

EXHIBIT A

BRENNAN
CENTER
FOR JUSTICE

OFFICE
VOTING SECTION

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September 6, 2007

Mr. John K. Tanner
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
U.S. Department of Justice
1800 G St., N.W.
Washington, DC 20006

Re: **Comment Under Section 5: 2007 Fla. Laws. ch. 30, §§ 1 and 2**

Dear Mr. Tanner:

We write on behalf of the Brennan Center for Justice, a nonpartisan public policy and law institute that advocates in favor of voting rights, and the Advancement Project, a democracy and justice action group. For the reasons set forth in this letter, we object to the preclearance approval of 2007 Fla. Laws ch. 30, §§ 1-2, which partially modify Fla. Stat. §§ 97.021(36) and 97.0575. These provisions comprise Florida's third-party voter registration law, which limits private voter registration drives.

The Brennan Center and the Advancement Project, with the law firms Kramer, Levin, Naftalis and Frankel and Becker and Poliakoff, represent the plaintiffs in *League of Women Voters of Florida v. Cobb*,¹ a lawsuit in the Southern District of Florida successfully challenging the original version of Florida's third-party voter registration law. Chapter 277, sections two and seven, of the 2005 Florida laws ("original law"), which required voter registration drives to return forms to the state within ten days on penalty of heavy fines, was enjoined on August 28, 2007 as unconstitutional.² In response to the court's injunction, the Florida Legislature amended the third-party voter registration law. It is this amendment, 2007 Fla. Laws ch. 30, §§ 1-2 ("amended law"), that is presently subject to preclearance.

Because Florida's third-party voter registration law has a chilling effect on the conduct of voter registration drives, it will necessarily decrease the amount of third-party voter registration that happens in Florida and in the five counties covered under Section 5 of the Voting Rights Act. Black and Hispanic Florida voters and Florida voters from Spanish-speaking households are twice as likely to register to vote through third-party voter registration drives as white voters or voters from English-speaking households. Any law that restricts the conduct of voter registration drives will therefore have a retrogressive effect on the voting rights of racial and language minorities. Florida cannot meet its burden of demonstrating that its third-party voter registration law does not have a retrogressive effect.

¹ 447 F. Supp. 2d 1314 (S.D. Fla. 2006).

² *Id.*

BRENNAN CENTER FOR JUSTICE**I. The Third-Party Voter Registration Law and Its Effects**

In 2004, a record number of voter registration applications were submitted in Florida, driven in large part by a number of third-party voter registration drives, which focused in particular on racial and language minorities in registering new voters. In the wake of this unprecedented engagement of new voters into the political process, the state of Florida in 2005 responded by passing its original third-party voter registration law, restricting third-party voter registration drives, which went into effect on January 1, 2006.

The original law and the amended law both impose an escalating series of fines on third-party voter registration organizations, defined as “any person, entity, or organization soliciting or collecting voter registration applications.”³ Organizations are required by both versions of the law to return voter registration applications within ten days of receipt or face, under the amended law, a \$50 per-form fine, increased to \$250 per form if the failure to return the form within ten days was willful.⁴ Failure to return an application by a book-closing deadline increases the fines to \$100 and \$500; failure to return an application at all increases them to \$500 and \$1,000. The amended law also provides that the aggregate fine “which may be assessed against a third-party voter registration organization, including affiliate organizations, for violations committed in a calendar year shall be \$1,000.”⁵ The fines are to be imposed even where third-party voter organizations act with all reasonable care. Instead, the Secretary of State can waive the fines only where the failure to timely return forms “is based on force majeure or impossibility of performance.”⁶ These fines may be reduced, but not eliminated, only if groups submit to a strict regimen of state registration and reporting.⁷

The ten-day deadline imposed by both versions of the law is novel and unsupported by any state interest. The state, in defending *League of Women Voters of Florida v. Cobb*, suggested that third-party voter registration drives were likely to “hoard” forms—holding them for long periods of time before turning them in just before the deadline—or turn applications in after the book-closing deadline.⁸ But plaintiffs demonstrated that in 2004, when third-party voter registration drives were at their peak, applications were no more likely than in previous presidential election years to be turned in during the weeks immediately preceding and following the book-closing deadline.⁹

³ Fla. Stat. § 97.021(36); 2007 Fla. Laws ch. 30, § 1.

⁴ 2007 Fla. Laws ch. 30, § 2.

⁵ *Id.*

⁶ *Id.*

⁷ Fla. Stat. § 97.0575(3); 2007 Fla. Laws. ch. 30, § 2.

⁸ See Defendants’ Response to Plaintiffs’ Motion for a Preliminary Injunction at 11, *League of Women Voters of Florida v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006) (No. 06-21265).

⁹ See Percentage of Forms Returned Statewide During 7 Days Before and Including Book Closing in Each of the Last 5 Presidential Elections, Percentage of Forms Returned Statewide in Florida During 7 Days After Book Closing in Each of the Last 5 Presidential Elections, Absolute Number of Forms Returned Statewide in Florida in Each of the Last 5 Presidential Elections, and Percentage of Registrations Returned Per Week Statewide in Florida Each of the Last 5 Presidential Elections, App. nos. 1-4 (originally submitted as evidence in *League of Women Voters of Florida v. Cobb*).

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The amended law continues to impose fines on drives even when third-party voter registration organizations have acted reasonably and have a valid excuse for not submitting a voter registration application within the arbitrary ten-day deadline. It holds organizations strictly liable for innocent mistakes, a third party's malicious acts (including those of disgruntled employees or political opponents), and potentially the state's mishandling or loss of applications. The amended law is also vague in three key ways: it fails to define "affiliate organizations" covered under the law's \$1,000 cap; it fails to make clear when individuals can be held liable as separate third-party voter registration organizations; and it fails to define "willful" behavior that will trigger the amended law's higher fines. This vagueness places drives at risk for thousands of dollars in fines, which will force organizations to cease or restrict considerably their voter registration drives.

Because the amended law imposes considerable burdens on third-party voter registration drives, it is likely to significantly decrease the amount of voter registration activity that takes place in the state of Florida. While the amended law may be less burdensome than the original law, it is worth noting that the original law caused the League of Women Voters of Florida to stop registering voters for the first time in its sixty-year history. Other groups that registered significant numbers of voters in 2004, including the AFL-CIO and the SEIU, also ceased entirely their voter registration activity while the original law was in effect. The amended law will have a significant negative effect on voter registration drives.

II. The Retrogressive Effect of the Third-Party Voter Registration Law

As you are aware, under Section 5 of the Voting Rights Act, the Department must refuse preclearance of state legislation affecting voting procedures in covered jurisdictions that has "the effect of denying or abridging the right to vote on account of race or color" or on the basis of membership in a language minority.¹⁰ Florida has the burden of showing that its proposed changes do not violate Section 5, a burden it has failed to carry.

In determining whether the amended third-party voter registration law should be precleared, its retrogressive effect on minority voting rights should be measured against the landscape in the covered counties in Florida as it was before the original law went into effect. The Supreme Court and the relevant regulations make clear that under Section 5, "the last legally enforceable practice or procedure" is the benchmark for comparison when determining whether an election change has a retrogressive effect.¹¹ Because the original third-party law was enjoined as unconstitutional, the retrogressive effect of the amended law should be measured against the universe before the original law went into effect.

¹⁰ 42 U.S.C. § 1973c.

¹¹ *Abrams v. Johnson*, 521 U.S. 77, 96 (1997) (quoting 28 C.F.R. § 51.54(b)).

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The five counties in Florida covered under Section 5, Collier, Hardee, Hendry, Hillsborough, and Monroe, all have significant Hispanic and black populations, as well as non-English-speaking populations. Population estimates in 2006 reflect black voting-age populations ranging from 4.6% in Monroe County to 15% in Hillsborough County, and Hispanic voting-age populations ranging from 16.7% in Monroe County to 41.5% in Hendry County.¹² In the 2000 Census, the rate of non-English speaking households ranged from 20.9% in Hillsborough County to 38% in Hendry County.¹³

Data from before the original law went into effect clearly demonstrates that in Florida, African-American, Hispanic, and Spanish-speaking voters are more than twice as likely to register to vote through private drives as white and English-speaking voters.¹⁴ In the November 2004 election, the last statewide contest before the original third-party voter registration law went into effect, 17% of black voters and 19% of Hispanic voters in Florida were registered through drives, versus only 7% of white voters. Similarly, 23% of voters in households where only Spanish was spoken were registered through drives, versus only 9% of non-Spanish only households.¹⁵

Minority voters are more likely to register through voter registration drives for a variety of reasons. Voter registration drives often directly target minority voters, particularly new voters. Drives also target people who wouldn't ordinarily register to vote or who may not have registered in the past, particularly those with lower incomes or lower levels of education, who are disproportionately racial or language minorities.¹⁶ Those without access to the Internet and those who do not own a car (and thus do not use the Department of Motor Vehicles to register to vote), who are again likely to be disproportionately minorities, are also less able to register through means other than voter registration drives. Absent these voter registration efforts, many of these voters will not register and will therefore be unable to vote.¹⁷

¹² See Voting Age Population by Race For Covered Counties, App. no. 5.

¹³ See Non-English Speaking Households For Covered Counties, App. no. 6.

¹⁴ See Percentage of White, Black, and Hispanic Voters in Florida Registered by Voter Registration Drives in 2004, App. no. 7.

¹⁵ See Percentage of Spanish-Only and Non-Spanish Only Households in Florida Registered by Voter Registration Drives in 2004, App. no. 9.

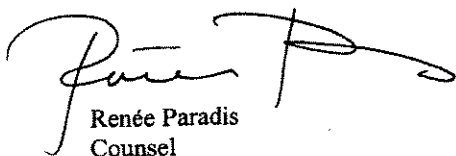
¹⁶ See Annual Household Income by Race and Highest Level of Education Completed by Race, Apps. no. 11-12.

¹⁷ See Transcript of Preliminary Injunction Hearing in *League of Women Voters of Florida v. Cobb* (Testimony of Dr. Donald Green) at 70, App. no. 13.

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Because minority voters register through voter registration drives at high rates, and because Florida's new law will seriously jeopardize the continued operation of voter registration drives, it will have a retrogressive effect on minority voter rights. Florida has not met its burden in demonstrating this voting change is entitled to preclearance. We urge you to object.

Respectfully submitted,



Renée Paradis
Counsel

Brennan Center for Justice

Elizabeth Westfall
Senior Attorney

Jennifer Marazano
Staff Attorney

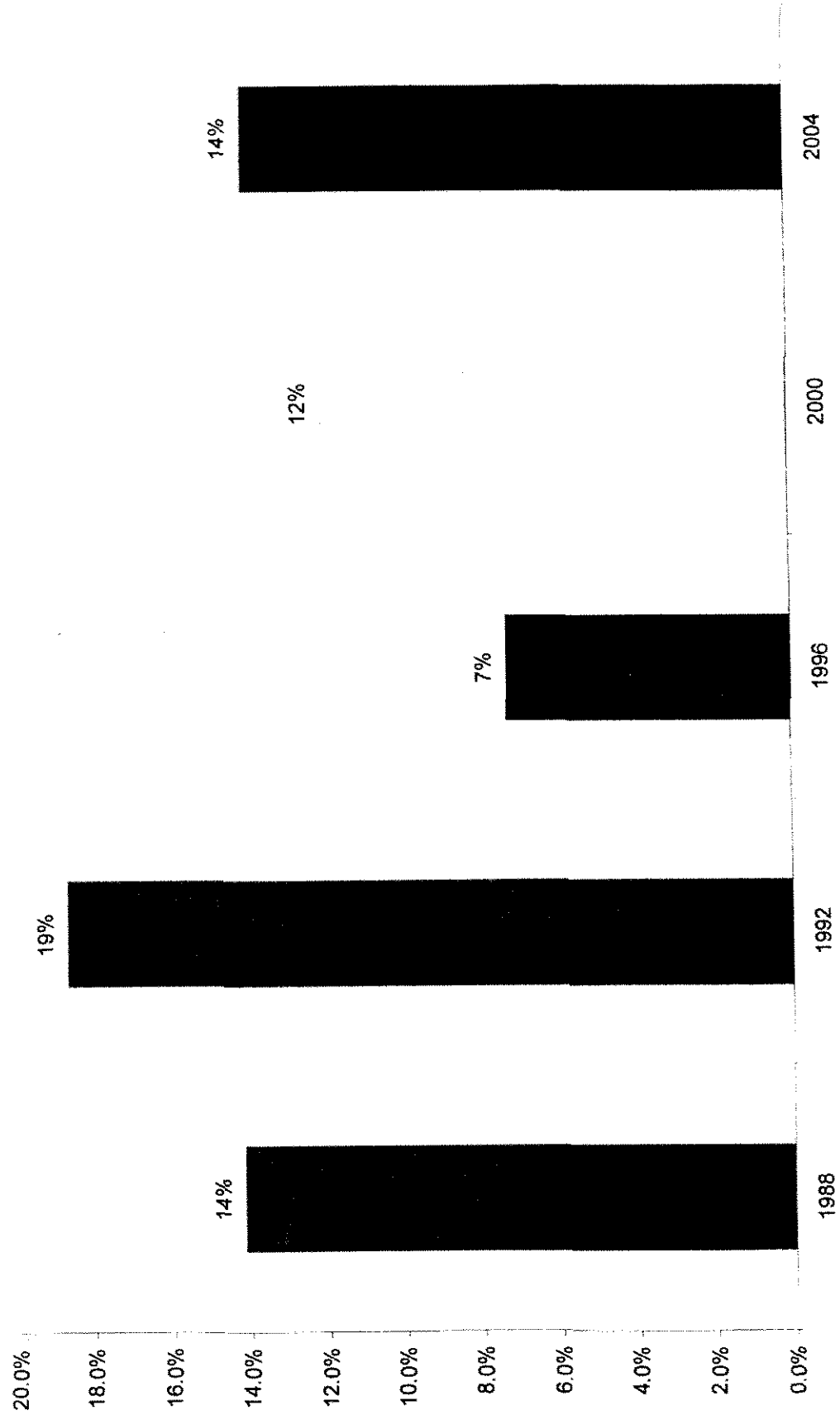
Advancement Project

Appendix to Submission

	Description
1	Percentage of Forms Returned Statewide in Florida During 7 Days Before and Including Book Closing in Each of the Last 5 Presidential Elections (chart created from Florida's statewide voter registration database for <i>League of Women Voters of Florida v. Cobb</i>)
2	Percentage of Forms Returned Statewide in Florida During 7 Days After Book Closing in Each of the Last 5 Presidential Elections (chart created from Florida's statewide voter registration database for <i>League of Women Voters of Florida v. Cobb</i>)
3	Absolute Number of Forms Returned Statewide in Each of the Last 5 Presidential Elections (chart created from Florida's statewide voter registration database for <i>League of Women Voters of Florida v. Cobb</i>)
4	Percentage of Registrations Returned Per Week Statewide in Florida in Each of the Last 5 Presidential Elections (chart created from Florida's statewide voter registration database for <i>League of Women Voters of Florida v. Cobb</i>)
5	Voting Age Population By Race For Covered Counties (chart created from data made available by Florida Office of Economic & Demographic Research)
6	Non-English Speaking Households For Covered Counties (chart created from 2000 federal census data)
7	Percentage of White, Black, and Hispanic Voters in Florida Registered by Voter Registration Drives in 2004 (chart based on figures in App. no. 8)
8	Florida 2004 Method of Registration by Race (chart created from November 2004 Current Population Survey data; percentages are based on in-universe responses)
9	Percentage of Spanish-Only and Non-Spanish Only Households in Florida Registered by Voter Registration Drives in 2004 (chart based on figures in App. no. 10)
10	Florida 2004 Method of Registration by Household Language Spoken (chart created from November 2004 Current Population Survey data; percentages are based on in-universe responses)
11	Florida 2004 Annual Household Income by Race (chart created from November 2004 Current Population Survey data)
12	Florida 2004 Highest Level of Education Completed by Race (chart created from November 2004 Current Population Survey data)
13	Excerpt From Transcript of Preliminary Injunction Hearing in <i>League of Women Voters of Florida v. Cobb</i> (Testimony of Dr. Donald Green)

1

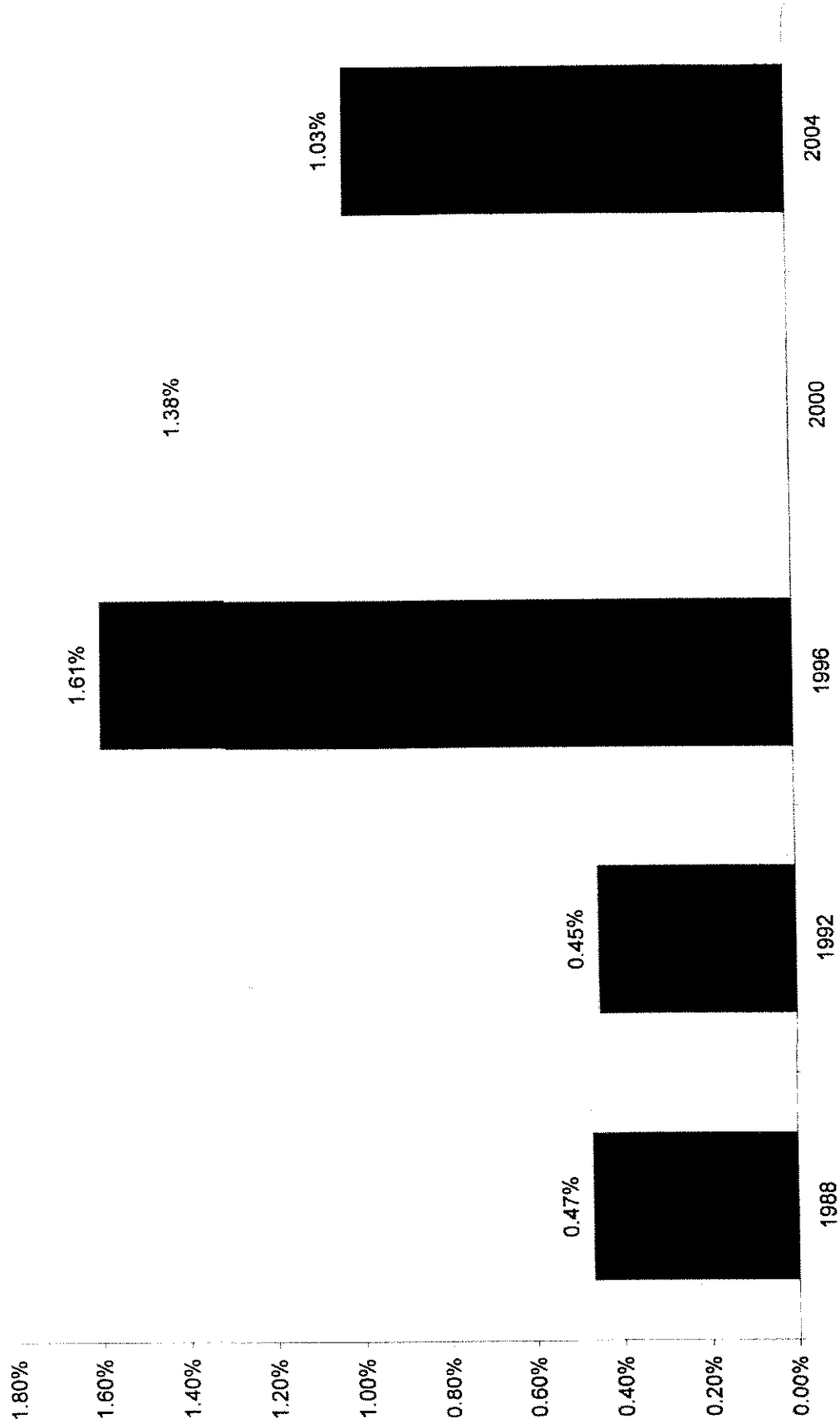
Percentage of Forms Returned Statewide in Florida During 7 Days Before and Including Book Closing in Each of the Last 5 Presidential Elections



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2

**Percentage of Forms Returned Statewide in Florida During 7 Days After Book Closing in Each
of the Last 5 Presidential Elections**



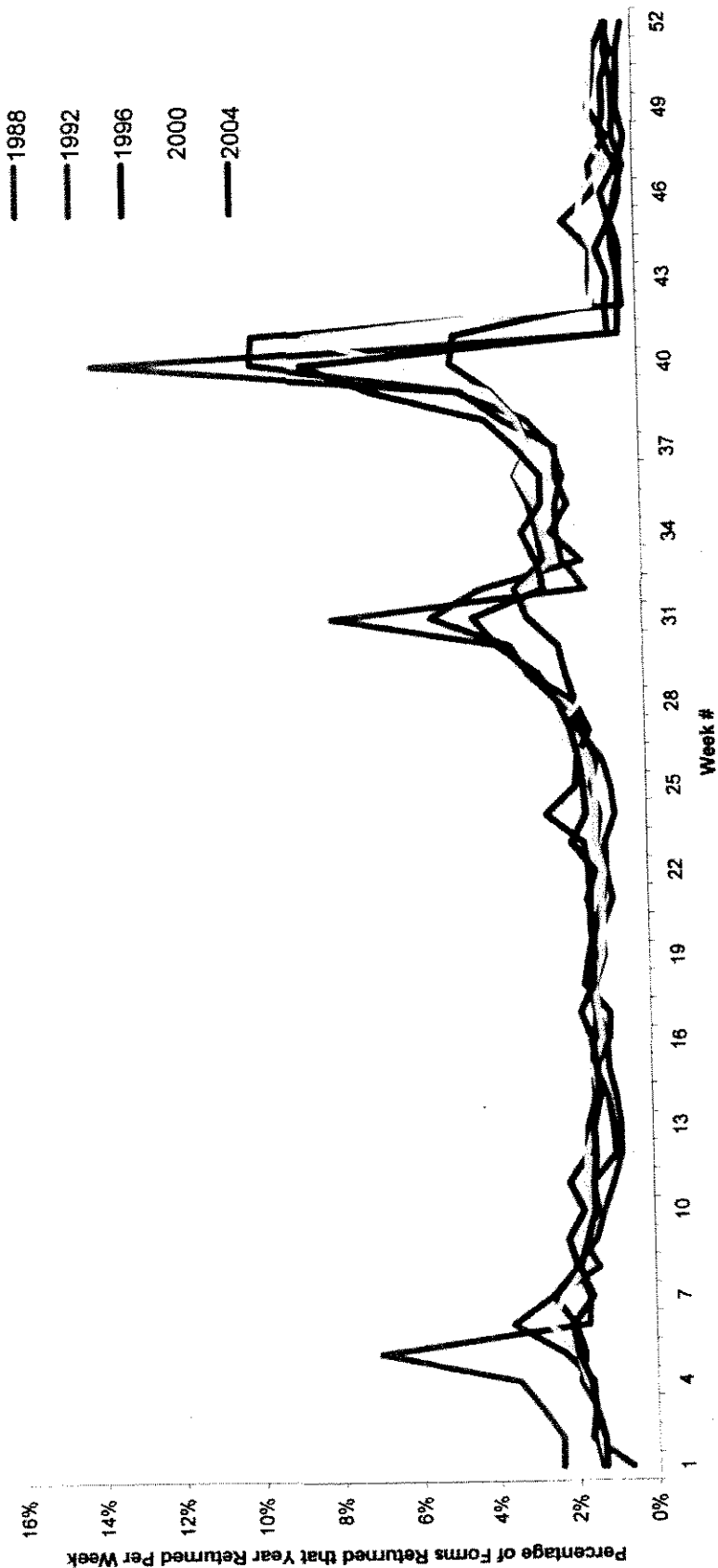
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Absolute Number of Forms Returned Statewide in Florida in Each of the Last 5 Presidential Elections



4

Percentage of Registrations Returned Per Week Statewide in Florida in Each of the Last 5 Presidential Elections



DOS-LWV 00028

Voting Age Population By Race For Covered Counties

County	Voting Age Population (VAP)	Percentage of Total VAP
Collier	260,250	100.0%
White, not Hispanic	192,115	73.8%
Black, not Hispanic	12,780	4.9%
Hispanic	52,969	20.3%
Hardee	20,054	100.0%
White, not Hispanic	11,543	57.6%
Black, not Hispanic	1,879	9.4%
Hispanic	6,458	32.2%
Hendry	27,400	100.0%
White, not Hispanic	12,254	44.7%
Black, not Hispanic	3,490	12.7%
Hispanic	11,368	41.5%
Hillsborough	870,642	100.0%
White, not Hispanic	536,172	61.6%
Black, not Hispanic	130,930	15.0%
Hispanic	177,520	20.4%
Monroe	66,559	100.0%
White, not Hispanic	51,456	77.3%
Black, not Hispanic	3,032	4.6%
Hispanic	11,220	16.7%

Sources: Office of Economic & Demographic Research, Florida Legislature, *County Population by Age, Race, Hispanic Origin, and Gender: April 1, 2006* (2006), available at <http://edr.state.fl.us/population/web12.xls>.

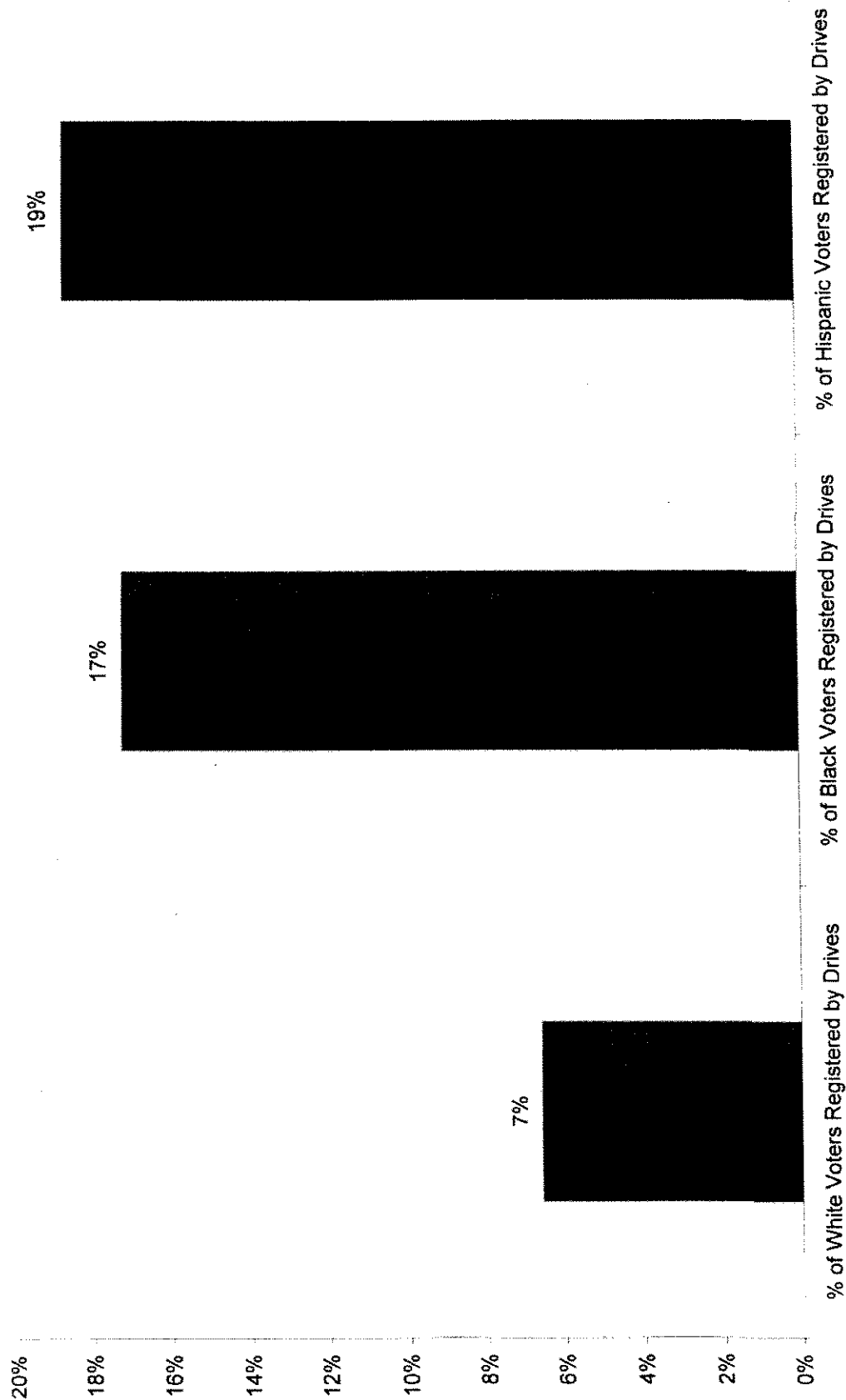
Non-English Speaking Households For Covered Counties

County	Percentage of Total Households
Collier	25.1%
Hardee	32.1%
Hendry	38.0%
Hillsborough	20.9%
Monroe	21.4%

Source: 2000 Census (figures are for those aged 5 and over).

7

Percentage of White, Black, and Hispanic Voters in Florida Registered by Voter Registration Drives in 2004



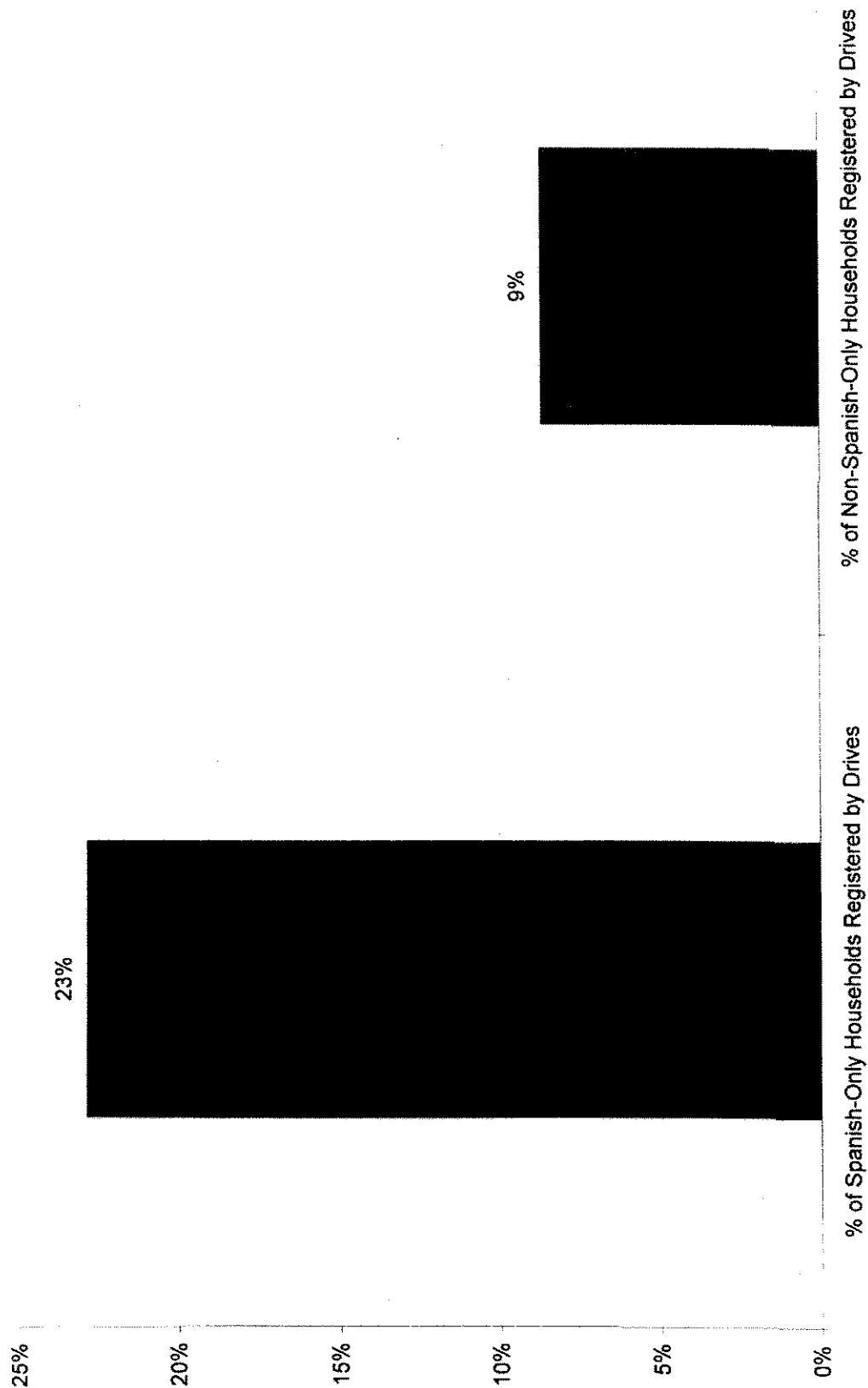
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Florida 2004 Method of Registration by Race

Method of Registration	White, not Hispanic		Black		Hispanic	
Department of Motor Vehicles	1,778,411	28.8%	197,873	19.9%	146,655	15.9%
Public Assistance Agency	38,352	0.6%	23,707	2.4%	17,714	1.9%
By Mail	622,531	10.1%	71,115	7.2%	194,294	21.0%
School, Hospital, or Campus	231,673	3.8%	72,479	7.3%	81,692	8.8%
Town Hall or County/Government Registration Office	1,702,985	27.6%	211,228	21.2%	110,546	12.0%
Voter Registration Drive	405,586	6.6%	172,628	17.4%	174,682	18.9%
Polling Place	164,985	2.7%	21,219	2.1%	77,972	8.4%
Other	302,365	4.9%	34,528	3.5%	29,306	3.2%
Don't Know, Refusal, or No Answer	922,167	14.9%	189,716	6.8%	91,622	9.9%

Source: U.S. Census Bureau, Current Population Survey, November 2004

Percentage of Spanish-Only and Non-Spanish Only Households in Florida Registered by
Voter Registration Drives in 2004



Florida 2004 Method of Registration by Household Language Spoken

Method of Registration	Spanish Only Households		Non-Spanish Only Households	
Department of Motor Vehicles	39,028	15.7%	2,106,997	26.7%
Public Assistance Agency	3,148	1.3%	71,849	0.9%
By Mail	43,833	17.7%	867,628	0.6%
School, Hospital, or Campus	11,756	4.7%	367,351	4.7%
Town Hall or County/Government Registration Office	18,177	7.3%	2,027,778	25.7%
Voter Registration Drive	56,410	22.7%	684,154	8.7%
Polling Place	36,918	14.9%	235,780	3.0%
Other	11,253	4.5%	351,020	4.5%
Don't Know, Refusal, or No Answer	27,570	11.1%	1,169,111	14.8%

Source: U.S. Census Bureau, Current Population Survey, November 2004

Florida 2004 Annual Household Income by Race

Annual Household Income	White, not Hispanic		Black		Hispanic	
Less Than \$12,500	478,872	4.5%	408,181	20.1%	388,206	12.1%
\$12,500 – \$24,999	1,026,296	9.7%	447,045	22.0%	610,017	19.1%
\$25,000 – \$39,999	1,712,984	16.1%	509,423	25.0%	615,148	19.2%
\$40,000 – \$59,999	1,536,478	14.5%	303,808	14.9%	431,645	13.5%
\$60,000 – \$74,999	1,165,211	11.0%	122,545	6.0%	211,139	6.6%
\$75,000 and more	2,639,474	24.9%	244,500	12.0%	416,521	13.0%

Source: U.S. Census Bureau, Current Population Survey, November 2004

Florida 2004 Highest Level of Education Completed by Race

Highest Education Level Completed	White, not Hispanic		Black		Hispanic	
Some K-12	1,168,071	10.9%	607,556	30.3%	746,258	22.9%
High School Diploma or GED	2,725,077	25.3%	676,229	33.7%	869,285	26.7%
Associate's Degree or Some College	2,546,034	23.7%	479,274	23.9%	491,148	15.1%
Bachelor's Degree or Higher	2,557,280	23.8%	244,999	12.2%	469,071	14.4%

Source: U.S. Census Bureau, Current Population Survey, November 2004

Note: Figures do not add up to 100% because categories do not represent whole population.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

LEAGUE OF WOMEN VOTERS
OF FLORIDA

Case No. 06-21265-CV-PAS

v.

MIAMI, FLORIDA
July 25, 2006
VOLUME I

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SECRETARY OF THE STATE OF
FLORIDA, SUE M. COBB, ET AL.

PRELIMINARY INJUNCTION HEARING
BEFORE THE HON. PATRICIA A. SEITZ, J.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

CRAIG L. SIEGEL, ESQ.
ERIN ANNE WALTER, ESQ.
JEFFREY S. TRACHTMAN, ESQ.
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

WENDY WEISER, ESQ.
Deputy Director, Democracy Program
BRENNAN CENTER FOR JUSTICE
161 Avenue of the Americas - 12th Floor
New York, NY 10013

ALSO PRESENT:

ELIZABETH WESTFALL
The Advancement Project

REPORTED BY:

DAVID S. EHRLICH, RPR
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301 N. Miami, Room 504
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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription(CAT).

APPEARANCES: (Continued)

FOR THE DEFENDANT:
SECRETARY OF THE STATE OF FLORIDA:

PETER ANTONACCI, ESQ.
ALLEN C. WINSOR, ESQ.
Gray Robinson
301 South Bronough Street - Suite 600
Tallahassee, FL 32302-3189

DOS-LWV 00038

as these campaigns return to the same people later on through different kinds of campaigns, voter education campaigns, and, finally, voter mobilization campaigns.

So, I think to the extent that you pull out from under them, the capacity to do voter registration, at least voter registration with economic impunity, I think that you impair their ability to do further education and engagement work.

Q. And is there anything in particular about -- Well, actually -- So, you indicated that it is likely to be less voter registration activity. Do you have a view on what the likely effect of that would be on voter turnout in Florida?

A. Well, I suspect that it will have very little effect on certain, quote, affluent or well-educated groups, but among people who would not ordinarily register under the current voter system -- I'm thinking now about the low socioeconomic status people, people with relatively limited education, I think it will have a profound effect on them. Those were the people who were registered in great numbers as a function of exactly the kinds of drives that we're talking about in 2004.

Q. And was -- Do you know if there was an overall increase in the number of voter registrations in 2004?

A. Yes. Throughout the country.

Q. And do you have a view as to whether political parties are inherently more accountable to prospective registrants in terms of submitting their forms than the nonparty groups?

DOS-LWV 00039