UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 08-21243-CIV-ALTONAGA/Brown

League of Women Voters of Florida, *et al.*,

Plaintiffs,

vs.

Kurt S. Browning, in his official capacity,
and Donald L. Palmer, in his official capacity,

Defendants.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Table of Contents

Page

Table of Contents i
Table of Authorities ii
PRELIMINARY STATEMENT 1
STATEMENT OF FACTS 3
I. Plaintiffs' Voter Registration Drives 4
II. Florida's Amended Third-Party Voter Registration Law 6
III. The Impact of the Challenged Law on Plaintiffs 7
ARGUMENT 8
I. Plaintiffs Have a Substantial Likelihood of Success on the Merits of Their Claim that the Amended Law Violates the First Amendment 9
A. The Law Is Unconstitutionally Vague 10
1. The Amended Law Fails to Provide Fair Notice of Wrongdoing. 10
2. The Amended Law Risks Arbitrary or Discriminatory Enforcement. 12
3. The Amended Law's Vagueness Chills Plaintiffs' Protected Speech and Association. 14
B. The Law Unconstitutionally Burdens the League Plaintiffs' Core Political Speech and Association 14
1. The Amended Law Imposes Severe Burdens on Core First Amendment Activities. 16
2. The State's Interests 17
3. The State's Interests Are Insufficient to Justify the Burdens on Plaintiffs' Rights. 18
4. This Court Properly Held in *LWVF* That the Challenged Law Implicates the First Amendment 21
II. Irreparable Harm 22
III. The Balance of Hardships Favors Injunctive Relief 23
IV. The Public Interest Weighs in Favor of an Injunction 24
CONCLUSION 26

TABLE OF AUTHORITIES

FEDERAL CASES

Anderson v. Celebrezze,
460 U.S. 780 (1983) 8, 15, 17, 18

Association of Community Organizations for Reform Now v. Cox,
No. 06-CV-1891, 2006 U.S. Dist. LEXIS 87080 (N.D. Ga. Sept. 27, 2006) 21

Bernbeck v. Moore,
126 F.3d 1114 (8th Cir. 1997)....................18

Buckley v. America Constitutional Law Foundation, Inc.,
525 U.S. 182 (1999) 17, 22

Burdick v. Takushi,
504 U.S. 428 (1992) 15

Charles H. Wesley Education Foundation, Inc v. Cox,
408 F.3d 1349 (11th Cir. 2005)....................9, 23, 25

City of Chicago v. Morales,
527 U.S. 41 (1999) 12

Common Cause/Georgia v. Billups,
406 F. Supp. 2d 1326 (N.D. Ga. 2005) 25

Connally v. General Construction Co.,
269 U.S. 385 (1926) 10

Crawford v. Marion County Election Board,
76 U.S.L.W. 4242, 2008 U.S. LEXIS 3846 (Apr. 28, 2008) 15, 16, 17

Elrod v. Burns,
427 U.S. 347 (1976) 9, 23

Fulani v. Krivanek,
973 F.2d 1539 (11th Cir. 1992)....................15, 19

Grayned v. City of Rockford,
408 U.S. 104 (1972) 14

Green v. Mortham,
155 F.3d 1332 (11th Cir. 1998)....................16

KH Outdoor, LLC v. City of Trussville,
458 F.3d 1261 (11th Cir. 2006)....................23, 24

Kolender v. Lawson,
461 U.S. 352 (1983)....................12

Konikov v. Orange County,
410 F.3d 1317 (11th Cir. 2005)....................10, 12, 14

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447 F. Supp. 2d 1314 (S.D. Fla. 2006).................... *passim*

McIntyre v. Ohio Elections Commission,
514 U.S. 334 (1995)....................17

Meyer v. Grant,
486 U.S. 414 (1988).................... *passim*

United States v. Playboy Entertainment Group, Inc.,
529 U.S. 803 (2000)....................19

Project Vote v. Blackwell,
455 F. Supp. 2d 694 (N.D. Ohio 2006)....................21

Sammartano v. First Judicial District Court, County of Carson City,
303 F.3d 959 (9th Cir. 2002)....................9, 25

Smith v. Goguen,
415 U.S. 566 (1974)....................12

Swanson v. Worley,
490 F.3d 894 (11th Cir. 2007)....................16

Timmons v. Twin Cities Area New Party,
520 U.S. 351 (1997)....................15

United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Regional Transit Authority,
163 F.3d 341 (6th Cir. 1998)....................25

Village of Schaumburg v. Citizens for a Better Environment,
444 U.S. 620 (1980)....................8, 14, 22

United States v. Playboy Entertainment Group, Inc.
529 U.S. 803 (2000)....................19

United States v. Williams,
444 F.3d 1286 (11th Cir. 2006) 10

STATE CASES

Churchville v. GACS Inc.,
973 So. 2d 1212 (Fla. Dist. Ct. App. 1st Dist. 2008) 11

FEDERAL STATUTES

28 U.S.C. § 2201(a) 1

28 U.S.C. § 2202 1

STATE STATUTES

2005 Fla. Laws 277 §§ 2, 7 3

2007 Fla. Laws 30 §§ 1, 2 .... 1, 3

Fla. Stat. § 97.012(1) 12

Fla. Stat. § 97.021(36) .... *passim*

Fla. Stat. § 97.0575 .... *passim*

Fla. Stat. § 104.011(2) 18

Fla. Stat. § 104.0615(4) 6, 19, 20

Fla. Stat. § 775.082(3) 19

Fla. Stat. § 775.083(1) 19

MISCELLANEOUS

Mike Baker, *More than 3.5 Million New Voters, AP Survey Finds*,
ASSOCIATED PRESS ONLINE,
May 6, 2008 24

Black's Law Dictionary 59 (7th ed. 1999) 11

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N.Y. Times, Apr. 28, 2008, at A1 .... 7, 12

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Plaintiffs League of Women Voters of Florida (the "League"), Florida AFL-CIO (the "AFL-CIO") (together "Organizational Plaintiffs"), and Marilynn Wills ("Ms. Wills") move pursuant to Rule 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201(a) and 2202 for a Preliminary Injunction preventing enforcement of Florida statutes §§ 97.021(36) and 97.0575.

PRELIMINARY STATEMENT

Plaintiffs are nonprofit organizations and a Florida citizen who have conducted, and wish to continue to conduct, voter registration drives in order to encourage civic participation in government, communicate political messages, and associate with fellow citizens to effect change. Plaintiffs file this motion to prevent Defendants, who are state election officials, from enforcing Florida's unusual third-party voter registration law, Fla. Stat. §§ 97.021(36) and 97.0575, as amended by Laws of Florida, Ch. 2007-30 (the "Amended Law"). Although at the Court's urging Defendants entered into a Consent Order Staying Enforcement of Challenged Statute on April 28, 2008 (the "Consent Order"), the Consent Order stays enforcement of the Amended Law only until such time as a final rule implementing the Amended Law is adopted and becomes effective pursuant to the Florida Administrative Procedure Act, Chapter 120, Fla. Stat. *See* Consent Order ¶ 1. Plaintiffs urge this Court to enjoin enforcement of the Amended Law, which could go into effect as early as July, and allow Plaintiffs to conduct their constitutionally protected voter registration activities unburdened by the statute's unconstitutionally vague and excessively punitive provisions.

This Court enjoined a previous enactment of this law in 2006, holding that the Plaintiffs' voter registration drives are intertwined with important political speech and association situated at the core of the First Amendment's protections. It further held that the original law unconstitutionally burdened the exercise of those rights by, among other things, threatening Plaintiffs and their volunteers and workers with crippling fines on a strict liability basis. The Amended Law continues to threaten Plaintiffs and their volunteers and workers with crippling fines on a near-strict liability basis; moreover, its vague provisions leave Plaintiffs uncertain of their potential liability.

As Defendant Browning has acknowledged, the Amended Law includes confusing and ambiguous language concerning the circumstances in which volunteers and workers participating in organized voter registration drives, as well as local League chapters and local unions, may be

individually subject to fines of up to $1,000 annually. Because the statutory language leaves open the possibility, Plaintiffs must assume that the League, its chapters, and its volunteers, including Ms. Wills, and the AFL-CIO, its locals, and its members, could each be subject to fines of up to $1,000 annually for cumulative fines of tens or hundreds of thousands of dollars. Because they cannot afford to risk such exposure, Plaintiffs intend to shut down their voter registration activity entirely as soon as the law takes effect. The law's vagueness also raises the very real possibility of arbitrary or discriminatory enforcement.

Even if the vagueness in the Amended Law were cured so that it clearly allowed the imposition of up to $1,000 in fines against each individual volunteer or member or against each chapter or local union, it should be enjoined because it unconstitutionally burdens Plaintiffs' speech and association. The Amended Law thus interpreted contains the same flaws that led this Court to enjoin the prior enactment: escalating fines for failing to meet arbitrary deadlines, nearly strict liability for those fines, and the risk of significant fines for individual volunteers and employees of Plaintiffs' voter registration drives. The law would allow the imposition of fines up to $1,000 on volunteers, such as Ms. Wills, who seek to exercise their core First Amendment rights and to engage fellow citizens in informed civic participation. The law would also allow the imposition of crippling fines on organizations, such as the League and the AFL-CIO, even for minor infractions and even for innocent mistakes (with a few very narrow exceptions). The state's interest in enforcing the law are no more compelling than they were in 2006, and the law, despite its purported fixes, is just as burdensome as and no more narrowly tailored than the prior enactment.

Florida is almost alone among states in seeking to impose civil fines without a finding of fault or intentionality on voter registration activities. This Court has previously noted the central importance of those activities to the election process and their place among the core rights protected by the First Amendment. The present action involves the very same protected activities and substantially the same burdens on those activities. For reasons previously articulated by this Court, and for the additional reason that the reenacted statute is void for vagueness, Plaintiffs urge this Court to preliminarily enjoin Defendants from enforcing the Amended Law.

STATEMENT OF FACTS

Plaintiffs conduct voter registration drives in order to energize and educate the electorate, communicate political messages important to their organizational missions, and associate with their fellow citizens to advance these missions. When faced with a statute that would have chilled their political expression, Plaintiffs and other nonprofit groups filed an action in this Court almost exactly two years ago to enjoin enforcement of the original version of Florida's third-party voter registration law. *See League of Women Voters of Fla. v. Cobb*, No. 06-21265. That law, 2005 Fla. Laws 277 §§ 2, 7 (the "Original Law"), made third-party voter registration organizations strictly liable for failure to deliver voter registration applications to the Division of Elections or any Supervisor of Elections after an arbitrary ten-day period from collection, and imposed fines for each violation.

After extensive briefing and a multi-day hearing, this Court issued an order on August 28, 2006 preliminarily enjoining enforcement of the Original Law. This Court found that the law's provisions subjecting third-party voter registration organizations to financial penalties unconstitutionally interfered with Plaintiffs' First Amendment freedoms. Defendants appealed, but while the case was pending in the Eleventh Circuit, the Florida Legislature enacted an amended version of the law, 2007 Fla. Laws 30 §§ 1, 2. This new version left in place many of the Original Law's key operative features and included new provisions and undefined terms.

Although the Amended Law was scheduled to go into effect on January 23, 2008, prior to that date, the parties to the previous action entered into a standstill agreement pursuant to which Defendants agreed to refrain from enforcement of the law. On March 31, 2008, Defendants abruptly and unexpectedly terminated the standstill agreement and, pursuant to the standstill agreement's terms, could have begun to enforce the Amended Law on April 30, 2008. Plaintiffs filed a complaint seeking declaratory and injunctive relief and an emergency motion for a temporary restraining order at their first opportunity. *See* Complaint, dated Apr. 28, 2008 [D.E. 1]; Emergency Motion For A Temporary Restraining Order And To Set A Briefing And Hearing Schedule For A Preliminary Injunction Motion And To Allow Limited Discovery, dated Apr. 28, 2008 [D.E. 2].

Following a hearing on Plaintiffs' motion held on April 29, 2008 (the "April 29 Hearing"), Defendants consented to stay enforcement of the Amended Law until such time as a final rule implementing the Amended Law is adopted and becomes effective pursuant to the

Florida Administrative Procedure Act, Chapter 120, Florida Stat. *See* Consent Order ¶ 1. Defendants further agreed that during the period in which the Amended Law remains unenforced by reason of the Consent Order, liability for fines under the Amended Law shall not accrue. *Id.* ¶ 2.

Absent an injunction, the date that a final rule implementing the Amended Law becomes effective—which could be as early as July—will be the first time since August 28, 2006 that a version of the third-party voter registration law will be in force.

I. Plaintiffs' Voter Registration Drives

According to data included in the U.S. Census's Current Population Survey for the November 2004 election (statistics compiled by the Brennan Center for Justice from U.S. Census Bureau data publicly available at http://dataferrett.census.gov/), over nine percent of Florida's registered voters, at least 750,000 individuals, including those already registered in previous years, had been originally registered through third-party voter drives in Florida. For members of certain communities, these numbers are even higher—as of 2004 in Florida, 17 percent of black voters, almost 19 percent of Hispanic voters, and 22 percent of voters from Spanish-speaking households were registered through voter registration drives. These high numbers reflect the unprecedented large-scale voter registration campaigns that were conducted in Florida in the summer and fall of 2004, and represent a significant increase over previous cycles. (Expert Declaration of Donald P. Green, dated May 14, 2008 ("Green Decl.") ¶ 13.) There is every reason to believe that a much greater proportion of first-time voters in 2004 were registered through drives.

Plaintiffs' voter registration drives have especially benefited senior citizens, members of low-income and minority communities, and others who may find it difficult either to travel to a government office during business hours or to obtain a registration application online. (Declaration of Dianne Wheatley Giliotti, dated May 13, 2008 ("Giliotti Decl.") ¶¶ 14-15, 17, 20; Declaration of Cynthia Hall, dated May 14, 2008 ("Hall Decl.") ¶¶ 16-17.) In other words, these drives are vital because they reach precisely those citizens for whom the cost imposed by voter registration is the highest. *See* James G. Gimpel, Joshua J. Dyck, and Daron R. Shaw, *Election-Year Stimuli and the Timing of Voter Registration*, 13:3 PARTY POLITICS 351, 353 (2007) (noting that the inconvenience of registration can be substantial, particularly for the many who do not go to their drivers' licensing office). The Amended Law thus shifts the transaction

costs of submitting a complete voter registration form from third-party registration groups to the individual. ("Green Decl." ¶ 7.) Voter turnout rates are predicated to a statistically significant degree by the ease in which people in different jurisdictions can register to vote. (*Id.* ¶ 6.)

Voter registration drives are a uniquely effective way to encourage informed and active participation in government, communicate political messages, and associate with fellow citizens to effect change. In addition to increasing the number of citizens registered to vote, voter registration drives promote participation in civic affairs, enhance government accountability (Giliotti Decl. ¶¶ 6, 9, 13, 15, 19-20, 24; Declaration of Marilynn Wills, dated May 14, 2008 ("Wills Decl.") ¶¶ 7-9), empower constituencies (Hall Decl. ¶ 12), and fuel political action and the advancement of shared political goals (Hall Decl. ¶¶ 13, 17-18; Wills Decl. ¶ 7). When Organizational Plaintiffs hold voter registration drives, they inevitably trigger conversations concerning the importance of voting, civic engagement, and the issues of the day. (Giliotti Decl. ¶¶ 14-15, 22-25; *see also* Wills Decl. ¶ 9.)

Plaintiffs register new voters in Florida not only by convincing eligible individuals that voting is an important civic duty, but also by providing assistance with completing voter registration applications accurately and completely, and by collecting completed applications and submitting them to supervisors of elections for processing. (Wills Decl. ¶ 11; Giliotti Decl. ¶¶ 17, 21, 26-27; Hall Decl. ¶ 18.) In-person voter registration provides a crucial personal touch that is far more influential and effective than merely mailing, or otherwise providing, registration forms to potential voters. (Green Decl. ¶ 11.) This type of "neighborhood outreach" was instrumental in the record-breaking surge in voter registrations in 2004. (*Id.* ¶ 13.) The Amended Law would discourage in-person registration efforts, thereby contributing to the "depersonalization of politics and sense of political disengagement that it engenders." (*Id.* ¶¶ 14-15.) This three-step approach is the most effective way to increase the percentage of Florida citizens who are registered to vote. (*See, e.g.,* Green Decl. ¶ 12.) Each step is crucial. If Plaintiffs did not help prospective voters properly complete applications, collect voter registration applications and submit them to supervisors of elections, significantly fewer voters would be added to the rolls. (Green Decl. ¶ 7; Giliotti Decl. ¶¶ 20, 26; Hall Decl. ¶¶ 20-21.) *See also* Gimple, *supra*, at 353 (discussing the impediments imposed by the transaction costs of registering to vote).

The Secretary of State's decision to move forward with the rulemaking process in order to be in a position to enforce the Amended Law as early as July 2008 comes at a time when Florida needs to work with its partners in voter registration to reverse this trend and increase the number of voters on the rolls. This is especially true given that research suggests that a significant proportion of the voter population registers within a year of the official deadline before a presidential election, and that "registration peak[s] in conjunction with . . . political events, including primaries, conventions, debates and even Independence Day," many of which are rapidly approaching. *See* Gimpel, *supra*, at 367-68. Moreover, new registrants turn out to vote at higher rates than those registered in prior years. *Id.* at 368. If the state is not enjoined from enforcing the Amended Law during this crucial period, Plaintiffs will have no choice but to cease their voter registration activities just at the moment when voter registration drives are most likely to be successful.

II. Florida's Amended Third-Party Voter Registration Law

As with the Original Law, under the Amended Law, "third-party voter registration organization[s]," defined as "any person, entity, or organization soliciting or collecting voter registration applications," Fla. Stat. § 97.021(36), are subject to mandatory, escalating, per-application fines for delivering a completed voter registration application to the Division of Elections or the supervisor of elections more than ten days after collecting it from the registrant ($50), or after the book-closing deadline for an upcoming election ($100), or for failing to submit a completed application ($500). *Id.* § 97.0575(3). These fines are increased for willful violations (to $250, $500, and $1,000 per application, respectively). *Id.* Florida's election code already imposes criminal liability on those who "knowingly . . . obstruct or delay the delivery of a voter registration form or election ballot." Fla. Stat. § 104.0615(4).

Knowing or intentional misconduct, and even negligence, are not, however, prerequisites to liability under the Amended Law. Section 97.0575 holds all third-party voter registration groups strictly liable for meeting its deadlines, with only two limited exceptions: where the failure to return an application form promptly is due to "*force majeure*" or "impossibility of performance." *Id.* § 97.0575. Groups or individuals who have failed to comply with the law for other reasons, including innocent mistakes or family emergencies, remain subject to mandatory fines. A "third-party voter registration organization" is defined to include "any person" who solicits or collects voter applications outside his or her immediate family, *id.* § 97.021(36),

making volunteers and other participants in registration drives subject to penalties without regard to whether they exercised due care.

The Amended Law includes a $1,000 cap on fines which may be assessed against a "third-party voter registration organization, including affiliate organizations," Fla. Stat. § 97.0575(3)(c), for violations committed in a calendar year. But the Amended Law does not define "affiliate." And, as noted, "third-party voter registration organization" is defined to include "any person, entity or organization soliciting or collecting voter registration applications." *Id.* § 97.021(36). It is impossible to determine from the statutory text whether a local chapter, unit, or division of a parent organization, or an individual working with or for an organization would be considered an "affiliate" eligible to benefit from the cap, as opposed to an independent organization subject to its own cap. Secretary of State Browning's office has even acknowledged to the *New York Times* that "the law is vague on whether the cap of $1,000 would apply to an entire organization, a chapter or individual volunteers" because the law lacks precise definitions for the terms "organization" and "affiliate." Damien Cave, *Election Day in Florida May Look Familiar,* N.Y. TIMES, Apr. 28, 2008, at A1.

III. The Impact of the Challenged Law on Plaintiffs

Local branches of Organizational Plaintiffs cannot afford the risk of potential fines authorized under the law. (Giliotti Decl. ¶¶ 33-35; Hall Decl. ¶¶ 23-25; Wills Decl. ¶¶ 16-18, 21.) Many of the AFL-CIO's local unions have *annual* budgets of *less than* $1,000. (Hall Decl. ¶ 24.) Moreover, Organizational Plaintiffs are financially ill-equipped to handle fines on behalf of those local branches. For example, if each of the AFL-CIO's 450 local unions is fined $1,000, the state organization could face $450,000 in fines that it would have to pay on behalf of its local branches. (Hall Decl. ¶ 24.) Similarly, the League of Women Voters could face fines as high as $26,000 on behalf of its local chapters, an amount greater than one-third of its annual budget. (Giliotti Decl. ¶ 33.) Because Plaintiffs cannot afford to risk accruing fines of this magnitude, they will cease all of their voter registration efforts when the law becomes enforceable. (Hall Decl. ¶ 23; Giliotti Decl. ¶ 37.)

The impact on individuals who participate in registration drives is even more drastic. Plaintiff Marilyn Wills has stated that uncertainty regarding whether she will be considered a "third-party voter registration organization" at risk of incurring per-application penalties, despite

her exercise of due care, would keep her from participating in voter registration drives. (Wills Decl. ¶¶ 10, 12-13, 21.)

This impact on individual volunteers and others would seriously undermine the ability of Organizational Plaintiffs to carry out their registration activities. (Hall Decl. ¶¶ 14, 23; Giliotti Decl. ¶¶ 35, 37, 40-41; Wills Decl. ¶¶ 10, 12-13.) Since the League relies exclusively on volunteers to register voters in drives organized by its 25 local chapters and 2 member-at-large units across the state with the equivalent of only 1.5 paid employees, it cannot fully oversee the activities of all its volunteers. (Giliotti Decl. ¶ 40.) The AFL-CIO also depends heavily on volunteers who may now be subject to devastating fines. (Hall Decl. ¶¶ 18, 20-21.) Due to the chilling effect of the Amended Law, neither individual volunteers like Marilynn Wills, nor Organizational Plaintiffs, will participate in voter registration drives should the Amended Law become enforceable.

ARGUMENT

In 2006, this Court found that Plaintiffs had established a substantial likelihood that the original version of the third-party voter registration law was unconstitutional under the First Amendment. *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314, 1339 (S.D. Fla. 2006) ("*LWVF*").

This Court first found that voter registration drives characteristically involve core political speech and association and are thus protected by the First Amendment under the cases such as *Meyer v. Grant*, 486 U.S. 414 (1988), and *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). *LWVF*, 447 F. Supp. 2d at 1332-33. This Court then found that the Original Law burdened such core political speech and association and therefore merited exacting First Amendment scrutiny. *Id.* at 1332 n.21, 1339. Applying the balancing test of *Anderson v. Celebrezze*, 460 U.S. 780 (1983), this Court found that the statute significantly burdened Plaintiffs' First Amendment activities and that the state had not demonstrated the law was necessary to advance its asserted interests. *Id.* at 1331, 1339.

The Amended Law leaves in place most of the offending provisions of the Original Law. The most important change, the $1,000 annual cap on fines for a voter registration organization and its affiliate organizations, however, is fatally vague. As a result, if Plaintiffs were to continue their voter registration drives after the Amended Law became effective, each individual volunteer like Plaintiff Marilyn Wills could face fines of up to $1,000. And Organizational

Plaintiffs, if the Amended Law is construed against them, could be completely shut down by ruinous fines reaching up to hundreds of thousands of dollars. The Amended Law therefore unconstitutionally infringes Plaintiffs' First Amendment rights.

Plaintiffs seek a preliminary injunction to prevent enforcement of the Amended Law and, thus, preserve the status quo created by this Court's prior ruling on the voter registration law. Should enforcement of the Amended Law commence after a final rule implementing the Amended Law is adopted and becomes effective, Plaintiffs will be back where they were before initiating the prior case: with their constitutionally protected voter registration activities chilled—indeed, completely shut down—to avoid being subject to enforcement of a statute that, by virtue of its vague terms and its excessively burdensome provisions, imposes an unconstitutional burden upon the exercise of their core political speech and association.

The four factors this Court should consider in determining whether a preliminary injunction is appropriate are met here. Plaintiffs can establish that (1) they have a substantial likelihood of prevailing on the merits; (2) they will suffer irreparable harm unless the injunction issues; (3) the threatened injury to them outweighs whatever damage the proposed injunction may cause the defendants; and (4) the injunction, if issued, would not be adverse to the public interest. *See, e.g., LWVF*, 447 F. Supp. 2d at 1331; *Charles H. Wesley Educ. Found., Inc v. Cox*, 408 F.3d 1349, 1354 (11th Cir. 2005). Plaintiffs seek a preliminary injunction to preserve the status quo in this case before enforcement of the Amended Law can begin, so that they may exercise their First Amendment rights of speech and association free from the chilling effects of excessive fines and other burdens on their protected activities. The loss of these rights "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Absent injunctive relief, therefore, Plaintiffs will suffer irreparable injury if the State begins enforcing the Amended Law after a final rule is adopted and becomes effective.

I. Plaintiffs Have a Substantial Likelihood of Success on the Merits of Their Claim that the Amended Law Violates the First Amendment

Plaintiffs are likely to succeed in demonstrating that the Amended Law violates the First Amendment on two independent bases. *First*, the Amended Law is unconstitutionally vague due to the inclusion of ambiguous language concerning the exposure of individual volunteers and

employees participating in organized voter registration drives, as well as individual local League chapters and local unions, to fines of up to $1,000 annually.

Second, the Amended Law leaves in place the essential features that led this Court to enjoin the Original Law in 2006 as an unconstitutional burden on Plaintiffs' speech and association: escalating fines for failing to meet arbitrary deadlines, nearly-strict liability for those fines, and the risk of significant fines for individual volunteers and employees participating in Organizational Plaintiffs' organized voter registration drives. Despite its purported fixes, the Amended Law is just as burdensome as and no more narrowly tailored to meet the state's interests than the Original Law enjoined by this Court in 2006.

A. <u>The Law Is Unconstitutionally Vague</u>

"A regulation is void on its face if it is so vague that persons 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Konikov v. Orange County*, 410 F.3d 1317, 1329 (11th Cir. 2005) (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)); *see also United States v. Williams*, 444 F.3d 1286, 1305-06 (11th Cir. 2006). A statute is void for vagueness if it either "fails to give fair notice of wrongdoing or . . . lacks enforcement standards such that it might lead to arbitrary or discriminatory enforcement." *Konikov*, 410 F.3d at 1329. Where a vague statute "threatens to inhibit the exercise" of First Amendment rights, the Constitution demands a particularly "high level of clarity" so as not to chill constitutionally protected speech and association." *Id.*

The Amended Law fails in each of these respects. It does not give sufficient notice to Plaintiffs and others as to how it will be enforced and what their liability may be; it creates the risk of arbitrary enforcement; and it chills Plaintiffs' speech and association.

1. The Amended Law Fails to Provide Fair Notice of Wrongdoing.

The Amended Law is fatally vague as written because it fails coherently to define which entities can be fined under what circumstances, and to which entities the $1,000 cap applies. Plaintiffs have no way to determine whether the fine for a given violation, or the $1,000 cap, will apply to them individually, to one or more of their local chapters, to their employees or volunteers, or to some combination of these entities.

The statute establishes an annual cap of $1,000 on fines "which may be assessed against a third-party voter registration organization, including affiliate organizations." Fla. Stat. § 97.0575(3)(c). But the law does not define "affiliate" or offer any other way to determine

when two "third-party voter registration organizations" are related closely enough to be considered "affiliates" subject to the same cap.

While "affiliate" has a reasonably clear meaning in the commercial context, *see Churchville v. GACS Inc*., 973 So. 2d 1212, 1215 (Fla. Dist. Ct. App. 1st Dist. 2008) (defining "affiliate" as "[a] corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent or sibling corporation") (quoting Black's Law Dictionary 59 (7th ed. 1999)), that definition does not provide reliable or consistent guidance to Plaintiffs, who are labor unions, nonprofit corporations, or individuals operating in a non-commercial context. *Cf.* Merriam-Webster's Collegiate Dictionary 20 (10th ed. 2002) (defining "affiliate" as "a person or organization," and "affiliated" as "closely associated with another typically in a dependent or subordinate position"). The language leaves open the possibility that each individual volunteer or employee participating in a voter registration drive could be personally liable for $1,000 in fines, and that each of the dozens of local League chapters and hundreds of local unions could be separately subject to the $1,000 annual cap.

The incoherence is compounded by Section 97.021(36), which defines a "third-party registration organization" as "any *person*, entity, or organization soliciting or collecting voter registration applications." Fla. Stat. § 97.021(36) (emphasis added). The Amended Law nowhere makes clear whether individuals volunteering for entities like the League will be considered registration organizations unto themselves, individually subject to fines, or agents of an entity, such as the League, that is liable for fines for its volunteers' acts or omissions.

For example, in the case of a volunteer collecting registration applications on behalf of the League, the law offers no way to determine whether the volunteer, or the League, or both, are considered third-party voter registration organizations. If both are considered such organizations, the law fails to specify which one is liable, or whether both are liable, for a fine imposed for a violation of Section 97.0575(3). Similarly, a local union that works with the AFL-CIO may be considered not an "affiliate" under the Amended Law and incur fines separate from the state AFL-CIO's $1,000 cap. The state AFL-CIO might then be held liable for those fines if the local union is unable to pay them.

The potential consequences are devastating. The AFL-CIO, with its 450 separately incorporated local unions, could be liable for up to $450,000 a year, in addition to potential fines for each of its member volunteers. (Hall Decl. ¶ 24.) The penalties could reach even higher if

organizations are held liable (through contract or agency principles) for fines incurred by their members. For instance, an individual union member who collects her grandmother's form on her own time and incurs a fine could subject the AFL-CIO to fines exceeding its $1,000 cap if the member is unable to pay the fine herself. Moreover, the law is silent on whether two local organizations that are affiliates of a state-wide organization could be liable for each other's fines—leaving a local union saddled with fines incurred by a completely different chapter of the state union.

Under Florida law, the Secretary of State is required to "[o]btain and maintain uniformity in the interpretation and implementation of the election laws." Fla. Stat. § 97.012(1). To date, however, the Secretary has apparently been unable to carry out these duties in connection with the Amended Law. In fact, press reports state that Secretary Browning's office has "acknowledged that the law is vague on whether the cap of $1,000 would apply to an entire organization, a chapter or individual volunteers." Cave, *supra*, at A1.[1]

2. The Amended Law Risks Arbitrary or Discriminatory Enforcement.

The Amended Law's fundamental vagueness also opens the door to arbitrary and discriminatory enforcement, providing an independent basis for enjoining its enforcement. *See City of Chicago v. Morales*, 527 U.S. 41, 60-64 (1999); *Konikov*, 410 F.3d at 1329-30; *see also Kolender v. Lawson*, 461 U.S. 352, 358 (1983) ("[T]he more important aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.'" (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)). While "[o]rdinarily, vagueness challenges must be evaluated in the light of the facts of the case at hand . . . , when a statute implicates First Amendment rights, [the court] may consider the *risk* of arbitrary enforcement." *Konikov,* 410 F.3d at 1330.

That risk is very real under the Amended Law. The law's ambiguity regarding who can be fined and which organizations are "affiliated" for purposes of the annual cap would inevitably create arbitrary and inconsistent line drawing within and among electoral districts. It could also allow election officials to assess more and heavier fines on disfavored groups than favored

[1] The Division of Elections' preliminary draft of a proposed rule regarding enforcement of the Amended Law (see Notice of Development of Rulemaking, 1S-2.042, dated Apr. 25, 2008), does not clarify the law's confusing language.

groups. For instance, the original statute explicitly exempted political parties, and as such this Court held it unconstitutionally discriminatory. *LWVF*, 447 F. Supp. 2d at 1335. Under the language of the Amended Law, state election officials could achieve the same (forbidden) ends through disparate enforcement. In connection with registration drives organized by the League or the AFL-CIO, election officials could impose separate fines on every worker or volunteer collecting applications; on each of the League's 27 local chapters; and on each of the AFL-CIO's 450 local unions. Applying the same language, the Division could determine that a single cap exists for a state-level political party organization in combination with all of its "affiliated" county organizations and local clubs, however convoluted those associations might be. In short, the law's vague language would allow state officials to achieve what this Court ruled they could not: imposing fines of tens or hundreds of thousands of dollars against Plaintiff organizations while largely sparing political parties.

The risk of arbitrary enforcement is compounded by the fact that the Amended Law gives state officials discretion to decide which potential violations to investigate and penalize. Section 97.0575(4)(b) provides that "[t]he division *may* investigate any violation of this section" (emphasis added). Rather than limiting such discretion, the Secretary's preliminary draft of the proposed rule would grant similar discretion to local supervisors of elections to report potential violations to the Division of Elections. (Preliminary Draft of Proposed Rule 1S-2.042, § (5)(a).) Under the preliminary draft of the proposed rule, persons who claim to have been registered by registration organizations but whose names do not appear on the registration roles may file complaints with local supervisors of elections, and supervisors "*may* report to the Division of Elections any potential violation of Section 97.0575(3)." *Id.* § (5)(b) (emphasis added). Without standards to guide this discretion, arbitrary or discriminatory enforcement is possible or even likely.

3. The Amended Law's Vagueness Chills Plaintiffs' Protected Speech and Association.

It has long been recognized that activities, like voter registration drives, which characteristically involve core political speech and association, are protected by the First Amendment. *See Meyer v. Grant*, 486 U.S. 414 (1988); *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). The vague nature of the Amended Law will prevent Plaintiffs from exercising their First Amendment rights out of concern that they may be subject to crippling fines. The $1,000 cap provides no comfort because the Amended Law does not provide guidance as to how this cap will be applied. Plaintiffs simply cannot afford the risk of exposing each of their volunteers and members who participate in their voter registration drives to $1,000 in fines, nor can they afford the cumulative fines if each of their related entities may be held liable for up to $1,000 in fines annually. (Giliotti Decl. ¶¶ 3, 33, 35, 40; Hall Decl. ¶¶ 23-24.) "[W]here a vague statute abuts upon sensitive areas of basic First Amendment freedoms, it operates to inhibit the exercise of those freedoms." *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (internal alterations and quotations omitted). For this reason, "the Constitution demands a high level of clarity from a law if it threatens to inhibit the exercise of a constitutionally protected right, such as the right of free speech." *Konikov*, 410 F.3d at 1329.

The risks are particularly intolerable because fines may be imposed for even minor violations and innocent mistakes that do not fall within the narrow exceptions to strict liability. Plaintiffs expect that the lingering strict liability in the Amended Law—imposing fines for any deviation from the 10-day deadline regardless of intent or excuse—would inevitably and routinely lead to annual fines up to the amount of the cap. (Giliotti Decl. ¶¶ 33-35, 41; Hall Decl. ¶ 24.) Not surprisingly, once the Amended Law goes into effect, Plaintiffs intend to shut down their registration operations across the state, just as they did when confronted with the original statute. It is precisely to avoid such chilling effects that the void-for-vagueness doctrine is applied with particular rigor in these cases.

B. <u>The Law Unconstitutionally Burdens the League Plaintiffs' Core Political Speech and Association</u>

Plaintiffs believe it is beyond dispute that the Amended Law is unconstitutionally vague and therefore void. Nonetheless, even if the law were to be definitively interpreted to allow the assessment of fines of up to $1,000 annually on each individual chapter of the League or on an

individual member or volunteer such as Marilynn Wills, it would still be unconstitutional because of its unreasonable burden on the League Plaintiffs' core political speech and association.[2] This burden exists as the law currently stands, since the vague statutory language creates a serious risk that the law will be interpreted or enforced in such a way as to expose those Plaintiffs to exorbitant fines—and Plaintiffs have no choice, given the scope of liability, but to assume the worst. The burden on the League Plaintiffs is virtually unchanged from the burden that this Court found unconstitutional under the Original Law. Like the Original Law, the Amended Law imposes escalating fines for failing to meet arbitrary deadlines, nearly strict liability for those fines, and the risk of significant fines for individual volunteers and members who participate in voting drives—the same defects this Court found fatal in the earlier litigation. The Amended Law should therefore be enjoined under the same reasoning this Court previously applied.

The Amended Law is unconstitutional as a result of a straightforward application of the balancing test the Supreme Court uses to assess the constitutionality of state election laws. Under *Anderson v. Celebrezze*, 460 U.S. 780 (1983), a court evaluating an election law must

> [f]irst consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

Id. at 789; *accord Crawford v. Marion County Election Bd.*, 76 U.S.L.W. 4242, 2008 U.S. LEXIS 3846, at *14 (Apr. 28, 2008) (reaffirming *Anderson*'s "balancing approach"); *Fulani v. Krivanek*, 973 F.2d 1539, 1543 (11th Cir. 1992). Where, as here, an election law severely burdens core political speech and association, *Anderson* requires the law to pass strict scrutiny. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (state election scheme that imposes "severe burdens" on constitutional rights survives only if it is "narrowly tailored and advance[s] a compelling state interest");

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[2] The claim of undue burden on the rights of speech and association is brought on behalf of the League Plaintiffs only, and not the Florida AFL-CIO. *See* Complaint Count II.

Swanson v. Worley, 490 F.3d 894, 903 (11th Cir. 2007); *Green v. Mortham*, 155 F.3d 1332, 1336 (11th Cir. 1998). Even if the burden is less than severe, "it must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford*, 2008 U.S. LEXIS 3846, at *16 (quoting *Norman v. Reed*, 502 U.S. 279, 288-89 (1992)); *see also id.* at *15 n.8 (rejecting suggestion that deferential standard is appropriate for laws imposing non-severe burdens); *LWVF*, 447 F. Supp. 2d at 1331 n.21 (rejecting Defendants' argument for rational basis review).

1. The Amended Law Imposes Severe Burdens on Core First Amendment Activities.

The first step in the *Anderson* balancing test is to determine the "character and magnitude" of the injury suffered by the League Plaintiffs. Plaintiffs' injury is clearly severe: the law's threat of thousands of dollars in fines will cause them to cease entirely their voter registration drives. As this Court found in the prior litigation, *see* 447 F. Supp. 2d at 1338-39, the League Plaintiffs' response to the Amended Law is entirely understandable in light of the risks the law imposes on those who engage in voter registration activities. Unavoidable circumstances or inadvertent, innocent mistakes by volunteers might lead to delays in submitting voter registration applications, generating substantial fines. The potential cumulative total of $26,000 in fines, possible if the League and each of the local League chapters were subject to up to $1,000 in annual fines, would comprise over one-third of the League's annual budget—surely a severe burden, without even counting the potential additional $1,000 fines for each of the League's member-volunteers. And Marilyn Wills would face up to $1,000 in fines for her registration work for the League—an even more severe burden.

Just as in the earlier litigation, the prospect of such crippling fines will rationally cause the League and its volunteers, including Marilyn Wills, to stop their voter registration efforts and their accompanying speech and association. (Giliotti Decl. ¶ 37; Wills Decl. ¶ 10; Green Decl. ¶ 13.) *See LWVF*, 447 F. Supp. 2d at 1338-39 ("[T]he threat of fines has rationally chilled Plaintiffs' exercise of free speech and association, as well as that of Plaintiffs' volunteers" and caused them to "completely or nearly completely cease[]" their "constitutionally protected activities.").

Florida's law not only inhibits Plaintiffs' speech and association, but it also reduces the number of citizens able to vote and to associate with Plaintiffs in making their voices heard

through the ballot box, by increasing the transaction costs of registering to vote. (Green Decl. ¶¶ 6-7); Gimple, *supra*, at 353. As a result of the Amended Law, fewer citizens will join the League in casting ballots for candidates who support their causes or referenda that advance their goals, or by signing petitions to place initiatives on the ballot. (Giliotti Decl. ¶ 25; Wills Decl. ¶¶ 7-8.) Registering citizens to vote and encouraging civic engagement is, simply put, a cornerstone of the League's mission as an organization. (Giliotti Decl. ¶¶ 4-6, 14; Wills Decl. ¶ 5.) There is no adequate substitute for registering voters in advancing the League's goals.

In short, the facts demonstrate that the burden the Amended Law imposes on plaintiffs is severe. As a doctrinal matter, the burden is severe for the added reason that the Amended Law interferes with plaintiffs' core political speech. The Supreme Court has made it clear that "interactive communication concerning political change" of the sort Plaintiffs engage in as part of their voter registration drives is "core political speech." *Meyer v. Grant*, 486 U.S. 414, 422 (1988) (internal quotations omitted). Where a law restricts core political speech and association, it is subject to "exacting scrutiny." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995) (quoting *Meyer*, 486 U.S. at 420). This is true even "where a State's law does not directly regulate core political speech." *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 207 (1999) (Thomas, J., concurring). A separate burden analysis is not necessary "when regulations of core political speech are at issue" because "restrictions on core political speech so plainly impose a severe burden." *Id.* at 208 (internal quotations omitted).

Regardless of whether the law's burden on the League Plaintiffs is characterized as "severe," it is certainly considerable. Defendant bears the burden of demonstrating that this burden is justified by commensurate state interests and that the law is necessary to serve those interests. *See Crawford*, 2008 U.S. LEXIS 3846, at *14-15.

2. The State's Interests

The next step in the *Anderson* test is to "identify and evaluate the precise interests put forward by the State as justifications for the" challenged law. *Anderson*, 460 U.S. at 789. In the earlier litigation, the state claimed that the original law served the state's interest in "ensur[ing] that Florida citizens have the right to vote" because it "(1) protect[ed] Florida's interest in ensuring that all voter registrations are properly and timely submitted; (2) [held] organizations accountable for the applications they collect; and (3) prevent[ed] fraud." *LWVF*, 447 F. Supp. 2d at 1337. Defendants particularly claimed that the original law was necessary to fix alleged

problems with third-party groups hoarding applications and submitting them after the book closing deadline. *Id.* at 1330.

3. The State's Interests Are Insufficient to Justify the Burdens on Plaintiffs' Rights.

Under *Anderson*'s final step, the Court must "consider the extent to which [the state's] interests make it necessary to burden the plaintiff's rights." *Anderson,* 460 U.S. at 789. Because the law, as a restriction on First Amendment expression and association, "so closely touch[es] our most precious freedoms," it must be "precisely drawn" to meet a "legitimate interest." *Id.* at 805-06; *see also Meyer*, 486 U.S. at 420. At the very least, the state must demonstrate that its "important regulatory interests" make it "necessary to burden [the League Plaintiffs'] rights" in this way. *Anderson*, 460 U.S. at 788-89.

This Court found in *LWVF* that the state had not met its burden of demonstrating that its system of imposing heavy fines was justified by its claimed interests in timely submission, accountability, or preventing fraud. *See* 447 F. Supp. 2d at 1337-38. The Amended Law is similarly not justified by the state's goals. While ensuring orderly administration of elections, fostering accountability, and preventing fraud may be laudable goals, the Amended Law's imposition of heavy fines on voter registration groups for failing to meet tight deadlines does little or nothing to foster those goals and is certainly not necessary.

As to preventing fraud, even if the state were able to demonstrate a serious problem with deliberate voter registration fraud from third-party groups (which they are not), the challenged law does nothing to discourage fraudulent actors from submitting false forms. Moreover, there is no reason to believe that the state's existing penalties on the "submi[ssion of] any false voter registration information" as a third-degree felony are insufficient to deter fraud. *See* Fla. Stat. § 104.011(2). Courts have consistently struck down statutes where less restrictive means exist to prevent fraud. *See, e.g.*, *Bernbeck v. Moore*, 126 F.3d 1114, 1116 (8th Cir. 1997) (striking down statute requiring petition circulators be registered voters for at least thirty days because "other less restrictive provisions of Nebraska law are adequate to prevent signature fraud").[3]

[3] Nor is there any reason to believe that someone bent on submitting fraudulent forms would also comply with a voluntary reporting requirement that would disclose their criminal behavior.

Similarly, the state's interest in fostering accountability is well-served by that part of § 97.0575(3) (unchallenged in this litigation) that makes third-party groups fiduciaries of those whose forms they collect. That fiduciary duty provision is precisely tailored to address any problem the state could show (and Plaintiffs believe they can show none) relating to insufficient accountability on the part of third-party groups. Accountability can also be enforced through state's criminal penalties on those who "knowingly . . . obstruct or delay the delivery of a voter registration form . . . ." Fla. Stat. § 104.0615(4).[4] As this Court previously found, these criminal penalties "address[ ] Defendant's core concerns of holding organizations accountable and preventing fraud." 447 F. Supp. 2d at 1338. More restrictive alternatives are therefore unnecessary and impermissible. *See United States v. Playboy Entm't Group, Inc.*, 529 U.S 803, 813 (2000) ("[I]f a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative."); *Fulani v. Krivanek*, 973 F.2d 1539, 1547 (11th Cir. 1992) (state interest was "adequately furthered" by different state law).[5]

With respect to the state's interest in ensuring the timely submission of voter registration forms, this Court has already found that heavy fines and tight deadlines are not necessary to address any problem. In particular, this Court found that the evidence Defendants previously submitted did "not demonstrate a significant problem with voter registration applications stemming from third party voter registration organizations." *LWVF*, 447 F. Supp. 2d at 1337. To the extent that the county supervisors of elections "had a difficult time processing applications near book closing during the 2004 presidential election," this Court found that "a large part of that difficultly arose from the general increase in the number of voter registration applications received that year and the lack of preparation on the part of the supervisors of elections offices." *Id.* Given the "*de minimis* nature of the problems arising from third party voter registration organizations," *id.* at 1339, the onerous restrictions in the challenged law are completely unnecessary. Moreover, Florida law already has provisions that serve the state's

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[4] A violation of this section constitutes a third-degree felony, and carries a penalty of up to five years in jail, a $5,000 fine, or both. Fla. Stat. §§ 775.082(3)(d), 775.083(1)(c).

[5] The Amended Law's reporting system will only encourage accountability to the extent that third-party groups voluntarily participate in the system; the testimony of Plaintiffs demonstrates that they will not be able to comply with the reporting system's strict requirements. (Giliotti Decl. ¶ 42; Hall Decl. ¶¶ 26-27; Wills Decl. ¶ 19.)

interests, including criminal penalties making it a felony to "knowingly . . . obstruct or delay the delivery of a voter registration form." Fla. Stat. § 104.0615(4). These penalties are more than adequate to address any concerns.

Even if the challenged law addressed real problems, and even if those problems were not already addressed by other provisions of Florida law, the law is nonetheless unconstitutional because it is not sufficiently tailored to meet the state's goals and it restricts significantly more First Amendment activity than necessary.

First, as this Court found in *LWVF*, steep fines are unnecessary to advance the state's interests: "Given that third party voter registration organizations are often non-profit organizations, and have limited budgets, it is unclear why such steep fines are necessary to promote Defendants' stated interests." *Id.* at 1338. The law, even as amended, imposes steep fines on the League Plaintiffs; cumulatively, the League and local Leagues could be liable for up to $26,000 annually, not including potential fines of up to $2.8 million for the League's 2,800 individual members. (Giliotti Decl. ¶ 33.)

Second, as this Court also found, the imposition of fines on individual volunteers is similarly problematic: "Volunteers are simply not willing to spend their time and effort on voter registration activities when the consequences of imperfect compliance are significant fines." *LWVF*, 447 F. Supp. 2d at 1338. The Amended Law retains individual liability (even though it no longer imposes joint and several liability), and so it will similarly chill the First Amendment activity of Ms. Wills and other members of the League. (*See* Wills Decl. ¶¶ 13-14.)

Third, this Court found that the original law was also unjustified because it imposed strict liability for failing to meet the law's deadlines, including an arbitrary ten-day deadline. *LWVF*, 447 F. Supp. 2d at 1338-39. Although the Amended Law includes extremely limited exceptions to its strict liability for *force majeure* and impossibility of performance, it still penalizes the League for forms submitted past the law's deadlines even if the organization acted with reasonable care, *id.* at 1323, and it still holds the League "liable for the actions of volunteers who are not accountable to them, and over which they have no control," *id.* at 1338.

In short, the Amended Law imposes potentially ruinous fines on the League and its members for failing to meet the law's deadlines even if they acted with reasonable care in conducting voter registration drives. This burdens far more speech than reasonable to address

the state's purported interests; indeed, it will shut down the League Plaintiffs' voter registration drives altogether. The Amended Law is therefore just as unconstitutional as the original law.

4. This Court Properly Held in *LWVF* That the Challenged Law Implicates the First Amendment

In *LWVF*, this Court properly held that restrictions on voter registration drives implicate core First Amendment rights to speech and association, and it properly applied the *Anderson* balancing test. *See id.* at 1332-34. Since then, district courts in two other states have reached the same conclusion. *See Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 700 (N.D. Ohio 2006) (enjoining enforcement of law that imposed several restrictions on voter registration drives); *Ass'n of Cmty. Orgs. for Reform Now v. Cox*, No. 06-CV-1891, 2006 U.S. Dist. LEXIS 87080, at * 15-16 (N.D. Ga. Sept. 27, 2006) (enjoining Georgia rule preventing organizations conducting drives from photocopying forms).

The present case involves the very same conduct—voter registration drives—that this Court found to be "intertwined with speech and association" and thus protected by the First Amendment. *LWVF*, 447 F. Supp. 2d at 1334. As this Court previously recognized, Plaintiffs communicate political messages and associate with fellow citizens through the voter registration process. Here, as in the prior case, the record shows that when Plaintiffs conduct voter registration drives they engage potential voters in face-to-face conversations at community events, shopping malls, workplaces, and other locations in the community. (Giliotti Decl. ¶ 19; Hall Decl. ¶ 11; Wills Decl. ¶ 6.) They encourage citizens to register to vote, discussing the importance of civic participation. (Giliotti Decl. ¶¶ 22, 24; Hall Decl. ¶¶ 12-14; Wills Decl. ¶ 9.) They necessarily communicate to prospective registrants that they care about ensuring the registrants' voices are heard. (Green Decl.¶¶ 8-11, 16.) They educate potential voters about salient political issues. (Hall Decl. ¶ 13.) And they encourage citizens to exercise their right to vote to advance shared political, economic, and social positions. (Giliotti Decl. ¶ 24; Hall Decl. ¶¶ 12-13.) These kinds of conversations are inevitably sparked by asking one's fellow citizens to register to vote. (Giliotti Decl. ¶ 24; Hall Decl. ¶ 14; Wills Decl. ¶ 9.) Community-based registration drives build a personal relationship between the voter and the third-party organization, building trust in the political process, facilitate voter education and voter mobilization, and may increase the likelihood that the voter will actually cast a ballot in the election. (Green Decl. ¶¶ 16-18.) The Supreme Court has repeatedly recognized that this kind of

"interactive communication concerning political change" is at the heart of the First Amendment's protections. *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 186 (1999); *Meyer*, 486 U.S. 414, 422 (1988).

Plaintiffs' drives are protected in part because this speech and association inevitably accompanies voter registration drives. Where protected speech is "characteristically intertwined" with particular conduct, regulation of that conduct must pass muster under the First Amendment. *See Vill. of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632-33 (1980) (finding law limiting door-to-door charitable solicitation invalid because solicitation was "characteristically intertwined" with protected speech).

In *Meyer v. Grant*, the Supreme Court invalidated a law that prohibited the payment of ballot initiative petition circulators. The law at issue did not directly regulate any speech component of petition circulation; rather, it regulated only the employment relationship, or the "conduct" of paying petition circulators. But, as the Court found, the broader activity—the circulation of initiative petitions—of which the payments were a part (and with which they were "characteristically intertwined") involved protected speech and association. In assessing the burden imposed on First Amendment activity, the Court looked to whether the prohibition on paying petition circulators had the "inevitable effect" of reducing that speech and association. *Meyer*, 486 U.S. at 422-23. Since the law challenged in that case had the effect of diminishing that speech and association, the Court subjected the law to First Amendment scrutiny. *Id.* at 421-23; *Buckley*, 525 U.S. at 186 (1999).

That is exactly the case here. As this Court correctly found in *LWVF*, based on the overwhelming weight of the evidence presented and re-presented here, collecting voter registration forms is characteristically "intertwined" with the protected speech and association that take place in voter registration drives, 447 F. Supp. 2d at 1332-34, and penalizing the collection of forms would cease the "'the flow of . . . information and advocacy'" in voter registration drives. *Id.* at 1334 (quoting *Schaumburg*, 444 U.S. at 632). The challenged law is therefore subject to First Amendment scrutiny. Since it involves the election process, the appropriate standard of review is that set forth in *Anderson*.

II. Irreparable Harm

The Amended Law undoubtedly would cause irreparable harm to Plaintiffs. Burdens on First Amendment freedoms by their nature cannot be cured after the fact by payment of

monetary damages and are thus irreparable. *See KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006); *LWVF*, 447 F. Supp. 2d at 1339-40. In other words, as this Court has recognized, "'[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *LWVF*, 447 F. Supp. 2d at 1339 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also KH Outdoor, LLC*, 458 F.3d at 1271-72 (same); *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005) (denial of "franchise-related rights" constitutes irreparable harm).

The mere termination of the standstill agreement already caused Plaintiffs to cease their voter registration efforts. (*See, e.g.,* Giliotti Decl. ¶ 37.) Should the law become enforceable again, its incoherent penalty provisions will again place Organizational Plaintiffs and their volunteers, such as Marilynn Wills, at risk for potentially crippling fines and prevent Plaintiffs from engaging with their fellow citizens, encouraging them to vote and facilitating their registration to do so. In fact, those registration efforts will cease altogether. (Giliotti Decl. ¶ 37; Hall Decl. ¶¶ 23, 28; Wills Decl. ¶¶ 4, 10.) This Court previously found that prospect to constitute irreparable harm, and the same finding is warranted here. *See LWVF*, 447 F. Supp. 2d at 1339-40.

The harm is particularly severe because the Amended Law threatens to halt ongoing planning of voter registration drives for the 2008 presidential election. (Giliotti Decl. ¶¶ 37-39; Hall Decl. ¶¶ 29-30.) The negative impact of such a delay this close to the election is already well-known to both Plaintiffs and Defendants. In 2006, even though Plaintiffs won injunctive relief in August, some were unable to mount significant drives because of the loss of valuable time for preparation and planning. What is more, they were completely unable to engage in voter registration before the book-closing date for the primary elections. Plaintiffs will be unable to conduct voter registration drives on a scale or level of quality proportionate to the importance of this presidential election year unless they can be assured, as soon as possible, that they can proceed without facing fines that would stop them in their tracks (and, for Organizational Plaintiffs, substantially drain their overall budgets) for minor violations or innocent mistakes.

III. The Balance of Hardships Favors Injunctive Relief

Without a preliminary injunction, Plaintiffs will be forced to suspend all voter registration efforts—activities which lie at the core of the First Amendment's protections and which are critically impacted by timely planning and execution. (Hall Decl. ¶ 23.) Should the

law become enforceable in or after July, this complete cessation of registration efforts will come just as those efforts become most critical in the months leading up to the presidential election.

In contrast, the burden on the state of a preliminary injunction would be virtually non-existent. The grant of a preliminary injunction would simply preserve the status quo: Defendants would be required to refrain from enforcing a statute that has not yet been enforced and that cannot lawfully or effectively be enforced. Nor would the state incur any costs by waiting for a ruling on the law's constitutionality or clarification of its terms. Moreover, this Court found in *LWVF* that the Defendants had failed to demonstrate that the law was necessary to further their asserted interests. *See LWVF*, 447 F. Supp. 2d at 1339. The Amended Law is no different in this respect, and an injunction would therefore not burden any identifiable state interest.

Preserving the status quo during the pendency of the case will also afford Plaintiffs greater time to plan voter registration drives and mobilize and train volunteers in a year in which unprecedented numbers of citizens have demonstrated their desire to vote for the first time. Mike Baker, *More than 3.5 Million New Voters, AP Survey Finds*, ASSOCIATED PRESS ONLINE, May 6, 2008. If the purpose of the law is to ensure that voter registration applications are received by the state in a timely manner, then that interest is well served by an injunction that allows registration and preparation for pre-election registration drives to proceed while the Amended Law is tested and clarified by a court. If the purpose of the law is to encourage orderly and timely registration of voters, that purpose—registering voters—would be better served by granting an injunction, thereby allowing voter registration organizations to effectively plan and execute registration drives in the period leading up to the general election than by allowing enforcement to begin, thereby shutting down, once again, significant third-party voter registration activities by plaintiffs and others.

Finally, if enforcing the Amended Law as written were of paramount importance, Defendants would neither have agreed to the standstill agreement and abstained from enforcing it for three months after the Department of Justice granted pre-clearance under the Voting Rights Act, nor agreed to the Consent Order Staying Enforcement.

IV. The Public Interest Weighs in Favor of an Injunction

"The public has no interest in enforcing an unconstitutional" law. *KH Outdoor, LLC*, 458 F.3d at 1272. Rather, the public interest is served by ensuring the Amended Law's

constitutionality prior to its enforcement. Further, safeguarding speech and association rights is undoubtedly in the public interest. *See Sammartano v. First Jud. Dist. Court, County of Carson City*, 303 F.3d 959, 974 (9th Cir. 2002) (there is traditionally a "significant public interest in upholding First Amendment principles"); *United Food & Commercial Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth.*, 163 F.3d 341, 363 (6th Cir. 1998) (noting the "public's interest in protecting First Amendment rights in order to allow the free flow of ideas").

Without the full-scale efforts of third-party voter registration groups, thousands of individuals will not register to vote and will be unable to participate in this year's election. Protecting an individual's right to vote is "without question in the public interest," *Charles H. Wesley Educ. Found., Inc.*, 408 F.3d at 1355, as is "removing the undue burdens on that right imposed by" the state, *Common Cause/Ga. v. Billups*, 406 F. Supp. 2d 1326, 1376 (N.D. Ga. 2005).

As this Court previously held:

> [A] preliminary injunction would significantly advance the public interest. Absent injunctive relief, the amount of First Amendment–protected political speech and activity will be reduced and the public will receive less information about current political issues and have fewer opportunities to associate with Plaintiffs in a meaningful way.

LWVF, 447 F. Supp. 2d at 1340.

Plaintiffs urge this Court to enter a preliminary injunction, without which thousands of individuals who experience barriers to voter registration will not be registered to vote.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter an injunction prohibiting Defendants from enforcing Fla. Stat. §§ 97.0575 and 97.021(36) during the pendency of this litigation.

Dated: May 14, 2008

s/Gary C. Rosen
Gary C. Rosen
BECKER & POLIAKOFF, P.A.
3111 Stirling Road
Ft. Lauderdale, Florida 33312
Telephone: (954) 985-4133
Florida Bar No. 310107
Attorneys for Plaintiffs

Wendy R. Weiser
Renée Paradis
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
161 Avenue of the Americas, 12th Floor
New York, New York 10013
Telephone: (212) 998-6730
Attorneys for Plaintiffs

OF COUNSEL

Elizabeth S. Westfall
ADVANCEMENT PROJECT
1730 M. Street, N.W., Suite 910
Washington, D.C. 20036
Telephone: (202) 728-9557
Of Counsel for All Plaintiffs

James E. Johnson
S.G. Dick
Eliza M. Sporn
Derek Tarson
Melissa Mortazavi
Jessica Simonoff
Corey Whiting
Courtney Dankworth
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Telephone: (212) 909-6000
Facsimile: (212) 909-6836
Of Counsel for Plaintiff League of Women Voters of Florida