

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

LEAGUE OF WOMEN VOTERS OF
FLORIDA, et al.,

Plaintiffs,

v.

Civil Case No. 4:11cv628-RH/WCS

KURT S. BROWNING, et al.,

Defendants.

**DEFENDANTS' RESPONSES TO
PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION
TO DEFENDANTS**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and the Court's Order Setting Discovery Procedures on the Preliminary Injunction Motion and Extending the Deadline for Responding to the Complaint (Doc. No. 31), Defendants, Kurt S. Browning, in his official capacity as Secretary of State for the State of Florida, Pamela Jo Bondi, in her official capacity as Attorney General for the State of Florida, and Dr. Gisela Salas, in her official capacity as Director of the Florida Division of Elections (collectively "Defendants"), by their undersigned attorneys, hereby respond to Plaintiffs' First Set of Requests to Admit to Defendants

Definitions and Instructions

Defendants object to Plaintiffs' definitions and instructions to the extent that they purport to impose any obligations on Defendants beyond those allowed under the Federal Rules of Civil Procedure, the Local Rules of the Northern District of Florida, or applicable law.

Requests for Admission

1. Admit that the Challenged Law prohibits a private citizen who has not previously signed a sworn statement identifying his or her relationship with a registered Third-Party Voter Registration Organization or been deputized or employed by an election official from verbally offering to collect and deliver a completed voter registration application from anyone other than that person's spouse, child, or parent.

RESPONSE:

Admitted.

2. Admit that if election officials' offices *are open at the end of* the 48-hour period immediately following the collection of a completed application, then regardless of whether those offices were closed at other times during the 48-hour period, a Third-Party Voter Registration Organization that delivers an application by hand must do so no later than 48 hours following the collection of the completed application.

RESPONSE:

Admitted.

3. Admit that outside the context of this litigation, the public has not been notified in writing by Defendants that they interpret and apply the Challenged Law "to mean that if the Election Official's office is closed when the 48-hour period **ends**, then the application must be delivered on the next business day." (Salas Aff., Dkt. No. 39-1 at 19).

RESPONSE:

Admitted.

4. Admit that outside the context of this litigation, the public has not been notified in writing of the criteria "that would lead the Secretary [of State] to refer a violation of section 97.0575 to the Attorney General," as described in the affidavit of Gisela Salas. (Salas Aff.,

Dkt. No. 39-1 at33).

RESPONSE:

Admitted.

5. Admit that a Third-Party Voter Registration Organization may be fined for not timely delivering a completed application even if the application was not timely delivered due to force majeure or impossibility of performance.

RESPONSE:

Denied. A Third-Party Voter Registration Organization (“3PVRO”) **cannot** be fined “for not timely delivering a completed application even if the application was not timely delivered due to force majeure or impossibility of performance.” *See* Fla. Stat. § 97.0575(3)(b) (“A showing by the third-party voter registration organization that the failure to deliver the voter registration application within the required timeframe is based upon force majeure or impossibility of performance shall be an affirmative defense to a violation of this subsection”). Failure to promptly deliver collected applications because of force majeure or impossibility of performance is an affirmative defense to a fine and if shown, the Secretary will not refer the untimely delivery to the Attorney General for enforcement, so long as no other aggravating circumstances exist. Fla. Stat. § 97.0575(3)(b) (2011). Such “aggravating circumstances” that may lead the Secretary to nevertheless refer the matter might include, for example, visibly altered voter registration applications. The 3PVRO cannot be fined, however, for untimely delivery shown to be due to force majeure or impossibility of performance.

6. Admit that the Challenged Law permits a local election official to refer or report an application as not timely returned by a Third-Party Voter Registration Organization if the local election official receives the application by mail more than two days after the applicant's signature date, and that application also includes a Third-Party Voter Registration

Organization's identifying number but has no indication, apart from the signature date, of the time and date that the application was completed.

RESPONSE:

Denied. A voter registration application mailed by a 3PVRO is not untimely if it is clearly postmarked "within two days of the date when the applicant completed the voter registration application." Rule 1S-2.042(7)(a). The date of actual receipt is only resorted to for calculating timeliness when there either is no postmark or the postmark is unclear, *i.e.*, the date of the postmark is illegible. *Id.* Moreover, the applicant's signature date is only resorted to for calculating timeliness when the 3PVRO failed to "print the date and time that the voter registration applicant completed the application" as it is required to do, or otherwise fails to "provide[] documentation at the time of mailing the application that the date the applicant completed the application was on an earlier date than when the applicant delivered the application to the organization" as it is permitted to do. *Id.* at (4)(b) and (7)(a).

The Secretary recently determined that two applications were not untimely submitted even though the applicants' signature dates were November 15, 2011 and the 3PVRO did not hand-deliver the applications until January 3, 2012 at 4:35 p.m. This is because the applications were not placed into the possession of the 3PVRO until January 3, 2012 at 4:00 p.m., as indicated by the 3PVRO on the back-side of the application. Deadlines for imposition of fines are calculated from the date and time the applicant delivered his or her application to the 3PVRO.

7. Admit that the Division of Elections has made public a "Fact Sheet," available at <http://election.dos.state.fl.us/pdf/TPVRFinalFactSheet.pdf>, that states that an individual, even one acting on behalf of another registered Third-Party Voter Registration Organization, "must" register as a Third-Party Voter Registration Organization if the applications he or she collects are not "returned to the controlling entity for delivery to the applicable Supervisor of Elections

or Division."

RESPONSE:

Admitted that such information was set forth in the referenced "Fact Sheet" as it existed at the time Plaintiffs' requests for admission were served, but denied that it continues to be set forth therein. The "Fact Sheet" has been revised; its site location remains unchanged.

8. Admit that throughout the period of time when Third-Party Voter Registration Organizations were required to deliver completed voter registration applications within the ten-day deadline enforced under the prior law, Defendants did not experience or document reports of "tremendous problems engendered by the hoarding of voter registration applications by 3PVROs and the dumping en masse of applications on the [election] officials' doorstep at or near to the book-closing deadlines," as referenced in Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction. (Dkt. No. 39 at 26).

RESPONSE:

Denied. See evidence referenced by the United States District Court for the Southern District of Florida in *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1314 (S.D. Fla. 2008), and *Diaz v. Cobb*, 541 F. Supp. 2d 1319, 1338 (S.D. Fla. 2008). See also Dr. Salas's Affidavit, Doc. 39-1, at paragraphs 22-25.

9. Admit that Defendants have no evidence demonstrating that any provision of the Challenged Law, as compared to applicable Florida laws and regulations prior to the 2011 enactment of House Bill 1355, reduces the incidence of fraud or incidents in which inaccurate or untimely applications are delivered to election officials.

RESPONSE:

Without sufficient knowledge to conclude whether or not "the incidence of fraud or incidents in which inaccurate or untimely applications are delivered to election officials" has been

“reduce[d]”. Prior to the current, 2011 Florida Law, voter registration applications collected by a 3PVRO were not tracked, and therefore there was no way to know if a 3PVRO did not deliver, or failed to timely deliver, an application that it collected, or if a 3PVRO engaged in any sort of registration fraud, unless the 3PVRO voluntarily reported itself, an applicant filed a Form DS-DE 121 (eff. 05/2010) identifying which organization collected his or her application, or if Form DS-DE 34 (eff. 01/06) was filed identifying the organization. *See* Dr. Salas’s Affidavit, Doc. 39-1, at paragraph 15.

10. Admit that the Challenged Law requires a registered Third-Party Voter Registration Organization to engage in the following actions in a given month, even if it has not collected a single voter registration application: to report all applications distributed to or collected by its agents; to report any new or terminated registration agents; and to "ensure its assigned ID # is on every voter registration application provided to and received by" it. (3PVRO Fact Sheet, available at: <http://election.dos.state.fl.us/pdf/TPVRFinalFactSheet.pdf>).

RESPONSE:

Admitted that if a 3PVRO “did not provide to, or receive from, a registration agent any state or federal voter registration applications during the [reporting] month,” it is instructed on Form DS-DE 123 to check one box, sign, and date the form. *See* Form DS-DE 123 (attached to Dr. Salas’s Affidavit, Doc. 39-1, at 23). Admitted that if a 3PVRO did “not collect[] a single voter registration application” in the reporting month, then it must report “0” applications received on Form DS-DE 123. *See* Form DS-DE 123 (attached to Dr. Salas’s Affidavit, Doc. 39-1, at 23). Admitted that “any new or terminated registration agents” must be reported in the reporting month. Admitted that the referenced information was set forth in the referenced “Fact Sheet” as it existed at the time Plaintiffs’ requests for admission were served, but denied that it continues to be set forth therein. The “Fact Sheet” has been revised; its site location remains unchanged.



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CERTIFICATE OF SERVICE

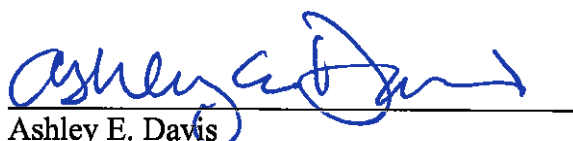
I hereby certify that, on this 10th day of February, 2012, a copy of the foregoing was served by email and U.S. Mail on:

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