lucie County, Broward County, Tallahassee, the Space

Coast (Brevard County), Palm Beach County, Manatee County, Sarasota County, Okaloosa County, Lake County, Collier County, Bay County, Martin County, and Flagler County. The League also has two member-at-large units in Charlotte County and The Villages Lake (Sumter, Lake and Marion counties), which are managed by member-at-large boards accountable to the state League.

9. Local Leagues are community-based organizations run by League members who volunteer their time. All twenty-five (25) of the Local Leagues are separately incorporated nonprofit corporations.

10. The League encourages the informed and active participation of citizens in government and influences public policy through education and advocacy. One of the League's primary goals is to promote effective voter participation in government. The League accomplishes this goal by: (1) conducting voter registration drives throughout the state; (2) holding educational forums and candidate debates open to the public; (3) publishing a quarterly newsletter and hosting a website; (4) distributing both a non-partisan bi-annual election guide to candidates for statewide office and other objective information regarding proposed constitutional amendments in Florida; and (5) distributing information on topics ranging from government reform and education to natural resources, and social and fiscal policy.

11. For fiscal year 2007-2008, the League had a budget of approximately \$86,000. For fiscal year 2008-2009, the League has a budget of approximately \$81,000. These funds have been budgeted to pay for: (1) 60% of the cost of one full-time and one part-time employee who manage the League's office, handle

correspondence (via phone, mail and email), service local Leagues, support board of directors meetings and member meetings, prepare reports, and receive funds; (2) office expenses; (3) transportation and costs for statewide board meetings, an annual legislative seminar, and an annual local League conclave; (4) events and publications; (5) advocacy efforts in the state legislature; (6) maintenance of a state website, [www.lwvfla.org](http://www.lwvfla.org); and (7) support of the National League with state dues.

12. The local Leagues generally have annual budgets ranging from \$1,000 to \$50,000; they are probably \$5,000 on average.

#### **The League's Voter Registration Activities**

13. The local Leagues conduct voter registration drives with assistance from the state League. These drives may occur on an annual basis or throughout the year, depending upon the local League's schedule of community events, but are especially active in the summer and fall months immediately prior to voter registration deadlines for fall primary and general elections.

14. Registering voters is an important part of accomplishing the League's mission of promoting political responsibility through an informed and active citizenry. It is also an important part of accomplishing the League's goal of increasing political participation by women, youth, and citizens in traditionally underrepresented and disenfranchised communities, particularly residents of low-income, African-American, and Hispanic communities.

15. As an example of this group objective, when I was involved with the local League in Pinellas County in 1999, we recognized that there was a growing Hispanic population in the county. We started holding voter registration drives at a newly opened Hispanic community and Hispanic fairs to register voters. I know that, in areas where there is a sizable under-represented Black population, local League members have made it a point to go into African-American churches to register voters before primaries in general elections. As another example, one of the local Leagues, the League of Women Voters in Orange County, has spearheaded the “Vamos A Votar Coalition,” which is a non-partisan campaign to increase Hispanic voter participation in Central Florida. The coalition’s website is [www.vamosavotar.org](http://www.vamosavotar.org). In addition, some local Leagues, such as the Jacksonville/First Coast League, regularly attend naturalization ceremonies in their community. They encourage new U.S. citizens to register to vote as part of their new responsibilities. League members also encourage these new citizens to become engaged in the political process locally and on a state and federal level by lobbying elected officials on issues of importance to these new U.S. citizens.

16. Approximately 30 percent of the League’s members and volunteers live in those counties along the Atlantic coastline from Indian River County to Monroe County, along with Highlands and Okeechobee counties [hereinafter “South Florida”]. Moreover, the League and local Leagues make special efforts to register voters in South Florida because of the predomination of Hispanic communities in South Florida, a population that has historically been under-represented in its participation in the political process.

17. The state League also strives toward the objective of involving those citizens in the political process who have generally been underrepresented. Toward that end, the League, recognizing Florida's diverse population, publishes candidate guides in both English and Spanish. I understand that in Miami/Dade County, the local League publishes voter registration information in English, Spanish, and Creole.

18. Each local League that conducts voter registration relies solely on members and other volunteers to register voters.

19. Typically, local Leagues will register voters by attending community events or talking to citizens at institutions and high-traffic areas, such as churches, malls, schools, nursing homes, and community centers. League voter registration volunteers often set up tables and encourage passers-by to stop and fill in a voter registration application. They also walk around with applications on clipboards and ask individuals if they are willing to register to vote.

20. In their voter registration drives, the local Leagues go to places where people, who may not have either the means or the opportunity to otherwise register to vote, congregate. For instance, many people we register do not have a car to go to the motor vehicle offices or the offices of their local supervisor of elections. Some people we register are just intimidated by going into a government office.

21. Local League volunteers assist applicants in properly filling in voter registration applications. The volunteers are responsible for collecting each completed application and either mailing them or delivering them in-person to a Supervisor of Elections.

22. League members or volunteers also register voters more informally, helping extended family, friends, co-workers, and acquaintances to register to vote. League volunteers are very enthusiastic about this work because, first, getting people registered to vote is the first step in getting people involved in the political process. But, also, registering voters has always been a hands-on opportunity for our volunteers where they can meet with prospective voters face-to-face, and not only register voters but help guide citizens in how to contact elected officials and, generally, in how they can take part in our political and governmental process.

23. The League communicates non-partisan political messages during its voter registration activities. Volunteers hand out pamphlets and other materials discussing the importance of registering to vote, providing information about voting, and informing voters about how they can contact their elected officials. For example, League volunteers provide new voters with a palm card entitled “5 Things to Know,” which contains tips for successfully voting, such as taking their voter ID card to their polling place. League volunteers also distribute the League’s quarterly publication, “The Florida Voter,” and solicit people to become members of the League.

24. During the course of voter registration drives, League volunteers are instructed to explain to potential new voters that the League believes it is important for all eligible citizens to register to vote in order to hold the government accountable for its decisions. We want volunteers to be conversant in this issue because conversations about the rights and responsibilities of a democracy’s citizens inevitably arise in the course of conducting voter registration drives.

25. The League sometimes conducts voter registration in conjunction with efforts to collect signatures from registered voters for ballot initiative petitions. Florida law permits only registered voters to sign initiative petitions. During a petition drive, if a potential signatory is not registered to vote, a League volunteer will encourage him or her to register to vote so he or she can later sign an initiative petition and vote for the initiative. For example, the League is currently collecting initiative petitions in support of a state constitutional amendment that would create new requirements for drawing congressional and legislative districts in a manner that would increase opportunities for racial and linguistic minorities to participate in the political process. League volunteers are instructed to give petitions to interested citizens who register to vote so the citizens can sign and submit the petition after they receive confirmation they are registered to vote.

26. The success of the League's voter registration drives depends upon our ability to know that a prospective voter filled out a completed application. In my 35 years of experience registering voters, I know that the vast majority of people we speak to will not properly complete and submit applications without assistance.

27. After collecting voter registration forms, our members submit them to the Supervisor of Elections' office as soon as is feasible, as they are instructed to do by the League. The League does not process or photocopy the forms it collects, as it does not have the resources to do so.

28. The League and its members do not "hoard" or delay submitting applications after they are properly filled in and signed by applicants, and I have never

known of any local League or League member to have done so. In my experience, the League and its members have never collected a properly completed application before a book-closing deadline and then submitted the application to a Supervisor of Elections after that book-closing deadline. League members have, however, submitted voter registration applications more than ten days after they were collected, though rarely.

29. In my experience, League members act extremely responsibly and conscientiously when it comes to protecting every citizen's right to vote; indeed, that is a central part of the League's mission. League members believe it is their personal duty and responsibility to submit applications to the Supervisor of Elections as soon as is feasible and before book-closing.

**Fla. Laws 2007-30 §§ 1 and 2**

30. I have read the Amended Law, Fla. Laws 2007-30 §§ 1 and 2, and find it extremely confusing, ambiguous, and burdensome.

31. For example, the definition of a "third-party registration organization" in § 1 includes "any *person*, entity, or organization soliciting or collecting voter registration applications." Section 2 states that a third-party registration organization could be fined if an application is not "promptly delivered" to a Supervisor of Elections. The law does not make it clear when an individual League volunteer will be liable for the fines, when the local League will be liable, or when the state League will be liable.

32. In addition, § 2 states that if a collected application is not “promptly delivered” to a Supervisor of Elections, then the third-party registration organization is liable for a series of escalating fines ranging from \$50 per application to \$1,000 per application. It adds that the “aggregate fine . . . which may be assessed against a third-party registration organization, including affiliate organizations, for violations committed in a calendar year shall be \$1,000.” Section 2 is entirely unclear and ambiguous as to the definition of “affiliate organizations” and whether local Leagues and League members are considered affiliate organizations of the League.

33. As a result of the vague and ambiguous aspects of the Amended Law, the Amended Law poses a severe and potentially ruinous risk of fines to the League, local Leagues, and individual members. For example, could each local League and the state League be annually fined up to \$1,000 each, for a total of \$26,000 in fines? A fine of \$1,000 for a local League would be devastating; a fine of \$26,000 for the League would wipe out one-third of its annual budget and be equally devastating.

34. This uncertainty would be catastrophic if individual League members or voter registration volunteers were considered separate organizations, but not affiliate organizations. As a result, the Amended Law is entirely unclear and ambiguous as to whether each of the League’s individual members, which numbered 2,903 as of January 31, 2008, and the individual volunteers, numbering even more, are personally liable for up to \$1,000 in annual fines. If so, the total liability would be greater than 2.9 million dollars because of the expanding membership of the League and the number of non-member volunteers.

35. Based on my knowledge and experience, I believe that the risk for individual members and volunteers of being personally liable for up to \$1,000 in annual fines would deter many members and volunteers from participating in League-sponsored and organized voter registration activities.

36. Section 2 provides that after the Secretary of State determines that fines should be imposed pursuant to the Amended Law, he “shall waive the fines . . . upon a showing that the failure to deliver the voter registration applications promptly is based upon force majeure or impossibility of performance.” While force majeure may refer to an act of God, such as a hurricane or car accident, it is entirely unclear to me whether these terms mean that the Secretary of State shall waive any fines if, for example, a League member faces a family crisis or emergency resulting in a gravely injured and hospitalized spouse or child causing the member to take more than ten days to submit an application before a book-closing deadline.

### **The League’s Moratorium on Voter Registration**

37. Prior to the entry of the Consent Order staying enforcement of the Amended Law until a final rule implementing the law becomes effective, the League’s board of directors, on April 16, 2008, voted to impose a moratorium, beginning May 1, 2008, on voter registration activities sponsored by all local Leagues in Florida. While this moratorium has now been lifted, this would have been only the second time in the League’s seventy year history that it would have had to suspend its voter registration activities, the first time being 2006, when the original law was enacted. If an injunction is not entered in this action, the League’s board of directors will impose another

moratorium on voter registration activities upon a final rule becoming effective because of the financial liabilities threatened by the Amended Law.

38. Prior to the board's decision, and after the Court issued its injunction on August 26, 2006, enjoining enforcement of the original law, Fla. Laws 2005-277, local Leagues had been organizing voter registration drives and collecting voter registration applications in anticipation of the fall 2008 elections, including the presidential election.

39. Presidential election years, like 2008, are the most important years in which the League conducts voter registration. The burdens imposed on the League's voter registration activities during presidential election years are significantly magnified because of the special importance of the upcoming elections, the increased volume in applications collected, and the heightened amount of free speech and association in which the League can engage due to the public's heightened interest in the political process.

40. The vagueness and burdensomeness of the Amended Law threatens the League with a real risk of being severely fined. The League relies on volunteers dispersed throughout the state to collect applications during the course of each year. With its limited budget and the equivalent of only 1.5 full-time employees, the League cannot monitor every voter registration activity of each of its 25 local Leagues, 2 member-at-large Leagues, and their countless volunteers. Particularly given the law's imposition of an unjustified 10-day deadline for submitting completed voter registration applications, there is a high likelihood that some applications will be submitted after the

10-day time limit, but before the next book-closing deadline, and the League will be liable for severe and potentially ruinous fines.

41. A League volunteer could miss the deadlines in the new law by honest mistake and through no fault of her or his own. For example, she or he might leave completed applications in a local office, mistakenly believing that arrangements had been made for another volunteer to deliver the applications to a Supervisor of Elections' office. If the applications are delivered nonetheless before the next book-closing, but after ten days, the volunteer, the League member, the local League, or the League may still face fines.

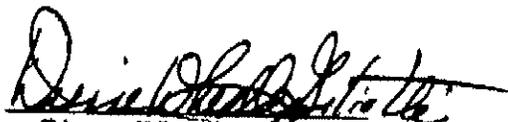
42. The League has determined that it will not be eligible for a three-fourths reduction of any fines under the Amended Law because it will not be able to comply with the requisite quarterly reporting provisions. The League cannot afford for its already over-extended full-time and part-time staff to be diverted from their existing responsibilities to spend the time necessary to prepare and submit the requisite reports to the state. Such reporting would take a considerable amount of time each year because it would require a staff member to contact each of the 25 local Leagues and the two member-at-large units and collect and compile information about where hundreds of volunteers collected applications every quarter. In addition, the volunteers who run our local Leagues have already committed to being responsible for substantive League-related work—including registering voters. Only one local League that I know of, the League of Women Voters for the St. Petersburg area, employs a part-time staff person, and even that person is currently overextended. Requiring these individuals to keep close

track of where every volunteer registers voters would add appreciably to their almost-entirely volunteer work.

43. In addition to imposing a severe financial risk to the League, the law also imposes a severe threat of unfair and unjustified reputational risk to the League. False, misleading, unsubstantiated or inaccurate complaints to the Secretary of State about the League's voter registration activities may force the League to pay the cost of defending itself and its reputation. These costs may include investigating the complaint, preparing witnesses, prepping for court and wasting time defending the League in the court of public opinion. This will reduce the time and money the League can spend engaging in protected speech to advance its mission. For example, a finding by the Secretary of State that a League member missed the ten-day deadline but submitted an application before a book-closing deadline, through no fault of her own, could severely damage the League's reputation but cause no harm to the potential voter's right to vote—even if the Secretary later waived the fine.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 13, 2008

  
Dianne Wheatley Giliotti