

24, 2008) [hereinafter “*NAACP*”]. As a result, the state’s “important regulatory interests” were sufficient to justify the law’s minimal burden on First Amendment interests. *Id.* at 40. But *NAACP* does not apply to this case, where the burden on Plaintiffs’ First Amendment rights is indisputably serious.

For the same reason, the Supreme Court’s decision in *Crawford*, 128 S. Ct. 1610 (2008), does not support Defendants’ contention—which they reassert in their notice of “supplemental” authority—that the State can meet its burden to justify the substantial injury the challenged law imposes on First Amendment rights by the mere *assertion* of a legitimate state interest. *Crawford* explicitly reaffirmed that courts evaluating election regulations must weigh the burden on Constitutional rights against “the precise interests *put forward by the State* as justifications for the burden imposed by its rule.” *Crawford*, 128 S. Ct. at 1616 (emphasis added; internal quotation marks and citations omitted). *See* Plaintiffs’ Motion for Preliminary Injunction [D.E. 24] at 15-17; Reply Memorandum [D.E. 55] at 11-13. Because the Court determined that the plaintiffs in *Crawford* had not presented evidence that the law imposed a cognizable burden on their First Amendment rights, the Court found it unnecessary to closely examine the legitimate state interests underlying the challenged Indiana law. *Id.* at 1623.¹

Unlike in both *Crawford* and *NAACP*, Plaintiffs here have demonstrated—and Defendants do not seriously contest—that the challenged statute will severely burden their speech and association. As argued in Plaintiffs’ briefs on the Motion for Preliminary Injunction, Defendants therefore have the burden to adduce evidence that the Law is justified by a

¹ Contrary to Defendants’ assertion, neither *Crawford* nor *NAACP* support the proposition that the state need not proffer *any* evidence where a minimally burdensome regulation is supported by an asserted state interest in preventing voter fraud. Each decision included an examination of the evidentiary records and a finding that the evidence was sufficient. *See* Pl. Reply Br. at 13; *NAACP* at 27-29.

compelling state interest and is narrowly drawn to advance that interest. *See* Plaintiffs’ Motion for Preliminary Injunction [D.E. 24] at 14-22; Plaintiffs’ Reply Memorandum [D.E. 55] at 11-14. *See also United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 816 (2000) (once a substantial burden on First Amendment rights is found, the state “bears the burden of proving the constitutionality of its actions.”).

What is more, neither *NAACP* nor the discovery order in *ACORN v. Cox* suggest that the State need not demonstrate that the laws at issue in those cases were appropriately tailored to serve the state’s interests. A critical issue in this case is whether Florida’s Third-Party Voter Registration Law is necessary in order to advance the State’s asserted interests. Plaintiffs submit that they do not and Defendants have not shown otherwise.

II. Association of Community Organizations for Reform Now v. Cox

The discovery order in the *ACORN v. Cox* case put forward by Defendants as “supplemental authority” contains no ruling of any relevance whatsoever to this matter. Defendants cite to dictum in a footnote in *ACORN* that “points to pages” in *Crawford* that are purportedly relevant here. *Crawford*’s analysis of the particular state interests put forward in that case, however, is not applicable in this case. If anything, the *ACORN* court’s discovery ruling contradicts the proposition for which Defendants cite it. Noting that the state had failed to present evidence supporting its purported interest in the challenged election regulation, the court ruled that the state was entitled to discovery of information relevant to those interests prior to trial.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2008, I caused to be electronically filed the foregoing document using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified below by transmission of Notices of Electronic Filing generated by CM/ECF.

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