

APR. 28, 2008

STEVEN M. LARIMORE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. **08-21243-CIV-ALTONAGA/BROWN**

	:	Civil Action No.
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.	:	

**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**

Plaintiffs League of Women Voters of Florida, Florida AFL-CIO, American Federation of State, County, and Municipal Employees, Council 79 (“AFSCME”), and Marilyn Willis hereby move this Court for an Order granting Plaintiffs’ application for a Temporary Restraining Order in this matter pursuant to Rule 65 of the Federal Rules of Civil Procedure and S.D. Fla. L.R. 7.1. As grounds for this application, Plaintiffs state:

1. Plaintiffs move for a Temporary Restraining Order for the reasons stated in the concurrently filed Complaint and the Memorandum of Law in Support of Plaintiffs’ 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 (“Brief”), along with the Declarations and Exhibits thereto.

2. Pursuant to S.D. Fla. L.R. 7.1(E), Plaintiffs respectfully request that this Court waive the time requirements of S.D. Fla. L.R. 7.1, and grant a hearing on this matter, if

necessary, as early as possible on Tuesday, April 29, 2008. It is necessary for the Court to rule on this motion in an expedited fashion because of the imminent threat to First Amendment rights. As detailed in the Complaint and Brief, Plaintiffs seek to enjoin the Defendants from enforcing Fla. Stat. 97.0575(3) (as construed by Fla. Stat. 97.021) starting April 30, 2008. Enforcement of that law will, if not enjoined, prevent Plaintiffs from planning and conducting voter registration drives and thus infringe their political speech. Without emergency review by this Court, Plaintiffs and other individuals and entities who conduct voter registration drives in Florida will suffer immediate and irreparable injury to their First Amendment rights.

3. Defendants will not be prejudiced by the entry of a temporary restraining order. Plaintiffs served a copy of this motion and all supporting papers by email at or around 1:00 p.m. on April 28, 2008 upon attorneys representing the Defendants in a prior action, *League of Women Voters of Florida v. Cobb*, Civil Action No. 06-21265, challenging the predecessor law to the statute being challenged in this action. Upon information and belief, counsel for Defendants in this action will be the same as it was in the prior action. Plaintiffs informed Defendants' counsel that they sought a hearing in this matter as early as possible on Tuesday, April 29, 2008. Moreover, Defendants have known since July 25, 2007 that Plaintiffs intended to challenge the amended law before it could be enforced. Plaintiffs-Appellees Opposition to Appellants' Suggestion of Impending Mootness, *League of Women Voters of Fla. v. Sec'y of State of Florida*, No. 06-14836-D (11th Cir. July 25, 2007), available at [http://www.brennancenter.org/page/-/d/download\\_file\\_50120.pdf](http://www.brennancenter.org/page/-/d/download_file_50120.pdf). Defendants were also informed of the basis of the Plaintiffs' complaints regarding the amended law.

4. For the reasons set forth in the Brief, Plaintiffs request that this Court enter the following briefing and hearing schedule for a preliminary injunction:

May 14, 2008	Plaintiffs' Motion to Extend TRO and for Preliminary Injunction Due
May 21, 2008	Defendants' Response Due
May 23, 26, 27, or 28	Plaintiffs' Reply Due; Preliminary Injunction Hearing

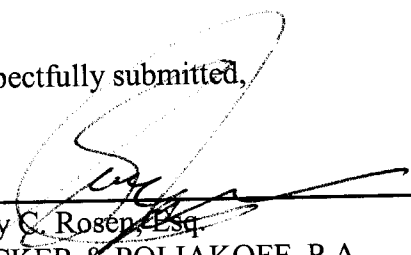
5. For the reasons set forth in the Brief, Plaintiffs further request that this Court order limited discovery to allow Plaintiffs to depose a small number of state and county officials regarding the state's interest in enforcing Fla. Stat. 97.0575(3) (as construed by Fla. Stat. 97.021).

6. Plaintiffs further request that out-of-state counsel, Debevoise & Plimpton LLP, the Brennan Center for Justice at NYU School of Law, and the Advancement Project be permitted to attend any hearing telephonically. Both Debevoise & Plimpton LLP and the Brennan Center for Justice at NYU School of Law are located in New York City, while the Advancement Project is located in Washington, DC.

Plaintiffs will rely upon the Complaint, Brief and supporting papers in support of this motion.

Dated: April 28, 2008

Respectfully submitted,



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Voters of Florida*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. \_\_\_\_\_

LEAGUE OF WOMEN VOTERS OF FLORIDA, FLORIDA  
AFL-CIO, AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 79  
(AFSCME), 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 her official capacity as Director of the Division of  
Elections within the Department of State for the State of  
Florida,

Defendants.

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**DECLARATION OF MARILYNN WILLS**

I, MARILYNN WILLS, declare:

1. I am a resident and citizen of the United States and of the State of Florida. I reside at 2326 Kilkenny Drive West, Tallahassee, Florida 32309-3156. I submit this declaration in support of plaintiffs' motion for declaratory and injunctive relief.

2. I am a registered voter in the state of Florida.

3. For about 30 years, I have been a member of the League of Women Voters of Florida (the "League" or the "state League"), a plaintiff in this case. I

am also on the Board of Directors of the Tallahassee League and the First Vice President of the state League.

4. I am seeking to prevent enforcement of Fla. Laws 2007-30 §§ 1 and 2, which the Secretary of State has announced he will enforce starting April 30, 2008, because this law will cause me to stop registering new voters. The law says individuals can be considered third-party organizations who will be subject to fines, but it does not explain when an individual is part of a larger organization. As a result, I am worried I can be personally subject to fines.

5. I have been registering voters since I joined the League no later than the early 1970's. The Tallahassee League has been registering voters since its founding.

6. In the past, I have registered voters with the Tallahassee League at shopping malls and the Tallahassee Saturday Downtown Market.

7. The Tallahassee League usually registers voters in conjunction with our other activities. For example, the state League publishes a special edition of the State Voter, an informational brochure explaining all amendments to the state constitution. Our local League had a table at the Downtown Market every Saturday for several months before the 2004 election. We passed out the information about the amendments, gave out information about membership in the League, and also provided voter registration forms to prospective voters.

8. After the 2004 election, the Tallahassee League gathered signatures for a petition for a redistricting amendment. Again, we gathered signatures at the Saturday Market. We also collected voter registrations and distributed information on early voting, including a local "Know Your Public Officials" brochure, a "Why I Should Vote" brochure and other publications written in English and Spanish.

9. Even if we are not combining voter registration with other campaigns, when I ask people if they would like to register to vote, that routinely sparks conversations about why they should vote, the importance of voting and civic engagement, or particular policies or issues that are of concern to them.

10. I would like to register new voters this year and in the future because voting is crucial to our form of government. It cannot survive without an informed, voting electorate. Unfortunately, however, I will stop registering voters on April 30th, due to my concerns about the serious fines imposed by this new law.

11. When I register voters, I help to ensure their applications are complete and accurate. I have found that for some, the registration application can be complex and difficult to understand. Once they have completed their applications, I personally submit them, usually by mail to the office of the Supervisor of Elections. I do this to ensure that the voters become registered because, in my experience, voters will often lose their applications or forget to mail them if they must submit them on their own.

12. Although I have never had a problem submitting voter registration forms before the registration deadline, I am afraid that some mistake or accidental delay may result in being fined hundreds of dollars.

13. I know other individuals who have registered voters in the past that have also stopped doing so out of concern about these fines.

14. I and other individual League members or volunteers are worried that we will be treated as third-party registration organizations, personally liable under the law, because we each have a fair amount of control over the way we register voters. Since we do not have paid staff, we do not drop all our forms at a central location for the League to submit or have paid drive organizers. Instead, we tend to collect and submit forms on our own.

15. In addition, members and volunteers often register voters informally, not as part as any drive. For instance, earlier this year one member of the Tallahassee League helped her grandson fill out his form and then returned it for him. Under the new law, I would be afraid to do something like that for fear I would turn in the form after ten days and be fined. League members often collect and submit forms for their extended families, friends, or acquaintances.

16. The Tallahassee League has also stopped registering voters because of the potentially severe fines that could result from mistakes or events beyond the control of the League. For instance, if a volunteer responsible for mailing the voter registration forms gets into a car accident on the way to mail them or gets sick and is hospitalized, the forms might be submitted after the 10-day deadline in the law. If that were to occur, the Tallahassee League could face hundreds of dollars in fines.

17. The Tallahassee League has no staff and is comprised entirely of volunteers. Our annual income is approximately \$4,500 – \$5,000, derived mostly from

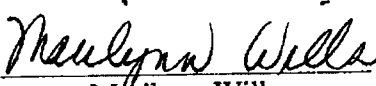
members' dues. We use these funds to pay our membership in the state League and to print and mail voter information brochures that describe local, state and national issues. We also publish a brochure listing the contact information of commission members, school board members, our state representatives, senators, judiciary and other government officials. Even the smallest fines under this law would be quite harmful. We certainly could not afford \$1,000 in fines.

18. The Tallahassee League has not had any problems turning in voter registration forms before the registration deadline. It would be impossible, however, to prepare for every possible accident that could happen. The severe fines under this law pose too much risk for me or the Tallahassee League to bear.

19. I know that the new law allows a reduction in fines for organizations that register with the state. However, the paperwork and supervision required for the registration and reporting required by the law would be burdensome for the Tallahassee League. Because we have no paid staff, our volunteers would need to undertake this additional work and in doing so would forego their other League activities. Furthermore, because our local budget is so limited, even the reduced fines would be burdensome.

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

Executed on 4/28, 2008

  
Marilynn Wills

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. \_\_\_\_\_

LEAGUE OF WOMEN VOTERS OF FLORIDA, FLORIDA  
AFL-CIO, AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 79  
(AFSCME), 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.

\_\_\_\_\_ /

**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 declaration in support of plaintiffs' motion for a temporary restraining order.

2. I am the president of the League of Women Voters of Florida (the "League of Women Voters" 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, which, due to their vagueness and the burden they impose,

have caused the League to suspend its voter registration drives entirely, out of fear that the League and its local affiliate organizations in Florida (“local Leagues”) will be unfairly subject to potentially severe and ruinous fines.

### **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. 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.

6. 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.

7. 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 one member-at-large board.

8. 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.

9. 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.

10. For fiscal year 2007-2008, the League has 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.

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

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

12. 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.

13. 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. For 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.

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

15. Typically, local Leagues will register voters by attending community events or talking to citizens at institutions and high-traffic areas, such as malls, schools and nursing homes. 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.

16. 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.

17. League members or volunteers also register voters more informally, helping extended family, friends, co-workers, and acquaintances to register to vote.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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**

25. I have read Fla. Laws 2007-30 §§ 1 and 2 (the “amended law”) and find them extremely confusing, ambiguous, and burdensome.

26. 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.

27. 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.

28. 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.

29. 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 2,800 individual members (and even more volunteers) are personally liable for up to \$1,000 in annual fines, totaling up to \$2,800,000.

30. 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

finances would deter many members and volunteers from participating in League-sponsored and organized voter registration activities.

31. 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**

32. On April 16, 2008, the League’s board of directors voted to impose a moratorium, beginning May 1, 2008, on voter registration activities sponsored by all local Leagues in Florida because of the financial liabilities threatened by the amended law. This is only the second time in the League’s seventy year history that it has had to suspend its voter registration activities, the first time being 2006, when the original law was enacted.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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 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 – and requiring them to keep close track of where every volunteer registers voters would add appreciably to their work.

38. 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 April 28, 2008

  
Dianne Wheatley Gilioffi

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. \_\_\_\_\_

LEAGUE OF WOMEN VOTERS OF FLORIDA, FLORIDA  
AFL-CIO, AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 79  
(AFSCME), as organizations and as representatives of their  
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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.

\_\_\_\_\_ /

**DECLARATION OF CYNTHIA HALL**

I, CYNTHIA HALL, declare:

1. I am a resident and citizen of the United States and of the State of Florida. I reside at 2053 Wildridge Drive, Tallahassee, Florida 32303. I submit this declaration in support of plaintiffs' motion for declaratory and injunctive relief.

2. I am the president of the Florida AFL-CIO ("AFL-CIO"), a plaintiff in the above-captioned action. I have been participating in voter registration drives for approximately twenty years. Prior to 1994, I had registered voters in Florida as both a representative of the United Teachers of Dade and a volunteer deputy voter registrar in Miami Dade County.

3. The AFL-CIO is seeking to prevent enforcement of Fla. Laws 2007-30 §§ 1 and 2, which have forced the AFL-CIO to stop registering its members to vote out of fear that the AFL-CIO and the local unions it works with and their members will be unfairly subject to severe and potentially ruinous fines as a result of their efforts to register the union's members to vote.

### **The AFL-CIO**

4. The AFL-CIO of Florida is a voluntary association of unions in Florida. It comprises approximately 450 local unions throughout the state and represents more than 500,000 active and retired Florida workers living in the state. Its mission is to improve the lives of working families. It accomplishes that mission by, among other things, encouraging workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of their local, state and national communities.

5. The AFL-CIO's local unions represent members of the building trades, service employees, airline employees and public employees, including teachers.

6. For fiscal year 2008, the AFL-CIO's budget allots approximately \$40,000 for program expenses. These expenses included registering our members to vote, an annual legislative conference, and various organizing and educational programs. The remaining \$1.5 million in the AFL-CIO's fiscal year 2008 budget pays salaries and benefits for ten full-time and two part-time employees, statewide travel costs, and the general operating expenses for our large, statewide union. The AFL-CIO's employees are responsible for providing services to 500,000 members across the state, including by

supporting union organizing efforts, issue advocacy campaigns, and other efforts to protect the rights of workers and working families.

### **The AFL-CIO's Voter Registration Activities**

7. The AFL-CIO conducts non-partisan voter registration drives each year intended to increase by at least 10% the number of its members registered to vote. These drives are typically active all year long. Each year, the AFL-CIO conducts a workshop for the leadership of each local union on how to register voters.

8. The AFL-CIO participates in voter registration by assisting its local unions in conducting voter registration drives. These drives are decentralized. Each of our more than 450 local unions identifies one member – usually a volunteer or retiree – to coordinate that local union's drive. The state AFL-CIO helps the local unions to obtain a list from the national AFL-CIO of its unregistered members and provides training and logistical support for the local unions' voter registration drives. In a presidential election year, the local unions generally conduct biannual registration drives, one in the spring followed by one in the summer that runs until the registration deadline for the November general election.

9. Each local union has separate leadership and considerable autonomy. They have their own constitution and governing structure, and are part of a larger international union in addition to their membership in the AFL-CIO federation. Local unions can decline to participate in the AFL-CIO's voter registration drives, and the state AFL-CIO has no control over their activities.

10. Each local union decides the most effective way to register its members. The local unions' voter registration methods vary based on the type of workforce represented by each union. For example, the most effective way for a building trades union to register its members is to send their coordinator to work sites scattered around a city or county where their members are employed.

11. Each local union's coordinator will encourage members to register to vote by explaining how decisions made by elected officials at all levels of government affect working families and union jobs. For example, coordinators will explain to public sector employees that local and state elected officials have enormous influence over collective bargaining and the funding for government entities, such as schools, that employ thousands of union workers. Moreover, they will explain that the more union members that register and vote, the more influence the union – and the individual members – will have over the policy decisions made by elected officials that affect working families and union jobs.

12. Coordinators will often conduct voter registration in conjunction with efforts to educate our members about particular legislative issues. Coordinators will explain these legislative issues to members and how the issues affect working families. They will explain that members can have an impact on how legislators vote on these issues if members register to vote and communicate with their legislators, including by writing letters, making phone calls and meeting with legislators.

13. When coordinators ask members to register to vote, they inevitably spark a conversation about the importance of registering and voting, and the political issues that are important to the member.

14. Each local union and its coordinator is responsible for collecting voter registration applications from members, ensuring that they are filled out completely and drawing the members' attention to any omissions, and delivering the applications to a county Supervisor of Elections.

**The Success of the AFL-CIO's Voter Registration Drives Depends on Its Ability to Collect and Submit Forms on Behalf of Its Members**

15. Since I became president of the AFL-CIO six years ago, I have implemented a successful effort to increase the percentage of our union members who are registered to vote from 40% to 65%. This represents approximately 125,000 union voters.

16. The success of this effort is primarily derived from two factors: first, one-on-one interactions between union members and volunteer coordinators at each of our 450 local unions; and second, the volunteer coordinators' collecting and delivering completed applications to a supervisor of elections, rather than just distributing applications for members to deliver on their own.

17. The one-on-one interactions are important, not only because they help to motivate unregistered members to register to vote but also help to educate members about issues of importance to the AFL-CIO.

18. The collection and submission of voter registration applications by volunteers is also vital. Based on my experience registering voters, if the AFL-CIO's volunteer coordinators had merely distributed applications to our members, very few would have successfully registered to vote.

19. For example, about seven years ago, when I was the political director of United Teachers of Dade, I attempted to register approximately 10,000 union members by mailing applications to them. Afterwards, I compared a list of unregistered union members to a government list of registered voters, which showed that no more than 1% of the union members I had mailed had actually been added to the voter rolls.

20. The success of the AFL-CIO's recent voter registration drives has depended on the union's ability to collect and submit voter registration applications on behalf of our members, which it can no longer do without exposing itself and its members to extraordinary financial liability under the laws challenged in this case.

**The Amended Third-Party Voter Registration Law Has Forced the AFL-CIO to  
Stop Registering Its Members to Vote**

21. The AFL-CIO has been forced by the amended law to stop registering its members to vote in 2008 because it cannot afford the risk that the local unions it works with or their members will have to pay the severe fines threatened by the new law.

22. The AFL-CIO finds the amended law to be vague and is reluctant to risk that the amended law's failure to define an "affiliate organization" and to make clear when an individual is liable as a separate third-party organization will leave its local unions and their members vulnerable to \$1,000 fines annually. The local unions that make up the AFL-CIO have independence from the AFL-CIO, and the AFL-CIO does not have control or any kind of corporate "ownership" over those locals. Many of those local unions have annual budgets of less than \$1,000 and could not afford those fines, and union members would be even less able to afford that amount. Finally, the statewide AFL-CIO would be unable to pay fines on behalf of its local unions and/or members on the order of \$450,000 (\$1,000 per local) or even \$500,000,000 (\$1,000 per member).

23. Each local union or member who does voter registration is at risk to incur substantial fines because of the decentralized voter registration drives that the AFL-CIO conducts with the local unions. Each of the local union members who coordinate these drives are responsible for collecting voter registration applications and delivering them to the state in the manner prescribed by the new law. There is a high likelihood that some of these coordinators—through honest mistake and through no fault of their own—will not submit some applications in the manner prescribed by the new law, including before the unnecessary and unjustified 10-day deadline. Fining these individuals would impose an enormous burden on them and would likely discourage them from volunteering in future voter registration drives.

24. The AFL-CIO has determined that neither it nor its local unions will be eligible for a three-fourths reduction of any fines under the new law because they will not be able to comply with the requisite quarterly reporting provisions. It would be

severely burdensome and extraordinarily costly for the AFL-CIO to divert one or more of its ten employees away from their current responsibilities to contacting each of our more than 450 local unions every quarter to compile an accurate and detailed report providing the date and location of every voter registration drive across the state.

25. Many of the AFL-CIO's local unions have no computers or offices, and only one volunteer staff member. In order to report their registration drives, hundreds of volunteers would have to maintain records of every date and location where they registered voters. This is severely burdensome for volunteers, including members of our building trades unions who, for example, register members at multiple locations and on multiple dates throughout Florida's cities and counties.

26. I and other members of the AFL-CIO, including members of the board of directors, have been forced by the amended law to personally refrain from registering voters. We have also been forced to tell the AFL-CIO's local unions that they cannot register their members to vote, out of fear that both we and the local affiliates will be liable for any fines levied against the local affiliates or their volunteers.

27. The impact of the cessation of our voter registration activities is particularly exacerbated by the timing of the Secretary of State's decision to begin enforcing this law. In anticipation of the 2008 presidential elections, the AFL-CIO was planning on mobilizing its member unions for a large drive, Labor 2008, to register unregistered union members in Florida. A successful drive requires several months of advance planning, logistics and training. However, we must now stop our preparations and lose precious time, just five months before the book-closing deadline in advance of

the election—an election that has already demonstrated its ability to generate unprecedented numbers of new voters interested in registering to vote

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

Executed on April 28, 2008

  
Cynthia Hall

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. \_\_\_\_\_

LEAGUE OF WOMEN VOTERS OF FLORIDA, FLORIDA  
AFL-CIO, AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 79  
(AFSCME), 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.

\_\_\_\_\_ /

**DECLARATION OF ALMA GONZALEZ**

I, ALMA GONZALEZ, declare:

1. I am a resident and citizen of the United States and of the State of Florida. I reside at 1105 High Meadow Drive, Tallahassee, Florida 32311. I submit this declaration in support of plaintiffs' motion for a temporary restraining order.

2. I am a registered voter in the state of Florida and have been participating in voter registration drives for thirty-six years.

3. I serve as Special Counsel to Council 79 of the American Federation of State, County and Municipal Employees (“AFSCME”), the Florida Council of AFSCME International.

4. AFSCME is seeking to prevent enforcement of Fla. Laws 2007-30 §§ 1 and 2, which has forced it to stop its plans for member registration in advance of the 2008 election out of fear that AFSCME and the local unions it works with and their members will be unfairly subjected to severe and potentially ruinous fines as a result of their efforts to register the union’s members to vote.

#### **AFSCME**

5. AFSCME is a labor union that represents government employees. Council 79 is a separately incorporated, nonprofit organization. AFSCME’s primary mission is to advocate for the members of its bargaining unit in labor negotiations in the workplace. We also organize for social and economic justice in the workplace and through political action and legislative advocacy.

6. AFSCME Council 79 represents approximately 250,000 employees through 90 local unions in the state. It has more than 20,000 dues-paying members. AFSCME Council 79 has seven offices statewide, including our Tallahassee headquarters, offices in Jacksonville, Miami, Orlando, and Tampa, and satellite offices in Daytona Beach and Gainesville.

7. At the direction of the president of AFSCME Council 79, I oversee, coordinate, and facilitate the day-to-day operations of Council 79, including its

voter registration activities. I have worked for AFSCME since 1999, in much the same capacity.

**AFSCME Council 79's Voter Registration Activities**

8. AFSCME Council 79 has conducted voter registration in the state of Florida for at least twenty-seven years.

9. Because AFSCME's members are government employees, most of the workplace issues of importance to our members are eventually resolved by elected officials. Electoral participation of our members is therefore vital to our mission.

10. AFSCME Council 79's voter registration goal is that at least 75% to 85% of its bargaining unit is registered to vote. In past years, AFSCME International has provided us with a data file that lists members of our bargaining unit who are unregistered to vote. From that data file, the Council 79 undertakes a plan to target members.

11. Volunteer voter registration coordinators who are members of AFSCME Council 79 run our member-to-member voter registration drives. Paid AFSCME staff, including myself, train the coordinators in advance of the registration drives. Training consists of voter registration techniques, including messages we communicate to our members in connection with registering and voting, and the technical requirements of voter registration, including how to complete a voter registration form and where to submit the forms. Coordinators, in turn, provide the same training to local volunteers in the field.

12. In order to register members of our bargaining unit to vote, our drive volunteers often visit a union workplace to do voter registration. When assisting members of the bargaining unit in registering to vote, we train our volunteers to discuss the importance of voting as part of our struggle to have a voice in our workplaces.

13. When we collect a registration application from one of our members, we review it to ensure that it is completely and accurately filled out so that we may increase the likelihood that each member will be added to the voter rolls. We also endeavor to photocopy the application to enable us to contact local election officials about the status of the application and ask whether the applicant has been added to the voter rolls.

**The Success of the AFSCME Council 79's Voter Registration Drives Depends on Its Ability to Collect Voter Registration Applications**

14. In my experience registering voters, unless Council 79 not only assists its members to complete their application, but also collects completed applications, copies those applications, submits the original applications to the appropriate supervisor of elections before the relevant deadlines, and follows up to ensure that supervisors properly process the applications, the vast majority of applications completed by AFSCME's members are not likely to be submitted and processed in time for our members to vote.

15. In my experience, members are unable to complete and submit the applications without AFSCME's assistance; they become confused about the proper postage for the state's unusually sized, heavy cardstock application; they are unaware of the appropriate supervisor to whom the form should be mailed—especially where a

member lives in one county but works and fills in the form in another county; or they are unaware of the voter registration deadlines. These obstacles to registration are made more difficult by the fact that our members are often preoccupied with juggling family and work responsibilities.

16. In addition, many people we seek to register have not completed high school and may be functionally illiterate. As a result, they need help filling out the voter registration application.

17. In addition to collecting and submitting applications on behalf of members, AFSCME must follow up with supervisors of elections to ensure that the applications are properly processed. In 2000 and 2004, for instance, AFSCME learned that supervisors of elections were not processing a significant number of applications submitted by AFSCME's members. Following up with supervisors also allows AFSCME to help members resolve any problems with incomplete applications or missing information.

18. In order to conduct this follow up, AFSCME attempts to photocopy each application we collect from our members. This procedure allows us to provide proof that we submitted a voter registration application on behalf of a member. In addition, it allows us to contact our members if a supervisor identifies a problem with the application, and to send voter education materials, including materials about candidates and issues, to our members.

**The Amended Third-Party Voter Registration Law Forced AFSCME Council 79 to Halt its Voter Registration Activities**

19. Several weeks ago, the Secretary of State announced that he intends to enforce the amended law, effective April 30, 2008.

20. Prior to that announcement, AFSCME Council 79 was planning to engage in extensive voter registration activities for the 2008 elections. These were designed to register members and retirees, and to support the efforts of non-profit organizations in registering non-members.

21. AFSCME International had set a target for Council 79 to register an additional 3-5% of our members, including active members and retirees in 2008. To accomplish this goal, Council 79 had intended to identify unregistered members and train its local members to conduct voter registration.

22. AFSCME Council 79 was also participating in a voter registration effort called Labor 2008 that was being undertaken, collectively, by all labor unions that are members of the AFL-CIO. Labor 2008 had planned to engage in voter registration of unregistered union members in Florida in advance of the 2008 election.

23. The amended law has forced AFSCME Council 79 to halt these voter registration activities due to the law's ambiguity, which could create a risk of huge fines for the Council's local unions and their members who engage in voter registration. Until AFSCME Council 79 receives clarification on how to interpret the amended law and concludes that it can operate and bear the potential liability under the amended law,

AFSCME Council 79 will be forced to refrain from engaging in any voter registration activities.

24. For example, the amended law fails to define an “affiliate organization” or when an individual is liable as a separate third-party organization. Due to this ambiguity, Council 79, its local unions, and their members will remain vulnerable for annual fines of thousands of dollars. Since Council 79 lacks day-to-day control over its local unions, it would be unable to ensure the local union’s full compliance with the amended law. If the local unions were subject to their own separate fines, many of them, which have annual budgets of less than \$1,000, could not afford the fines. Moreover, union members who volunteer to register other members would be severely burdened if they were treated as individual third-party organizations and forced to pay fines up to \$1,000. Finally, AFSCME Council 79 would be unable to pay fines on behalf of its local unions and/or members on the order of \$90,000 (\$1,000 per local) or as much as \$200,000 (\$1,000 per member).

25. Each local union or member who conducts voter registration risks incurring substantial fines because of the decentralized voter registration drives that Council 79 conducts with the local unions. Each of the local union members who coordinate these drives are responsible for collecting voter registration applications and delivering them to election officials in the manner prescribed by the new law.

26. Although member coordinators are trained to submit applications before the voter registration deadline, some of these coordinators—for various innocuous reasons—will likely not submit some applications in the manner prescribed by the new

law, including its requirement that applications be submitted to an election official within ten days of the date of the applicant's signature.

27. For instance, some of our local unions may have members who live in different counties. Those unions may have meetings only once a month. When individual members engage in one-on-one voter registration with others in their bargaining unit, they may only turn over their forms to a coordinator once a month, well after ten days have passed. Once the coordinator receives all those forms, they must sort them by county, copy them, and drive to each county to turn in those forms to election supervisors.

28. AFSCME Council 79 has determined that neither it nor its local unions will be eligible for a three-fourths reduction of any fines under the new law because they will not be able to comply with the requisite quarterly reporting provisions. Due to the autonomous nature of our local unions, it would be severely burdensome and extraordinarily costly for the AFSCME Council 79 to divert one or more of its employees away from their current responsibilities to contacting each of our more than 90 local unions every quarter to compile an accurate and detailed report providing the date and location of every instance in which one of our members collects a voter registration application.

29. Many of Council 79's local unions have no computers or offices, and only one volunteer staff member. Reporting their drives and individual registration activities would require the hundreds of volunteers who engage in voter registration for the local unions to maintain records of every date and location where they registered

voters. This is severely burdensome for volunteers, including members of operational units who, for example, register members at multiple locations and on multiple dates throughout Florida's cities and counties. For Council 79 to administer and oversee the production of quarterly reports that require input from hundreds of volunteers across the state would severely tax the Council's personnel and cause it to divert significant resources from its registration activities to reporting.

30. Unless and until AFSCME Council 79 obtains clarification on the risks associated with its engaging in voter registration under the amended law, the amended law will continue to force Council 79 to refrain from its voter registration activities. As a result, the amended law has and continues to interfere with Council 79's intent to engage in political speech and action through voter registration and the political participation of its members.

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

Executed this \_\_\_\_ day of April 2008, in Tallahassee, Florida

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ALMA GONZALEZ

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

Executed this 20<sup>th</sup> day of April 2008, in Tallahassee, Florida

  
ALMA GONZALEZ