

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

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

Plaintiffs,

v.

KENNETH W. DETZNER, 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. 4:11-CV-628-RH-WCS

JOINT MOTION FOR PERMANENT INJUNCTION

The Parties jointly move for entry of a permanent injunction as set forth herein.

The Motion is unopposed and the Parties stipulate as follows.

BACKGROUND

1. On December 15, 2011, Plaintiffs filed a complaint seeking an order and judgment declaring unconstitutional and illegal certain provisions of Florida Statutes § 97.0575 and Florida Administrative Code Rule 1S-2.042, as the statute was amended on May 19, 2011, and as the rule was amended on November 2, 2011¹ (collectively, the “third-party voter registration law”), and enjoining Defendants from implementing these

¹ Unless otherwise specified, all references to the statute and rule in this Motion are to the versions as amended in 2011.

provisions. The third-party voter registration law regulates organizations that conduct voter registration drives. Plaintiffs are organizations that have conducted such drives in the past and contended that the third-party voter registration law violated their constitutional rights, the National Voter Registration Act, and the Voting Rights Act.

2. On December 19, 2011, Plaintiffs moved for a preliminary injunction barring enforcement of the third-party voter registration law. Defendants filed a memorandum in opposition on January 24, 2012; Plaintiffs filed a reply memorandum on February 14, 2012. The Court held a preliminary injunction hearing on March 1, 2012.

3. On May 31, 2012, the Court granted Plaintiffs' motion in part. Specifically, the Court entered an Order enjoining Defendants from enforcing the following provisions of the third-party voter registration law (the "Preliminary Injunction Order"):

- i. Fla. Stat. § 97.0575(1)(c);
- ii. Fla. Stat. § 97.0575(1)(d);
- iii. Fla. Stat. § 97.0575(3)(a), to the extent it requires delivery of an application within 48 hours—or any period less than 10 days;
- iv. Rule 1S-2.042(3)(a), to the extent it requires disclosure of an employee or volunteer who does not actually collect or handle voter-registration applications and to the extent it requires disclosure of a volunteer's termination within 10 days after it occurs;
- v. Rule 1S-2.042(3)(c);
- vi. Rule 1S-2.042(3)(d);
- vii. Rule 1S-2.042(3)(e), to the extent it requires disclosure of a volunteer's termination within 10 days after it occurs;
- viii. Rule 1S-2.042(5);

- ix. Rule 1S-2.042(6)(b);
- x. Rule 1S-2.042(6)(c), to the extent it addresses form DS-DE 123; and
- xi. Rule 1S-2.042(7)(a).

4. The Preliminary Injunction Order concluded that the Plaintiffs were not likely to prevail on the merits of their challenges to Florida Statute § 97.0575(5) and Rule 1S-2.042(4)(c) (requiring identification numbers on collected forms); Florida Statute §§ 97.0575(1) (requiring electronic filing); Florida Statute § 97.0575(4) (providing for referral of possible violations to the Attorney General for enforcement); Florida Statute § 97.0575(3) and Rule 1S-2.042(2)(d) (waiver of fines for violations based on force majeure or impossibility of performance).

5. Subsequent to entry of the Preliminary Injunction Order, the parties engaged in discussions regarding a possible resolution of this matter. On July 2, 2012, Defendants filed a Notice of Appeal to the United States Court of Appeals for the Eleventh Circuit to preserve their appellate rights while continuing the Parties' "productive discussions" toward an orderly and timely final resolution of this action.

6. On August 7, 2012, the Florida Department of State noticed an Emergency Rule conforming Rule 1S-2.042, Florida Administrative Code, to the terms of the Court's Order Granting Preliminary Injunction. The Emergency Rule is attached as Exhibit A. The Florida Department of State has submitted a proposed rule identical to Exhibit A for publication in the Florida Administrative Weekly and adoption as a final rule according to the rulemaking process set forth in Section 120.54, Florida Statutes.

7. Plaintiffs agree that the rule attached as Exhibit A is consistent with the terms of the Court's Order Granting Preliminary Injunction and support the adoption of the rule attached as Exhibit A as a final rule.

8. The Parties have concluded their discussions and have agreed to a resolution of this matter, subject to the Court's entry of a Permanent Injunction as set forth herein.

9. Accordingly, the parties respectfully request that the Court enter a Permanent Injunction and final judgment as follows:

- a. Defendants Kenneth W. Detzner, 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 Gisela Salas, in her official capacity as Director of the Division of Elections within the Department of State for the State of Florida, are hereby permanently enjoined from taking any step to demand compliance with or enforce the following provisions:
 - i. Fla. Stat. § 97.0575(1)(c), to the extent it requires identification of volunteer registration agents or employee registration agents who solicit but do not collect or handle voter registration applications;
 - ii. Fla. Stat. § 97.0575(1)(d);
 - iii. Fla. Stat. § 97.0575(3)(a), to the extent it requires delivery of an application within 48 hours—or any period less than 10 days;
 - iv. Fla. Stat. § 97.0575(5), to the extent it requires third-party voter registration organizations to report on the number of voter registration applications used by, distributed to, or collected from registration agents;
 - v. Rule 1S-2.042(3)(a), to the extent it requires disclosure of: any volunteer registration agent; any employee who does not actually collect or handle voter-registration applications; or a volunteer's termination;
 - vi. Rule 1S-2.042(3)(c);

- vii. Rule 1S-2.042(3)(d);
 - viii. Rule 1S-2.042(3)(e), to the extent it requires disclosure of volunteer registration agents or their termination;
 - ix. Rule 1S-2.042(4)(b), to the extent it requires recording the time of collection of any voter registration applications;
 - x. Rule 1S-2.042(5);
 - xi. Rule 1S-2.042(6)(a), to the extent it requires an accounting of the number of voter registration forms provided to or held by a third party voter registration organization;
 - xii. Rule 1S-2.042(6)(b), to the extent it requires notice of termination of volunteer registration agents;
 - xiii. Rule 1S-2.042(6)(c), to the extent it addresses form DS-DE 123;
and
 - xiv. Rule 1S-2.042(7)(a), to the extent it requires delivery of an application within 48 hours—or any period less than 10 days; to the extent it requires recording the time of delivery; and to the extent it imposes a fine for late delivery because of the absence of a ‘clear postmark’ on any organization that actually mailed an application within 10 days after collecting it.
- b. This injunction does not affect any other portion of Florida Statutes § 97.0575 or Florida Administrative Code Rule 1S-2.042. This injunction is binding on the Secretary of State, Attorney General, and Director of the Division of Elections and their successors, officers, agents, servants, employees, and attorneys, and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The court retains jurisdiction to enforce this injunction.
 - c. All other claims in this action are dismissed with prejudice.
 - d. No costs or attorneys’ fees will be taxed by the Court.
 - e. The clerk must enter a judgment with the terms set out in paragraphs a, b, and c above.

Respectfully submitted,

/s/ Farrah R. Berse

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served by filing in this Court's CM/ECF system this 10th day of August, 2012, on all attorneys of record.

/s/ Farrah R. Berse
Attorney