

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

FLORIDA STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
(NAACP), as an organization and representative
of its members, *et al.*,

Civil No. 4:07cv402 SPM/WCS

vs.

KURT S. BROWNING, in his official capacity as
Secretary of State for the State of Florida,

Defendant.

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs move pursuant to Fed. R. Civ. P. 65 and 28 U.S.C. §§ 2201(a) and 2202 for declaratory and injunctive relief to strike down a provision of Florida election law that creates an illegal precondition to registering the State's voters and that will unlawfully disenfranchise thousands of Florida citizens in the 2008 election cycle -- beginning with the presidential primaries on January 29, 2008.

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The state-law provision at issue, as detailed in the Complaint,¹ violates and conflicts with the Help America Vote Act of 2002, 42 U.S.C. § 15301 *et seq.*, the Voting Rights Act, 42 U.S.C. §§ 1971(a)(2)(B) and 1973, the National Voter Registration Act, 42 U.S.C. § 1973gg, as well as the First and Fourteenth Amendments to the United States Constitution.

The provision, Section 97.053(6), Florida Statutes (“Subsection 6”), prohibits the Secretary of State from completing the registration of perfectly eligible voters if the State cannot match or verify the identifying information on the voters’ registration applications with existing driver’s license or Social Security records. Applicants who are not “matched” will not be allowed to cast a valid ballot unless they overcome a series of burdensome bureaucratic hurdles that deprive them of their fundamental right to vote. Some will not have a chance to overcome those hurdles and will be denied the right to vote.

This statutory obstacle to registration and voting will illegally disenfranchise thousands of eligible Florida voters during the 2008 election cycle. Matching information from one database with information in a different database is a process plagued with errors and is notoriously unreliable in the elections context. If not enjoined, Florida’s matching system will exclude eligible voters from the registration rolls because of data entry errors, typos, meaningless spelling differences, imperfect handwriting,

¹ This motion was filed simultaneously with the Complaint in this action on September 17, 2007.

ministerial mistakes, computer glitches, and other factors having nothing to do with the voters' eligibility.

A preliminary injunction under Fed. R. Civ. P. 65 is appropriate here because, as will be demonstrated, (i) Plaintiffs have a substantial likelihood of success on the merits of their claims; (ii) Plaintiffs and their members will suffer irreparable injury in the form of disenfranchisement unless the injunction issues; (iii) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the Secretary of State; and (iv) if issued, the injunction would not be adverse to the public interest. *See, e.g., Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1231 (11th Cir. 2005).

The more complete grounds and legal authority in support of this motion are addressed in the accompanying Memorandum of Law. A proposed order granting Plaintiffs' motion is attached at Tab 1.

WHEREFORE, and for the reasons detailed in the accompanying Memorandum of Law, Plaintiffs seek an order:

(1) Declaring that the provisions of § 97.053(6), Fla. Stat., as currently enacted and as amended effective January 1, 2008, prohibiting election officials from registering eligible voters until the Secretary of State has matched the driver's license number or Social Security number on the voter registration form with existing records of the Department of Highway Safety and Motor Vehicles or Social Security Administration, the applicant has produced unspecified evidence deemed sufficient to authenticate the identifying number on the form, or it has been determined that the applicant has no such number, violate rights granted to

Plaintiffs and their members by, and conflict with preempting provisions of, the Help America Vote Act of 2002, 42 U.S.C. § 15301 *et seq.*, the Voting Rights Act, 42 U.S.C. §§ 1971(a)(2)(B) and 1973, the National Voter Registration Act, 42 U.S.C. § 1973gg, and the First and Fourteenth Amendments to the United States Constitution;

(2) Preliminarily and permanently enjoining Defendant, his employees, agents, representatives, and successors in office from refusing to place on the official statewide list of registered voters voter registration applicants solely because they cannot “verify the authenticity or nonexistence” of the applicants’ identifying numbers;

(3) Awarding Plaintiffs their attorneys’ fees and costs in accordance with 42 U.S.C. § 1988; and

(4) Granting Plaintiffs such additional relief as the interests of justice may require, together with their costs and disbursements in maintaining this action.

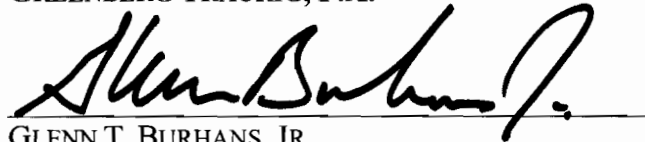
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N.D. FLA. LOC. R. 7.1 CERTIFICATION

Pursuant to N.D. Fla. Loc. R. 7.1(B), undersigned counsel states that this motion has been filed contemporaneously with service of process and the Complaint in this matter and that, because counsel for defense has not made an appearance, undersigned counsel has not been able to resolve by agreement the issues raised in the motion.

Dated: September 17, 2007.

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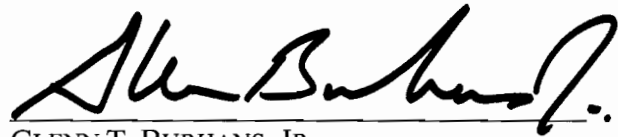
* *Pro Hac Vice* application to be filed

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Motion for Preliminary Injunction* was served via HAND DELIVERY this 17th of September , 2007 upon the following:

Kurt Browning, Defendant
Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

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Civil No. _____

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vs.

KURT S. BROWNING, in his official capacity as
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Defendant.

**[PROPOSED] ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

THIS CAUSE comes before the Court on Plaintiffs' *Motion for Preliminary Injunction*, filed September 17, 2007. The Court, upon the papers filed by the parties, evidence and argument presented at the hearing, is fully advised of the premises and determines that there is good cause for granting Plaintiffs' Motion.

Accordingly, it is

ORDERED AND ADJUDGED that the Plaintiffs' Motion for Preliminary Injunction is **GRANTED**; and

THE COURT DECLARES AS FOLLOWS:

Defendant and his employees, agents, representatives, and successors in office are preliminarily enjoined from implementing § 97.053(6), Fla. Stat., as currently enacted and as amended effective January 1, 2008, including but not limited to its provision that

EXHIBIT

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exclusion of an otherwise eligible voter registration applicant from the official statewide list of registered voters until Defendant is able to “verify the authenticity or nonexistence of the driver's license number, the Florida identification card number, or the last four digits of the social security number provided by the applicant.”

In accordance with Fed. R. Civ. P. 65(d), Defendant **IS FURTHER INSTRUCTED** to provide actual notice of this Order to his officers, agents, servants, employees, attorneys and all those in active concert and participation with them, so as to assure compliance.

DONE AND ORDERED in Chambers at Tallahassee, Florida, this ____ day of _____, 2007.

UNITED STATES DISTRICT JUDGE

Copies to Counsel of Record.

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