

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, FLORIDA PUBLIC INTEREST
RESEARCH GROUP EDUCATION FUND,
and ROCK THE VOTE,

Plaintiffs,

v.

KURT S. BROWNING, in his official capacity
as Secretary of State for the State of Florida,
PAMELA J. BONDI, in her official capacity as
Attorney General for the State of Florida, and
GISELA SALAS, in her official capacity as
Director of the Division of Elections within the
Department of State for the State of Florida,

Defendants.

Civil No. _____

**Affidavit of Heather Smith
Submitted in Support of
Plaintiffs' Motion for
Preliminary Injunction**

I, Heather Smith, hereby declare as follows:

1. I serve as President of Rock the Vote ("RTV"), a position that I have held for over four years. For more than eight years, I have specialized in nonprofit work encouraging young Americans to register to vote, including prior stints as the National Field Director for the New Voters Project, a project of the Student PIRGs and the Graduate School of Political Management at the George Washington University, with support from the Pew Charitable Trusts.
2. In my role as President of RTV, I have direct knowledge of the organization's structure, organization, and mission. I also work closely with our staff and volunteers running voter registration efforts in the states, and I am updated about our progress on a daily basis. Thus, I have direct and detailed knowledge of our voter registration plans and procedures both nationally and in Florida. I submit this affidavit in support of Plaintiffs' motion for a preliminary

injunction to prevent enforcement of provisions of Florida law, codified at Fla. Stat. § 97.0575, that restrict RTV and similar groups engaged in voter registration efforts (the “Law”).

Rock the Vote’s Mission and Structure

3. Rock the Vote is a nonprofit, nonpartisan 501(c)(3) organization dedicated to engaging young people in our nation’s democracy. In 2012, RTV hopes to be at the forefront of reinvigorating democracy and redefining citizenship for a generation, building relationships with and activating a growing and diverse base of young voters, and ensuring they stay involved while continuing to reach more young people as they turn 18 each year.

4. RTV’s fundamental mission is to engage and build political power for young people in our country by increasing voter registration rates and voter turnout among younger voters. Our principal activities include assisting young voters with registering to vote and getting young voters out to the polls. We also engage in widespread public education efforts, including public service announcements, voter information distribution led by our community street teams, and a highly trafficked website at www.rockthevote.com that offers extensive voting and election information and online opportunities to register to vote using the federal voter registration form.

5. RTV is a national nonprofit organization headquartered in Washington D.C. and founded in 1990. RTV began its first field campaign to encourage young Americans to register to vote in 1992. RTV does not have local or state-based affiliates or branches. Sometimes, but not always, RTV will obtain physical office space when we engage in dedicated voter registration drive activity in the states. In a typical election year, we engage in our online public education and voter registration work nationwide. We also supplement our work with dedicated, in-person voter registration drive activity in ten to twenty states and/or local jurisdictions.

6. In 2008, RTV dedicated over \$4.2 million to voter registration nationally and Florida was one of the top five states in which RTV directed its efforts.

7. When RTV engages in voter registration activity on the ground in select states, we hire and dedicate trained staff members to run that activity. In 2010, for example, RTV employed a single staff person at any given time in the state of Florida, but we had no physical office space there. RTV does not currently have any employees or office space in Florida. While we may hire staff in Florida to conduct registration activities prior to the 2012 election, we do not anticipate obtaining physical offices in the state during that time period.

8. RTV does not provide state-based staff members with office equipment such as printers, fax machines, or scanners. Instead, state-based staff purchase such services, as needed, at office supply and service centers.

9. RTV has approximately 1.5 million members in our national database, including approximately 82,000 members in Florida. RTV does not have a formal membership application process and does not collect dues. Anyone who registers to vote using the forms made available on our website, as well as anyone who signs up to get involved with Rock the Vote on our website (volunteer, take action, get information) or at events, is given the opportunity to opt in to our membership lists and receive regular communications, including updates about policy issues affecting young voters, information about upcoming elections, and “get out the vote” communications. These communications are almost exclusively by email or text message. We collect cell phone numbers—with individuals’ consent—and contact members by phone call or text message to remind them of upcoming elections. We do this to ensure that those we have helped register to vote in fact cast a vote on Election Day. We also offer young people the

opportunity to run their own voter registration drives and volunteer with RTV in their communities.

Rock the Vote's Voter Registration Activity and Online Forms

10. Voter registration is a central activity of RTV. It is integral to our mission of engaging young people in our nation's democracy. Our voter registration work started soon after RTV was founded in 1990. Our first campaign designed to increase turnout of youth voters in elections was in 1992.

11. Our data shows that we register more voters than any other nonpartisan voter registration organization. Since our founding, we have registered more than 5 million voters. Nationwide, we helped approximately 2 million people complete voter registration applications in 2008 and approximately 300,000 in 2010. Most people we register are between the ages of 18 and 29.

12. We help individuals register to vote both online and with volunteers on the ground using physical voter registration applications. Our online voter registration system offers applicants the National Mail Voter Registration Form, which is made publicly available by the Election Assistance Commission. We typically use the national mail-in form for in-person voter registration as well, although our staff members and volunteers may occasionally use the appropriate state form.

13. When applicants use the RTV online voter registration tool, they are asked to answer a series of questions used to collect all of the information needed to register to vote. After an applicant finishes answering the questions, our system fills that data into the National Mail Voter Registration Form and generates a .pdf document of the form with the necessary fields completed. Then, the applicant sees on the screen a big red button that says, "Print your registration form now. You won't be registered unless you print, sign and mail in your form!"

Applicants are told to print out and sign the pre-filled form, and given instructions on how to mail it in.

14. Online applicants are thus responsible for independently signing and mailing the form to the correct address. RTV is not responsible for mailing. RTV does not have access to the completed, signed forms, but RTV does have access to all the information the applicants provide during the series of questions asked by our system.

15. The system automatically and immediately emails all individuals who completed the online process of preparing a registration form a reminder to mail in their completed voter registration form. Another reminder is e-mailed five days later. RTV compares the voter registration rolls with its list of individuals who completed forms online and tries to follow up with those who have completed RTV's online process but do not show up on the voter rolls. We do this by running the list of applicants who have used our voter registration system through the third-party vendor Catalist, which analyzes the voter rolls in every state to identify whether our applicants appear on the rolls. If anyone who fills out a registration form through our website does not appear on the voter rolls within two weeks, we add that person to what we refer to as the "chase list," a list of applicants whom we then contact via phone to remind them to submit their applications.

Rock the Vote's In-Person Voter Registration Procedure

16. During the 2008 election cycle, over 400 individuals signed up to volunteer on the ground in Florida with RTV, in addition to RTV's one full-time staff member. In 2010, RTV had one full-time staff member and approximately 200 volunteers in Florida assisting with voter registration. We do not currently have any staff in Florida.

17. RTV provides a week-long training at its headquarters in Washington D.C. for all state-based staff who will coordinate in-person voter registration drive activity. This includes training on how to ensure that applicants properly fill out voter registration forms, how to properly submit completed forms to elections officials, and how to use RTV's data entry systems. We also give state-specific training to inform staff about particular voter registration requirements in the states in which they will be working. Before staff members can engage in voter registration activity on behalf of RTV, they must acknowledge and certify that they have received various documents, including an employee manual, documents prohibiting partisan activities, and a "do's and don'ts" document.

18. RTV's voter registration drives depend on volunteers, whom we recruit in a variety of ways, including, for example, by sending text messages to people who registered through RTV's website or inviting individuals in person to join us at tabling events. Everyone who registers to vote through RTV's website or at our tabling events is asked whether he or she would also like to volunteer to help others register; this is an opt-in box for anyone using our online registration tool.

19. It is not uncommon for RTV members and other volunteers to show up to volunteer to register voters without scheduling or prior notice. RTV will send out a high volume of e-mail or phone requests to volunteer to our member list, in the hope that a number of respondents will sign up to volunteer at a scheduled RTV event or set up their own event. Non-members often show up to volunteer, particularly if they are friends or family members of scheduled volunteers.

20. A staff member or an experienced and previously trained volunteer (a "lead volunteer") fully trains every volunteer to properly register voters. This training includes information on state registration laws and nonpartisan rules, and it emphasizes that volunteers must treat

registration forms “like gold” and must register everyone regardless of party affiliation or beliefs. Most RTV volunteers are college students or recent graduates between the ages of 18 and 24.

21. RTV’s voter registration events vary, but the majority of our in-person voter registration activity consists of “tabling,” which involves staff or volunteers setting up a table in a high-traffic area from which they can engage passersby and offer them opportunities to fill out and submit voter registration applications. The vast majority of these tabling events are held on college and university campuses or at concerts or festival events.

22. Each voter registration event is run by a staff person or an experienced lead volunteer, who supervises all other volunteers working at that event. Each volunteer is instructed on what to say when speaking to potential applicants. Generally, volunteers open with a question about whether or not the individual is registered to vote at his or her current address. Volunteers are instructed to walk applicants through the form, answer any questions, and help correct any errors. Volunteers are also encouraged to enthusiastically share with registrants the importance of voting and participating in our democracy, discussion topics that inevitably arise at registration events.

23. During the voter registration process, volunteers may hand out buttons and stickers expressing support for greater civic engagement by young voters. They may also hand out “palm cards” that discuss how to get involved in the political process and provide an election protection hotline phone number, or “pledge cards” which applicants can sign to pledge to vote. We physically mail these pledge cards back to the applicants before the election, reminding them of their own promise in hopes of boosting turnout among those who register to vote through RTV.

24. Where possible, RTV staff and volunteers collect applicants’ cell phone numbers and keep voters’ contact information in a secure national database that can be sorted by state. We

obtain this information on the pledge cards or on separate “sticky notes” that are attached to the applicant’s voter registration form. Our staff or volunteers then enter that contact information into RTV’s database system; however, we never enter other private data of the applicants, such as a driver’s license number or social security number. Prior to elections, RTV uses names and contact information of those who have requested additional information about elections from RTV to remind individuals who have registered to get out to the polls and to vote, and to re-register when they move.

25. While RTV volunteers will give people blank forms at tabling events if they ask for them, our voter registration experience demonstrates that individuals are far less likely to properly fill out and submit completed forms on their own than they are if they are assisted by our volunteers. Even among people who were interested enough in registration to visit RTV’s website, and who received multiple reminders from RTV, a significant percentage still are not properly added to registration rolls. In 2008 for example, only approximately 1.5 million of the 2.2 million individuals who visited RTV’s website and downloaded a voter registration form actually made it onto the voter rolls. This demonstrates that our in-person registration work and personal collection of forms is uniquely effective.

26. Accordingly, RTV volunteers are instructed to strongly encourage applicants to fill out the voter registration form in person and hand the completed form to RTV staff or volunteers. RTV believes that this greatly increases the number of individuals who are actually registered.

27. Despite our best efforts, applicants sometimes start to fill out their form in person, but then suddenly take off with a blank or partially completed form. This is especially true when we register voters at concerts or music festivals. While we successfully register lots of attendees before the band starts, once the music starts playing, individuals will frequently stop what they

are doing and leave with a form in hand. This also occurs on college campuses, when students hurry between classes, often without the necessary ID to complete the information required by the form.

28. After volunteers collect voter registration forms at tabling events, the lead volunteer or a staff member hand-delivers or mails the forms to the appropriate elections officials. Whenever possible, forms are dropped off in person to county Supervisors of Election. If RTV staff and lead volunteers lack the ability to drive to county offices, though, they place the completed forms in the U.S. mail. In addition, RTV does not always register voters in their resident counties. Forms for individuals who reside in a different county from where the registration event occurs are placed in the mail as soon as possible.

29. RTV employs several quality control measures during registration activities. Volunteers assisting with voter registration review the forms and make sure all forms are filled out correctly while the applicant is still present. After each form is completed, the forms are placed in an envelope and given to a lead volunteer or staff member for safekeeping. Only staff members or lead volunteers who have been fully vetted by RTV are designated to collect and submit completed voter registration forms. Where possible, RTV keeps records and copies of all voter registration forms completed at our drives.

30. Based on past registration activities in Florida, the entire process of obtaining a completed voter registration form and submitting the application to an election official ordinarily takes two to five days. It is rarely complete within 48 hours.

31. To my knowledge, in our almost twenty-year history, RTV has never been fined or otherwise cited in conjunction with violating any voting registration regulations in Florida or any other state. I am not aware of any allegations of fraud connected to our organization.

32. RTV successfully turned in every completed voter registration form given to any of our staff or volunteers in Florida during the 2008 election cycle by the registration deadline. In 2010, we never took longer than ten days to turn in completed registration forms that were collected by staff and volunteers engaged in registration activities in Florida.

33. In both 2008 and 2010, RTV registered with Florida as a third-party voter registration organization, under the prior law, and submitted quarterly reports of our voter registration activities to the Secretary of State. On or about May 26, 2011, RTV received a letter from the Florida Division of Elections informing us that within 90 days, we must begin complying with Florida's new set of voter registration regulations that were enacted with the passage of the Law. As required by the Law and its implementing regulations, and per the State's directive included in that letter, RTV began submitting monthly reports in 2011.

Rock the Vote's "Democracy Class"

34. An important component of RTV's voter registration and outreach efforts is our "Democracy Class," a collaborative civic education program between Rock the Vote and participating high school teachers. In 2010, when RTV conceived the Democracy Class, we chose a handful of states for our pilot program, and Florida was a natural fit because the state encouraged the pre-registration of 16 and 17 year-olds. We had a staff person on the ground in Florida to administer the Democracy Class in 2010, which was a rousing success. We rolled the program out nationally in 2011 based on its success in Florida and other states.

35. Democracy Class consists of a "toolkit" of materials that teachers can use to supplement their class instruction about civic engagement and the right to vote. It includes a video about the right of 18-year-olds to vote, lesson plans for staging a mock election in class, and a set of voter registration materials for the students.

36. Students participating in Democracy Class learn about the history of the franchise in our country, the countless sacrifices people made to earn and expand the right to vote, the 26th Amendment, and the importance of the right to vote today.

37. RTV will begin promoting each year's Democracy Class on March 23, which is the anniversary of the date on which Congress approved the 26th Amendment, granting 18-year-olds the right to vote, and sent it to the states for ratification. It was ratified 100 days later. RTV therefore urges teachers to complete the Democracy Class program within 100 days of March 23 in commemoration of the 26th Amendment.

38. RTV works with groups such as the National Education Association and the National Council for the Social Studies to promote and identify opportunities for Democracy Class. We also reach out to individual teachers and invite them to collaborate with RTV by offering Democracy Class in their classrooms.

39. Teachers who wish to run a Democracy Class contact RTV for materials. RTV sends these teachers lessons plans and comprehensive instructions, including a primer on proper voter registration and information about how to conduct a mock election. RTV staff then follows up by telephone to ensure teachers have received the materials and are aware of the proper way to implement the lesson plan. Teachers then sign a licensing agreement and a promise to be nonpartisan while engaging in any education or voter registration activity on behalf of Rock the Vote. Once a teacher signs that pledge, RTV mails him or her a full Democracy Class toolkit.

40. As part of the Democracy Class program, all eligible high school students are given the opportunity to register to vote. In most states this means all students who are citizens and are at least 18 years old. In states such as Florida, where 16- and 17-year-olds may pre-register to vote, those students are also given the opportunity to pre-register.

41. In order to facilitate voter registration, each Democracy Class toolkit includes 30 copies of the National Mail Voter Registration Form and an envelope pre-addressed to the state Division of Elections, pre-stamped with sufficient postage to mail in 30 completed registration forms.

42. Teachers collect voter registration applications and send them to the Supervisor of Elections using the pre-addressed, pre-stamped envelope. RTV asks, but does not require, teachers to make copies of voter registration applications and send them to RTV so RTV can keep track of the students that are registered and can remind them to vote. Not all teachers choose to send copies to RTV; some simply collect and mail the completed forms to election officials.

43. In many cases, teachers may make additional copies of the blank national forms we send them. For example, one teacher might copy a stack of application forms for another teacher who wishes to encourage her own students to register to vote. This frequently happens when teachers find out about other teachers in their school participating in Democracy Class, and want their own students to participate as well. Or, a teacher may use registration forms to register friends, family, or acquaintances. We encourage teachers to make as many copies of the publicly available national voter registration form as they need. We will also send additional pre-stamped envelopes if teachers need to mail more than 30 completed forms.

44. RTV also sends each teacher 30 “pledge cards,” which students may fill out to “pledge to vote.” If students fill the cards out, the teacher sends them back to RTV in a pre-addressed, postage paid envelope. Students are also asked to check a box letting us know if they submitted a completed voter registration form to their teacher, so that we can follow up to ensure those students are actually registered as voters and include them in our “get out the vote”

communications. RTV encourages students to fill out pledge cards by entering them in drawings to win concert tickets and other prizes.

45. Teachers frequently collect voter registration forms over a period of several days after Democracy Class to ensure that every interested student has an opportunity to register to vote.

46. In 2011, approximately 1,200 educators from across the nation participated in our Democracy Class, including 63 in Florida. In 2012, we expect the number to be significantly higher because of the presidential election. We expect around 5,000 educators will incorporate Democracy Class into their curriculum, including approximately 125 from Florida if the program is active.

47. In addition to its Democracy Class, RTV identifies a few schools in Florida for special emphasis in registering voters. RTV focuses on schools in which students are not likely to have many other opportunities to register to vote, or may be less likely to be exposed to information about how important the right to vote is, or why they should register to vote. These tend to be schools in districts that have disproportionately high numbers of low-income and minority students. At these schools, with the cooperation of teachers and administrators, RTV organizes school-wide events to educate students about the right to vote and encourage voter registration.

48. RTV has worked hand-in-hand with Florida Supervisors of Elections on its Democracy Class. It has been my experience that Supervisors of Elections strongly encourage, and are very excited to see, higher levels of voter registration and participation in democracy by young voters. Supervisors of Elections, however, do not have time to do extensive outreach and voter registration efforts in schools. RTV, in collaboration with teachers, has helped meet this need through its Democracy Class. Without Democracy Class and other RTV programs, we have

reason to believe voter registration rates among students and other young voters would be significantly lower.

49. Democracy Class is integral to RTV's mission because it combines education, outreach, and active engagement (through voter registration) of young people. It has been one of RTV's most successful and important programs, and it was particularly effective in Florida because Florida encourages 16- and 17-year old future voters to pre-register.

The Severe Burdens Florida's New Law Imposes on Rock the Vote

Burdens on RTV's In-Person Voter Registration Activity

50. Florida's new voter registration Law will make it extremely difficult to continue to help young people to register to vote in Florida. As described below, RTV lacks the time, resources, and personnel to comply with all of the Law's onerous requirements. In addition, there are some parts of the Law that are unclear. Unless the Law is enjoined or limited in such a way that substantially reduces the burdens and risks it places on RTV, there is no question that we will have to drastically cut back, or perhaps discontinue, our registration efforts in Florida. We have already suspended our Democracy Class program and our in-person voter registration work in the state of Florida since the Law's passage. We have had to turn down requests from individuals and teachers in Florida to collaborate on voter registration activity due to the Law's burdensome new requirements.

51. RTV is extremely concerned that the Law will make it exceedingly difficult to encourage student volunteerism with us. The Law now requires each "registration agent" to sign a sworn form detailing severe felony penalties that result from false registration. While we train our volunteers to ensure no one falls afoul of these laws, introducing a student to civic participation and volunteerism via a list of felony penalties, in turn signed under felony penalty of perjury, is

intimidating and scary for many students. The nature of the required form will lead to fewer students who are willing to participate in and volunteer in RTV's voter registration activity, particularly on a spontaneous basis.

52. As I understand the Law, RTV will be required to place an identifying number on each completed voter registration form. Right-wing organizations heavily scrutinize RTV, and potential voters could fear that they will be harassed for their association with us.

53. When, or if, we do resume on-the-ground registration efforts in Florida, RTV does not understand how the Law's tracking requirements would apply to registration forms made available by RTV online. RTV frequently refers volunteers, teachers, and others to our online voter registration system, and it is unclear if this activity falls under the Law's requirement that we track each form "provided to" our "registration agents." For example, we frequently provide the web address of our voter registration process to teachers involved in our Democracy Class. Under the Law, those teachers may have to register as "registration agents" of RTV because they use our materials to help students register to vote.

54. In addition, we provide Democracy Class teachers, and all of our volunteers, with blank copies or digital versions of the National Mail Voter Registration Form and encourage them to copy and print the forms as needed. It is totally unclear how we would account for and report those copied forms under the Law – it would be essentially impossible. This is of particular concern when the forms we distribute are blank, publicly available forms, and may be used by our volunteers or Democracy Class teachers *either* to help voters register on behalf of RTV *or* to simply distribute a public form to encourage others to vote without any intention of collecting those completed forms. Nonetheless, the Law requires us, for some reason I do not understand,

to track all of the blank forms we provide, even though an identical form can be downloaded from the website of the Election Assistance Commission.

55. RTV also lacks the practical ability to make sure every pre-marked form used at our in-person events is submitted in a timely fashion. As described above, applicants sometimes begin filling out a registration form at a table but then leave with the partially completed form. If this were to happen with a marked form that is then submitted past the 48 hour deadline, RTV would apparently be held strictly liable.

56. It is also unclear to me how the submission timing requirements in the Law work. The law requires that each form be submitted in person within 48 hours unless the elections office is “closed for the 48-hour period.” I cannot tell from this instruction whether the closure of a government office for only part of that 48-hour period would impact the return deadline for completed forms. Similarly, while the regulations provide for a two-day return time based on a postmark if the forms are mailed to elections officials, it makes no mention of extending this postmark deadline in circumstances when the U.S. postal offices are closed within some period of the 48 hour window. Finally, the postmark provides the time of receipt for mailed-in forms only when the postmark is “clear.” I have no way of knowing whether the post office will provide a clear postmark, and the Law’s strict deadline does not permit us to mail completed forms with confidence that they will be received by election officials in advance of this deadline.

57. I understand that the Division of Elections’ explanation of the Law’s requirements includes a statement that all completed forms must first be turned in to RTV before they can go to election officials. If this is actually what the Law requires, it is extremely burdensome and likely impossible to comply with. RTV’s main offices are located in Washington, D.C., and we do not have a formal office Florida. Our organizers would have to mail forms to Washington,

D.C., in order for us to then mail them to the state of Florida. This would absolutely not be possible within 48 hours. It also would require us to place these forms in the mail – twice – rather than use our standard in-person delivery to ensure that they directly reach elections officials.

58. RTV sometimes receives completed forms from students who know we are on campus but who completed their forms days before they submit them to us. RTV would never refuse to accept and help submit an applicant's completed form, but in situations like this one, the Law would present a serious problem for RTV. It appears from the statute and regulations that the Law's 48-hour delivery period starts running from the date and time that a registrant completes the form, even if RTV volunteers actually collect it later. The regulations permit RTV to "provide documentation" that a form was completed before the day that it was delivered to RTV, but this process appears to be available only for mailed-in forms. It is also unclear how we would be able to document such a delay. Therefore, it is unclear whether we could accept a previously completed form from an applicant and submit that form within 48 hours of receipt without subjecting RTV to a fine.

59. RTV already has every incentive to turn voter registration forms in as soon as possible, and it has always done so. We want our applicants to vote, and the earlier we can verify that they are on the voter rolls, the better. However, requiring each form to be turned in within 48 precise hours forces us to operate at the very margins of our ability, with zero wiggle room. Not only does this place undue stress and haste on our successful voter registration processes, but it places entirely unnecessary demands on our volunteers, particularly students. While all RTV volunteers who handle completed voter registration forms have been vetted and proven to act in good faith, they are still extremely busy students. I would hesitate to demand that they place

themselves or RTV at risk of fines or civil penalties if they cannot turn a form around in 48 hours. These students are actively engaged in the political process and willing to donate their limited time to help others register to vote. Hanging the threat of sanctions over their heads will not increase the security of these forms or reduce fraud. All it does is place stressful and punitive demands on volunteers acting in good faith.

60. In our experience, it usually takes staff members or lead volunteers two to five days to ensure that forms are submitted properly. At times, it may be physically impossible for them to collect the forms from other volunteers, check them for accuracy and completeness, and deliver them to a Supervisor of Elections or the post office within 48 hours. It would be extremely difficult to submit every form within 48 hours of it being completed at a tabling event. Many volunteers are students who do not have cars, and many college campuses, where our tabling events are held, are not close to county offices (and are certainly outside of walking distance of those offices). These difficulties are particularly acute on weekends, when we often do voter registration events at concerts, festivals and community events, when relevant offices are closed for some or all of the 48-hour return period and the return window is shortened. Thus, it is likely that because of the Law's 48-hour deadline, RTV will not be able to organize tabling events, especially before or during weekends.

61. Even if it were always possible to submit forms within 48 hours, RTV would likely have to forego asking staff and volunteers to collect data from applicants for follow-up communications, because they would be in such a rush to meet the submission deadline. This would make it impossible for RTV to follow up with applicants if there was any problem with their forms, remind them to vote, or otherwise communicate with them. Subsequent communication with people who fill out voter registration forms is a critical organizing tool and

is essential to our mission. Without it, we will not be able to effectively motivate the population that we serve to get out and vote.

62. In rare instances in the past, RTV has been unable to submit forms through no fault of RTV, our staff, or our volunteers. In 2010, in Ohio, 300 voter registration forms were stolen out of a staff member's car as he was parked on the way to the state board of elections. RTV contacted as many people as possible using previously scanned information and asked them to fill out forms again. In this type of situation, RTV uses stored contact information to ensure that each individual who submitted a completed registration form has another opportunity to register to vote. Without our internal data collection and retention, we would not have been able to follow up with impacted voters to ensure they ultimately got onto the voter rolls.

63. The Law's requirement that we identify all of our registration agents, including when they start and when they end their relationship with RTV would be impossible to satisfy under our model of volunteer driven events. RTV cannot determine who is a registration agent for the organization under the Law. Many volunteers show up without notifying RTV in advance. Volunteers may or may not see themselves as RTV members, and other than opting out of future RTV e-mails, there is no formal way for members to resign their membership. Volunteers may also help people register to vote on their own time in activities not affiliated with RTV. We do not require volunteers to provide us with an "end date" to their volunteer activity, and we believe that doing so would formalize and discourage the exact civic participation that RTV works to cultivate among the younger generation. The Law's new requirement that we update the state about those who "terminate" their status as our volunteer base is bewildering and impossible to satisfy.

Burdens on RTV's Democracy Class Program

64. Under the Law, it is my belief that teachers running Democracy Class would need to be identified as registration agents for RTV because they would be collecting and submitting voter registration applications on RTV's behalf.

65. Because teachers would be registration agents, prior to collecting voter registrations as part of Democracy Class, they would have to sign a statement threatening them with criminal prosecution. I believe teachers would be intimidated by this statement, and many would not sign it. Since the Law passed, there have been reports in the media about Florida teachers who have fallen afoul of the new Law, and who are being investigated or fined for returning voter registration forms later than 48 hours after collecting them from students. I am concerned that between the frightening registration agent form and the publicized investigations of teachers, principals and other administrators may not allow teachers to sign such forms because of concerns about liability and the school's reputation.

66. Even if teachers were willing to sign the forms, RTV cannot afford to expose itself to liability under the Law by listing teachers as registration agents. Under the Law, if a teacher collected voter registration forms during an RTV Democracy Class but did not submit them within 48 hours, RTV would be liable.

67. There are many good reasons why a teacher might not submit an application within 48 hours. First and foremost, teachers are in the classroom teaching students throughout the week, and I would hesitate to place immediate demands on their work or personal schedules. A teacher could teach a Democracy Class on a Friday and give students the weekend to fill out applications. Or a teacher could collect a round of voter registration applications during Democracy Class, but hold on to the completed applications so that students who were absent the day of Democracy Class could fill out the voter registration application on a subsequent day. If

for any reason the teacher mailed the envelope with the completed applications more than two days after the first student signed and dated an application, RTV would be liable for fines. RTV would have no way of tracking all of the voter registration applications that teachers collected from students, yet the applications would be stamped with RTV's third-party voter registration number ("3PVRO number").

68. Additionally, a student may choose to fill out the voter registration application but not return it to the teacher. If the student does not submit the completed application within 48 hours, RTV would apparently be liable under the Law, since the form would be stamped with RTV's 3PVRO number.

69. Because mailing completed forms only constitutes delivery for purposes of the Law's 48-hour deadline if the mailing envelope bears a "clear" postmark when it arrives at the Division of Elections, even a teacher who promptly and properly collects and mails every single completed application risks running afoul of the Law's strict provisions. Even if teachers were able to personally drop off packages of completed forms at the post office during business hours, neither they nor RTV would have any control over whether the postal service properly and clearly postmarked every envelope containing completed forms. Nevertheless, for each and every application that arrives at the Division of Elections more than 48 hours after it was completed and in an envelope that was not clearly postmarked, the Law would impose mandatory fines.

70. RTV would not be able to track all of the voter registration applications bearing its 3PVRO number. Especially in Democracy Class, we would feel compelled to pre-mark any forms used by teachers rather than place the burden on public servants trying to engage young voters. Each of these pre-stamped forms is a floating liability for RTV. For example, a teacher could make a copy of a stamped application to give to a colleague or friend or for additional

students. If that person completed the application but did not submit the application within 48 hours, RTV would be liable.

71. RTV would also be unable to comply with the Law's requirement that it report the number of blank voter registration forms it distributes in Democracy Class. Even if RTV sent out unmarked voter registration applications, teachers and others could make copies of these blank applications, and RTV would have no way of knowing how many applications were copied and distributed. While we do try to assess the number of forms we send out to teachers to track the efficacy of our work, our overarching goal is to get voter registration forms out to those who wish to fill them out. We are not in the business of telling teachers *not* to copy and distribute blank voter registration forms, as we want nothing to hinder the ultimate goal of increasing voter registration.

72. The Law will prevent RTV from incorporating voter registration into Democracy Class. Without the voter registration component, Democracy Class will be significantly less effective in advancing RTV's mission of getting young people involved in the political process.

73. RTV does not have the resources to run an entirely different model of Democracy Class in Florida than it does in the rest of the country in an attempt to somehow comply with the illogical and excessively stringent requirements of the Law. It would be practically impossible for RTV to adequately ensure that neither RTV nor teachers participating in the Democracy Class accidentally create liability for civil fines or criminal penalties.

Conclusion

74. Sadly, the Law has forced us to discontinue Democracy Class in Florida despite the fact that our successful pilot program in 2010 was based here. The Law now undermines Florida's policy of encouraging young people to register to vote by making it effectively impossible for

RTV and teachers to collaborate to help high school students register to vote. Florida is effectively banning RTV from continuing what has been a very successful mission.

75. The Law's provisions governing voter registration directly undermine RTV's ability to express and engage in our mission. RTV's registration events are a central aspect of our advocacy for encouraging and inculcating civic participation in all young citizens. But the Law's provisions requiring registration agents certify to criminal penalties will alienate young students just as they begin their volunteerism through RTV, stigmatizing volunteerism as an activity fraught with risk. Requiring RTV volunteers to be formal agents of RTV, and making them swear to acknowledge serious criminal penalties, are disincentives that will make civic participation with RTV an intimidating, formalistic, and complex process. Similarly, the Law's 48-hour turnaround period and the fines and penalties for failing to strictly satisfy this requirement place undue burdens on our staff and volunteers and will drive away those who would otherwise seek to join RTV in our mission of encouraging political participation.

76. Put simply, Florida's new Law makes voter registration in the state an activity that is simply too costly and too perilous for RTV to engage in. Under the Law's vague but ominous enforcement provisions, the Attorney General could bring an action against RTV for even the most mundane and innocent violation of the law's confusing and complex requirements. The financial and reputational harm RTV could suffer in the likely event that it accidentally failed to comply with one of the Law's incomprehensible provisions would severely impede RTV's ability to engage an entire generation of potential voters, both in Florida and across the nation.

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I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 13th day of December 2011.

A handwritten signature in cursive script, reading "Heather Smith", written over a horizontal line.

Heather Smith

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Heather Smith Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19th day of December, 2011 upon the following:

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