

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF FLORIDA,

Plaintiff,

v.

UNITED STATES OF AMERICA and
ERIC H. HOLDER, JR.,
in his official capacity as Attorney General,

Defendants,

and

NATIONAL COUNCIL OF LA RAZA and
LEAGUE OF WOMEN VOTERS OF
FLORIDA,

Proposed Defendant-
Intervenors.

No. 1:11-cv-1428-CKK-MG-ESH
Judges Kollar-Kotelly, Garland & Huvelle

**[PROPOSED] DEFENDANT-INTERVENORS' ANSWER TO THE
COMPLAINT FOR DECLARATORY RELIEF**

Defendant-Intervenors National Council of La Raza and the League of Women Voters of Florida, by their undersigned legal counsel, submit the following Answer in response to the Complaint for Declaratory Relief (“the Complaint”) (ECF No. 1) filed in this matter by the State of Florida (“Florida”).

1. Defendant-Intervenors admit the allegations in paragraph 1 to the extent that they identify the Plaintiff and that the Voting Rights Act (“VRA”) authorizes Florida to bring a claim seeking VRA Section 5 (“Section 5”) preclearance before this Court.

2. Defendant-Intervenors admit the allegations in paragraph 2.

3. Defendant-Intervenors admit the allegations in paragraph 3, except to the extent that they suggest that only the United States of America and Attorney General are authorized to defend a Section 5 declaratory judgment action in this Court. Defendant-Intervenors aver that citizens and organizations in Section 5 jurisdictions are frequently permitted to intervene as defendants in Section 5 declaratory judgment actions.

4. Defendant-Intervenors deny that the provisions of Chapter 2011-40, Laws of Florida (the “Act”), for which Florida seeks a declaratory judgment in this lawsuit, are effective as law in the Florida counties covered by Section 5, and otherwise admit the allegations in paragraph 4.

5. Defendant-Intervenors admit the allegations in paragraph 5.

6. The allegations in paragraph 6 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant-Intervenors admit the allegations in paragraph 6.

7. Defendant-Intervenors admit the allegations in paragraph 7, except that the date for determining Section 5 coverage, with regard to voter registration rates in Florida counties in 1972, is November 1, 1972.

8. The allegations in paragraph 8 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant-Intervenors admit the allegations in paragraph 8 to the extent that the five Florida counties named in paragraph 6 continue to be covered jurisdictions under Section 5.

9. The allegations in paragraph 9 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant-Intervenors admit the allegations in paragraph 9.

10. Upon information or belief, Defendant-Intervenors admit that Florida, on June 8, 2011, made an administrative Section 5 submission to the Attorney General regarding voting changes occasioned by the Act. Defendant-Intervenors aver, on information and belief, that subsequent to the filing of this lawsuit, on August 8, 2011, the Attorney General granted Section 5 preclearance to certain of the submitted voting changes, *i.e.*, all submitted changes except those voting changes for which Florida requests a declaratory judgment in this lawsuit (since, as paragraph 10 alleges, Florida withdrew those changes from review before the Attorney General).

11. Defendant-Intervenors admit the allegations in paragraph 11 to the extent that they describe the statutory basis for the claims asserted by Florida and characterize Florida's contentions. Defendant-Intervenors deny that Section 5 of the Voting Rights Act precludes Florida from uniformly enforcing its election laws.

12. Defendant-Intervenors admit the allegations in paragraph 12.

13. Defendant-Intervenors admit the allegations in paragraph 13.

14. Defendant-Intervenors admit the allegations in paragraph 14.

15. Defendant-Intervenors admit that the allegations in paragraph 15 accurately characterize the subject matter of this lawsuit and that the voting changes for which Florida requests a declaratory judgment may not be implemented in the Section 5 covered counties unless and until Section 5 preclearance is obtained. Defendant-Intervenors otherwise deny the allegations in paragraph 15, including the allegation that Section 5 precludes Florida from uniformly enforcing its election laws.

16. Defendant-Intervenors deny the allegations in paragraph 16 that the voting changes for which Florida seeks a declaratory judgment will impact all Floridians uniformly. Defendant-Intervenors further deny that these changes neither have the purpose nor will have the

effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

17. Defendant-Intervenors admit that paragraph 17 correctly summarizes Florida's voter registration law prior to January 1, 1995, and that Florida adopted Fla. Stat. §97.0575 in 2005 and amended this law in 2007. Defendant-Intervenors deny that Fla. Stat. §97.0575 represents the Florida Legislature's first comprehensive regulation of third-party voter registration organizations, as Defendant-Intervenors aver that the law governing voter registration in Florida before 2005 included the National Voter Registration Act of 1993 and the Florida Voter Registration Act of 1995. Defendant-Intervenors further deny that Fla. Stat. §97.0575 represents the Section 5 benchmark practice, in that the benchmark includes the decision in *League of Women Voters v. Browning*, 575 F. Supp. 2d 1298 (S.D. Fla. 2008), and the regulations, practices, and materials issued or adopted by the Florida Division of Elections and the Secretary of State.

18. Defendant-Intervenors admit that the allegations in paragraph 18 correctly describe provisions of Fla. Stat. § 97.021(37) and that the provisions of this statute, in part, constitute the Section 5 benchmark. Defendant-Intervenors deny that the allegations in paragraph 18 fully identify the applicable Section 5 benchmark.

19. Defendant-Intervenors admit that Fla. Stat. § 97.0575(1) includes provisions relating to the matters alleged in paragraph 19 and that paragraph 19 accurately quotes from that statute. Defendant-Intervenors deny that paragraph 19 accurately sets forth, even in part, the Section 5 benchmark in that Defendant-Intervenors deny that the statute requires third-party registration organizations to register with the State of Florida, or otherwise provide information

to Florida, since Fla. Stat. § 97.0575 provides that there is no penalty if such organizations decline to register and decline to provide such information.

20. Defendant-Intervenors admit that the allegations in paragraph 20 correctly quote provisions of Fla. Stat. § 97.0575(3) and that the provisions of this statute, in part, constitute the Section 5 benchmark. Defendant-Intervenors deny that the allegations in paragraph 20 fully identify the applicable Section 5 benchmark.

21. Defendant-Intervenors admit that the allegations in paragraph 21 correctly describe provisions of Fla. Stat. § 97.0575 and that the provisions of this statute, in part, constitute the Section 5 benchmark. Defendant-Intervenors deny that the allegations in paragraph 21 fully identify the applicable Section 5 benchmark.

22. Defendant-Intervenors admit that the allegations in paragraph 22 correctly describe provisions of Fla. Stat. § 97.0575 and that the provisions of this statute, in part, constitute the Section 5 benchmark. Defendant-Intervenors deny that the allegations in paragraph 22 fully identify the applicable Section 5 benchmark.

23. Defendant-Intervenors admit that Fla. Stat. § 97.0575(1) includes provisions relating to the matters alleged in paragraph 23. Defendant-Intervenors deny that paragraph 23 accurately sets forth, even in part, the Section 5 benchmark in that Defendant-Intervenors deny that the statute requires third-party registration organizations to submit any report to the Florida Secretary of State, since Fla. Stat. § 97.0575 provides that there is no penalty if such organizations decline to submit the report described in paragraph 23.

24. Defendant-Intervenors admit that the Act will require that third-party voter registration organizations register with Florida before engaging in any registration activities, but deny that existing law requires any such preregistration (*see* Answer to paragraph 19).

Defendant-Intervenors deny that the Act only requires that third-party voter registration organizations promptly deliver completed voter registration applications to election officials, but admit that existing law requires prompt delivery of such applications. Defendant-Intervenors admit that the applicable fines remain unchanged by the Act. Defendant-Intervenors otherwise deny the allegations in paragraph 24 insofar as they characterize the requirements of existing Florida law and compare that law to the provisions in the Act relating to third-party voter registration activities. Defendant-Intervenors further deny the allegations in paragraph 24 regarding the Section 5 benchmark because the allegations replicate or incorporate the incomplete and/or mistaken allegations concerning the Section 5 benchmark identified in the Answers to paragraphs 17, 19, and 23.

25. Defendant-Intervenors admit that one of the principal changes in the Act relates to the time period for delivery of completed voter registration applications, but deny the allegation that this is “[t]he principal change.” Defendant-Intervenors deny the allegations in paragraph 25, describing the Act’s provisions relating to the time period in which third-party voter registration organizations must deliver completed applications to election officials, insofar as the following corrections are needed: Defendant-Intervenors aver that the Act permits applications to be submitted after the 48-hour period on the next business day only if the office is closed for the 48-hour period; Defendant-Intervenors further aver that the Act requires voter registration forms to be submitted within 48 hours of the time of completion by the applicant. Defendant-Intervenors admit that the allegations in the last two sentences of paragraph 25 correctly describe provisions of Fla. Stat. § 97.0575(3)(b).

26. Defendant-Intervenors admit that the allegations in paragraph 26 correctly describe provisions included in the Act relating to third-party voter registration activities.

27. Defendant-Intervenors admit that the allegations in paragraph 27 correctly describe provisions included in the Act relating to third-party voter registration activities.

28. Defendant-Intervenors deny that the voting changes regarding third-party voter registration, for which Florida requests a declaratory judgment, serve any legitimate state interests. Defendant-Intervenors further deny that these changes were not adopted for the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

29. Defendant-Intervenors deny the allegations in paragraph 29 with regard to the purported equal application of the voting changes in the Act, the time period in which the Act requires delivery of completed voter registration applications, the claimed protections provided by the Act as to the right to vote, and the claim that the Act does not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Defendant-Intervenors admit the allegations in paragraph 29 insofar as they describe provisions of existing Fla. Stat. § 97.0575(3).

30. Defendant-Intervenors admit that the allegations in paragraph 30 correctly describe the provisions of Fla. Stat. § 100.371 (not § 101.371 as indicated in the Complaint). Defendant-Intervenors aver that existing Florida law regarding constitutional amendments proposed by initiative includes any regulations, practices, and materials issued or adopted by the Florida Division of Elections and the Florida Secretary of State. Defendant-Intervenors deny that paragraph 30 sets forth the appropriate Section 5 benchmark, and aver that the benchmark practices are the practices that have received Section 5 preclearance or otherwise are legally enforceable under Section 5.

31. Defendant-Intervenors admit that the allegations in paragraph 31 correctly describe the provisions of Fla. Stat. § 100.371(3) (not § 101.371(3) as indicated in the Complaint). Defendant-Intervenors deny the allegations in paragraph 31 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 30 allegations.

32. Defendant-Intervenors admit that the allegations in paragraph 32 correctly describe the provisions of Fla. Stat. § 100.371(6) (not § 101.371(6) as indicated by the Complaint) and the holding of *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So.3d 1053 (Fla. 2010). Defendant-Intervenors deny the allegations in paragraph 32 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 30 allegations.

33. Defendant-Intervenors admit that the allegations in paragraph 33 correctly describe the Act's amendments to Fla. Stat. § 100.371(3) (not § 101.371(3) as indicated by the Complaint). Defendant-Intervenors deny the allegations in paragraph 33 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 30 allegations.

34. Defendant-Intervenors admit that the allegations in paragraph 34 correctly describe the Act's provisions governing signature verification. Defendant-Intervenors deny the allegations in paragraph 34 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 30 allegations.

35. Defendant-Intervenors admit that the allegations in paragraph 35 correctly describe the Act's amendments to Fla. Stat. § 100.371(6) (not § 101.371(6) as indicated by the Complaint).

36. Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36, and thus deny these allegations.

37. Defendant-Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 37, and thus deny these allegations.

38. Defendant-Intervenors admit that the allegations in paragraph 38 correctly describe the provisions of Fla. Stat. §§ 101.045(1), 101.045(2)(a), and 97.1031. Defendant-Intervenors aver that existing Florida law regarding voting by registered voters who change their voting residence includes any regulations, practices, and materials issued or adopted by the Florida Division of Elections and the Florida Secretary of State. Defendant-Intervenors deny that paragraph 38 sets forth the appropriate Section 5 benchmark, and aver that the benchmark practices are the practices that have received Section 5 preclearance or otherwise are legally enforceable under Section 5.

39. Defendant-Intervenors admit that the allegations in paragraph 39 correctly describe the provisions of Fla. Stat. § 101.045(2). Defendant-Intervenors deny the allegations in paragraph 39 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 38 allegations.

40. Defendant-Intervenors admit that the allegations in paragraph 40 correctly describe the provisions of Fla. Stat. § 101.045(2)(d).

41. Defendant-Intervenors admit that the allegations in paragraph 41 correctly describe the Act's amendments to Fla. Stat. § 101.045(2). Defendant-Intervenors deny the allegations in paragraph 41 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 38 allegations.

42. Defendant-Intervenors admit that the standards for canvassing a provisional ballot are not changed by the Act. Upon information and belief, Defendant-Intervenors deny that the allegations in paragraph 42 correctly describe the provisions of Fla. Stat. § 101.048(2)(b)(1), and

aver that this statute permits the counting of a provisional ballot only if the person is registered to vote and entitled to vote at the precinct where the person cast a vote in the election. Defendant-Intervenors deny the allegations in paragraph 42 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 38 allegations.

43. Defendant-Intervenors deny the allegations in paragraph 43 that the voting changes concerning voting by registered voters who have changed their residence, for which Florida requests a declaratory judgment, serve any legitimate state interests. Defendant-Intervenors further deny that these changes were not adopted for the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

44. Defendant-Intervenors deny the allegations in paragraph 44 that the voting changes concerning voting by registered voters who have changed their residence, for which Florida requests a declaratory judgment, will apply equally to every elector regardless of race, color, or membership in a language minority group. Defendant-Intervenors admit the allegations in paragraph 44 describing the individuals impacted by the Act's changes concerning residence for voting purposes.

45. Defendant-Intervenors deny the allegations in paragraph 45 that only a limited number of electors will be affected by the referenced voting changes, and further deny that affected individuals will not have their right to vote denied or abridged on account of race, color, or membership in a language minority group. Defendant-Intervenors lack knowledge or information sufficient to form a belief as to whether the covered counties will adopt and implement a practice of counting all provisional ballots cast by individuals who would have been entitled to vote by regular ballot under the existing practice relating to registered voters who

change their Florida county of residence, and also lack knowledge or information sufficient to form a belief as to what Secretary Browning may anticipate, and thus deny these allegations. Defendant-Intervenors admit that the allegations in paragraph 45 correctly describe the provisions of Fla. Stat. § 101.048, but note that the cited language comes from Fla. Stat. § 101.048(2)(b)(1). Defendant-Intervenors deny the allegations in paragraph 45 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 38 allegations.

46. Defendant-Intervenors deny the allegations of paragraph 46, including the allegation that the voting changes relating to registered voters' change of address, for which Florida requests a declaratory judgment, have neither the purpose nor effect of denying or abridging the right to vote on account of race, color, or membership in a language minority.

47. Defendant-Intervenors admit that the allegations in paragraph 47 correctly describe the provisions of Fla. Stat. § 101.657. Defendant-Intervenors aver that existing Florida law regarding early voting includes any regulations, practices, and materials issued or adopted by the Florida Division of Elections, the county Supervisors of Elections, and the Florida Secretary of State. Defendant-Intervenors deny that paragraph 47 sets forth the appropriate Section 5 benchmark, and aver that the benchmark practices are the practices that have received Section 5 preclearance or otherwise are legally enforceable under Section 5.

48. Defendant-Intervenors admit that the allegations in paragraph 48 correctly describe the provisions of Fla. Stat. § 101.657(1). Defendant-Intervenors deny the allegations in paragraph 48 regarding the Section 5 benchmark for the reasons set forth in the Answer to the paragraph 47 allegations.

49. Defendant-Intervenors admit that the allegations in paragraph 49 correctly describe the provisions of the Act amending Fla. Stat. § 101.657(1). Defendant-Intervenors deny

the allegations in paragraph 49 that the changes to the early voting law occasioned by the Act adequately preserve the option of early voting or provide increased flexibility in a manner equivalent to the existing practice.

50. Defendant-Intervenors admit that the allegations in paragraph 50 correctly describe the Act's amendment to Fla. Stat. § 101.657(1)(d).

51. Defendant-Intervenors deny the allegations in paragraph 51 that the voting changes to the early voting law, for which Florida requests a declaratory judgment, serve any legitimate state interests or were adopted for the reasons set forth in paragraph 51. Defendant-Intervenors further deny that these changes were not adopted for the purpose of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

52. Defendant-Intervenors deny the allegations in paragraph 52 that the Act's changes relating to the early voting, for which Florida requests a declaratory judgment, will expand access to or increase the convenience of early voting. Defendant-Intervenors admit that the allegations in paragraph 52 correctly describe the Act's amendment to Fla. Stat. § 101.657(1)(d).

53. Defendant-Intervenors deny the allegations in paragraph 53 that the Act's changes relating to early voting changes will expand access to or provide additional opportunities for early voting. Defendant-Intervenors also deny that the overall maximum number of weekday early voting hours is increased by the Act, due to the Act's reduction in the number of weekdays during which early voting may be conducted. Defendant-Intervenors admit that paragraph 53 correctly describes the Act's amendment to the maximum number of early voting hours in an individual day.

54. Defendant-Intervenors admit that the allegations in paragraph 54 correctly describe the Act's amendments to Fla. Stat. § 101.657(1)(d) insofar as the Act provides for 6-12 hours of early voting on the one Sunday of early voting permitted by the Act; however, Defendant-Intervenors aver that the Act disallows early voting on the Sunday immediately prior to an election. Although the five covered Florida counties were authorized by law to offer early voting on Sundays, Defendant-Intervenors admit that the covered counties did not do so in the 2008 or 2010 elections.

55. Defendant-Intervenors deny that the voting changes occasioned by the Act relating to early voting, for which Florida seeks a declaratory judgment, will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Defendant-Intervenors also deny the allegations contained in the second sentence of paragraph 55 concerning which persons may benefit from these changes.

56. Paragraph 56 re-alleges the allegations contained in paragraphs 1 through 55 of the Complaint and thus does not include any new or additional allegations; to the extent that Paragraph 56 includes any allegations, Defendant-Intervenors deny them to the extent that the allegations of paragraphs 1 through 55 are denied above.

57-63. Defendant-Intervenors deny the allegations of paragraphs 57 through 63.

64. Paragraph 64 re-alleges the allegations contained in paragraphs 1 through 55 of the Complaint and thus does not include any new or additional allegations; to the extent that Paragraph 64 includes any allegations, Defendant-Intervenors deny them to the extent that the allegations of paragraphs 1 through 55 are denied above.

65-71. Defendant-Intervenors deny the allegations of paragraphs 65-71

72. Paragraph 72 re-alleges the allegations contained in paragraphs 1 through 55 of the Complaint and thus does not include any new or additional allegations; to the extent that Paragraph 72 includes any allegations, Defendant-Intervenors deny them to the extent that the allegations of paragraphs 1 through 55 are denied above.

73-79. Defendant-Intervenors deny the allegations of paragraphs 73-79.

80. Paragraph 80 re-alleges the allegations contained in paragraphs 1 through 55 of the Complaint and thus does not include any new or additional allegations; to the extent that Paragraph 80 includes any allegations, Defendant-Intervenors deny them to the extent that the allegations of paragraphs 1 through 55 are denied above.

81-87. Defendant-Intervenors deny the allegations of paragraphs 81-87.

PRAYER FOR RELIEF

Wherefore, Defendant-Intervenors pray for judgment against Plaintiff as follows:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That the Court enter an order denying Plaintiff's request for a declaratory judgment that the voting changes that are subject of the Complaint neither have a discriminatory effect nor were not adopted with a discriminatory purpose, under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c;
3. To the extent authorized law, grant Defendant-Intervenors appropriate temporary, preliminary, or permanent injunctive relief to enforce Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c;
4. Grant Defendant-Intervenors an award of reasonable attorney's fees, litigation expenses, including expert witness fees and expenses, and costs; and
5. Grant Defendant-Intervenors such other relief that the Court finds proper.

Dated: September 9, 2011

Respectfully submitted,

/s/ Mark A. Posner

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