UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:08-21243-CIV-ALTONAGA

LEAGUE OF WOMEN VOTERS OF FLORIDA;
FLORIDA AFL-CIO; and MARILYNN WILLS;

Plaintiffs,

v.

KURT S. BROWNING, in his official capacity as Secretary of State of 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.
_____/

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSE TO PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Kurt S. Browning, in his official capacity as Secretary of State of the State of Florida, and Donald L. Palmer, in his official capacity as Director of the Division of Elections, submit this Answer and Affirmative Defense to Plaintiffs' Complaint for Declaratory and Injunctive Relief (doc. 1) and respond paragraph by paragraph as follows:

INTRODUCTION[1]

1. Admitted as to the existence of Sections 1 and 2 of Chapter Law 2007-30 and Sections 2 and 7 of Chapter Law 2005-277, which speak for themselves. Admitted that, on August 28, 2006, the Court entered a preliminary injunction in prior litigation concerning an

[1] For the Court's ease of reference, Defendants incorporate into their Answer the headings contained in Plaintiffs' Complaint for Declaratory and Injunctive Relief. The substance of each heading is denied.

earlier version of the law challenged here. Without knowledge as to Plaintiffs' activities and therefore denied. Denied as to the characterization of the challenged law. The remaining allegations of Paragraph 1 are a characterization of this case that require no answer.

2. Admitted that, in 2007, the Florida Legislature amended Sections 97.021(36) and 97.0575(3) of the Florida Statutes; that, prior to the effective date of the amendment, the Secretary and then Director of the Division of Elections Amy Tuck entered into a stipulation; and that, on March 31, 2008, and pursuant to paragraph 4 of the stipulation, Defendants noticed their intent to terminate the stipulation, which speaks for itself. Denied as to the remainder.

3. The challenged law speaks for itself. Denied as to any remaining allegations.

4. The challenged law speaks for itself. Denied as to any remaining allegations.

5. Denied as to the characterization of the challenged law. As to the organizational Plaintiffs' internal structure, without knowledge and therefore denied.

6. Denied.

7. Denied as to the characterization of the challenged law. As to the Plaintiffs' voter registration drives, without knowledge and therefore denied.

8. Denied.

9. Without knowledge of the "U.S. government data sources" and "U.S. Census Bureau figures" referenced in Paragraph 9, and therefore denied. Denied as to the remainder.

10. Denied.

11. The allegations of Paragraph 11 constitute a request for relief to which no response is required. Denied that Plaintiffs are entitled to relief.

JURISDICTION AND VENUE

12. Admitted for jurisdictional purposes only.

13. Admitted.

PARTIES

I. PLAINTIFFS

14. Without knowledge and therefore denied.

A. Organizational Plaintiffs

1. *League of Women Voters*

15. Without knowledge and therefore denied.

16. Without knowledge and therefore denied.

17. Denied as to the characterization of the challenged law. Without knowledge as to any remaining allegations and therefore denied.

18. Without knowledge and therefore denied.

2. *AFL-CIO*

19. Without knowledge and therefore denied.

20. Without knowledge and therefore denied.

21. Without knowledge and therefore denied.

22. Denied as to the characterization of the challenged law. Without knowledge as to any remaining allegations and therefore denied.

3. *AFSCME*

23. Without knowledge and therefore denied.

24. Without knowledge and therefore denied.

25. Denied as to the characterization of the challenged law. Without knowledge as to any remaining allegations and therefore denied.

B. Member Plaintiff

26. Without knowledge and therefore denied.

II. DEFENDANTS

27. Admitted.

28. Admitted that Donald L. Palmer is the Director of the Division of Elections. The challenged law speaks for itself.

29. The allegations of Paragraph 29 constitute a legal conclusion to which no answer is required.

FACTS

I. VOTER REGISTRATION IN FLORIDA

30. Admitted that, in Florida, government offices, citizens, and groups participate in different ways in the voter registration process. Federal and state law speak for themselves.

31. Without knowledge and therefore denied.

A. Voter Registration Drives and Political Speech and Association

32. Denied.

33. Without knowledge and therefore denied.

34. Without knowledge and therefore denied.

35. The First Amendment speaks for itself. Without knowledge as to the remaining allegations of Paragraph 35 and therefore denied.

36. The First Amendment speaks for itself. Without knowledge as to the remaining allegations of Paragraph 35 and therefore denied.

37. Without knowledge and therefore denied.

B. Third-party Groups and Individuals Register Significant Numbers of Florida Voters

38. Denied.

39. Without knowledge and therefore denied.

40. Without knowledge and therefore denied.

41. Denied as to the characterization of Department of State Voter Registration Statistics. Without knowledge as to remaining allegations of Paragraph 41 and therefore denied.

42. Without knowledge as to the U.S. Census Bureau data referenced in Paragraph 42. Denied as to the remainder.

43. Without knowledge and therefore denied.

44. Without knowledge and therefore denied.

45. Without knowledge of Plaintiffs' efforts and desires and therefore denied. Admitted as to the existence of the National Voter Registration Act of 1993 and *Charles H. Wesley Education Foundation, Inc. v. Cox*, 408 F.3d 1349, 1353 (11th Cir. 2005), which speak for themselves.

46. Without knowledge of Plaintiffs' efforts and therefore denied. Admitted as to the existence of the Florida Voter Registration Act, which speaks for itself.

47. Without knowledge as to the first and third sentences of Paragraph 47 and therefore denied. Denied as to the remainder.

II. THE CHALLENGED LAW

48. Admitted that, prior to the adoption of Chapter Law 2007-30, Plaintiffs challenged the constitutionality of Sections 97.021(36) and 97.0575 of the Florida Statutes in the District Court for the Southern District of Florida. Sections 1 and 2 of Chapter Law 2007-30 and Sections 2 and 7 of Chapter Law 2005-277 speak for themselves.

A. Procedural Background

49. Admitted.

50. Admitted as to the first sentence of Paragraph 50. Denied that the challenged law forced the plaintiffs in the prior action to modify their voter registration drives. As to the remainder of the allegations of Paragraph 50, the documents filed in the prior litigation speak for themselves.

51. Admitted as to the first sentence of Paragraph 51. As to the remainder of the allegations of Paragraph 51, the Court's order in the prior litigation speaks for itself.

52. Admitted.

53. Admitted.

54. Admitted that, on the day after the appellate panel was announced, the plaintiffs sent a letter to the Eleventh Circuit to express their agreement with the defendants' position that the amendment mooted the appeal, despite their vigorous opposition to that very position seven weeks earlier. Admitted that the Eleventh Circuit thereupon cancelled oral argument.

55. Admitted that, on November 29, 2007, the parties to the earlier action entered into a stipulation, which speaks for itself.

56. Admitted that, on January 23, 2008, the Justice Department precleared the amended version of the challenged law under Section 5 of the Voting Rights Act over the objection of Plaintiffs.

57. Admitted.

58. Admitted that, on March 31, 2008, and pursuant to paragraph 4 of the stipulation, Defendants noticed their intent to terminate the stipulation, which speaks for itself. Denied as to the remainder.

B. Tight Deadlines, Heavy Fines, and Strict Liability Left Virtually Unchanged From Prior Unconstitutional Law

59. Denied.

60. Denied.

61. The challenged law speaks for itself. Denied as to the remainder.

62. The challenged law speaks for itself. Denied as to the remainder.

63. The challenged law speaks for itself. Denied as to the remainder.

64. The challenged law speaks for itself. Denied as to the remainder.

65. The challenged law speaks for itself. Denied as to the remainder.

66. The challenged law speaks for itself. Denied as to the remainder.

C. Vagueness in the Amended Law

67. The challenged law speaks for itself. Denied as to the remainder.

68. The challenged law speaks for itself. Denied as to the remainder.

69. Denied as to the first sentence of Paragraph 69. Admitted as to the existence of the referenced newspaper article, which speaks for itself.

D. The Proposed Rules and Forms

70. Admitted.

71. Denied.

72. Admitted as to the existence of the proposed rule and forms, which speak for themselves. Denied as to the remainder.

73. Admitted as to the existence of *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 706-07 (N.D. Ohio 2006), and the proposed rule and forms, which speak for themselves. Denied as to the remainder.

III. THE LAW'S BURDENSOME IMPACT

A. The Law Chills Plaintiffs' Exercise of Their Constitutional Rights

74. Denied as to the characterization of the challenged law. Without knowledge of Plaintiff's activities and therefore denied.

I. Strict Liability

75. Denied.

76. With respect to the first and second sentences of Paragraph 76, the challenged law speaks for itself. Without knowledge as to the remaining allegations of Paragraph 76 and therefore denied.

77. Denied.

78. The challenged law speaks for itself. Denied as to the remainder.

2. Severe Fines and Personal and Widespread Liability

79. Denied as to the characterization of the challenged law, which speaks for itself. Without knowledge as to the remaining allegations and therefore denied.

80. The challenged law speaks for itself. Denied as to the remainder.

81. Without knowledge of the League's budget and internal structure and therefore denied. Denied as to the remainder.

82. Without knowledge of the AFL-CIO's budget and internal structure and therefore denied. Denied as to the remainder.

83. Without knowledge of the organizational Plaintiffs' budgets and organizational status and therefore denied. Denied as to the remainder.

84. Denied.

85. Without knowledge and therefore denied.

86. Denied.

B. The Law Burdens Certain Plaintiffs' Constitutional Rights to Speech and Association

87. Denied.

88. Denied as to the characterization of the challenged law. Without knowledge of the League's internal structure and therefore denied. The remaining allegations constitute legal conclusions to which no answer is required.

89. The first and third sentences of Paragraph 89 constitute legal conclusions to which no answer is required. Without knowledge as to the second sentence of Paragraph 89 and therefore denied.

90. Denied.

91. Without knowledge and therefore denied.

92. Denied as to the characterization of "burdens." Without knowledge as to the remainder and therefore denied.

93. Denied.

IV. IMPACT OF THE LAW ON EACH ORGANIZATIONAL PLAINTIFF

A. League of Women Voters

94. Denied as to the first sentence of Paragraph 94. Without knowledge as to the remainder and therefore denied.

95. Denied as to the characterization of the challenged law. Without knowledge as to the remainder and therefore denied.

96. Without knowledge and therefore denied.

97. Without knowledge and therefore denied.

98. Without knowledge and therefore denied.

99. Without knowledge and therefore denied.

100. Without knowledge and therefore denied.

101. Denied.

102. Without knowledge and therefore denied.

B. AFL-CIO

103. Without knowledge and therefore denied.

104. Denied as to the characterization of the challenged law. Without knowledge as to the AFL-CIO's knowledge of the challenged law and therefore denied.

105. Denied as to the characterization of the challenged law. The remaining allegations of Paragraph 105 constitute legal conclusions to which no answer is required.

106. Denied.

C. AFSCME

107. Without knowledge and therefore denied.

108. Without knowledge and therefore denied.

109. Without knowledge and therefore denied.

110. Denied as to the characterization of the challenged law. Without knowledge as to the remainder and therefore denied.

111. Denied as to the characterization of the challenged law. Without knowledge as to the remainder and therefore denied.

112. Without knowledge and therefore denied.

V. THE CHALLENGED LAW DOES NOT SERVE A COMPELLING OR LEGITIMATE STATE INTEREST

113. Denied.

114. Denied as to the first sentence of Paragraph 114. Admitted as to the existence of the cited statutory provisions, which speak for themselves.

115. Admitted that, in 2004, voter registration groups increased the total number of voter registration applications submitted. Denied as to the remainder.

CAUSES OF ACTION

COUNT I

Violation of the First and Fourteenth Amendments
(Void for Vagueness)

116. Defendants incorporate their answers to Paragraphs 1 through 115 as though fully restated herein.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

COUNT II

Violation of the First and Fourteenth Amendments
(Burden on Speech; Asserted by Plaintiffs League of Women Voters and Marilyn (sic) **Wills Only)**

122. Defendants incorporate their answers to Paragraphs 1 through 115 as though fully restated herein.

123. Denied.

124. Denied.

125. Denied.

126. Denied.

COUNT III

Violation of the First and Fourteenth Amendments
(Burden on the Rights to Vote and to Participate in the Political Process

127. Defendants incorporate their answers to Paragraphs 1 through 115 as though fully restated herein.

128. The cited provisions of the United States Constitution speak for themselves.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

133. Denied.

Defendants deny each and every allegation in Plaintiffs' Complaint except to the extent specifically admitted herein.

First Affirmative Defense

Plaintiffs have failed to state a cause of action upon which relief can be granted.

Second Affirmative Defense

Plaintiffs lack standing to assert their claims.

Third Affirmative Defense

Plaintiffs' claims are not ripe.

WHEREFORE, Defendants respectfully requests entry of judgment in their favor and all other relief this Court deems appropriate.

Respectfully submitted this 12th day of June, 2008.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through the Court's CM/ECF system on all counsel or parties of record on the attached service list this 12th day of June, 2008.

/s/ Andy Bardos
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