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The Brennan Center for Justice at New York University School of Law thanks Chairman Leahy and the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for providing this opportunity to submit written testimony in advance of the important field hearing, “New State Voting Laws II: Protecting the Right to Vote in the Sunshine State.”

The Brennan Center is a nonpartisan think tank and legal advocacy organization that focuses on issues of democracy and justice. Among other things, we seek to ensure fair and accurate voting procedures and systems and to promote policies that maximize citizen enfranchisement and participation in elections. We have done extensive work on a range of issues relating to voting rights, including work to remove unnecessary barriers to voter registration; to make voting machines more secure, reliable, usable, and accessible; and to expand access to the franchise. Our work on these topics has included the publication of studies and reports; assistance to federal and state administrative and legislative bodies with responsibility over elections; and, when necessary, participation in litigation to compel states to comply with their obligations under federal law and the Constitution. We submit this testimony today in our capacity as national advocates of voting rights committed to (1) preventing efforts, such as Florida’s H.B. 1355 (alternatively “the Law”), to constrict voter registration and participation and (2) promoting improvements that will make our election system secure and accessible to all eligible Americans.

The harm caused by HB 1355 to Florida voters and community-based voter registration groups is so severe that several organizations and individuals have been forced to turn to the courts for relief. In *Florida v. United States*, the Brennan Center is co-counsel<sup>1</sup> to the League of Women Voters of Florida (“LWVF”) and the National Council of La Raza (“NCLR”), who oppose HB 1355 because of the harm it will cause to minority voters.<sup>2</sup> The Brennan Center also represents<sup>3</sup> LWVF, Rock the Vote (“RTV”), and Florida Public Interest Research Group’s Education Fund (“FL PIRG”) in *LWVF v. Browning*, a broad challenge to the Law on the basis that its provisions violate the U.S. Constitution, the National Voter Registration Act, and the Voting Rights Act.

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<sup>1</sup> Our co-counsel in *Florida v. United States* are the Lawyers’ Committee for Civil Rights Under Law and the law firm Bryan Cave, LLP.

<sup>2</sup> Under the federal Voting Rights Act, changes to Florida’s election laws must be “precleared” by the United States Department of Justice or through a lawsuit in the D.C. federal court. Florida is currently seeking preclearance by a D.C. federal court in the case *Florida v. United States*.

<sup>3</sup> Our co-counsel in *LWVF v. Browning* are law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, the ACLU of Florida, and law firm Coffey Burlington.

In this statement, the Brennan Center will detail why the discriminatory provisions of HB 1355 should be struck down. We will also suggest long-term improvements to Florida's antiquated paper-based registration system that would save the State significant money and time processing paper registration forms, while also increasing the inclusiveness and accuracy of the voter rolls.

### ***Background***

HB 1355 is the third and most heavy-handed set of rules and penalties enacted by the State of Florida in the past six years to regulate the community-based voter registration activities of individuals and organizations who advocate for greater voter participation and who help their fellow citizens register to vote. HB 1355's newly enhanced and tightened restrictions on those constitutionally protected efforts were adopted with barely the pretense of justification, other than to erect additional and unwarranted barriers to registration and voting.

Despite the devastating impact HB 1355 would have on voter participation, this latest step in Florida's serial effort to repress the voter registration activities of community-based groups sped through the legislative process in 2011. The Florida Legislature considered no evidence demonstrating that such grave restrictions were necessary to prevent voter registration fraud or preserve the integrity of the election process. Nor did HB 1355's proponents offer any basis at all to conclude that the existing legal regime, including the voter registration law passed just three years ago, has been inadequate to address whatever dangers may exist.

Restrictions on voter registration are particularly troublesome in light of Florida's declining voter registration rates. In 2004, before Florida began restricting community-based voter registration drives, Florida ranked 33rd in the nation in voter registration rates, with 71.7% of voting age citizens registered. In 2010, Florida dropped to 38th in the nation in voter registration rates, with only 63% of voting age citizens registered.<sup>4</sup> Similarly, the overall number of registration forms received in Florida has steadily declined. From 2000 to 2004, Florida received over 8.6 million voter registration forms. From 2006 to 2010, after restrictions on community-based registration efforts were implemented, the total number of voter registration forms received dropped to just under 3 million.

HB 1355 can only exacerbate these downward trends. And unfortunately, the impacts of this law will fall most heavily on the shoulders of Florida's voters of color.

In general, community-based voter registration drives register significant numbers of citizens to vote in Florida. According to the U.S. Census Bureau's Current Population Survey, as of the November 2010 election, 7.3% of all registered voters, which would translate to 585,004 Florida citizens, had

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<sup>4</sup> Data obtained by creating custom tables with the Current Population Survey (CPS) Table Creator for 2004 and 2010, respectively. U.S. Census Bureau, Current Population Surveys (Nov. 2004; Nov. 2010). The rate of new voter registrations in Florida from 2006 to 2010 similarly mirrors the overall decline in registered voters. From January through October 2006, there were 479,611 new and valid voter registrations in Florida, compared to 363,545 in the same period in 2010, a 24.2% decline. *See* Florida Division of Elections, Voter Registration Statistics, <http://election.dos.state.fl.us/NVRA/reports.shtml>; Voter Registration Year To Date Report, October 2006: <http://election.dos.state.fl.us/voter-registration/archives/2006/October/YTDTotal.pdf>; Voter Registration Year To Date Report, October 2010: <http://election.dos.state.fl.us/voter-registration/archives/2010/October/YTDTotal.pdf>.

been registered to vote through such third-party drives in Florida. Those numbers are significantly higher for communities of color.

As of 2010 in Florida, 16.2% of African-American registered voters and 15.5% of Hispanic registered voters in Florida were registered through drives, compared to only 8.6% of non-Hispanic white registered voters.<sup>5</sup> Similarly, African Americans and Latinos registered to vote through voter registration drives at approximately twice the rate as white voters in 2004 and 2008. The large emphasis on voter registration drives in Florida is one major reason why racial disparities in voter registration are lower in Florida than most states. But, due to HB 1355, many organizations and individuals, including those that specifically reach out to minority communities, have been forced to suspend or severely curtail their voter registration efforts.

Unsurprisingly, during its consideration by the legislature, HB 1355 was strongly opposed by minority leaders in Florida. And, because of HB 1355's disparate impact, numerous civil rights organizations and individuals have intervened in *Florida v. United States* to illustrate how the law harms minority voters.<sup>6</sup>

### ***The Law Severely Burdens Community Voter Registration Efforts***

The experiences of the League of Women Voters of Florida (LWVF), Rock the Vote (RTV) and Florida Public Interest Research Group Education Fund (FL PIRG)—three volunteer-driven, non-profit organizations with long histories of helping to register voters in Florida—illustrate the myriad burdens imposed by HB 1355.

- The LWVF is the Florida affiliate of the national League of Women Voters. Central to the group's mission is encouraging the informed, active participation of citizens in government, including voter registration. LWVF has approximately 2,800 current dues-paying members, and a list of about 9,000 members, supporters, and volunteers who receive regular communications. LWVF conducts voter registration drives via 29 local chapters throughout Florida. These local voter registration efforts are wholly volunteer-run and are central to LWVF's ability to engage with its membership and volunteers. Voter registration goes hand-in-hand with virtually all of LWVF's public education efforts, as well as many of their advocacy activities.

Many of LWVF's outreach activities are directed at traditionally underrepresented communities. For instance, the Orange County League spearheaded the "Vamos A Votar Coalition," a nonpartisan campaign to increase Hispanic voter participation in Central Florida and statewide. And, the Miami/Dade County League reaches out to historically underrepresented communities in their county by publishing registration information in English, Spanish, and Creole. Similarly, some local Leagues, including the Jacksonville/First Coast League, regularly attend naturalization ceremonies in their communities. There, they

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<sup>5</sup> U.S. Census Bureau, Current Population Survey (Nov. 2010).

<sup>6</sup> Attached as Exhibit A is a letter by the Brennan Center and the Lawyers' Committee for Civil Rights Under Law further detailing these racial impacts, which was submitted to the Justice Department in opposition to the preclearance of the Law, on behalf of the National Council of La Raza and the League of Women Voters of Florida.

introduce new U.S. citizens to one of the most important opportunities and responsibilities of citizenship by assisting them in registering to vote.

- RTV is a national organization whose fundamental mission is to build political power for young people by increasing their registration and voter turnout rates. Critical to that mission are the organization's efforts to register young people to vote and to encourage them to vote on election days. RTV has approximately 1.5 million members in its national database, including approximately 82,000 members in Florida. RTV makes voter registration forms and instructions available on its website and conducts in-person registration drives staffed by volunteers at college campuses and in other locations.

RTV also offers a "Democracy Class" curriculum for local educators that teaches students about the importance of voting and offers registration opportunities. RTV provides a "toolkit" of materials that teachers can use to supplement their class instruction about civic engagement and the right to vote. It includes a video about the right of 18-year-olds to vote, lesson plans for staging a mock election in class, and a set of voter registration materials for the students.

- FL PIRG is an affiliate of the national Public Interest Research Group and strives to ensure equal access to the political process by, among other things, registering voters. FL PIRG focuses its voter registration efforts on student populations within Florida, and since the 2004 election cycle, it has registered approximately 23,000 Floridians. FL PIRG hires and trains campus organizers, often recent college graduates, to plan and organize voter registration drives at college campuses around the country. FL PIRG also conducts door-to-door registration drives.

FL PIRG's voter registration efforts have been particularly successful in engaging minority citizens. For example, in 2008, 42% of the citizens FL PIRG registered self-identified as members of a racial or ethnic minority group.

Voter registration is clearly a central part of each of these groups' missions. HB 1355 creates a laundry list of restrictions that severely impede such community-based voter registration efforts, and transforms the act of assisting others to register to vote into an exceedingly complex and highly risky activity. For example, HB 1355 imposes, under threat of severe financial penalties and potential criminal prosecution, a requirement on any person (not just on organizations) to pre-register with the State in order to "solicit" or "collect" voter registration applications, and requires such persons or organizations to track and report on every single voter registration application that they handle, including applications that are never completed or collected.<sup>7</sup> HB 1355 also requires that every completed voter registration application be delivered to the State within an arbitrarily narrow and unnecessarily prohibitive 48-hour window, under the penalty of strict monetary fines.<sup>8</sup> Moreover, HB 1355 sets forth vague but ominous penalties for even a minor, unintentional act of noncompliance with any provisions of the Law.<sup>9</sup>

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<sup>7</sup> Fla. Stat. §§ 97.021(37), 97.0575; Fla. Admin. Code Ann. R. 1S-2.042.

<sup>8</sup> Fla. Stat. § 97.0575(3)(a).

<sup>9</sup> *Id.* §§ 97.0575(4), 104.41.

As detailed in their sworn affidavits submitted in support of a motion seeking a federal court order to enjoin the Law,<sup>10</sup> because of its burdensome restrictions, LWVF, RTV, and FL PIRG have all ceased, or dramatically cut back, their voter registration efforts in Florida.

- Ms. Macnab, President of the League of Women Voters of Florida, explains: “As a result of the new Law, LWVF has ordered a statewide cessation of voter registration until the Law is enjoined or limited in such a way as to substantially reduce the organizational and financial risk to the League, its members, and volunteers...The local Leagues operate on a decentralized model with an all-volunteer force, which has successfully registered tens of thousands of Floridians to vote over the last 72 years without incident. The 48-hour requirement would require LWVF and its local Leagues to dramatically revise their procedures in a manner that would require volunteers to become detailed timekeepers and create strict schedules to ensure that forms were handed in before the clock strikes 48 hours—and do all this under the ticking time bomb of civil penalties and fines.” Moreover, “[m]any LWVF volunteers are elderly and depend on others for transport. They may have a particularly hard time meeting the 48-hour deadline.” Ms. Macnab goes on to explain how voter registration activity is crucial to the LWVF’s ability to recruit new volunteers and retain active members: “Helping other Floridians to register to vote is one of the most popular and effective volunteer opportunities with LWVF, and it has consistently been one of the best ways to get new volunteers invested in our work...I have come to believe that individuals who begin volunteering even a few hours helping to register their fellow citizens to vote find the activity extremely rewarding and feel a sense of purpose and connection to their democracy. Many, if not most, of our seasoned volunteers, stalwart supporters, and State Board members began volunteering their time at a LWVF voter registration drive table. My own very first hour spent volunteering with LWVF was behind such a table.”

*See* Exhibit B for Ms. Macnab’s full affidavit detailing HB 1355’s impacts on the LWVF’s voter registration activity.

- Rock the Vote’s community-based voter registration activity in Florida has also ceased in the face of HB 1355’s extreme requirements. In the words of President Heather Smith, “RTV is extremely concerned that the Law will make it exceedingly difficult to encourage student volunteerism with us. The Law now requires each ‘registration agent’ to sign a sworn form detailing severe felony penalties that result from false registration. While we train our volunteers to ensure no one falls afoul of these laws, introducing a student to civic participation and volunteerism via a list of felony penalties, in turn signed under felony penalty of perjury, is intimidating and scary for many students. The nature of the required form will lead to fewer students who are willing to participate in and volunteer in RTV’s voter registration activity, particularly on a spontaneous basis.” Likewise, Ms. Smith affirms that “[T]here is no question that we will have to drastically cut back, or perhaps discontinue, our registration efforts in Florida. We have already suspended our Democracy Class program and our in-person voter registration work in the state of Florida since the Law’s passage.” The cessation of RTV’s Democracy Class in Florida is particularly significant because RTV has “had to turn down requests from individuals and teachers in Florida to

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<sup>10</sup> Each of these affidavits, which are quoted in part in this statement, are appended in their entirety as exhibits B-F.

collaborate on voter registration activity due to the Law's burdensome new requirements." This is because HB 1355 will prevent RTV from incorporating voter registration into Democracy Class. "Without the voter registration component," Ms. Smith explains, "Democracy Class will be significantly less effective in advancing RTV's mission of getting young people involved in the political process."

*See Exhibit E for Ms. Smith's full affidavit detailing HB 1355's impacts on RTV's voter registration activity.*

- Brad Ashwell, Advocate for Florida PIRG, explains how HB 1355 similarly impacts his organization's ability to engage in voter registration: "FL PIRG will have to require every person assisting with voter registration to sign sworn statements threatening criminal prosecution for false registrations before they can engage in registration activities. From my experience working with students and other young people, I believe the intimidating registration agent form will significantly burden FL PIRG's ability to recruit volunteers. Some students will hesitate to join our volunteer efforts, particularly those drawn in spontaneously, if they must first sign a form listing multiple felony penalties. Moreover, certain school administrators will not want their students to participate in voter registration drives for fear of fines or reputational damage to the school." Furthermore, Mr. Ashwell explains, "The Law's requirement that forms be submitted within 48 hours of collection will be extremely difficult to comply with in many circumstances. The 48-hour turnaround time is particularly troubling as it relates to FL PIRG's frequent voter registration work during the evening. Nighttime events are extremely effective on campus, after classes are over and when students have more time to complete voter registration applications. But under the law, conducting voter registration efforts after 5:00 p.m. becomes more complicated because of the 48-hour requirement."

*See Exhibit F for Mr. Ashwell's full affidavit detailing HB 1355's impacts on the FL PIRG's voter registration activity.*

Though it has been in effect for only a short time, the onerous burdens of HB 1355 are already clear. Multiple groups, whose charitable missions revolve around protecting and expanding the franchise, have ceased or significantly curtailed their registration activities throughout the State out of fear that they will be unable to comply with HB 1355's requirements and thus be subject to fines, crippling civil and criminal penalties, and devastating reputational harm. HB 1355's severe restrictions effectively preclude these groups from advancing a shared belief in the importance of participatory democracy and widespread voter registration.

### ***Policy Recommendations***

Rather than making it more difficult for Floridians to vote, the State should be working to encourage widespread participation and increase voter registration rates. Responsibility for voter registration must be transferred from the citizens to the government, and Florida must upgrade its registration process. Florida's antiquated, paper-based registration system is expensive, inefficient and prone to errors which can disenfranchise voters.



Current voter registration requirements place the onus of registering on the voter, and block the proper functioning of an inclusive democratic system. Our country's traditional voter registration system was not designed for a mobile society where one in six Americans moves every year. Of the 57 million citizens who were not registered to vote in 2000, one in three was a former voter who had moved but failed to register. Unsurprisingly, registration problems alone kept up to 3 million eligible Americans from voting in 2008.

Four key components are necessary for Florida to modernize its voter registration system: automatic registration, permanent registration, online registration, and Election Day registration.

- *Automatic Registration:* Florida should automatically register eligible citizens to vote using available databases maintained by motor vehicle authorities and other state agencies, as well as federal databases such as the Selective Service.
- *Permanent Registration:* When voters move within a state, they should stay on the voter rolls. HB 1355 has taken Florida a step backwards in time: it eliminated Florida's longstanding and successful practice of permitting movers to make any in-state address change at the polls. Voters should remain permanently registered unless they move from the state.
- *Online Registration:* Florida should make this convenient form of registration available. Studies show that online registration is more secure and cost-effective than paper. While Florida offers its voter registration form online to complete and print, it should take the next step and develop a system that permits voters to submit and update their voter registration online.
- *Election Day Correction:* Florida should allow eligible citizens to register and correct their registration on Election Day. This has already been implemented in many states, and technological advances ensure that it can be done securely. It serves as a fail-safe measure to prevent voters from being disenfranchised by registration errors.

There is simply no reason to make people navigate a cumbersome, 19th-century model of voter registration when there are more efficient, cost-effective, and reliable methods available. In a modernized voter registration system, information contained in existing databases—such as those held by state departments of motor vehicles, public assistance agencies, state tax authorities or, for example, the federal Selective Service list—would be sorted and sent to election officials. After checks to verify citizenship and avoid duplicate registration, these citizens would be automatically registered to vote. Alternatively, citizens could register through a secure online system. On Election Day, any eligible voter whose name did not appear on the voter rolls or whose name appeared with inaccurate information could correct her registration and vote a regular ballot, rather than being turned away or forced to vote provisionally. States that have implemented these reforms have enjoyed increased registration rates, cost savings, and fewer registration errors. Florida has already adopted reforms in the wake of the federal “motor voter” law, and therefore already has many of the tools needed to fully implement these reforms. Voter registration modernization would help remove a needless obstacle that prevents millions from voting. Florida's leaders should follow this approach instead of making registration even more difficult.

By implementing common-sense reforms, Florida can ensure that more citizens are registered to vote while reducing burdens on election officials. These steps would not only boost Florida's dismal

voter registration rates, they would save the State money in the long run. Florida should overturn the Law's unreasonable restrictions on community-based voter registration and instead adopt common-sense reforms to modernize voter registration.



# Exhibit A



## BRENNAN CENTER FOR JUSTICE

*at New York University School of Law*



July 15, 2011

Chris Herren  
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, Submission No. 2011-2187

Dear Mr. Herren:

### **I. Introduction and Summary**

The League of Women Voters of Florida, Democracia USA, the Brennan Center for Justice, and the Lawyers' Committee for Civil Rights Under Law hereby submit this letter opposing preclearance of three sets of provisions of a new Florida law, H.B. 1355 (2011), which dramatically impact the State's voter registration and voting processes. All four organizations are non-partisan, non-profit entities that work to expand and protect voting rights in Florida and across the United States.

The voting changes which we address in this letter are the following: 1) a panoply of burdensome and wholly unnecessary restrictions on the opportunity and ability of individual citizens and grassroots organizations to conduct voter registration drives; 2) a reduction in the number of days during which early voting will be conducted, and a possible concomitant reduction in the number of early voting hours; and 3) a limitation on registered voters' existing opportunity to vote when they move between Florida counties and do not re-register to vote in their new county.

The available data indicate that these changes will disproportionately and negatively impact the voting rights of minority citizens in the covered counties. Despite this, and despite the fact that H.B. 1355 was strongly opposed by minority leaders during its consideration by the Florida Legislature, the State has failed to include any data or other evidence in its preclearance

submission to demonstrate that the changes will not have an impermissible retrogressive effect and were not impermissibly motivated by a discriminatory purpose.

Accordingly, the Department of Justice, should not grant Section 5 preclearance to these voting changes. In particular, the evidence with regard to the third-party voter registration changes, discussed herein, is so overwhelming in demonstrating their retrogressive effect that the Justice Department should interpose an objection to these changes now, without sending the State a written request for additional information pursuant to 28 C.F.R. § 51.37. With regard to the other changes addressed in this comment letter, while the State has not met its burden under Section 5, it would be appropriate to send a “more information” request, which would be in accord with the Department’s frequent practice when controversial changes are submitted for preclearance and the submitting authority fails to provide adequate information regarding the purpose and effect of the changes.<sup>1</sup>

## **II. Overview of the Covered Counties**

Five of Florida’s 67 counties are covered by Section 5: Collier, Hardee, Hendry, Hillsborough, and Monroe. Hillsborough is by far the largest of the counties in population, constituting 73 percent of the citizen voting age population (“CVAP”) of the combined counties according to the 2010 Census.<sup>2</sup>

The CVAP of the five counties combined (2010 Census) is 12.0 percent black (non-Hispanic, “black alone”) and 15.2 percent Hispanic. The CVAP data for the individual counties are as follows:

<b>County</b>	<b>Total CVAP</b>	<b>White Alone</b>	<b>Black Alone</b>	<b>Hispanic</b>
All Covered Counties, Combined	1,091,365	69.9%	12.0%	15.2%
Collier	205,090	85.1%	3.1%	10.4%
Hardee	16,765	64.8%	10.3%	22.6%
Hendry	19,570	58.0%	16.6%	23.1%
Hillsborough	794,060	65.6%	14.8%	16.2%
Monroe	55,880	81.3%	3.8%	13.2%

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<sup>1</sup> We also note that Florida has not requested expedited consideration of its preclearance request.

<sup>2</sup> The CVAP data used herein are from the special 2010 Census tabulation prepared by the Census Bureau on behalf of the Justice Department.

### **III. Florida Seeks to Severely Restrict the Ability of Individual Citizens and Citizen Groups to Conduct Voter Registration Outreach and Voter Registration Drives**

Section 4 of H.B. 1355 enacts highly intrusive, burdensome, and unnecessary restrictions on the ability of individual citizens and citizen groups to conduct voter registration outreach and voter registration drives in Florida, including in the five covered counties. The new requirements are unique, both in terms of how Florida law addresses other similar grassroots election activities and how other covered and partially covered states address citizen voter registration efforts. Florida only recently adopted less restrictive provisions which provide more than adequate assurance that citizen registration efforts are properly conducted, and yet the State now is seeking to impose new and more extreme burdens on citizen voter registration efforts without any evidence to suggest that the existing provisions are inadequate in any way. Minority voters disproportionately rely on third-party registration drives, and the new restrictions will significantly reduce this activity. Finally, the State has not provided any data to support preclearance, has not provided any specific justifications for the new requirements, and has adopted emergency regulations and forms to further define and implement the new statutory provisions but has not submitted these related changes for preclearance.

For all these reasons, Florida has not met its burden of showing the absence of retrogressive effect and discriminatory purpose. The evidence relating to the submitted changes is so compelling that the Justice Department should immediately interpose a Section 5 objection. Alternatively, the Department may request additional information, or consider whether it would be appropriate to issue a “no determination” letter based on the lack of submission of the changes encompassed in the emergency regulations and forms (28 C.F.R. § 51.22(a)(2)).<sup>3</sup>

#### **A. Proposed Changes**

The changes enacted by Section 4 are numerous and onerous. Given the breadth of the enacted changes, it is important to begin by identifying their full scope. Also, as discussed below, the State’s submission misidentifies several of the voter registration changes in its section-by-section analysis of the submitted legislation contained in Exhibit E to the submission.

The enacted changes are as follows:

1. The new law mandates that every “third-party voter registration organization” register with the state before “engaging in any voter registration activities.”<sup>4</sup> This mandate applies

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<sup>3</sup> It is important to note, in this regard, that Florida is in the process of issuing permanent regulations and forms which will supersede the emergency regulations and forms. The State released a proposed final rule (which includes the proposed permanent forms) for comment on July 5, 2011. As discussed below, the proposed permanent regulations and forms are nearly identical to the emergency versions. If the Justice Department decides to send a written request for additional information, it seems likely that the permanent regulations and forms will have been finalized shortly thereafter. Thus, if the Department does not interpose an objection now, it may be appropriate to combine a “more information” letter with a “please submit” request for the regulations and forms in effect at the time of the State’s response (rather than sending a “no determination/please submit” letter now).

<sup>4</sup> The pre-registration must include the names of the organization’s officers, and the name and address of a registered agent in the State.

broadly to a wide variety of efforts by individuals to ask or help another individual register to vote, whether the voter registration effort is being undertaken by a single citizen acting alone to help one other person, an *ad hoc* volunteer citizens group (e.g., a student group that sets up a registration table on campus), a more established citizens group, or a political party. This is because, under current law, a “third-party voter registration organization” includes “*any person, entity, or organization*” and applies to any person or organization that is “*soliciting or collecting* voter registration applications.” Fla. Stat. § 97.021(37) (emphasis added).<sup>5</sup>

Contrary to what the State advises in Exhibit E to its submission, no such state pre-registration mandate currently exists. As Exhibit E notes, the current statute does include a pre-registration provision. However, Exhibit E fails to note that the current statute also *expressly* specifies that there are no penalties for noncompliance; instead, the statute merely encourages pre-registration by reducing the fines that can be assessed against those who pre-register.<sup>6</sup> The bottom line, therefore, is that compliance currently is optional. The new statute deletes this “no penalty” provision, and creates, for the first time, an onerous and mandatory pre-registration process for all individuals and organizations engaged in voter registration activity.<sup>7</sup>

2. The new law mandates that, before conducting any voter registration activities, each “third-party voter registration organization” must inform the State of the name of each and every individual who will conduct voter registration on its behalf or in association with it (referred to as “registration agents”), and must provide the temporary and permanent addresses for each such individual. No such requirement exists currently.

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<sup>5</sup> The definition of a “third-party voter registration organization includes a limited “family members” exception which excludes the situation where “[a] person . . . seeks only to register to vote or collect voter registration applications from that person's spouse, child, or parent.” Florida law also provides that the term does apply to state or county employees or agents. The proposed final regulations, if adopted, also may limit, to some extent, the application of the law to mere solicitations to register, since they would specify that a “third-party voter registration organization” is “engaging in . . . voter registration activities” as to solicitations to register only when it is “soliciting [voter registration applications] for collection.” On the other hand, the proposed final regulation does not alter the definition of a “third-party voter registration organization” which, as noted, seems to provide that any solicitation concerning voter registration triggers the restrictions set forth in state law, subject only to the “family members” exception.

<sup>6</sup> Specifically, current Fla. Stat. § 97.0575 states that: “The failure to submit the information required by subsection (1) [– which includes the pre-registration provision –] does not subject the third-party voter registration organization to any civil or criminal penalties for such failure, and the failure to submit such information is not a basis for denying such third-party voter registration organization with copies of voter registration application forms.” In recognition of the fact that pre-registration is not mandatory, the current statute seeks to encourage pre-registration by providing that certain fines which may be assessed for violating the existing third-party registration requirements will be reduced if the organization has complied with the pre-registration provision. The new statute deletes this inducement since registration now is to be mandatory.

<sup>7</sup> Should the Justice Department decide to make a written request for additional information, we suggest that the Department request a list of all “third-party registration organizations” that registered under current law, and a list of those that have subsequently withdrawn as registered third-party voter registration organizations.

3. The new law mandates that, before conducting voter registration, each “third-party voter registration organization” must submit a sworn statement from each “registration agent” in which the individual declares that he or she “will obey all state laws and rules regarding the registration of voters.” This statement must be made on a form provided by the State that also lists the “penalties for false registration.” No such requirement exists currently.

4. The new law provides that “registration agents” include both persons who are employed by a “third-party voter registration organization” and persons who simply volunteer with such an “organization.”

5. The new law mandates that the Florida Division of Elections adopt rules requiring that each “third-party voter registration organization” “account [to the State] for all state and federal registration forms used by their registration agents.”

Contrary to what the State advises in Exhibit E to its submission, no mandatory reporting requirement exists currently. Exhibit E correctly notes that the current statute nominally provides for quarterly reporting by “third-party voter registration organizations” regarding voter registration drives conducted during the previous quarter. However, what Exhibit E fails to note is that, as is the case with the existing pre-registration provision, such reporting is optional; there is no penalty for non-compliance.

6. Each “third-party voter registration organization” must deliver to election officials each and every completed voter registration application that it collects “within 48 hours after the applicant completes it or the next business day if the appropriate office is closed for that 48-hour period.” The only exception is if the “organization” can show that noncompliance occurred because of “force majeure or impossibility of performance.”

Currently, completed registration applications simply must be delivered “promptly,” and fines may be assessed for applications turned in more than ten days after receipt. While the current law requires the Secretary of State to waive any applicable fines after a showing of force majeure or impossibility of performance, H.B. 1355 only provides that the Secretary “may” waive fines after such a showing.

7. The new law requires Florida election officials to assign a registration number to each “third-party voter registration organization,” include that number on every blank registration form provided to such “organizations,” and establish a data base to track “the voter registration forms assigned to [each] third-party voter registration organization.”

8. The Florida Attorney General is granted new authority to sue to enforce the registration restrictions or to enjoin any voter registration activity not in conformance with H.B. 1355, and the Florida Division of Elections must further “adopt rules to ensure the integrity of the registration process” (current law provides that the Division may “adopt rules to administer this [statutory] section”).<sup>8</sup>

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<sup>8</sup> If a “third-party voter registration organization” does not timely submit a completed voter registration application, the current practice is that this would not affect the validity of the application, although this rule is not specified either by statute or regulation. The proposed permanent regulations explicitly provide that this is the rule.



## **B. The Emergency Regulations and Forms**

In order to implement the new statute, the Florida Secretary of State, on May 20, 2011, issued emergency regulations that amend existing regulations concerning “third-party voter registration organizations” (see Attachment A to this letter). The amendments further define the nature and scope of the statutory changes, and also adopt regulatory forms to be used by these “organizations” and their registration agents. The additional provisions and forms have not been submitted for preclearance, although they clearly are directly related to the submitted changes. These provisions further exacerbate the intrusive, burdensome, and unnecessary provisions of the submitted statute. The Secretary of State has recently issued proposed regulations that will supersede the emergency regulations, if adopted (see Attachment B to this letter).<sup>9</sup>

The additional requirements set forth in the emergency regulations include, but are not limited to, the following:

1. Each “third-party voter registration organization” (or its agents) must print, on each completed voter registration form that it collects, the date and precise time at which the individual completed the registration application.<sup>10</sup> Election officials also must record the date and precise time at which each completed application is received from an “organization.” This strongly suggests that Florida intends to strictly enforce the 48-hour turnaround requirement, down to the exact minute. Among other things, that interpretation would effectively prohibit “third-party voter registration organizations” from submitting completed voter registration applications by mail.

2. Each “third-party voter registration organization” must ensure that its identification number is listed on each completed registration application that it turns in to election officials. Federal registration forms used by the “organization” are not excluded.<sup>11</sup>

3. Each “third-party voter registration organization” must submit to the Secretary of State an “accounting” of registration applications once every month (on one of the new forms promulgated by the Secretary). The regulations specify that each “organization” must “report . . . the number of state and federal voter registration application forms provided to and received from each of its registration agents for the preceding month.” This applies to all registration application forms used by the “third party voter registration organization,” including publicly-

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<sup>9</sup> As previously noted, the proposed permanent regulations and forms are nearly identical to the emergency regulations and forms. Two differences are referenced above (see fns. 5 and 8 *supra*). Another difference is that the proposed permanent regulations state that if a “third-party voter registration organization” registers with the State and then an “affiliate organization” of that entity wishes to engage in “any voter registration activities,” the “affiliate organization” must separately register with the State. Other small differences in the two sets of regulations are noted below.

<sup>10</sup> The regulations also specify the precise form in which this information must be written out.

<sup>11</sup> Each “third-party voter registration organization” will need to print its assigned number on every completed federal form that it turns in; generally, the “organization” is supposed to receive state registration forms from the county supervisors of elections or the Secretary of State with the organization’s number already entered on the forms.

available state and federal registration forms, and forms that are simply distributed to citizens but not collected by the “organization.” Moreover, the new reporting form promulgated by the Secretary of State specifies that each “organization” not only must report the number of completed registration applications received from its registration agents during the prior month, but also must report the number of application forms that the “organization” provided to its registration agents which were not completed by citizens during the prior month. County election officials must, daily, provide the state Division of Elections with reports that “record the number of voter registration applications they provide to, and receive from, each organization.”<sup>12</sup>

4. The requirements that apply to “registration agents” apply to persons who only “solicit” registration applications as well as to persons who collect completed applications.<sup>13</sup>

5. The Secretary of State has promulgated the form that each registration agent must complete and which the “third-party voter registration organization” must electronically submit to the State (see Attachment C to this letter). The form must be sworn to or affirmed in front of a notary public. The form recounts that “penalties for false registration may include a term of imprisonment up to 5 years and a fine up to 5,000 [sic] . . . Subsequent convictions may result in greater penalties. False registration offenses include, but are not limited to, offenses constituting a felony of the third degree . . .” Each registration agent must sign and submit the notarized form before engaging in any voter registration activity.<sup>14</sup>

6. If, after pre-registering with the State, a “third-party voter registration organization” engages additional individuals to conduct voter registration, the emergency regulations require that sworn statements from these individuals be submitted to the State before the agents may begin registering voters.<sup>15</sup>

7. Each “third-party voter registration organization must report to the Division of Elections “any change in information previously submitted.” Thus, for example, if an existing

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<sup>12</sup> The proposed final regulations grant a partial reprieve to county election officials by specifying that a daily report need not be filed if no registration applications were provided to, or received from, an “organization” on the preceding business day. The proposed regulations do not take the same approach with the “organizations”; rather, they add that even if an “organization” had no registration activity during the previous month, it still must file a monthly report with the Secretary of State.

<sup>13</sup> As noted above, the proposed permanent regulations would amend “solicits” to “solicits for collection.”

<sup>14</sup> The proposed permanent regulations specify that if an individual should happen to work on behalf of more than one “third-party voter registration organization,” then each organization must separately submit the requisite sworn statement from that individual “registration agent.” For example, if an individual were to solicit and gather voter registration applications on behalf of his church, which registered as a “third-party voter registration organization” and submitted the requisite statement from that individual, the individual nonetheless would be in violation of Florida law if he were to then separately collect a registration application from his next-door neighbor if he did not himself register as a “third-party voter registration organization” and submit a second, identical sworn statement.

<sup>15</sup> The proposed new regulations alter this slightly to provide that such new registration agents must complete and sign a sworn statement before registering voters, and the “organization” then must ensure that the statement is submitted to the Division of Elections within ten days thereafter.

“registration agent” should change his or her temporary or permanent address from the addresses listed on the sworn statement submitted to the Secretary of State, the organization must report the new address to the Secretary. Also, when an individual ends his or her participation in soliciting or collecting registration applications for a “third-party voter registration organization,” the “organization” must inform the Secretary of State of that change.<sup>16</sup>

8. When an individual stops working or volunteering as a registration agent, the “organization” must obtain from that individual all of the state and federal registration applications that the agent has in his or her possession.

### **C. The Submitted Changes Are Unprecedented in Nature and Scope**

The restrictions that Florida seeks to impose on voter registration efforts by individual citizens and citizen groups are unprecedented in their nature and scope, both in terms of Florida’s regulation of other similar grassroots election activity and the extent to which other Section 5 states seek to regulate citizen registration efforts.

#### **1. Florida law.**

Florida does not regulate the activities of individuals who gather citizen signatures on other documents that have legal significance in the election process. Specifically, Florida does not regulate the process by which citizens collect candidate qualification signatures, Fla. Stat. § 99.095, or the process by which citizens collect initiative petition signatures, Fla. Stat. § 100.371. Likewise, Florida does not, in any other context, regulate the simple act of Florida citizens soliciting other citizens to participate in the State’s democratic processes.

#### **2. Other covered and partially covered States.**

No other State covered by Section 5 of the Voting Rights Act has enacted restrictions on citizen registration efforts that approximate what Florida is seeking to implement. Most do not regulate such activity at all. A few provide a deadline for turning in voter registration applications after receipt, but even these States (with the arguable exception of Texas) do not seek to impose any comprehensive regulation on third-party registration efforts.

The provisions in place in other covered jurisdictions are as follows:<sup>17</sup>

- Alabama: The Secretary of State must make voter registration forms available for use in registration drives, and there are no specific restrictions that apply to third-party voter registration efforts.<sup>18</sup>

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<sup>16</sup> The emergency regulation provides that updates must be submitted within five days of the occurrence of the change, while the proposed permanent regulations would require submission within ten days of the change.

<sup>17</sup> This list does not include Michigan, New Hampshire, or South Dakota.

<sup>18</sup> Ala. Admin. Code 820-2-2 (11)(3).

- Alaska: Citizen voter registration efforts are not regulated. (Alaska separately has a system whereby an individual may become a registration official, who then is able to officially accept and register persons to vote, rather than only transmitting completed forms to officials who make the registration determination.)
- Arizona: County registrars “may provide voter registration forms in quantity to groups and individuals that request forms for conducting voter registration drives.”<sup>19</sup> There are no restrictions on third-party voter registration activity.
- California: Persons collecting voter registration applications must complete a registration receipt with their address and telephone number and give it to the voter.<sup>20</sup> Voter registration applications must be turned in or mailed within three days of receipt, excluding all weekends and holidays.<sup>21</sup> Any person paid to collect voter registrations must list their name, telephone number, and address, and the name and telephone number of their employer, and affix their signature, on each registration card they collect.<sup>22</sup> Individuals or organizations that compensate others to collect voter registration applications are required to retain for three years, and provide on demand: the name, address, and telephone number of each of their employees and a signed acknowledgement of each employee’s receipt of a statement describing their duties under the law.<sup>23</sup>
- Georgia: Third parties engaged in voter registration must inform applicants about basic voter registration information and deadlines.<sup>24</sup> Completed voter registration forms must be sealed before a third party collects them, unless an applicant gives written consent to the third party to view and copy the information on the form.<sup>25</sup> Voter registration applications must be turned in within 10 days of the date of signature, or within three days during the last two weeks of the registration period.<sup>26</sup>
- Louisiana: Failure of a third party to submit to the parish registrar of voters a completed registration application collected through a registration drive within thirty days of receipt

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<sup>19</sup> ARIZ. REV. STAT. ANN. § 16-131(E).

<sup>20</sup> CAL. ELEC. CODE § 2158(b)(1).

<sup>21</sup> CAL. ELEC. CODE § 2138.

<sup>22</sup> *Id.* § 2159(a).

<sup>23</sup> *Id.* § 2159.5(a).

<sup>24</sup> GA. COMP. R. & REGS. 183-1-6-.02 (6).

<sup>25</sup> GA. COMP. R. & REGS. 183-1-6-.02 (7) (f)).

<sup>26</sup> GA. COMP. R. & REGS. 183-1-6-.02 (8)(a).

of the completed application is a violation of Louisiana election laws.<sup>27</sup> There are no other restrictions that apply to third-party voter registration.

- Mississippi: The Secretary of State is required to send bulk quantities of mail-in voter registration applications to any person or organization who requests them and charge the requesting entity the actual cost incurred in providing bulk quantities.<sup>28</sup> There are no other provisions in the Mississippi Election Code restricting or otherwise regulating third-party registration.
- New York: New York has no restrictions specific to third-party voter registration.
- North Carolina: The State Board of Elections must make voter registration forms available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration drives.<sup>29</sup> No restrictions are placed on third-party registration drives.
- South Carolina: South Carolina does not have any statutory provisions or guidelines restricting third-party registration.
- Texas: While Texas does not seek to regulate the simple solicitation of voter registration applications, it does provide that, in order to accept and submit another's voter registration application, an individual must be a "deputy registrar."<sup>30</sup> Eligible voters may request appointment as deputy registrars, and that request shall not be denied if an individual is eligible. The appointment is made after the individual executes an oath, and per a recently-passed law that goes into effect in September of 2011, undergoes training.<sup>31</sup> A volunteer deputy registrar may distribute voter registration application forms throughout the county and receive registration applications submitted to the deputy in person. All voter registration forms must be turned in to county registrars within 5 days of receiving them from the voter, and a deputy registrar must provide each voter with a signed receipt indicating the date that the deputy registrar accepted the voter's registration form.

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<sup>27</sup> La. Rev. Stat. Ann. §18:1461 (7)(A)(1).

<sup>28</sup> Miss. Code § 23-15-47(4)(c).

<sup>29</sup> N.C. GEN. STAT. ANN. § 163-82.5.

<sup>30</sup> Source Tex. Elec. Code § 13.031 et seq.

<sup>31</sup> Source Tex. Elec. Code § 13.031 as amended by 2011 Tex. Sess. Law Serv. Ch. 507 (H.B. 1570) : "(e) A regular deputy registrar may not assist in the registration of voters until the deputy registrar has completed training developed under Section 13.047. At the time of appointment, the voter registrar shall provide information about the times and places at which training is offered."

- Virginia: The only restriction is that a voter registration application must generally be turned in within 15 days of its date of signature.<sup>32</sup>

#### **D. Recent History of Third-Party Voter Registration Enactments by Florida**

The 2011 restrictions on citizen voter registration efforts are the most recent iteration of Florida's ongoing effort to significantly curtail the ability and opportunity of individual citizens and citizen groups to conduct voter registration activities. In 2005, the Florida Legislature passed a law that imposed heavy fines on "third-party voter registration organizations" for turning in completed voter registration applications more than 10 days after receiving them, or after an election's book closing. In 2006, the Brennan Center commenced litigation against the law on behalf of the League of Women Voters and other organizations, resulting in the law being enjoined by a federal district court for violating third-party voter registration organizations' First Amendment rights of free speech and free association.<sup>33</sup> The court noted that the heavy fines would have a chilling effect on the willingness of such organizations to register new voters.<sup>34</sup>

The Florida Legislature subsequently passed a revised version of the law that became effective in 2008, and which is the law that is in effect currently. The revised law was upheld in federal court.<sup>35</sup> It maintained the 10-day turnaround deadline but imposed significantly lower fines on third-party voter registration organizations than the prior law, added an annual cap of \$1,000 on the amount of fines that can be levied on an organization or any of its affiliates, removes an exception for political parties that was contained in the original law, and provides that fines "shall" be waived if an organization can show that timely delivery of the forms was impossible.

These restrictions appear to be accompanied by a dramatic decline in third-party voter registration activity. Florida's voter registration rates have dropped by approximately 25 percent between 2006 and 2010.<sup>36</sup>

#### **E. Minority Voters' Reliance on Third-Party Voter Registration Drives**

It is generally recognized that minority voters disproportionately rely on third-party registration drives. Those without access to the Internet and those who do not own a car (and

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<sup>32</sup> Virginia Stat. § 24.2-1002.01.

<sup>33</sup> *League of Women Voters of Florida v. Cobb*, 447 F.Supp.2d 1314, 1316 (S.D. Fla. 2006).

<sup>34</sup> *Id.* at 1332–33.

<sup>35</sup> *League of Women Voters of Florida v. Browning*, 575 F.Supp.2d 1298 (S.D. Fla. 2008).

<sup>36</sup> From January through October 2006, there were 479,611 new and valid voter registrations in Florida, compared to 363,545 in the same period in 2010, a 24.2% decline. See Florida Division of Elections, Voter Registration Statistics, <http://election.dos.state.fl.us/NVRA/reports.shtml>; Voter Registration Year To Date Report, October 2006: <http://election.dos.state.fl.us/voter-registration/archives/2006/October/YTDTTotal.pdf>; Voter Registration Year To Date Report, October 2010: <http://election.dos.state.fl.us/voter-registration/archives/2010/October/YTDTTotal.pdf>.



thus do not use the Department of Motor Vehicles to register to vote) are less able to register through means other than voter registration drives. Absent the third-party voter registration efforts, many of these voters will either not register or will complete their registration applications improperly.

In Florida, U.S. Census Bureau data from the 2004 and 2008 election cycles show that both African-Americans and Hispanics rely more than white voters on third-party registration drives, and that, indeed, minority reliance on such drives is greater in Florida than elsewhere in the country. Specifically, African-American and Hispanic citizens in Florida are more than twice as likely to register to vote through private drives as white voters. In 2004, while 6.6 percent of non-Hispanic whites in Florida indicated they registered through private drives, 17.4 percent of African-Americans and 18.9 percent of Hispanic voters in Florida registered in this manner.<sup>37</sup> Similarly, in 2008, 6.3 percent of non-Hispanic white registered voters in Florida were registered through drives versus 12.7 percent of black voters and 12.1 percent of Hispanic registered voters.<sup>38</sup> Among those who said they voted in Florida in 2008, 6.3 percent of white voters were registered through drives, versus 11.5 percent of black voters and 11.5 percent of Hispanic voters.<sup>39</sup>

These data appear to be the best data available regarding the extent to which minority citizens in the five covered counties disproportionately rely on third-party voter registration efforts. The Census does not report such data by county, and it is our understanding that the five covered counties do not maintain such data. Given the pronounced statewide pattern that exists in Florida, and the fact that the pattern both tracks and exceeds the national pattern, there would seem to be little doubt that this also is what is occurring in the five covered counties. Certainly, Florida has not provided any evidence to the contrary.

Current registration rates confirm that Hispanic voters are underrepresented in terms of voter registration in the covered counties, while black voters have begun to achieve equity in voter registration rates. As noted above, the CVAP of the five counties combined (2010 Census) is 12.0 percent black (non-Hispanic, “black alone”) and 15.2 percent Hispanic. Voter registration in the five counties combined, as of the 2010 general election, is 12.2 percent black

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<sup>37</sup> U.S. Census Bureau, Current Population Survey, November 2004. The national figures in 2004 were: 7.8% of non-Hispanic whites; 12.7% of blacks; and 12.9% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html>.

<sup>38</sup> U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/apsd/techdoc/cps/cpsnov08.pdf>. All data from the CPS on methods of voter registration is self-reported by survey respondents. The corresponding national figures in 2008 were: 5.4% of non-Hispanic whites registered at private drives; 11.1% of African-Americans; and 9.6% of Hispanics. See Table 14, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

<sup>39</sup> U.S. Census Bureau, Current Population Survey 2008, available at <http://www.census.gov/apsd/techdoc/cps/cpsnov08.pdf>.

and 12.0 percent Hispanic, based on Florida residents' self-identifications on their voter registration forms:<sup>40</sup>

County	White VR	Black VR	Hispanic VR
All Combined	72.7%	12.2%	12.0%
Collier	86.5%	3.1%	8.1%
Hardee	74.4%	6.5%	15.9%
Hendry	61.8%	14.9%	18.8%
Hillsborough	68.1%	15.5%	13.1%
Monroe	86.8%	3.5%	8.4%

There is no doubt that Hispanic voters remain underrepresented on the voter rolls (15.2% of the 2010 CVAP, but only 12% of registered voters). The underrepresentation is particularly stark in Monroe County, where Hispanics make up 13.2% of the CVAP, but only 8.4% of registered voters, and Hardee County, where they are 22.6% of the CVAP, but only 15.9% of voters. Black voters are underrepresented in three of the covered counties: Hardee (10.3% of CVAP vs. 6.5% of registered voters); Hendry (16.6% of CVAP vs. 14.9% of registered voters); and Monroe (3.8% of CVAP vs. 3.5% of registered voters).

However, even in the counties where minority voter registration has achieved some parity with population figures, these numbers are undoubtedly a result, in part, of focused efforts by third-party voter registration groups to bring new and minority voters onto the rolls. H.B. 1355's dramatic impact on third-party voter registration efforts risks eliminating a key mechanism for achieving racial equity on the voter rolls.

#### **F. Effect of the Changes on Third-Party Registration Efforts**

It appears highly likely that the restrictions on third-party voter registration activities put into place by H.B. 1355, along with the restrictions further imposed by the Secretary of State's regulations and standard forms, will dramatically curtail, or even put a halt to, third-party voter registration efforts in Florida.

For individuals or groups that are not specifically organized to engage in voter registration drives, and want to undertake an *ad hoc* or a time-limited voter registration effort (e.g., efforts by a religious organization, a neighborhood group, or a student group), it clearly will be difficult and time-consuming to attempt to comply with the array of requirements imposed by the State and the level of minutia that is required. The need to pre-register with the State, have volunteers sign sworn statements which indicate that they may be subject to felony prosecution, implement the organizational control needed to satisfy the 48-hour turnaround requirement, update the state registration if any new volunteers are brought on after the initial state pre-registration, track any changes in the information previously provided to the State (even

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<sup>40</sup> The voter registration percentages were calculated from data from data provided by the Florida Division of Elections. <http://election.dos.state.fl.us/voter-registration/index.shtml>. The calculations exclude the small number of persons who did not self-identify their race on their voter registration forms (in the five counties combined, 2.8 percent of all registered voters are listed as "unknown" race as of the 2010 general election).

concerning volunteers' residence addresses) and submit updates, track the number of registration forms given to each volunteer and returned by each volunteer, and obtain unused forms back from any volunteer who ceases his or her participation in the effort will likely cause many groups to conclude that conducting a legal voter registration drive is simply not possible. And, those groups that do seek to comply clearly will need to devote substantial resources to following the multitude of requirements, which in turn will necessarily limit the amount of resources they can devote to actually conducting registration drives.

The new restrictions will not be any less problematic for groups whose mission is to conduct voter registration drives. While these groups may have more organizational resources and voter registration experience than the types of groups noted above, their resources still are limited and the larger size of their voter registration efforts will make it more difficult to comply with the restrictions.

Democracia USA, a project of the National Council of La Raza, is a national, non-partisan civic engagement organization that seeks to increase the prominence and participation of Latinos in the American democratic process. Since 2004, Democracia USA has registered over 200,000 individuals in Florida alone.<sup>41</sup> It runs a highly structured and closely supervised voter registration effort that mostly relies on paid staff. It conducts voter registration drives door-to-door in Latino neighborhoods, at specific selected locations, and at special events (such as community festivals). Among the covered counties, it has registered a significant number of voters in Hillsborough County, including approximately 4,600 individuals in 2008 and 7,000 in 2010.

Democracia USA has conducted an extensive review of the new third-party voter registration restrictions and, based on that review, has at least temporarily suspended its voter registration efforts statewide. Democracia USA wants to be able to continue its voter registration efforts, as these efforts are a part of its core organizational mission. However, it is uncertain how it will be able to operationalize the new requirements, given their nature and breadth. Implementing the new requirements will require significantly more staff time, significantly increasing the cost to the organization of conducting voter registration drives. Thus, it appears that the restrictions, at a minimum, will have the long term effect of substantially reducing the length and number of registration drives it is able to conduct.

For example, ensuring that each of the thousands of registration applications Democracia USA historically has collected includes the date, hour, and minute at which it was signed likely will require substantial staff time, considering the fact that, historically, one office may produce up to one thousand registration applications on just one day. Democracia USA also currently subjects every registration drive to an extensive quality control process which occurs after the voter registration applications are collected. This allows the organization to flag and address incomplete registration forms, among other things. The organization is uncertain how or whether this process may be maintained in light of the 48-hour turnaround requirement, since the current process takes several days. Democracia USA also does not track the precise number of blank registration forms given to each person collecting registration forms, or the number of

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<sup>41</sup> The information regarding Democracia USA's voter registration program is from an interview with Rudi Navarra, the organization's National Program Coordinator, on July 6, 2011.

blank forms that each does not use in a given period of time, and so complying with these requirements will necessitate additional staff time as well. Finally, while the new form required of “registration agents” may not intimidate Democracia USA’s experienced staff, it will make it more difficult to hire new staff, who may well be deterred by the statements about possible felony prosecution.

The League of Women Voters of Florida (LWVF) is an all-volunteer, non-partisan organization that has been dedicated to registering Floridians to vote and engaging them in the political process for over 70 years.<sup>42</sup> LWVF has a statewide office in Tallahassee, and 29 local leagues throughout the state, including League affiliates in Collier County (established in 1975) and Hillsborough County (established in 1949). Both are active county Leagues with numerous public events at which volunteers offer voter registration opportunities. As Marilyn Wills, Second Vice President of the LWVF, noted:

The League has been registering voters in Florida since 1939. We register voters all year long and automatically tie voter registration to every non-lobbying activity. Approximately 99% of voter registration is a secondary activity to our other educational endeavors. Whether it’s a hot topic lunch, a high school event, a debate, or any other election related activity, members always have voter registration forms on hand to register voters.

Due to the passage of H.B. 1355, the LWVF’s board of directors has voted to cease all voter registration efforts by the League and its affiliates in all Florida counties, including the covered jurisdictions. On May 26, 2011, the state board issued a moratorium to all LWVF members and affiliates directing them to cease voter registration activity. As the Collier County League indicates on its website, the new law “imposes an undue burden on groups such as ours that work to register voters.”<sup>43</sup>

H.B. 1355 creates particular burdens on the LWVF affiliates’ all-volunteer operations. Because the law permits the state to levy a fine or institute a civil proceeding against individual registration agents in addition to the organizations they volunteer with, LWVF leaders believe these individual risks will chill their members’ participation in volunteer voter registration. Therefore, even if the LWVF’s state board were to lift the voter registration moratorium, officials with the LWVF believe that the new law will make it difficult, if not impossible, to secure volunteers for voter registration drives. According to Pam Goodman, First Vice President of LWVF, volunteers will likely be unwilling to risk the individual summons or fines permitted by H.B. 1355. “Because of the risk, they won’t register voters under this new law.” Quoting the state LWVF, the Collier County League notes that it has shut down voter registration in part to protect the LWVF’s volunteers, stating “we cannot and will not place thousands of volunteers at

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<sup>42</sup> The information regarding the League of Women Voters of Florida’s voter registration activity is from an interview with Marilyn Wills, Second Vice-President; Pam Goodman, First Vice President; and Jessica Lowe-Minor, Executive Director, of the League of Women Voters of Florida (June 22, 2011).

<sup>43</sup> Website of the League of Women Voters of Collier County, available at <http://www.lwvcolliercounty.org/> (last checked July 6, 2011).

risk, subjecting them to a process in which one late form could result in their facing financial and civil penalties.”<sup>44</sup> In addition, the law’s requirements that a barrage of forms be submitted and updated electronically places massive stress on all-volunteer LWVF affiliates, which lack office space, electronic equipment, or the staff to manage the multiple electronic submissions required by H.B. 1355.

Rock the Vote is another organization that works to register new Florida voters. Rock the Vote works closely with college volunteers, and is a non-partisan, non-profit organization that focuses on registering new and young voters via both in-person voter registration activity in Florida and via its national website. “The personal delivery requirement would make it very challenging to meet the 48 hour deadline — not all volunteers have cars and not all college campuses are close to county seats,” states Thomas Bates, Vice President for Civic Engagement. He also indicates that H.B. 1355 places “a significant burden” on Rock the Vote’s ability to register and engage voters in Florida.

### **G. Florida Has Provided No Non-Discriminatory Justification for H.B. 1355**

The legislative history of H.B. 1355 provides scant evidence of any justification for the far-reaching and onerous new requirements set forth in the law. During the legislative debates, the bill’s sponsors and supporters made numerous references to the sanctity of the voter registration process, but were unable to point to any actual evidence that the current Florida law is inadequate or that there is any record of voter registration abuses.<sup>45</sup>

For example, Representative Baxley, the sponsor of the bill, claimed that the reason to change from the current ten-day requirement for submitting completed registration applications to 48 hours is that voter registration forms are

valued document[s] and the longer you have these documents floating around, the more likely it is for mischief and mishap. There is a responsibility that when you’ve taken someone’s registration for them to go ahead and deliver it immediately. And we have made a provision that if it’s a weekend or whatever, fine.<sup>46</sup>

But when asked how many forms filled out with the assistance of third party voter registration organizations are “floating around,” Baxley was unable to offer any evidence of any problem, instead replying with his own speculative question: “Who knows how many slip through the system?”<sup>47</sup>

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<sup>44</sup> Website of the League of Women Voters of Collier County, available at <http://www.lwvcolliercounty.org/> (last checked July 6, 2011).

<sup>45</sup> To prepare this comment, we have watched video of all Florida House and Senate testimony and debate regarding H.B. 1355. As official transcripts are not available, the quotes set forth herein are from an in-house transcription.

<sup>46</sup> FLA. HOUSE DEB.: 2nd Reading, Rep. Kriseman (April 20, 2011, 12:30).

<sup>47</sup> FLA. HOUSE DEB.: 2nd Reading, Rep. Kriseman (April 20, 2011, 32:04).

Another supporter of the bill, Senator Bennett suggested that the bill does impose burdens on voters, but these burdens are justifiable. Senator Bennett was emphatic that voting and voter registration should be made more difficult under Florida law:

You say it is inconvenient. Ever read the stories about people in Africa? People in the desert who literally walk 200-300 miles so they could have an opportunity to do what we do? And we want to make it more convenient? How much more convenient do you want to make it? Want to go to their house? Take the polling booth with us? This is a hard fought privilege. This is something people died for. And you want to make it convenient? To the guy who died to give you that right, it was not convenient. Why would we make it any easier? I want 'em to fight for it. I want 'em to know what it's like. I want 'em to have to walk across town to go over and vote. I want 'em to at least know the date of when they're supposed to vote. I'd like them to actually know where they're supposed to go vote. Is that too much to ask? I don't think so. . . . This is Florida and we should count. We do make it convenient for people to vote but I gotta tell ya I wouldn't have any problem making it harder. I would want them to really want to be informed. I would want them to really want to vote as badly as I want to vote. I want the people in the State of Florida to want to vote as bad as that person in Africa who is willing to walk 200 miles for that opportunity he's never had before in his life. This should not be easy. This should be something you feel with a passion.<sup>48</sup>

Opponents of the bill, on the other hand, pointed out the very real racial impacts that H.B. 1355 is likely to have. Nothing in the legislative record of H.B. 1355 or the State of Florida's submission to the Department of Justice contains evidence contradicting or addressing these impacts. For example, Senator Rich highlighted how she believes that the bill will limit voter access and what the true intent of HB 1355 is, stating:

Under the guise of ensuring the integrity of the election process we have another bill that puts up barriers to participating in the democratic process. Make no mistake, the supporters of this bill can cite no examples of voter fraud or provide any proof that the integrity of our election process has been compromised. . . . I have to wonder if the only problem that can be found with our electoral process is that some people didn't like the outcome of our last presidential election or the outcome of some of our ballot initiatives...but this is no excuse to enact legislation that primarily affects the ability of people to vote who don't tend to support the majority party.<sup>49</sup>

Speaking about the discriminatory impact in the context of Florida's history of discrimination, Representative Thompson said the following during the House debate:

Florida is a covered jurisdiction under VRA of 1965 and those states or parts of states that are covered jurisdictions are placed in the VRA because they have a

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<sup>48</sup> FLA. SENATE DEB.: Final Passage, Senator Bennett (May 5, 2011, 35:40-38:24).

<sup>49</sup> FLA. SENATE DEB.: Final Passage, Senator Rich (May 5, 2011, 47:50).



history of discriminatory voting practices they have a history of voter suppression they have a history of voter intimidation. I had hoped that in my lifetime I would see Florida not among those covered jurisdictions. . . . And when I look at this bill that would impose a financial penalty on groups and organizations, third parties, that are working to get people registered. I have to ask the question, are we there yet? . . . It does limit access to voting and having your vote count. . . . Florida is still covered by the VRA of 1965 because of its history so why are we making it more difficult to vote? . . . What are we going to do with regard to getting these proposed changes cleared by the DOJ? With this bill we're putting up more roadblocks and hampering the opportunity of people who just want the right of every American and that is the right to vote. I don't think this is the direction that we should be taking in 2011.<sup>50</sup>

Finally, Representative Stafford outlined why she believes the bill has a discriminatory impact, speaking from the perspective of her own family's recent history:

When I read this bill, I thought about my 86 year old grandmother. . . . I thought about her as I read the provisions in this bill that, in my opinion, create barriers to voting. I thought about my grandma who was born in this country but was not allowed to vote in this country until 1965 because of the color of her skin. When my grandma was finally granted the right to vote in 1965 there were barriers put in place to exercising the right to vote. I submit to you that this bill creates barriers to exercising the right to vote. . . . It is the provision in the bill that eliminates long standing rules that allow voters to change their information at their polling place and forces voters attempting to vote in a different county to use provisional ballots which often go uncounted. . . . It's the provision in the bill that reduces from ten days to two days the time that third party groups have to submit voter registration forms to election officers or face a fifty dollar fine for each late submission. Are we now criminalizing voter registration efforts? . . . If this bill passes into law, the Floridians most harmed will be those who have been historically disenfranchised in this country—people of color. . . . and youth. Anything that makes it harder for a person to vote or harder for that vote to count is very concerning and alarming.<sup>51</sup>

In sum, while the retrogressive impact of H.B. 1355 was clearly noted on the record, neither the legislative history of the bill nor the State's submission to the Department address with any specificity, the degree to which the new law will harm Florida's minority voters.

#### **H. The New Voter Registration Restrictions Must Not Be Precleared**

As explained, H.B. 1355 includes a host of burdensome, unprecedented, and unnecessary restrictions on individuals and groups helping others to register to vote. Minority citizens in the covered counties disproportionately rely on third-party registration drives to register to vote, but

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<sup>50</sup> FLA. HOUSE DEB.: 3rd Reading, Rep. Thompson (April 21, 2011, 20:59-24:34).

<sup>51</sup> FLA. HOUSE DEB.: 3rd Reading, Rep. Stafford (April 21, 2011, 37:35-40:09).

the new restrictions will cause existing and planned third-party registration efforts to either be shut down or curtailed. The types of restrictions enacted by Florida are not found in other covered States, and Florida law regulates no other election-related citizen activity in this manner. The State has provided no record of voter registration abuses that could justify the far-reaching and onerous new requirements set forth in the new law. Indeed, the ink on Florida's latest round of restrictions on voter registration was barely dry when H.B. 1355 was enacted, even as state registration rates continued to plummet. Opponents of the bill pointed out not only that the restrictions were unjustified, but that they also risked harming Florida's minority voters.

For these reasons, the Justice Department should object to this direct attack on the voter registration process. Alternatively, the Department should send a written request for additional information to Florida.

### **III. Restrictions on Early Voting**

#### **A. Submitted Changes**

Section 39 of H.B. 1355 restricts the time period during which early voting is conducted for federal and state elections, and potentially restricts the number of early voting hours. The new law also provides that, with regard to county elections not held in conjunction with a federal or state election, early voting will become optional.

Currently, early voting runs for a full two-week period. It begins on the 15<sup>th</sup> day before an election and ends on the second day before the election. That means that early voting begins on a Monday two weeks before election day, continues from that Monday through the following Sunday, and then continues through the following week, ending on the Sunday two days before the election. Early voting is conducted for eight hours on each weekday, and for eight hours in the aggregate during each of the two covered weekends (each county decides how to allocate the weekend hours between Saturdays and Sundays).

Under the new law, early voting will occur over a more limited, eight-day period, from the tenth day before an election to the third day before an election. This will eliminate the first five days of early voting (Monday through Friday of the second week before the election), and also will eliminate the possibility of having early voting during the Sunday two days before the election. Early voting will begin on a Saturday, a week and a half before an election, and will end on the following Saturday. Moreover, instead of a set number of hours for each weekday and an aggregate number of hours for each weekend, each county elections supervisor will be given the discretion to set the number of early voting hours for each day (weekday or weekend day), between a minimum of six hours and a maximum of 12 hours. The hours also could vary between early voting sites in the same county.

Pursuant to the Procedures for Administration of Section 5, 28 C.F.R. § 51.15, the new law thus is enabling in two respects: first, the law grants discretion to election supervisors to set the number of early voting hours in each election; and, second, the law grants discretion to election supervisors to decide whether to conduct early voting in county elections in which there is no federal or state office on the ballot. It follows, therefore, that if the Justice Department ultimately concludes that the early voting changes should be precleared, the Department would

be obligated to inform the State and the covered counties that these enabled changes must receive preclearance in the future when early voting decisions are made.

### **B. Minority Voters' Reliance on Early Voting**

As shown by election data maintained by the State of Florida, black voters in the five covered counties disproportionately have relied on early voting in casting their ballots in recent elections.<sup>52</sup>

This was especially true in the 2008 general election, when over half of all black voters in the covered counties who cast a ballot in that election – 52.8 percent – voted using early voting.<sup>53</sup> In contrast, only about a quarter of white voters in the covered counties who voted in that election cast early-voting ballots, 27.9 percent. The Hispanic rate was 27.8 percent, which was essentially identical to the white percentage. The percentage for the category of registered voters which Florida denominates as “other” was 31.1 percent.

In the 2010 general election, the difference between black and white voters was less dramatic, but black voters in the covered counties still disproportionately made use of early voting in that election as well. Among black voters, 28.6 percent voted early, whereas 24.7 percent of white voters cast early ballots. The rate among Hispanic voters was 18.9 percent, and the rate among “other” voters was 23.0 percent.

The data also show that, among early voters in the covered counties, black voters have relied disproportionately more on weekend hours than weekday hours.

### **C. Discriminatory Effect**

One of the key questions posed by the proposed early-voting changes is how counties will utilize the discretion newly granted as to the number of hours of early voting that will be conducted on each early-voting day. As noted by the State in its submission, it is theoretically possible that the number of hours of early voting will not be reduced in the covered counties as a result of H.B. 1355. But, for this to occur, each county will need to decide to conduct early voting for the maximum number of hours possible at all early voting sites in each county. Currently, all counties are required to have 96 hours of early voting at all early voting sites (10 weekdays times 8 hours a day, plus two weekends times eight hours on each weekend). Under the new law, each county could continue to conduct 96 hours of early voting, but only if each county conducts early voting for 12 hours a day at every early voting site in the county (8 days times 12 hours a day).

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<sup>52</sup> Data on the number of persons casting early-voting ballots were obtained from a Florida website, <https://doe.dos.state.fl.us/fvrscountyballotreports/FVRSAvailableFiles.aspx>, that identifies all persons who voted early in the 2008 and 2010 general elections, by voter identification number. The race of these early voters was obtained by matching these voter identification numbers with the data on the State’s registration file, which includes the self-identified race of each voter. The data on persons who voted absentee and on election day were obtained from Florida’s statewide voter history file, a copy of which was obtained by the Brennan Center.

<sup>53</sup> In other words, 52.8% equals the number of black persons who cast early votes divided by the sum of all blacks who voted in that election (voted early, voted absentee, and voted on election day)

The State's submission, however, provides no factual information concerning this key issue. For example, the submission does not address how the practical realities relating to election administration (including, but not limited to, budgetary considerations) will affect the covered counties' decisions as to the number of early voting hours that they would decide to institute under the new law. Accordingly, this is one of the issues that the Justice Department should examine in sending the State a "more information" letter.

To attempt to gain some information about this question, we spoke with election officials in the five covered counties. These interviews suggest that the majority of the covered counties are not likely to offer the full 96 hours of early voting permitted under H.B. 1355. The election officials we interviewed in Hardee, Hendry, and Monroe Counties (Jeff Ussery, Lucretia Strickland, and Harry Sawyer, Jr., the counties' elections supervisors) do not expect to increase their hours and expressed doubt that they would be able to afford to do so. In Hillsborough County, the director of operations for voting (Lyle Roberts) said that he hopes that the county will keep early voting open for 96 hours, but also noted that the county would need to hire double the number of workers and institute double shifts to avoid the cost of overtime pay. Lastly, in Collier County, the Chief Deputy Supervisor of Elections (Tim Durham) believes that Collier will stay open for 96 hours at least for general elections, but will need to hire more poll workers to do so.

If, as is suggested by these interviews, the practical reality is that the new law will result in a significant reduction in the number of early voting hours, this weighs in favor of a finding of retrogression as to the early voting changes.

#### **D. Discriminatory Purpose**

The State of Florida's submission also provides little or no information that addresses the State's burden of showing the absence of discriminatory purpose. Our review of the legislative debates indicates that the opposition to the early-voting changes was based on the concern that the changes will reduce the opportunity of Florida voters to cast early votes. This concern, combined with the minority voters' reliance on early voting, suggests the possibility that a discriminatory purpose was present. Yet, the submission provides no neutral justification for the changes.

One particular concern is that the changes may have been adopted specifically to eliminate the possibility that early voting is conducted in the future on the last Sunday before the election. Under current law, counties have the discretion to conduct early voting on that day, but the new law requires that early voting end on the Saturday before the election. Several of the large urban counties in the State have conducted early voting on Sundays (although the covered counties did not in the 2008 and 2010 general elections), and the extent to which minority voters have made use of that voting opportunity has been dramatic (apparently many minority voters travel from church to their early voting site on that day). In the 2008 general election, statewide, 33.2 percent of those who voted early on that last Sunday before election day were black and 23.6 percent were Hispanic, whereas blacks constituted 13.4 percent of all early voters statewide (for all early voting days) and Hispanics constituted 11.6 percent. These data support the concern that a specific discriminatory purpose underlying the changes may have been to eliminate early voting on this last Sunday before election day.

This specific concern about the purpose underlying the changes applies to the present submission regardless of the fact that, as noted, the covered counties have not utilized early voting on this last Sunday in recent general elections. The covered counties currently have that option, and a discriminatory purpose aimed at eliminating that option would require the interposing of an objection.

Accordingly, the Justice Department also should obtain further information regarding the issue of discriminatory purpose by making a written request for additional information as to the early voting changes.

#### **E. The State Has Not Met its Burden Under Section 5**

For the reasons set forth above, the State has not met its burden under Section 5 with regard to its submission of the early voting changes, and the Justice Department should send a written request for additional information.

### **IV. Restrictions on Voting by Registered Voters Who Move Between Florida Counties Without Re-Registering at Their New Address**

Section 26 of H.B. 1355 enacts new restrictions on the ability of persons who are registered to vote in Florida, and who move between counties without re-registering at their new address, to change their address at their polling place in their new county and cast a ballot that will be counted. This voting change is of concern both because Florida's submission to the Justice Department does not clearly delineate the nature and scope of the change (as required by 28 C.F.R. § 51.27 (c)) and because the available data suggest that the affected voters may be disproportionately minority. Accordingly, we believe that the appropriate course of action is for the Justice Department to send Florida a written request for additional information so as to clarify what Florida is submitting for preclearance, and to enable the Department to properly assess whether the change is discriminatory.

#### **A. Benchmark System**

Florida law generally provides that Florida residents may vote only in the "election precinct in which . . . [they are] registered." Fla. Code § 101.045(1).

However, Florida law also includes a significant exception to this rule: registered voters who move after registering to vote, and who do not re-register at their new address, nevertheless are permitted to vote in their new precinct so long as they complete an affirmation specified in Florida law. Fla. Code § 101.045(2)(a).<sup>54</sup> This exception applies equally to persons who move within the same Florida county and to those who move between Florida counties. This fail-safe provision, which ensures that persons who are properly registered to vote in Florida are not disenfranchised simply because they move without notifying Florida election officials, appears to have been the law in Florida for over two decades.

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<sup>54</sup> The affirmation that a mover must complete is simple and straightforward. The voter need only fill in his or her name, former address (including city and county), former precinct and county where registered, new address (including city and county), and the new precinct and county where the individual is now eligible to vote. The voter affirms this information, affirms that he or she is "otherwise legally registered and entitled to vote," and signs the affirmation. Fla. Code § 101.045(2)(a).

## **B. Proposed Change**

### **1. New statutory language**

Section 26 makes two important changes to the statutory language of the Florida code section in question, Fla. Code § 101.045. First, Section 26 includes new language which, at first blush, could be interpreted as limiting the “movers” exception to those registered voters whose change of residence is intra-county, and eliminating the exception for those whose change of residence is inter-county. In this regard, Fla. Code § 101.045(2)(a), as amended by Sec. 26, specifies that the exception is to apply to electors whose “change of residence is within the same county.” Second, Section 26 adds a new subsection “(b)” to § 101.045, to provide that registered voters who move inter-county “may not change [their] legal residence at the place and vote a regular ballot; however, such elector[s] [are] entitled to vote a provisional ballot.”

### **2. Will registered voters who are inter-county movers still be able to cast a ballot that will be counted?**

The questions presented by the submitted amendments are whether, if Section 26 is precleared, Florida will count provisional ballots cast by inter-county movers who are registered to vote but who have not re-registered at their new address, and if so, what actions will such inter-county movers be required to take in order for their provisional ballots to be counted.

The answer to the threshold question – whether there are any circumstances in which these provisional ballots will be counted – appears to be “yes,” but the State’s submission is not clear on this point. Therefore, the Justice Department should seek a written clarification from the State on this critical issue.

More specifically, Exhibit E to the State’s submission, which provides a section-by-section description of the changes, advises, circularly, that inter-county movers’ provisional ballots will be counted except when the voter “was not entitled to vote.” Exh. E, at 12. Exhibit E then goes on to note the reasons that a voter may not be “entitled to vote.” These reasons do not include being registered in one’s former county but not in one’s new county of residence. Accordingly, this may suggest that such provisional ballots can be counted. On the other hand, Exhibit E also references the state statute regarding the counting of provisional ballots, Fla. Stat. § 101.048, and that statute specifies that provisional ballots are counted only when “the person voting that ballot was entitled to vote at the precinct where the person cast a vote in the election.” Fla. Stat. § 101.048(2)(a). Given the amendment to Fla. Stat. § 101.045(2)(a) noted above, it might be argued that these inter-county movers will no longer be “entitled to vote at the [new residence] precinct.”

This threshold question appears to have been definitively answered by Directive 2011-01, issued by the Secretary of State to the county election supervisors on May 19, 2011 (see Attachment D to this letter). The Directive states that, under the new law, the determination as to whether to count provisional ballots cast by inter-county movers is made using “the same standard that would apply for counting a regular ballot” by intra-county movers, i.e., the ballots should be counted unless the inter-county mover “was not registered or the voter voted in a precinct other than the one that corresponds to his or her new address.” Directive 2011-01, at 2. However, this Directive was not included in the State’s Section 5 submission.



The second question, assuming that inter-county movers' provisional ballots have the potential to be counted, is what inter-county voters will be required to do in order for their provisional ballots, in fact, to be counted. For example, will these voters still complete the same affirmation that they complete under current law and, if so, will this be sufficient or will they need to do more? Will the voters need to present evidence of eligibility to the elections supervisor after election day (in the same way that persons who cast provisional ballots for other reasons are required to do)? The State's submission does not address this question at all, and Directive 2011-01 makes only a glancing reference to this.

Accordingly, the Justice Department should seek clarification from the State, in writing, as to whether there are circumstances in which provisional ballots cast by these inter-county movers may be counted and, if so, what steps must these citizens take in order to cast a provisional ballot that will be counted. Once the Department obtains these answers, the Department also, in its final decision letter, should specifically identify what the State is changing with regard to voting by inter-county movers who are registered to vote but who do not re-register at their new Florida address, so that the precise preclearance issue in this regard is set forth.

### **C. Potential Discriminatory Nature of the Submitted Change**

We also do not believe that the State has made the necessary showing of no discriminatory purpose and no retrogressive effect, and believe that, in order to address these issues, the Justice Department should send a written request for additional information.

First, because the nature and scope of the change has not been properly delineated, it is difficult to gauge the obstacles that Florida may be erecting to voting by these inter-county movers and why these obstacles have been created. For example, if the inter-county movers will be required to complete the same affirmation they are required to complete now, and if their votes then will be counted so long as they properly complete the paperwork associated with provisional ballots – with no need to do anything more – the obvious question is why will these voters be required to jump through the additional “provisional ballot” hoop when this would not seem to serve any substantive purpose? On the other hand, if the inter-county movers will be required to do more, why is their eligibility to vote more suspect than that of intra-county movers, especially given the fact that the State has a computerized statewide system of voter registration? Nothing in the State's submission answers these questions.

Second, the State has not provided any data as to the racial composition of the inter-county movers in question (i.e., registered voters who move into a Florida covered county from another Florida county and who do not re-register at their new address). The data that we have been able to identify suggests, however, that these voters are disproportionately African American. The Census Bureau's 2009 American Community Survey reports data, by race and Hispanic origin, regarding the percentage of persons of each population group (one year and older) within each of the covered counties that had moved from another Florida county within the past year. These data are as follows:

Race <sup>55</sup>	Collier	Hardee	Hendry	Hillsborough	Monroe
White	1.9	3.4	5.6	2.8	2.3
Black	1.9	15.4	12.2	2.9	3.6
Hispanic	1.8	3.4	3.3	3.0	3.5

#### **D. Summary**

For these reasons, the State has not met its burden with regard to this submitted change and the Justice Department should send the State a written request for additional information to request: a) “[a] statement that identifies with specificity” the nature and scope of the change regarding registered voters who move between counties without re-registering in their new county, as required by 28 C.F.R. § 51.27(c); b) a clear delineation of any new burdens being imposed on these inter-county movers to cast a ballot that will be counted, and the reasons for imposing these burdens; and c) any data available to the State that relates to the racial composition of these inter-county movers in the covered counties.

#### **V. Conclusion**

For the reasons set forth above, the Justice Department should not grant Section 5 preclearance to three significant sets of voting changes enacted by H.B. 1355 – the changes that would severely restrict citizen voter registration efforts, the changes that would shorten the early voting period, and the changes with regard to voting by persons who are registered to vote and move between counties without re-registering to vote.

Respectfully submitted,

Lee Rowland  
Democracy Counsel  
Brennan Center for Justice

Mark A. Posner  
Senior Counsel  
Lawyers’ Committee for Civil Rights Under Law

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<sup>55</sup> The data for whites are for white non-Hispanics. However, the data reported for blacks include black Hispanics as it does not appear that the 2009 ACS reports change-of-residence data for black non-Hispanics.

# Exhibit B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA

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

Plaintiffs,

v.

KURT S. BROWNING, 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. \_\_\_\_\_

**Affidavit of Deirdre Macnab**

**Submitted in Support of**

**Plaintiffs' Motion for**

**Preliminary Injunction**

I, Deirdre Macnab, hereby declare as follows:

1. I am a U.S. citizen, a resident of Florida, a registered voter, and I am serving my second term as President of the State Board of Directors of the League of Women Voters of Florida ("LWVF"). I submit this affidavit in support of Plaintiffs' motion for a preliminary injunction to prevent enforcement of the provisions of the newly enacted 2011 Fla. Laws 40 § 40 (codified at Fla. Stat. § 97.0575) ("the Law") that impose onerous new registration, reporting, and submission deadlines on individuals and civic groups engaged in voter registration, and which are preventing LWVF from fully carrying out its mission of fostering civic participation.

2. My experience with LWVF includes four years on the State Board, as well as four years as President of the League of Women Voters of Orange County, one of LWVF's largest local Leagues. My great-great-grandmother was a League of Women Voters member. I believe passionately in the mission of the LWVF, and my role as President is extremely meaningful to

me on a professional and personal level. I also have enjoyed a successful career that has included corporate work, public service, and elected office. I hold an MBA from Columbia University in marketing and finance and a B.A. from New York University in History and Political Science.

3. In my capacity as President of LWVF, I am responsible for leading our State Board of Directors, running State Board meetings, recommending and deliberating about statewide policy positions and strategy, and communicating our policies to our many local chapters, our members, and the public. I am intimately involved in all aspects of our work, including our previously extensive voter registration work, our legislative and policy positions, and the procedures by which we attract, retain, and communicate with our extensive membership. I am the official voice of LWVF in the media and to the public. All of my time is volunteered, and I spend around 60 hours per week performing my duties. Our State Board members volunteer up to 40 hours per week with LWVF, in addition to the hours many of them spend volunteering for local leagues in their home counties.

#### **The League of Women Voters' History, Mission, and Structure**

4. The national League of Women Voters was founded by Carrie Chapman Catt in 1920 during the convention of the National American Woman Suffrage Association. The convention was held just six months before the Nineteenth Amendment to the U.S. Constitution was ratified, giving women the right to vote after a 72-year struggle.

5. LWVF was founded in Florida in 1939. LWVF is a nonpartisan, not-for-profit corporation organized under the laws of Florida, and a tax-exempt charity pursuant to sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. It has approximately 2,800 current dues-

paying members in Florida, and a list of about 9,000 members, supporters, and volunteers, who receive regular communications from LWVF.

6. LWVF has 29 separately incorporated city- and county-based local leagues throughout Florida ( "local Leagues").

7. LWVF's mission is to promote political accountability by encouraging the informed and active participation of citizens in government. LWVF also influences public policy through education and advocacy. One of LWVF's primary goals is to promote effective voter participation in government. LWVF accomplishes this goal by: (1) conducting voter registration drives throughout the state; (2) holding educational forums and candidate debates open to the public; (3) publishing a quarterly newsletter and hosting a website; (4) distributing both a non-partisan biannual election guide to candidates for statewide office, and objective information regarding proposed constitutional amendments in Florida; and (5) distributing information on topics including government reform, education, natural resources, social policy, and fiscal policy.

#### **LWVF Organizational Structure and Activities**

8. LWVF has one physical office located at 540 Beverly Court, Tallahassee, Florida 32301-2506. Its nonpartisan education, outreach, and voter registration efforts are funded entirely by LWVF's annual 501(c)(3) Education Fund, with a budget of approximately \$99,000.

9. LWVF employs only two staff members: a part-time Executive Director and a part-time Office Manager. We also hire a contract lobbyist for legislative advocacy. The Executive Director, alongside volunteer interns and LWVF members, manages the office, handles correspondence and donations (via phone, mail, and email), services local chapters, supports Board of Directors meetings and member meetings, and prepares reports. She also serves as a



control tower between the LWVF state office and local leagues and volunteers. Our office manager assists with all of these tasks and provides administrative support to the Executive Director and the State Board.

10. LWVF maintains a website at [www.thefloridavoter.org](http://www.thefloridavoter.org) and, through its Education Fund, maintains another website at [www.bereadytovote.org](http://www.bereadytovote.org), which houses our groundbreaking collaboration with Microsoft to use smart phone technology to help voters access and confirm their current voter registration status.

11. LWVF policy is set by consensus among its State Board members, all of whom must be current dues-paying members. The State Board sets statewide policy for local leagues, particularly concerning policy positions and voter registration efforts. The State Board also publishes an annual report, available to members and to the public, detailing LWVF's financials, policy, and accomplishments each year.

12. LWVF has 29 local Leagues, which are community-based and depend entirely on member volunteers; none have paid staff. To the extent that volunteers need storage space or a physical location for meeting and planning, local Leagues operate from the homes of volunteers or in free community meeting spaces. Only the St. Petersburg League has a physical office. Each local League must pay dues to both LWVF and the national League of Women Voters. Individual members join their local League and pay a \$50 annual membership fee. Out of that \$50, the local League will owe \$30 to the national organization, and \$15 to LWVF, leaving the local League with \$5 per new member. Every member of each of the 29 local Leagues is also a member of LWVF.

13. For example, the Tallahassee League, like all local Leagues, has no staff and is composed entirely of volunteers. Its annual income is approximately \$5,000, derived mostly from member

dues. It uses these funds to pay its membership fees to LWVF and the national League of Women Voters, and, with what little is left, to print and mail voter information brochures that describe local, state, and national issues. It also publishes a brochure listing the contact information of school board members, state representatives, senators, members of the judiciary, and other government officials. The Tallahassee League has engaged in voter registration in the past, but has not previously allocated specific money toward that activity. Like the state LWVF, it never needed to, because all voter registration work was entirely volunteer-based and cost the organization no money.

14. Many local Leagues do not have access to computers and other technology. This is due in part to their sparse budgets and in part to the fact many members are not familiar with computer or email technology. For example, the Martin County League does not have a website, and its former president did not have an email address. While LWVF's state office has a scanner and a fax machine, local Leagues generally have no centralized or free access to such equipment.

15. Although LWVF maintains a list of members, it is difficult to tell when individuals consider themselves "active" members. Each member must pay dues every year by the date on which he or she joined LWVF. However, it is very common for members to pay late, for example delaying a renewal payment until the beginning of the calendar year, or forgetting to renew promptly. LWVF does not immediately remove these members from our communications lists or stop offering them opportunities to volunteer. Lapsed members routinely pay their renewal dues and become current again. These individuals likely consider themselves continual members, and LWVF considers them supporters and calls on them as volunteers. I do not believe that the simple lapse in payment of dues on the annual date signals that an individual wishes to terminate his or her association with LWVF, or an unwillingness to volunteer with us.



16. Not all volunteers are dues-paying members. Some volunteers only donate their time once, or on a few occasions. LWVF does not require volunteers to sign contracts or other documents, specify the beginning and ending dates of their volunteerism, or to provide updates to LWVF about “terminating” their volunteerism. Any of these requirements would stigmatize and reduce volunteerism. LWVF strives to facilitate an open, inclusive environment that accepts all comers and does not require a level of formality beyond maintaining contact information and asking the time which each volunteer is willing to give on any given day.

#### **LWVF’s Voter Registration Activity**

17. Registering new voters is a critical part of LWVF’s mission to promote political responsibility through an informed and active citizenry. It is also an important part of accomplishing our goal of increasing political participation by women, youth, and citizens in traditionally underrepresented and disenfranchised communities, particularly residents of low-income, African-American, and Hispanic communities. Indeed, recognizing Florida’s diverse population, LWVF publishes statewide candidate guides in both English and Spanish.

18. Voter registration is particularly important and integral to LWVF’s mission in presidential election years. The heightened attention to politics makes citizens more interested in government, which gives LWVF an opportunity to engage them in the political process and in the values and issues for which the League of Women Voters stands. With the extent of attention already on the 2012 election, the coming months will provide a crucial opportunity to bring more citizens into the democratic system.

19. LWVF conducts annual voter registration drives through its 29 local Leagues. There is a State Board member dedicated to voter service who communicates to those members coordinating voter registration drives at the local level about broad policy and priorities. Local

Leagues design, plan, and conduct their own voter registration activity without operational assistance from the LWVF, usually led by a local voter service chairperson. These drives occur throughout the year, but they are especially active in the summer and fall months immediately prior to voter registration deadlines for fall primary and general elections.

20. Typically, local Leagues will register new voters by attending community events or talking to citizens at malls, schools, nursing homes, or other institutions or high-traffic areas. At these events, our volunteers often set up tables and encourage passersby to stop and fill out a new voter registration form. Alternatively, volunteers walk around high-traffic areas with forms on clipboards and ask individuals if they would be willing to register to vote.

21. Helping other Floridians to register to vote is one of the most popular and effective volunteer opportunities with LWVF, and it has consistently been one of the best ways to get new volunteers invested in our work. New and busy volunteers love it because the schedule is flexible in terms of both scheduling and time commitment. It is one of the few activities in which a volunteer can participate on an impromptu basis and, within an hour or less, be trained and help voters to register. I have come to believe that individuals who begin volunteering even a few hours helping to register their fellow citizens to vote find the activity extremely rewarding and feel a sense of purpose and connection to their democracy. Many, if not most, of our seasoned volunteers, stalwart supporters, and State Board members began volunteering their time at a LWVF voter registration drive table. My own very first hour spent volunteering with LWVF was behind such a table.

22. While engaging in voter registration activity, LWVF volunteers hand out pamphlets and other materials discussing the importance of registering to vote, providing information about voting, and informing new voters about how they can contact their elected officials. For

example, LWVF volunteers provide new voters with a palm card published by the national League of Women Voters entitled “5 Things to Know,” which contains tips for successfully voting, such as taking their voter ID card to their polling place. Local Leagues also frequently release “Know Your Elected Officials” publications to provide their members with a basic overview of and contact information for their local government officials.

23. LWVF has recently launched the interactive “Be Ready to Vote” campaign, which connects Florida citizens to their county Supervisor of Elections office via smart phone technology in order to ensure their voter registration information is current and complete.

24. LWVF registers voters at all of its events throughout the year. Voter registration goes hand-in-hand with virtually all of LWVF’s public education efforts, as well as many of our advocacy activities. Registration efforts are automatically tied as a secondary exercise to every non-lobbying activity in which LWVF is involved. Whether the activity is a luncheon, a school event, a debate, or any another election-related activity, members always have voter registration forms on hand. LWVF believes that the best way to succeed at its mission of increasing civic engagement is to register as many citizens to vote as possible, to provide voters with basic nonpartisan information about candidates and issues on the ballot, and to get as many voters as possible out to the polls.

25. Local Leagues are very active in registering voters. For example, the Tallahassee League, which has been registering voters since its founding, registers voters at shopping malls, city Fourth of July celebrations, and the Tallahassee Saturday Downtown Market. The Tallahassee League usually registers voters in conjunction with its other activities. For instance, for several months before the 2004 election, it set up a table every Saturday at the downtown market to distribute a special edition of *State Voter*, an informational brochure published by



LWVF explaining all amendments to the State Constitution. In conjunction with this, the Tallahassee League registered voters, distributed voter registration forms, and gave out information about joining LWVF. The Tallahassee League also registered voters when it was collecting signatures for a state redistricting petition and a petition to change the timing of a city commission election in 2004.

26. Local Leagues also make a point to go to places where people who may not have either the means or the opportunity to register to vote congregate. Accordingly, LWVF members and volunteers register many people who do not have a car to go to the motor vehicle offices or the offices of their local supervisor of elections. Some people who register with the assistance of LWVF are intimidated by the prospect of navigating an official form or visiting a government office. Our targeted voter registration activity has included trips to nursing homes and outreach to social service providers, such as those providers conducting community outreach at the Palm Beach County Health Fair.

27. Many of LWVF's outreach activities are directed at traditionally underrepresented communities. For instance, the Orange County League spearheaded the "Vamos A Votar Coalition," a nonpartisan campaign to increase Hispanic voter participation in Central Florida and statewide. This campaign includes a Spanish language website, [www.vamosavotar.org](http://www.vamosavotar.org), maintained by the LWVF Education Fund. Similarly, when the Pinellas County League recognized fifteen years ago that there was a growing Hispanic population in that county, it started holding voter registration drives at a newly-opened Hispanic community center and at Hispanic cultural fairs. Some local Leagues, including the Jacksonville/First Coast League, regularly attend naturalization ceremonies in their communities. There, they introduce new U.S. citizens to one of the most important opportunities and responsibilities of citizenship by assisting

them in registering to vote. The Jacksonville/First Coast League also encourages these new citizens to become engaged in the political process by becoming LWVF members and by lobbying elected officials on issues of importance to them and their communities. And, the Miami/Dade County League reaches out to historically underrepresented communities in their county by publishing registration information in English, Spanish, and Creole.

#### **LWVF Voter Registration Procedure**

28. Local Leagues conducting voter registration efforts rely on volunteers who may or may not be LWVF members. LWVF's staff, which consists of only two part-time employees, does not have time to register voters or to supervise voter registration at each of the local leagues' events. We do not keep records of each volunteer and the precise time they spend with us. Nor do we ask volunteers to commit to regular volunteering, or ask when they next plan to assist LWVF. Instead, we view our members and supporters as an inclusive, constant source of potential volunteers dedicated to public service, and we are grateful for any time they spend volunteering with us.

29. Voter registration at LWVF events is well organized. The voter registration activity is announced beforehand through a newsletter or some other means, and volunteers are requested to commit in advance to a time to help register voters. While local Leagues sometimes keep proposed rosters of volunteers for each upcoming event, volunteers may get sick, have emergencies, change plans, or find out about the opportunity to volunteer at the last minute. As a result, despite our best efforts, volunteer schedules routinely change up to, and through, the day of a voter registration event.

30. At LWVF events, there are always at least two volunteers. One volunteer is always experienced and can show any new volunteers what to do. Volunteers usually have a sign that

says “League of Women Voters” and a sign that says “register here” in English and Spanish posted at their table.

31. Local League members train voter registration volunteers before they may engage in voter registration activity. Volunteers are instructed not to just hand forms out, but to assist people in filling out the forms and collecting them to make sure they get properly submitted to election officials. Volunteers are instructed to explain to potential new voters that it is important for all eligible citizens to register to vote, and to actually vote, in order to keep government accountable. Volunteers may offer literature or messaging on LWVF’s mission, and some local Leagues may also offer registered voters opportunities to sign initiative positions supported by LWVF. We believe it is important that volunteers are conversant on these issues related to civic participation because conversations about the rights and responsibilities of American citizens inevitably arise in the course of conducting voter registration drives. Volunteers are poised to respond to questions presented by the applicants and to clear up any confusion about the registration and voting process. Volunteers prefer not to register more than two or three people at a time to ensure they can properly assist each one.

32. The success of LWVF’s voter registration drives depends upon volunteers taking the time to ensure that a prospective voter has correctly and completely filled out a voter registration form. Volunteers are instructed to provide all necessary assistance to ensure that each voter registration form collected is fully completed. After an individual hands a completed voter application to a LWVF volunteer, volunteers check each field on each form to make sure it is correctly filled out. Many LWVF volunteers encourage registrants to put their phone numbers on the form so they can be contacted if additional information is needed.



33. It is the experience of LWVF members that the vast majority of people will not properly complete and submit applications without assistance. LWVF believes that asking people to register in person, and collecting and delivering their voter registration forms for them, results in a vastly increased rate of voter registration as compared to simply handing out blank forms to be completed and submitted a later date. As a volunteer, I have seen proof of this first hand, and I know that many citizens would not be registered to vote but for our assistance in completing and submitting voter registration forms. LWVF volunteers will distribute blank forms if that is the only option, but they make every effort to collect completed forms from registrants and to then ensure that these forms get submitted properly. For example, if a student is not carrying his or her driver's license or other government ID, he or she may not have with them the requisite personal information needed to complete the voter registration form. In those cases, the volunteer will encourage students to come back rather than just give them blank forms.

34. LWVF does not make copies of voter registration forms after completion, and it does not keep track of how many people it registers unless there is a distinct reason, such as evaluating the success of a particular drive. This is in part because LWVF hesitates to place administrative requirements on our volunteers; instead, we seek to engage them in the purely civic acts of community engagement, volunteerism, and voter registration.

35. Members and volunteers participating in voter registration efforts understand the importance of getting completed registration forms to the registrar promptly. The person in charge of the voter registration event gathers all forms to be submitted. The forms are secured by placing them in a closed box or envelope and keeping them in the member's personal possession until they are taken to a Supervisor of Elections. In some cases the forms are mailed, but LWVF prefers to have members submit them in person to ensure proper delivery. LWVF

believes it is very important to have well-trained, trustworthy people in charge to ensure that forms are not lost or submitted late.

36. The average turnaround time between when a completed registration form is collected and submitted varies based on the circumstance. In many instances, it would be very difficult to deliver the forms within 48 hours. Frequently, during multi-day voter registration drives, forms will be collected in a single secure location until the drive is over, and then delivered together to elections officials. This process ensures the security and accountability of the forms. Depending on the length of the drive, this can take 2 to 8 days. In some cases, LWVF volunteers in charge of an event may work full time, or have other pressing demands, and may not be able to take the forms to the LWVF office or an election supervisor immediately after an event. Volunteers may also be elderly or lack a car, and need assistance in submitting forms.

37. LWVF members and volunteers also register voters more informally, helping extended family, friends, co-workers, and acquaintances to register to vote on a smaller scale. LWVF members and volunteers are very enthusiastic about this work because registering people to vote is the first step in getting them involved in the political process. Moreover, registering voters is a hands-on opportunity for volunteers, during which they can meet with prospective voters face-to-face, and help inform citizens how to take part in the political and governmental process.

38. For example, I recently hired a contractor for my home, who goes by "Sonny the Carpenter." Sonny asked me about myself, and I told him I was involved in voting issues. Sonny responded that he was a citizen, thought he was registered to vote, and wanted to check his status. I offered him the opportunity to use our Be Ready to Vote Campaign technology to check his voter registration on his phone. We discovered he was not, in fact, on the voter rolls. I have not pre-registered myself as a "third-party voter registration organization," so I was unable



to offer to have Sonny fill out a registration form and give it to me for submission. I talked through the steps of voter registration with him, but felt strongly that he was unlikely to obtain, complete, and submit a voter registration form. If I could have spontaneously offered that assistance to Sonny, I am sure he would have been registered to vote. But because of the Law, I could not help him register.

39. Volunteers obtain the voter registration forms they distribute and/or collect in diverse ways. Many volunteers print publicly-available Florida state voter registration forms from the Florida Division of Elections website or obtain the national mail voter registration form available at the website of the Election Assistance Commission. In addition, LWVF and local Leagues typically enjoy excellent and close working relationships with the county Supervisors of Elections, who routinely provide blank state voter registration forms to LWVF volunteers.

40. To my knowledge, in its 72 years of engaging in citizen voter registration activity in Florida, LWVF has never been cited, fined, or found in violation of Florida's previous laws governing third-party voter registration, including under the 10-day return deadline for completed voter registration applications added in 2008.

### **The Law's Impact on LWVF Voter Registration Activities**

#### ***The 48-Hour Requirement***

41. LWVF volunteers take their duty towards voter registration forms very seriously, and endeavor at all times to turn forms in as quickly and securely as possible. Although LWVF has very good procedures for keeping track of and turning in voter registration forms, it would be nearly impossible logistically for LWVF to ensure that each completed form was submitted within 48 hours—to the minute—as the Law requires. The local Leagues operate on a decentralized model with an all-volunteer force, which has successfully registered tens of

thousands of Floridians to vote over the last 72 years without incident. The 48-hour requirement would require LWVF and its local Leagues to dramatically revise their procedures in a manner that would require volunteers to become detailed timekeepers and create strict schedules to ensure that forms were handed in before the clock strikes 48 hours—and do all this under the ticking time bomb of civil penalties and fines.

42. A LWVF volunteer could easily miss the Law's strict deadline through no fault of her or his own, and without jeopardizing the forms in any way. For example, a volunteer who has collected forms all day but is unable to deliver them the next day might leave completed applications secured in his or her home or office for one full day. In this situation, a delay of even a few minutes on the morning of delivery—due to traffic, weather, ill health, or unexpected family emergencies, for example—could lead to automatic fines. My understanding, based on public statements by county Supervisors of Elections, is that a delay of even a minute could cause the Supervisors to report a group's delinquency to the Secretary of State.

43. Several Supervisors have expressed to me their dismay over the Law, especially that it places us in adversarial postures where they are forced to “turn us in” for submitting forms even a minute over the 48-hour deadline.

44. Many LWVF volunteers are elderly and depend on others for transport. They may have a particularly hard time meeting the 48-hour deadline.

45. In one case, a LWVF member died while in possession of ballot petitions. Her sister ensured that the petitions were later turned in before the deadline, but had a 48-hour rule been in effect, LWVF would have been liable.

46. A rainstorm, flood, or hurricane could also delay a volunteer attempting to deliver forms. In these extreme circumstances, the Law does not automatically waive the fines, even though

weather emergencies are fairly common in coastal Florida. It is not clear how and when the force majeure and impossibility of performance defenses in the Law apply. And even when, or if, they do apply, they must be argued as an “affirmative defense” under the Law, which appears to mean that we would still be cited for a violation of the Law and would only have an opportunity to present these circumstances in our defense afterward. Even more troubling, the Secretary is not required to release LWVF or its local leagues from liability even for a natural disaster.

47. The Law’s 48-hour requirement is all but unintelligible to me. The Law states that forms are due within 48 hours “or the next business day if the appropriate office is closed for that 48-hour period.” Within the same sentence, the regulation thus uses the terms “hours” and “day.” I do not understand whether, in order to receive some “grace period” when offices are closed, an office must be closed for an entire 48-hour period, or just some portion of that period. I also have no idea from the statutory text or from the regulations whether the due date shifts to the same hour and minute on a different day, or allows the submission of forms through the end of that business day.

48. Therefore, if a volunteer collects a form on a Friday night, and offices are closed for the entire weekend, I cannot decipher by what time, if any, the form must be submitted on Monday—or perhaps on Tuesday. Oddly, it might be due *after* a form collected on Saturday morning and due 48 hours later on Monday morning. Alternatively, if a volunteer collects a form on a Thursday—such that it would be due Saturday, when offices are closed—is that form entitled to the grace period even though the office was open for part of that 48-hour period? In thinking about these very likely scenarios, it is simply not clear to me how LWVF volunteers could reasonably know when they are at risk of running afoul of the 48-hour provision.



49. Even to the extent LWVF would be able to comply with the 48-hour requirement in submitting forms, compliance would prevent LWVF from following its standard procedures for ensuring that information is not missing from forms, because volunteers would be in such a rush to submit the forms within 48 hours. LWVF would waste valuable time and incur unnecessary and burdensome costs due to frequent trips to election supervisors or postal offices.

50. Although LWVF prefers to hand-deliver completed applications to Supervisors of Elections to ensure they are properly submitted, in some cases, it has been necessary to submit applications by mail. Although the newly enacted Law purports to continue to allow delivery by mail, it only counts the date of mailing as a “delivery” for purposes of the Law’s 48-hour deadline if the mailing envelope is clearly postmarked. LWVF volunteers have no control over whether the postal service properly postmarks every package of applications they mail and have no way of ensuring that the postmark does not become detached, smudged, or otherwise made “unclear.” Under the Law’s prior, ten-day deadline, volunteers could minimize the risk of incurring fines by mailing forms so that they would arrive well before the expiration of the permissible period of delivery. Now, because of the Law’s strict 48-hour deadline, combined with its requirement for a “clear” postmark for the date mailing to satisfy this deadline, it is impossible for a volunteer to submit a completed voter registration form by mail without subjecting LWVF to the potential for civil fines and reputational harm due to factors entirely beyond the control of LWVF or its volunteers.

51. There is a statement on the Division of Elections’ website indicating that any affiliate or registration agent for a registered third-party voter registration group must first send any collected applications to the registered organization *before* they can be submitted to election officials. If this is true, it poses perhaps the greatest barrier to compliance with the 48-hour

requirement. Collecting all voter registration applications in our state office would be totally impossible given our structure and de-centralized voter registration practices. Moreover, our state office simply does not have the resources to be collecting, collating, and delivering voter registration forms from our 29 local Leagues. Even if we could comply with that requirement, it would make it physically impossible to then submit these forms within 48 hours. Florida is a massive state, and it is inconceivable that our local Leagues could reliably send collected forms to our state office within 48 hours—let alone with enough time for us to then get the forms to election officials. It would also double the unnecessary movement or mailing of registration forms, increasing the possibility these forms could be destroyed or lost in transit.

#### *Registration Agent Issues*

52. Compliance with the Law would require LWVF to report to the State every individual volunteer who engages in voter registration on behalf of LWVF as a “registration agent.” Before helping anyone register to vote, the Law would require each of our volunteers to sign a sworn statement form provided by the Division of Elections that lists several felony penalties for “false registration,” including imprisonment for up to five years and a fine of \$5,000, which warns that falsely swearing to the form is a felony offense. The form does not specify what constitutes “false” registration or swearing to a form. For example, the form lists “submission of false voter registration information” as an example of a “false registration” offense, but it does not explain that submitting forms with inadvertent mistakes would not qualify as “false registration.” I believe the form is intimidating and suggests serious felony charges may flow from even innocent mistakes. It is the last thing I would want to give to someone whom I am encouraging to engage in a public service. I believe that many volunteers would balk at signing such a form.

The average LWVF volunteer, who is often elderly and extremely risk-averse, is particularly likely to be deterred from volunteerism by this form.

53. LWVF cannot force all of its volunteers to become “agents” for voter registration purposes consistent with LWVF’s mission. Formalizing the volunteer process would be a deterrent to many of our volunteers, particularly retired or elderly volunteers, who may view these legalistic forms detailing criminal penalties as an intimidating and complicated process in which they do not wish to become involved. Moreover, LWVF attempts to inclusively recruit volunteers to foster civic participation; LWVF does not want to force volunteers to become its signed, sworn agents in order to help others to participate in our democracy.

54. Local Leagues have no way of knowing when a volunteer stops “working” for them. We ask all members and volunteers to donate their time and create an inclusive environment to encourage *ad hoc* volunteerism when needed at events. We absolutely do not ask when or if each individual plans to “terminate” their volunteer time with LWVF. Doing so would alienate former LWVF volunteers and deter future volunteerism.

#### ***Registration, Tracking and Reporting Requirements***

55. The new regulations state that any affiliate of a registered third-party voter registration group must also register with the State as a third-party voter registration organization via an electronic registration form that requires a list of its individual volunteers. LWVF does not provided local League volunteers with support staff, nor offices nor equipment, and volunteers frequently have limited familiarity with technology. Making electronic filings would be extremely difficult for them, and would duplicate the information on filings already required of LWVF. The rules are also unclear what other filings the affiliates would have to make—for example, whether they would have to make regular filings to update that initial registration when



new volunteers join their voter registration activity. Repeated filings would place a large burden on our all-volunteer local Leagues.

56. Because LWVF relies on volunteers dispersed throughout the state to collect applications, LWVF cannot, with its limited budget and staff, monitor the daily voter registration activities of each of its 29 local Leagues and their countless volunteers. There is thus a high likelihood that LWVF would not be able to fully monitor, count, and report the use of every voter registration form by every one of its members and volunteers, as the Law's monthly reports require.

57. As discussed above, we have no system of tracking the individual volunteers who donate their time to each of the 29 local Leagues, let alone determining if, or when, they "terminate" serving as a LWVF volunteer. Requiring these all-volunteer local Leagues to send us constant rosters of their volunteers—along with copies of their sworn registration agent forms to be scanned and submitted by LWVF to the State—would necessitate an entire layer of costly bureaucracy that is totally at odds with our mission and our volunteer spirit.

58. LWVF cannot realistically track all forms it "provides" to each registration agent as the monthly forms require. LWVF members and volunteers obtain voter registration forms from numerous sources. Many download state and federal voter registration forms online at home on the way to a registration event, rather than get them directly from LWVF. Some volunteers simply copy the available blank forms held by other volunteers. Even more have habitually obtained Florida voter registration forms from their local Supervisor of Elections. Because of LWVF's decentralized volunteer efforts, it is not possible for LWVF to keep track of every form distributed. Doing so would require new lines of communication between each local League and the LWVF office and would consume untold hours of volunteer resources that could be better spent on civic engagement—the reason that individuals become involved with LWVF.

59. LWVF would not be able to comply with the requisite reporting provisions. LWVF cannot afford for its already over-extended two-person staff to spend the time necessary to prepare and submit the requisite reports to the state. Such reporting would take a considerable amount of time and cost. It would, for instance, require that staff members contact each of the 29 local Leagues and collect and compile information about potentially large number of applications collected by the local league volunteers every month. The volunteers who run the local Leagues have already committed to being responsible for a substantial amount of LWVF-related work, including registering voters. Requiring unpaid volunteers to keep close track of each voter registration form they both distribute and collect would add appreciably to their work load.

60. LWVF employees also do not have the time nor the legal expertise to understand and make sure LWVF is in compliance with the constant, complicated, and byzantine reporting requirements required by the Law. LWVF cannot afford to hire attorneys to work for LWVF on an ongoing or even limited basis to ensure that we strictly comply with all filing and reporting rules for registration forms and agents. We have already spent considerable resources attending rulemaking hearings, discussing the Law, evaluating whether our voter registration work remains feasible under the Law, and responding to members' myriad concerns.

61. In short, the Law would force every volunteer to become an administrator and legal agent of LWVF. Many volunteers are unable to take on such a difficult burden and would find it extremely intimidating. Volunteers receive no pay to register voters, and they are typically unwilling to assume any financial or legal risk for their good deeds.

***Form-Marking Requirement***



62. In addition to imposing a financial risk to LWVF, the Law also imposes a severe threat of unfair and unjustified reputational risk. Any form containing LWVF's third-party voter registration organization number ("3PVRO number") that is received by elections officials more than 48 hours after completion—to the minute—could be considered a violation of the Law. This could occur if an individual took a "stamped" form from any of our tables and turned it in at a more leisurely pace. For example, an elderly volunteer could set up a registration table on a college campus. A group of students could come up and start filling out forms. Then one could say she forgot her ID and run off with the form to fill it out later—leaving the elderly volunteer helpless to stop her. If the student did not turn in the stamped form within 48 hours of filling it out, LWVF would be liable.

63. In the past, our volunteers have worked closely with, and relied heavily on, county Supervisors of Elections. One key to building that relationship is having LWVF volunteers go into Supervisors' offices and introduce themselves when they pick up the public forms. The Law discourages this method of obtaining forms, though, because it requires that any forms provided to citizen registration groups by county election officials be pre-stamped with the group's 3PVRO number. This means that each uncompleted form we obtain from county Supervisors of Elections becomes a walking liability for LWVF should it be inadvertently displaced or even simply distributed.

64. If we do not obtain forms that are pre-marked, the rules require us to mark our 3PVRO number on each voter registration form that we collect. Seeing us mark their forms with an identifying code could intimidate or dissuade people who strictly value their privacy, object to submitting to the State a record of their association with the LWVF, or are uncomfortable stating publicly that they used assistance to register to vote.

*Moratorium*

65. As a result of the new Law, LWVF has ordered a statewide cessation of voter registration until the Law is enjoined or limited in such a way as to substantially reduce the organizational and financial risk to the League, its members, and volunteers. LWVF has previously been forced to impose moratoria on voter registration due to similar laws in 2006 and 2008, but ended both moratoria when those laws were enjoined or interpreted and implemented in a way that allowed LWVF to resume voter registration work without fear of debilitating fines or prosecution.

66. LWVF imposed the present moratorium because it is concerned about our reputational and financial liability and that of the local Leagues. LWVF fears that it could be liable for up to \$1,000, even for accidental failure to submit every registration form within the Law's strict 48-hour deadline, which is very difficult to interpret and satisfy. Any fine would tarnish LWVF's previously spotless reputation for voter registration, which we value highly as an organization dedicated to the rule of law and respect for the election process. LWVF's reputation is extremely important, and we cannot risk having LWVF be seen as a law-breaking organization. Anything that would cast doubt on LWVF's integrity would severely damage LWVF and its ability to attract risk-averse volunteers, members, and donors.

67. In addition, LWVF's bare-bones staff and volunteer State Board do not have the time or resources to interpret all of the vague provisions of the Law, figure out how they apply to LWVF, and ensure that LWVF is complying with all of the provisions. LWVF submitted detailed commentary during the rulemaking process governing the regulations implementing the Law, but many provisions of the Law remain hopelessly vague and confusing.

68. For instance, LWVF cannot afford the risk that its volunteers, members, directors, and officers would have to personally pay fines under the Law for being unable to turn in voter

registration forms within 48 hours—to the minute—of the time they are completed. The Law appears to allow individual volunteers to be fined, even without evidence of any intent to do wrong or any actual problems with a voter's registration form. It is not realistic to expect our volunteers to risk fines and other penalties on a ridiculously tight, 48-hour timeframe, when a single day home sick might trigger liability.

69. Furthermore, Florida law makes any general violation of the election code a first degree misdemeanor where no other penalty is specified. Although the Law specifies that fines will be levied for some delivery-related violations, it does not specify the penalties for failing to perfectly comply with all of the *other* complicated provisions in the Law. I am fearful that this puts LWVF and its volunteers at risk of criminal penalties for unintentional failures to comply with all of the other onerous requirements. LWVF cannot in good conscience accept the risk that its volunteers, members, employees, directors, and officers may be subject to criminal misdemeanors for unspecified violations of the Law.

70. In general, it is entirely unclear to me what penalties LWVF may face in the event that it fails to perfectly comply with the Law's myriad requirements. But any action subject to a fine, injunction, or other remedy contemplated by the Law would certainly require LWVF to expend costs and other resources defending its reputation. These costs may include hiring additional attorneys, investigating any complaint, preparing witnesses, preparing for court, and wasting time defending LWVF in the court of public opinion. In fact, even in the case of a natural disaster delaying the delivery of completed registration forms, LWVF only has the option of presenting an "affirmative defense," presumably after being charged with violations of the Law. Any fine, investigation, or prosecution would reduce the time and money LWVF could spend engaging in protected speech to advance its mission.



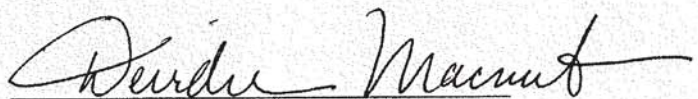
71. The current moratorium is very disruptive to LWVF's work because the year before a presidential election is ordinarily an incredibly productive time for voter registration. Based on estimates from past years, if the law is not enjoined, LWVF will be prevented from collecting and submitting thousands of voter registration forms from Floridians in advance of the book-closing deadline prior to the 2012 general election.

72. The moratorium disproportionately impacts minority, low-income, and other communities where LWVF targets outreach efforts, and where individuals have registered through third-party voter registration organizations at very high rates. Census statistics show that Florida's African-American and Hispanic voters are more than twice as likely than other voters to be registered via voter registration drives like those organized by LWVF.

73. The moratorium also disrupts LWVF's broader mission to encourage civic engagement. Because voter registration is such an integral part of LWVF's activities, and because LWVF volunteers routinely register voters as part of their education, outreach, and advocacy efforts, LWVF's inability to register voters severely inhibits our ability to further our message of citizen participation in our democracy.

I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 14 day of December 2011.

A handwritten signature in cursive script, reading "Deirdre Macnab", written in black ink.

Deirdre Macnab

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Deirdre Macnab Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19<sup>th</sup> day of December, 2011 upon the following:

Kurt S. Browning  
Secretary of State of Florida  
500 S. Bronough Street  
Tallahassee, Florida 32399

Pamela J. Bondi  
Attorney General of Florida  
107 West Gaines Street  
Tallahassee, Florida 32399

Gisela Salas  
Director of Florida Division of Elections  
500 S. Bronough Street  
Tallahassee, Florida 32399

**COFFEY BURLINGTON**

/s/ Kendall Coffey  
Kendall Coffey  
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# Exhibit C



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA

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

Plaintiffs,

v.

KURT S. BROWNING, 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. \_\_\_\_\_

**Affidavit of Ben Wilcox**  
**Submitted in Support of**  
**Plaintiffs' Motion for**  
**Preliminary Injunction**

I, Ben Wilcox, hereby declare as follows:

1. I am a citizen of the United States and a resident of Leon County Florida.
2. I am a registered voter in Florida, where I have lived and voted since the age of 18. I am a member and supporter of the League of Women Voters of Florida ("LWVF"), and I have served as a Board Member of the Tallahassee League of Women Voters for the last 12 years. I was also formerly the Director of Florida Common Cause. I submit this affidavit in support of Plaintiffs' motion for a preliminary injunction to prevent enforcement of those provisions of the newly enacted 2011 Fla. Laws 40 § 40 (codified at Fla. Stat. § 97.0575) ("the Law") that impose onerous new registration, reporting, and submission deadlines on individuals and civic groups engaged in voter registration, and which are preventing LWVF from fully carrying out its mission of fostering civic participation.

3. I have served as the contract Governmental Consultant for LWVF for the last two sessions of the Florida legislature, where I was LWVF's primary legislative advocate and government relations representative. I was personally present and able to both witness and participate in the legislative process that led to the Florida Legislature's enactment of the Law.

4. The Florida House of Representatives bill that became the law—H.B. 1355—was, as initially introduced in the House, a short bill that was offered on behalf of Florida Secretary of State Kurt Browning to amend the powers of the office of the Secretary of State.

5. During consideration of the bill by the House Government Operations Subcommittee of the State Affairs Committee on April 1, 2011, the brief bill was changed to a 150-page bill by means of a strike-all amendment. Changes to the bill were distributed the night before the Subcommittee hearing to all parties, including the legislators. Based on my conversations with proponents of the bill and comments made during the legislative hearings on the bill, I believe that none of the legislators or staff understood the many provisions of the bill with any level of detail.

6. Members of the Subcommittee did not solicit input from LWVF or from any other citizen voter registration organization. Members did not ask any representatives of organizations engaged in voter registration to testify as to the need for the legislation or the impact it might have on groups and individuals working to help register Floridians to vote.

7. I was able to testify at an April 1st Subcommittee hearing, but only because I put in a card requesting to testify on the bill as a member of the public. At that hearing, I testified that the restrictions on citizen voter registration drives were unnecessary, would not prevent fraud, and would make it extremely burdensome for LWVF and similar organizations to assist others in



registering to vote. I was not asked a single question by any legislator, nor did they respond to my testimony in any way.

8. At no point during House consideration of H.B. 1355 did I hear any Representative or staff member put forward any facts or circumstances detailing why the provisions of the bill were necessary or would prevent fraud. The only statements made by supporters of H.B. 1355 to justify these new provisions were oblique references to ACORN and voter fraud generally. No proponent of the bill explained how provisions of the bill could prevent the type of voter registration misconduct allegedly engaged in by ACORN.

9. During consideration of H.B. 1355 by the full House, Florida legislators opposed to the bill asked a number of questions about the need for the third-party voter registration provisions, including the requirement that voter registration applications be turned in within 48 hours of being obtained. Again, proponents of the bill merely made generalized references to fraud and ACORN and did not address why any of the specific provisions of the bill were necessary.

10. S.B. 2086, as first introduced in the Senate, made largely technical changes to election procedure, and passed out of the Senate Sub-Committee on Ethics and Elections in that form. Senate consideration of a revised version of S.B. 2086, which was turned into the companion bill of H.B. 1355 also by a full text strike-all amendment, was extremely brief, and public discussion of the revised bill was very limited. After S.B. 2086 was amended to match H.B. 1355, including its extreme burdens on voter registration activity, I and Marilyn Wills, second Vice-President of the League of Women Voters of Florida, tried several times to make an appointment with Senator Miguel Diaz de la Portilla, chair of the Subcommittee on Ethics and Elections, but he did not respond to our requests for an appointment.

11. The Senate Budget Committee scheduled consideration of S.B. 2086 in its revised form for April 26, 2011, the Committee's last meeting of the legislative session. Despite the fact that 38 individuals and groups had put in cards requesting to testify regarding the bill, the Committee considered the bill at the very end of the Committee meeting, with only 30 minutes remaining in the meeting. This meant that only one individual was able to testify on the bill, and even his testimony was cut short. The other 37 groups and individuals, including me, were not allowed to testify.

12. Dismayed by the Senate's refusal to hear testimony from all speakers, the LWVF requested the public speaker cards submitted at Senate hearings on April 25 and 26 via a public records request. We were permitted to view the cards and from our review we learned that on Monday April 25, members of the public had submitted 39 total cards: 37 against the bill and two with a neutral stance offering to provide information. No one signed up to speak in support of the bill. On Tuesday, April 26 members of the public submitted 39 total cards: one speaker in support of S.B. 2086, one neutral speaker who sought to provide information and 37 requesting to speak against the bill—36 of whom were never heard by the Legislature.

13. At no point during Senate consideration of S.B. 2086 did any Senator or staff member express any position on why the specific restrictions on voter registration drives found in the bill were necessary or would prevent fraud. As in the House, the only justifications given for the need for the legislation were oblique references to ACORN and voter fraud generally. No proponent of the bill made any specific allegation of third-party voter registration misconduct by any organization in Florida under existing law, nor did any proponent of the bill explain why provisions of the bill would prevent the type of voter registration misconduct allegedly engaged in by ACORN.

I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 14 day of December 2011.

A handwritten signature in cursive script, reading "Ben Wilcox", is written over a horizontal line. The signature is fluid and stylized, with the first name "Ben" and last name "Wilcox" clearly legible.

Ben Wilcox

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Ben Wilcox Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19<sup>th</sup> day of December, 2011 upon the following:

Kurt S. Browning  
Secretary of State of Florida  
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Pamela J. Bondi  
Attorney General of Florida  
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Tallahassee, Florida 32399

Gisela Salas  
Director of Florida Division of Elections  
500 S. Bronough Street  
Tallahassee, Florida 32399

**COFFEY BURLINGTON**

/s/ Kendall Coffey  
Kendall Coffey  
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Fax 305-858-5261

# Exhibit D

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA

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

Plaintiffs,

v.

KURT S. BROWNING, 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. \_\_\_\_\_

**Affidavit of Pamela Goodman**  
**Submitted in Support of**  
**Plaintiffs' Motion for**  
**Preliminary Injunction**

I, Pamela Goodman, hereby declare as follows:

1. I am a registered voter and Florida resident. I currently serve as the First Vice President for the League of Women Voters of Florida ("LWVF"). I was also formerly the Director of Florida Common Cause. I submit this affidavit in support of Plaintiffs' motion for a preliminary injunction to prevent enforcement of the provisions of the newly enacted 2011 Fla. Laws 40 § 40 (codified at Fla. Stat. § 97.0575) ("the Law") that impose onerous new registration, reporting, and submission deadlines on individuals and civic groups engaged in voter registration, and which are preventing LWVF from fully carrying out its mission of fostering civic participation.
2. Prior to my current role as First Vice President of LWVF, I served as President of the League of Women Voters of Palm Beach County from 2005 to 2009. I also have served on the LWVF State Board of Directors since 2007, and I have served in the past on the national League

of Women Voters Nominating Committee and the National Membership Recruitment Committee. While serving as President of the Palm Beach County League, I was appointed by the Supervisor of Elections in Palm Beach County to head a review and audit of voting machines and processes for the 2006 and 2008 elections. I also spearheaded Project ROAR (short for “Reach Out And Register”), LWVF’s successful statewide push to maximize voter registration efforts before the 2008 general election.

3. I have received numerous awards for my service, including the Susan B. Anthony Award for Outstanding Feminist 2008 from the National Organization for Women.

4. From 1985 to 1996, I worked at the Fortune 100 Company, The Limited/Express, serving as its CEO between 1993 and 1996. The Limited/Express is a 1.5 billion dollar business with over 850 stores, where I managed hundreds of employees and juggled the logistics of a fast-paced, complex company. From years of honing my business acumen as the lead executive at a large corporation, I have developed a strong sense of how to motivate and engage workers, and I apply this experience to managing and inspiring Floridians to begin and continue volunteering with LWVF.

5. I have extensive experience personally assisting new voters in registering and working with LWVF volunteers to register voters. The culture of LWVF volunteerism is one of public service and civic education. We get together to help other citizens register to vote, particularly those who would have a hard time navigating the voter registration processes without our assistance. This may be because of a disability, lack of transportation, or being intimidated by complex forms that are difficult for many to read and complete. We also work hard to register those who have never registered to vote, including students and newly-naturalized citizens.

6. In discussing the Law governing voter registration with LWVF members and volunteers

in Palm Beach County and across the state, I have found that they are afraid of being found guilty of violations under the Law due to innocent mistakes. Members are particularly confused about the penalties that they, the local leagues, or LWVF could face. LWVF members—including myself—cannot and will not risk being subject to high fines, undefined civil penalties, or criminal prosecution for an inability to comply with the Law’s burdensome and confusing provisions.

7. The newly-required “sworn statement” form (Form DS-DE 120) cites a list of serious felony penalties for “false registration.” We will need to ask every volunteer to sign one of these, which is an intimidating and off-putting way to ask individuals to volunteer their time to register voters. Based on my extensive experience recruiting volunteers, I think many volunteers would stop after a first read of the registration agent forms, which lists numerous felony penalties. Even the possibility of being charged with a crime for attempting to help people register to vote will scare away potential volunteers, particularly because volunteers are worried they could personally be prosecuted even for an accidental failure to comply with the law. In particular, the fact that the registration agent form says that false registration is a felony—without explaining what constitutes “false registration”—will harm our ability to recruit volunteers.

8. In my experience, volunteers and local Leagues are very conscientious and do everything they can to make sure forms are handled flawlessly. They are concerned about maintaining their spotless reputations for successful voter registration.

9. Older volunteers will be particularly worried about violating the Law. In my experience working with this population of volunteers, they are more likely to be intimidated by the administrative burdens of the rules, the registration agent forms, and the extremely short 48-hour return deadline. Thus, many will be discouraged from registering voters, particularly during



evening events or on weekends when postal offices and election offices are closed, shortening the available return time even further.

10. From the Division of Election's website, it is my understanding that completed forms can only be turned in by the LWVF, and not by local Leagues or individual volunteers—or else the individuals could be personally liable for fines. If this would require individuals or county Leagues to mail forms to the LWVF's state office before they could be submitted, my experience in the Palm Beach County League tells me this would be an impossible task. The local Leagues do not receive administrative support from the LWVF, and this requirement would place an enormous burden on our local organizations. Indeed, it is unclear how we would physically be able to comply with the 48-hour return time if we had to first transmit forms outside of our county. Palm Beach is a large county, and returning forms to our county Supervisor's office would be extremely burdensome in its own right. But if the Law also required us to send these forms elsewhere in the state, it would be both impossible and unwise. Florida is a huge state—Palm Beach is over 400 miles away from the state LWVF office in Tallahassee—and I have no idea how we would be able to ensure that forms reached Tallahassee in less than 48 hours, with enough time left over for the LWVF to then collect the forms and turn them in to election officials. It also seems like a very bad idea to require more movement and more handling of these critical documents, creating new opportunities for them to become lost, damaged, or delayed in the mail. At the Palm Beach County League, we have always hand-delivered registration forms, because we feel personally responsible for them. Requiring us to send forms hundreds of miles before turning them in—only to be moved again once they arrive—is at odds with our vigilant accountability over voters' completed registration forms. It would also require us to mail the forms, which we never do because it would require us to move the completed

forms out of our personal control. We simply cannot depend on a third party like the United States Postal System to ensure forms are submitted, because personally ensuring they are delivered to the right election official is critical for both the voter's sake and for the reputation of the LWVF.

11. One of the most meaningful voter registration events that I have participated in was an organized civics education and voter registration drive targeting high school seniors, which the Palm Beach County League held for several years. For this program, we reached out to high school history teachers to ask them to allow a volunteer to come into their classrooms for a full day to teach students about their right to vote—and then help them exercise that right by assisting them with registering to vote. I trained dedicated Palm Beach County League volunteers on how to deliver a short, entertaining civics script and then properly help to register student voters.

12. These specially-trained volunteers went into high schools starting at 7:00 a.m., and during each of seven periods of school classes, they taught a short civics lesson and provided eligible students with an opportunity to register to vote. Volunteers wheeled voter registration forms around the school on a small cart and collected completed forms from interested students. We dedicated an entire week to this program at each Palm Beach high school we targeted. Over the course of the week, the designated Voter Registration Chair, who is the person selected by a local League to supervise voter registration activity, would collect each day's completed forms, seal them in a labeled manila envelope, and set them aside in a secure location. At the week's end, she returned the whole batch of completed high school forms to the county elections office at the end of the school drive. Under the Law, this safe, efficient voter registration process is now banned, as most of those forms were submitted beyond the 48-hour period (and that was *without* sending them to the LWVF first).

13. I strongly believe that this student-focused program has been one of the most successful and meaningful programs in my time with the LWVF, in part because we helped make up for a lack of structured civic education in Florida's classrooms. Unfortunately, the Palm Beach County League cannot engage in this type of drive anymore, as holding such a drive under the Law would create a massive new level of bureaucracy that would either require volunteers to travel to hand in forms at least once every other day, or to constantly mail completed forms to the FLWV. This would not only create an administrative burden for our volunteers, it would require the constant movement of completed forms in a manner that reduces their security and safekeeping by a single, trained individual.

14. In the past, I have frequently made voter registration a constant part of my own personal life in addition to my volunteerism with LWVF. One of the most memorable and meaningful personal experiences I have had was to register my own daughter-in-law to vote in 2010. She worked hard to obtain U.S. citizenship, and in my capacity as a mother-in-law—and in the spirit of a LWVF member—I was delighted to immediately, and personally, offer her a chance to register to vote. Today I would not be able to do the same thing. Because my daughter-in-law would not qualify for the exception in the Law for helping immediate family members to register to vote, I would have to first register with the State and become an independent “third-party voter registration organization” before I could hand my daughter-in-law a voter registration form and offer to turn it in for her.

15. I constantly interact with my fellow Floridians at public events, charity functions, and business and government meetings. Historically, I have carried, in my purse, blank voter registration forms that I have obtained from county elections or DMV offices. When I discover someone has an interest in registering to vote and I offer them a form, I cannot know whether

they perceive me as offering assistance personally, as a representative of LWVF, or both. If the League registers under the Law, I am uncertain if, in these situations, my simple distribution of these forms would trigger LWVF's reporting requirements for tracking all registration forms provided to its agents.

16. Likewise, outside of formal LWVF registration events, I frequently interact with elderly Floridians who lack ready access to online applications or transportation to an elections office, and who may need to update a signature or address on their existing registration. This is extremely common, and I am now unable to spontaneously assist these citizens to register to vote or offer to turn in forms when I meet them, without first registering with the State.

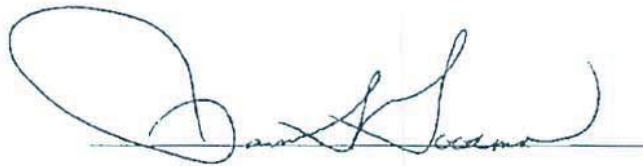
17. The Law is directly at odds with the principles of civic engagement, and it now actually prevents me, in my personal capacity as an engaged citizen, from reaching out to help a friend or fellow citizen become involved in his or her government unless I first register with the State before doing so. I do not believe I should have to register myself, in my personal capacity, as a "third-party voter registration organization" before I can engage in political activities such as distributing and offering to collect voter registration forms. While attending community events, I can no longer spontaneously hand someone, who simply needs to register to vote or update their existing registration, a blank voter registration form and offer to submit the form for that person. If my daughter-in-law needs to update her voter registration, I will not be able to help her with that unless I pre-register with the State, provide extensive personal information, and obtain an agent of process.

18. Because of the Law, I am no longer willing to help others register to vote in Florida. I believe that the new registration, reporting, and 48-hour return provisions stigmatize and penalize positive American civic engagement. I will not put myself at risk of being fined or

subjected to civil or criminal enforcement actions for innocent mistakes, nor will I sign up for constant, monthly reporting requirements and be subjected to unreasonable and unworkable time constraints on my efforts to spontaneously assist members in my community. I have been helping Floridians to register to vote for over 12 years, since I first moved to Florida. This Law will result in fewer voters being registered, and far fewer volunteers willing to help them register to vote. I am one of them.

I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 13 day of December 2011.

A handwritten signature in black ink, appearing to read 'Pamela Goodman', written over a horizontal line.

Pamela Goodman



**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Pamela Goodman Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19<sup>th</sup> day of December, 2011 upon the following:

Kurt S. Browning  
Secretary of State of Florida  
500 S. Bronough Street  
Tallahassee, Florida 32399

Pamela J. Bondi  
Attorney General of Florida  
107 West Gaines Street  
Tallahassee, Florida 32399

Gisela Salas  
Director of Florida Division of Elections  
500 S. Bronough Street  
Tallahassee, Florida 32399

**COFFEY BURLINGTON**

/s/ Kendall Coffey  
Kendall Coffey  
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# Exhibit E

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA

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

Plaintiffs,

v.

KURT S. BROWNING, 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. \_\_\_\_\_

**Affidavit of Heather Smith**  
**Submitted in Support of**  
**Plaintiffs' Motion for**  
**Preliminary Injunction**

I, Heather Smith, hereby declare as follows:

1. I serve as President of Rock the Vote ("RTV"), a position that I have held for over four years. For more than eight years, I have specialized in nonprofit work encouraging young Americans to register to vote, including prior stints as the National Field Director for the New Voters Project, a project of the Student PIRGs and the Graduate School of Political Management at the George Washington University, with support from the Pew Charitable Trusts.
2. In my role as President of RTV, I have direct knowledge of the organization's structure, organization, and mission. I also work closely with our staff and volunteers running voter registration efforts in the states, and I am updated about our progress on a daily basis. Thus, I have direct and detailed knowledge of our voter registration plans and procedures both nationally and in Florida. I submit this affidavit in support of Plaintiffs' motion for a preliminary

injunction to prevent enforcement of provisions of Florida law, codified at Fla. Stat. § 97.0575, that restrict RTV and similar groups engaged in voter registration efforts (the “Law”).

### **Rock the Vote’s Mission and Structure**

3. Rock the Vote is a nonprofit, nonpartisan 501(c)(3) organization dedicated to engaging young people in our nation’s democracy. In 2012, RTV hopes to be at the forefront of reinvigorating democracy and redefining citizenship for a generation, building relationships with and activating a growing and diverse base of young voters, and ensuring they stay involved while continuing to reach more young people as they turn 18 each year.

4. RTV’s fundamental mission is to engage and build political power for young people in our country by increasing voter registration rates and voter turnout among younger voters. Our principal activities include assisting young voters with registering to vote and getting young voters out to the polls. We also engage in widespread public education efforts, including public service announcements, voter information distribution led by our community street teams, and a highly trafficked website at [www.rockthevote.com](http://www.rockthevote.com) that offers extensive voting and election information and online opportunities to register to vote using the federal voter registration form.

5. RTV is a national nonprofit organization headquartered in Washington D.C. and founded in 1990. RTV began its first field campaign to encourage young Americans to register to vote in 1992. RTV does not have local or state-based affiliates or branches. Sometimes, but not always, RTV will obtain physical office space when we engage in dedicated voter registration drive activity in the states. In a typical election year, we engage in our online public education and voter registration work nationwide. We also supplement our work with dedicated, in-person voter registration drive activity in ten to twenty states and/or local jurisdictions.

6. In 2008, RTV dedicated over \$4.2 million to voter registration nationally and Florida was one of the top five states in which RTV directed its efforts.

7. When RTV engages in voter registration activity on the ground in select states, we hire and dedicate trained staff members to run that activity. In 2010, for example, RTV employed a single staff person at any given time in the state of Florida, but we had no physical office space there. RTV does not currently have any employees or office space in Florida. While we may hire staff in Florida to conduct registration activities prior to the 2012 election, we do not anticipate obtaining physical offices in the state during that time period.

8. RTV does not provide state-based staff members with office equipment such as printers, fax machines, or scanners. Instead, state-based staff purchase such services, as needed, at office supply and service centers.

9. RTV has approximately 1.5 million members in our national database, including approximately 82,000 members in Florida. RTV does not have a formal membership application process and does not collect dues. Anyone who registers to vote using the forms made available on our website, as well as anyone who signs up to get involved with Rock the Vote on our website (volunteer, take action, get information) or at events, is given the opportunity to opt in to our membership lists and receive regular communications, including updates about policy issues affecting young voters, information about upcoming elections, and “get out the vote” communications. These communications are almost exclusively by email or text message. We collect cell phone numbers—with individuals’ consent—and contact members by phone call or text message to remind them of upcoming elections. We do this to ensure that those we have helped register to vote in fact cast a vote on Election Day. We also offer young people the



opportunity to run their own voter registration drives and volunteer with RTV in their communities.

### **Rock the Vote's Voter Registration Activity and Online Forms**

10. Voter registration is a central activity of RTV. It is integral to our mission of engaging young people in our nation's democracy. Our voter registration work started soon after RTV was founded in 1990. Our first campaign designed to increase turnout of youth voters in elections was in 1992.

11. Our data shows that we register more voters than any other nonpartisan voter registration organization. Since our founding, we have registered more than 5 million voters. Nationwide, we helped approximately 2 million people complete voter registration applications in 2008 and approximately 300,000 in 2010. Most people we register are between the ages of 18 and 29.

12. We help individuals register to vote both online and with volunteers on the ground using physical voter registration applications. Our online voter registration system offers applicants the National Mail Voter Registration Form, which is made publicly available by the Election Assistance Commission. We typically use the national mail-in form for in-person voter registration as well, although our staff members and volunteers may occasionally use the appropriate state form.

13. When applicants use the RTV online voter registration tool, they are asked to answer a series of questions used to collect all of the information needed to register to vote. After an applicant finishes answering the questions, our system fills that data into the National Mail Voter Registration Form and generates a .pdf document of the form with the necessary fields completed. Then, the applicant sees on the screen a big red button that says, "Print your registration form now. You won't be registered unless you print, sign and mail in your form!"

Applicants are told to print out and sign the pre-filled form, and given instructions on how to mail it in.

14. Online applicants are thus responsible for independently signing and mailing the form to the correct address. RTV is not responsible for mailing. RTV does not have access to the completed, signed forms, but RTV does have access to all the information the applicants provide during the series of questions asked by our system.

15. The system automatically and immediately emails all individuals who completed the online process of preparing a registration form a reminder to mail in their completed voter registration form. Another reminder is e-mailed five days later. RTV compares the voter registration rolls with its list of individuals who completed forms online and tries to follow up with those who have completed RTV's online process but do not show up on the voter rolls. We do this by running the list of applicants who have used our voter registration system through the third-party vendor Catalist, which analyzes the voter rolls in every state to identify whether our applicants appear on the rolls. If anyone who fills out a registration form through our website does not appear on the voter rolls within two weeks, we add that person to what we refer to as the "chase list," a list of applicants whom we then contact via phone to remind them to submit their applications.

#### **Rock the Vote's In-Person Voter Registration Procedure**

16. During the 2008 election cycle, over 400 individuals signed up to volunteer on the ground in Florida with RTV, in addition to RTV's one full-time staff member. In 2010, RTV had one full-time staff member and approximately 200 volunteers in Florida assisting with voter registration. We do not currently have any staff in Florida.

17. RTV provides a week-long training at its headquarters in Washington D.C. for all state-based staff who will coordinate in-person voter registration drive activity. This includes training on how to ensure that applicants properly fill out voter registration forms, how to properly submit completed forms to elections officials, and how to use RTV's data entry systems. We also give state-specific training to inform staff about particular voter registration requirements in the states in which they will be working. Before staff members can engage in voter registration activity on behalf of RTV, they must acknowledge and certify that they have received various documents, including an employee manual, documents prohibiting partisan activities, and a "do's and don'ts" document.

18. RTV's voter registration drives depend on volunteers, whom we recruit in a variety of ways, including, for example, by sending text messages to people who registered through RTV's website or inviting individuals in person to join us at tabling events. Everyone who registers to vote through RTV's website or at our tabling events is asked whether he or she would also like to volunteer to help others register; this is an opt-in box for anyone using our online registration tool.

19. It is not uncommon for RTV members and other volunteers to show up to volunteer to register voters without scheduling or prior notice. RTV will send out a high volume of e-mail or phone requests to volunteer to our member list, in the hope that a number of respondents will sign up to volunteer at a scheduled RTV event or set up their own event. Non-members often show up to volunteer, particularly if they are friends or family members of scheduled volunteers.

20. A staff member or an experienced and previously trained volunteer (a "lead volunteer") fully trains every volunteer to properly register voters. This training includes information on state registration laws and nonpartisan rules, and it emphasizes that volunteers must treat

registration forms “like gold” and must register everyone regardless of party affiliation or beliefs. Most RTV volunteers are college students or recent graduates between the ages of 18 and 24.

21. RTV’s voter registration events vary, but the majority of our in-person voter registration activity consists of “tabling,” which involves staff or volunteers setting up a table in a high-traffic area from which they can engage passersby and offer them opportunities to fill out and submit voter registration applications. The vast majority of these tabling events are held on college and university campuses or at concerts or festival events.

22. Each voter registration event is run by a staff person or an experienced lead volunteer, who supervises all other volunteers working at that event. Each volunteer is instructed on what to say when speaking to potential applicants. Generally, volunteers open with a question about whether or not the individual is registered to vote at his or her current address. Volunteers are instructed to walk applicants through the form, answer any questions, and help correct any errors. Volunteers are also encouraged to enthusiastically share with registrants the importance of voting and participating in our democracy, discussion topics that inevitably arise at registration events.

23. During the voter registration process, volunteers may hand out buttons and stickers expressing support for greater civic engagement by young voters. They may also hand out “palm cards” that discuss how to get involved in the political process and provide an election protection hotline phone number, or “pledge cards” which applicants can sign to pledge to vote. We physically mail these pledge cards back to the applicants before the election, reminding them of their own promise in hopes of boosting turnout among those who register to vote through RTV.

24. Where possible, RTV staff and volunteers collect applicants’ cell phone numbers and keep voters’ contact information in a secure national database that can be sorted by state. We

obtain this information on the pledge cards or on separate “sticky notes” that are attached to the applicant’s voter registration form. Our staff or volunteers then enter that contact information into RTV’s database system; however, we never enter other private data of the applicants, such as a driver’s license number or social security number. Prior to elections, RTV uses names and contact information of those who have requested additional information about elections from RTV to remind individuals who have registered to get out to the polls and to vote, and to re-register when they move.

25. While RTV volunteers will give people blank forms at tabling events if they ask for them, our voter registration experience demonstrates that individuals are far less likely to properly fill out and submit completed forms on their own than they are if they are assisted by our volunteers. Even among people who were interested enough in registration to visit RTV’s website, and who received multiple reminders from RTV, a significant percentage still are not properly added to registration rolls. In 2008 for example, only approximately 1.5 million of the 2.2 million individuals who visited RTV’s website and downloaded a voter registration form actually made it onto the voter rolls. This demonstrates that our in-person registration work and personal collection of forms is uniquely effective.

26. Accordingly, RTV volunteers are instructed to strongly encourage applicants to fill out the voter registration form in person and hand the completed form to RTV staff or volunteers. RTV believes that this greatly increases the number of individuals who are actually registered.

27. Despite our best efforts, applicants sometimes start to fill out their form in person, but then suddenly take off with a blank or partially completed form. This is especially true when we register voters at concerts or music festivals. While we successfully register lots of attendees before the band starts, once the music starts playing, individuals will frequently stop what they



are doing and leave with a form in hand. This also occurs on college campuses, when students hurry between classes, often without the necessary ID to complete the information required by the form.

28. After volunteers collect voter registration forms at tabling events, the lead volunteer or a staff member hand-delivers or mails the forms to the appropriate elections officials. Whenever possible, forms are dropped off in person to county Supervisors of Election. If RTV staff and lead volunteers lack the ability to drive to county offices, though, they place the completed forms in the U.S. mail. In addition, RTV does not always register voters in their resident counties. Forms for individuals who reside in a different county from where the registration event occurs are placed in the mail as soon as possible.

29. RTV employs several quality control measures during registration activities. Volunteers assisting with voter registration review the forms and make sure all forms are filled out correctly while the applicant is still present. After each form is completed, the forms are placed in an envelope and given to a lead volunteer or staff member for safekeeping. Only staff members or lead volunteers who have been fully vetted by RTV are designated to collect and submit completed voter registration forms. Where possible, RTV keeps records and copies of all voter registration forms completed at our drives.

30. Based on past registration activities in Florida, the entire process of obtaining a completed voter registration form and submitting the application to an election official ordinarily takes two to five days. It is rarely complete within 48 hours.

31. To my knowledge, in our almost twenty-year history, RTV has never been fined or otherwise cited in conjunction with violating any voting registration regulations in Florida or any other state. I am not aware of any allegations of fraud connected to our organization.

32. RTV successfully turned in every completed voter registration form given to any of our staff or volunteers in Florida during the 2008 election cycle by the registration deadline. In 2010, we never took longer than ten days to turn in completed registration forms that were collected by staff and volunteers engaged in registration activities in Florida.

33. In both 2008 and 2010, RTV registered with Florida as a third-party voter registration organization, under the prior law, and submitted quarterly reports of our voter registration activities to the Secretary of State. On or about May 26, 2011, RTV received a letter from the Florida Division of Elections informing us that within 90 days, we must begin complying with Florida's new set of voter registration regulations that were enacted with the passage of the Law. As required by the Law and its implementing regulations, and per the State's directive included in that letter, RTV began submitting monthly reports in 2011.

#### **Rock the Vote's "Democracy Class"**

34. An important component of RTV's voter registration and outreach efforts is our "Democracy Class," a collaborative civic education program between Rock the Vote and participating high school teachers. In 2010, when RTV conceived the Democracy Class, we chose a handful of states for our pilot program, and Florida was a natural fit because the state encouraged the pre-registration of 16 and 17 year-olds. We had a staff person on the ground in Florida to administer the Democracy Class in 2010, which was a rousing success. We rolled the program out nationally in 2011 based on its success in Florida and other states.

35. Democracy Class consists of a "toolkit" of materials that teachers can use to supplement their class instruction about civic engagement and the right to vote. It includes a video about the right of 18-year-olds to vote, lesson plans for staging a mock election in class, and a set of voter registration materials for the students.

36. Students participating in Democracy Class learn about the history of the franchise in our country, the countless sacrifices people made to earn and expand the right to vote, the 26<sup>th</sup> Amendment, and the importance of the right to vote today.

37. RTV will begin promoting each year's Democracy Class on March 23, which is the anniversary of the date on which Congress approved the 26<sup>th</sup> Amendment, granting 18-year-olds the right to vote, and sent it to the states for ratification. It was ratified 100 days later. RTV therefore urges teachers to complete the Democracy Class program within 100 days of March 23 in commemoration of the 26<sup>th</sup> Amendment.

38. RTV works with groups such as the National Education Association and the National Council for the Social Studies to promote and identify opportunities for Democracy Class. We also reach out to individual teachers and invite them to collaborate with RTV by offering Democracy Class in their classrooms.

39. Teachers who wish to run a Democracy Class contact RTV for materials. RTV sends these teachers lessons plans and comprehensive instructions, including a primer on proper voter registration and information about how to conduct a mock election. RTV staff then follows up by telephone to ensure teachers have received the materials and are aware of the proper way to implement the lesson plan. Teachers then sign a licensing agreement and a promise to be nonpartisan while engaging in any education or voter registration activity on behalf of Rock the Vote. Once a teacher signs that pledge, RTV mails him or her a full Democracy Class toolkit.

40. As part of the Democracy Class program, all eligible high school students are given the opportunity to register to vote. In most states this means all students who are citizens and are at least 18 years old. In states such as Florida, where 16- and 17-year-olds may pre-register to vote, those students are also given the opportunity to pre-register.

41. In order to facilitate voter registration, each Democracy Class toolkit includes 30 copies of the National Mail Voter Registration Form and an envelope pre-addressed to the state Division of Elections, pre-stamped with sufficient postage to mail in 30 completed registration forms.

42. Teachers collect voter registration applications and send them to the Supervisor of Elections using the pre-addressed, pre-stamped envelope. RTV asks, but does not require, teachers to make copies of voter registration applications and send them to RTV so RTV can keep track of the students that are registered and can remind them to vote. Not all teachers choose to send copies to RTV; some simply collect and mail the completed forms to election officials.

43. In many cases, teachers may make additional copies of the blank national forms we send them. For example, one teacher might copy a stack of application forms for another teacher who wishes to encourage her own students to register to vote. This frequently happens when teachers find out about other teachers in their school participating in Democracy Class, and want their own students to participate as well. Or, a teacher may use registration forms to register friends, family, or acquaintances. We encourage teachers to make as many copies of the publicly available national voter registration form as they need. We will also send additional pre-stamped envelopes if teachers need to mail more than 30 completed forms.

44. RTV also sends each teacher 30 “pledge cards,” which students may fill out to “pledge to vote.” If students fill the cards out, the teacher sends them back to RTV in a pre-addressed, postage paid envelope. Students are also asked to check a box letting us know if they submitted a completed voter registration form to their teacher, so that we can follow up to ensure those students are actually registered as voters and include them in our “get out the vote”

communications. RTV encourages students to fill out pledge cards by entering them in drawings to win concert tickets and other prizes.

45. Teachers frequently collect voter registration forms over a period of several days after Democracy Class to ensure that every interested student has an opportunity to register to vote.

46. In 2011, approximately 1,200 educators from across the nation participated in our Democracy Class, including 63 in Florida. In 2012, we expect the number to be significantly higher because of the presidential election. We expect around 5,000 educators will incorporate Democracy Class into their curriculum, including approximately 125 from Florida if the program is active.

47. In addition to its Democracy Class, RTV identifies a few schools in Florida for special emphasis in registering voters. RTV focuses on schools in which students are not likely to have many other opportunities to register to vote, or may be less likely to be exposed to information about how important the right to vote is, or why they should register to vote. These tend to be schools in districts that have disproportionately high numbers of low-income and minority students. At these schools, with the cooperation of teachers and administrators, RTV organizes school-wide events to educate students about the right to vote and encourage voter registration.

48. RTV has worked hand-in-hand with Florida Supervisors of Elections on its Democracy Class. It has been my experience that Supervisors of Elections strongly encourage, and are very excited to see, higher levels of voter registration and participation in democracy by young voters. Supervisors of Elections, however, do not have time to do extensive outreach and voter registration efforts in schools. RTV, in collaboration with teachers, has helped meet this need through its Democracy Class. Without Democracy Class and other RTV programs, we have



reason to believe voter registration rates among students and other young voters would be significantly lower.

49. Democracy Class is integral to RTV's mission because it combines education, outreach, and active engagement (through voter registration) of young people. It has been one of RTV's most successful and important programs, and it was particularly effective in Florida because Florida encourages 16- and 17-year old future voters to pre-register.

### **The Severe Burdens Florida's New Law Imposes on Rock the Vote**

#### *Burdens on RTV's In-Person Voter Registration Activity*

50. Florida's new voter registration Law will make it extremely difficult to continue to help young people to register to vote in Florida. As described below, RTV lacks the time, resources, and personnel to comply with all of the Law's onerous requirements. In addition, there are some parts of the Law that are unclear. Unless the Law is enjoined or limited in such a way that substantially reduces the burdens and risks it places on RTV, there is no question that we will have to drastically cut back, or perhaps discontinue, our registration efforts in Florida. We have already suspended our Democracy Class program and our in-person voter registration work in the state of Florida since the Law's passage. We have had to turn down requests from individuals and teachers in Florida to collaborate on voter registration activity due to the Law's burdensome new requirements.

51. RTV is extremely concerned that the Law will make it exceedingly difficult to encourage student volunteerism with us. The Law now requires each "registration agent" to sign a sworn form detailing severe felony penalties that result from false registration. While we train our volunteers to ensure no one falls afoul of these laws, introducing a student to civic participation and volunteerism via a list of felony penalties, in turn signed under felony penalty of perjury, is

intimidating and scary for many students. The nature of the required form will lead to fewer students who are willing to participate in and volunteer in RTV's voter registration activity, particularly on a spontaneous basis.

52. As I understand the Law, RTV will be required to place an identifying number on each completed voter registration form. Right-wing organizations heavily scrutinize RTV, and potential voters could fear that they will be harassed for their association with us.

53. When, or if, we do resume on-the-ground registration efforts in Florida, RTV does not understand how the Law's tracking requirements would apply to registration forms made available by RTV online. RTV frequently refers volunteers, teachers, and others to our online voter registration system, and it is unclear if this activity falls under the Law's requirement that we track each form "provided to" our "registration agents." For example, we frequently provide the web address of our voter registration process to teachers involved in our Democracy Class. Under the Law, those teachers may have to register as "registration agents" of RTV because they use our materials to help students register to vote.

54. In addition, we provide Democracy Class teachers, and all of our volunteers, with blank copies or digital versions of the National Mail Voter Registration Form and encourage them to copy and print the forms as needed. It is totally unclear how we would account for and report those copied forms under the Law – it would be essentially impossible. This is of particular concern when the forms we distribute are blank, publicly available forms, and may be used by our volunteers or Democracy Class teachers *either* to help voters register on behalf of RTV *or* to simply distribute a public form to encourage others to vote without any intention of collecting those completed forms. Nonetheless, the Law requires us, for some reason I do not understand,

to track all of the blank forms we provide, even though an identical form can be downloaded from the website of the Election Assistance Commission.

55. RTV also lacks the practical ability to make sure every pre-marked form used at our in-person events is submitted in a timely fashion. As described above, applicants sometimes begin filling out a registration form at a table but then leave with the partially completed form. If this were to happen with a marked form that is then submitted past the 48 hour deadline, RTV would apparently be held strictly liable.

56. It is also unclear to me how the submission timing requirements in the Law work. The law requires that each form be submitted in person within 48 hours unless the elections office is “closed for the 48-hour period.” I cannot tell from this instruction whether the closure of a government office for only part of that 48-hour period would impact the return deadline for completed forms. Similarly, while the regulations provide for a two-day return time based on a postmark if the forms are mailed to elections officials, it makes no mention of extending this postmark deadline in circumstances when the U.S. postal offices are closed within some period of the 48 hour window. Finally, the postmark provides the time of receipt for mailed-in forms only when the postmark is “clear.” I have no way of knowing whether the post office will provide a clear postmark, and the Law’s strict deadline does not permit us to mail completed forms with confidence that they will be received by election officials in advance of this deadline.

57. I understand that the Division of Elections’ explanation of the Law’s requirements includes a statement that all completed forms must first be turned in to RTV before they can go to election officials. If this is actually what the Law requires, it is extremely burdensome and likely impossible to comply with. RTV’s main offices are located in Washington, D.C., and we do not have a formal office Florida. Our organizers would have to mail forms to Washington,

D.C., in order for us to then mail them to the state of Florida. This would absolutely not be possible within 48 hours. It also would require us to place these forms in the mail – twice – rather than use our standard in-person delivery to ensure that they directly reach elections officials.

58. RTV sometimes receives completed forms from students who know we are on campus but who completed their forms days before they submit them to us. RTV would never refuse to accept and help submit an applicant's completed form, but in situations like this one, the Law would present a serious problem for RTV. It appears from the statute and regulations that the Law's 48-hour delivery period starts running from the date and time that a registrant completes the form, even if RTV volunteers actually collect it later. The regulations permit RTV to "provide documentation" that a form was completed before the day that it was delivered to RTV, but this process appears to be available only for mailed-in forms. It is also unclear how we would be able to document such a delay. Therefore, it is unclear whether we could accept a previously completed form from an applicant and submit that form within 48 hours of receipt without subjecting RTV to a fine.

59. RTV already has every incentive to turn voter registration forms in as soon as possible, and it has always done so. We want our applicants to vote, and the earlier we can verify that they are on the voter rolls, the better. However, requiring each form to be turned in within 48 precise hours forces us to operate at the very margins of our ability, with zero wiggle room. Not only does this place undue stress and haste on our successful voter registration processes, but it places entirely unnecessary demands on our volunteers, particularly students. While all RTV volunteers who handle completed voter registration forms have been vetted and proven to act in good faith, they are still extremely busy students. I would hesitate to demand that they place

themselves or RTV at risk of fines or civil penalties if they cannot turn a form around in 48 hours. These students are actively engaged in the political process and willing to donate their limited time to help others register to vote. Hanging the threat of sanctions over their heads will not increase the security of these forms or reduce fraud. All it does is place stressful and punitive demands on volunteers acting in good faith.

60. In our experience, it usually takes staff members or lead volunteers two to five days to ensure that forms are submitted properly. At times, it may be physically impossible for them to collect the forms from other volunteers, check them for accuracy and completeness, and deliver them to a Supervisor of Elections or the post office within 48 hours. It would be extremely difficult to submit every form within 48 hours of it being completed at a tabling event. Many volunteers are students who do not have cars, and many college campuses, where our tabling events are held, are not close to county offices (and are certainly outside of walking distance of those offices). These difficulties are particularly acute on weekends, when we often do voter registration events at concerts, festivals and community events, when relevant offices are closed for some or all of the 48-hour return period and the return window is shortened. Thus, it is likely that because of the Law's 48-hour deadline, RTV will not be able to organize tabling events, especially before or during weekends.

61. Even if it were always possible to submit forms within 48 hours, RTV would likely have to forego asking staff and volunteers to collect data from applicants for follow-up communications, because they would be in such a rush to meet the submission deadline. This would make it impossible for RTV to follow up with applicants if there was any problem with their forms, remind them to vote, or otherwise communicate with them. Subsequent communication with people who fill out voter registration forms is a critical organizing tool and

is essential to our mission. Without it, we will not be able to effectively motivate the population that we serve to get out and vote.

62. In rare instances in the past, RTV has been unable to submit forms through no fault of RTV, our staff, or our volunteers. In 2010, in Ohio, 300 voter registration forms were stolen out of a staff member's car as he was parked on the way to the state board of elections. RTV contacted as many people as possible using previously scanned information and asked them to fill out forms again. In this type of situation, RTV uses stored contact information to ensure that each individual who submitted a completed registration form has another opportunity to register to vote. Without our internal data collection and retention, we would not have been able to follow up with impacted voters to ensure they ultimately got onto the voter rolls.

63. The Law's requirement that we identify all of our registration agents, including when they start and when they end their relationship with RTV would be impossible to satisfy under our model of volunteer driven events. RTV cannot determine who is a registration agent for the organization under the Law. Many volunteers show up without notifying RTV in advance. Volunteers may or may not see themselves as RTV members, and other than opting out of future RTV e-mails, there is no formal way for members to resign their membership. Volunteers may also help people register to vote on their own time in activities not affiliated with RTV. We do not require volunteers to provide us with an "end date" to their volunteer activity, and we believe that doing so would formalize and discourage the exact civic participation that RTV works to cultivate among the younger generation. The Law's new requirement that we update the state about those who "terminate" their status as our volunteer base is bewildering and impossible to satisfy.

*Burdens on RTV's Democracy Class Program*



64. Under the Law, it is my belief that teachers running Democracy Class would need to be identified as registration agents for RTV because they would be collecting and submitting voter registration applications on RTV's behalf.

65. Because teachers would be registration agents, prior to collecting voter registrations as part of Democracy Class, they would have to sign a statement threatening them with criminal prosecution. I believe teachers would be intimidated by this statement, and many would not sign it. Since the Law passed, there have been reports in the media about Florida teachers who have fallen afoul of the new Law, and who are being investigated or fined for returning voter registration forms later than 48 hours after collecting them from students. I am concerned that between the frightening registration agent form and the publicized investigations of teachers, principals and other administrators may not allow teachers to sign such forms because of concerns about liability and the school's reputation.

66. Even if teachers were willing to sign the forms, RTV cannot afford to expose itself to liability under the Law by listing teachers as registration agents. Under the Law, if a teacher collected voter registration forms during an RTV Democracy Class but did not submit them within 48 hours, RTV would be liable.

67. There are many good reasons why a teacher might not submit an application within 48 hours. First and foremost, teachers are in the classroom teaching students throughout the week, and I would hesitate to place immediate demands on their work or personal schedules. A teacher could teach a Democracy Class on a Friday and give students the weekend to fill out applications. Or a teacher could collect a round of voter registration applications during Democracy Class, but hold on to the completed applications so that students who were absent the day of Democracy Class could fill out the voter registration application on a subsequent day. If

for any reason the teacher mailed the envelope with the completed applications more than two days after the first student signed and dated an application, RTV would be liable for fines. RTV would have no way of tracking all of the voter registration applications that teachers collected from students, yet the applications would be stamped with RTV's third-party voter registration number ("3PVRO number").

68. Additionally, a student may choose to fill out the voter registration application but not return it to the teacher. If the student does not submit the completed application within 48 hours, RTV would apparently be liable under the Law, since the form would be stamped with RTV's 3PVRO number.

69. Because mailing completed forms only constitutes delivery for purposes of the Law's 48-hour deadline if the mailing envelope bears a "clear" postmark when it arrives at the Division of Elections, even a teacher who promptly and properly collects and mails every single completed application risks running afoul of the Law's strict provisions. Even if teachers were able to personally drop off packages of completed forms at the post office during business hours, neither they nor RTV would have any control over whether the postal service properly and clearly postmarked every envelope containing completed forms. Nevertheless, for each and every application that arrives at the Division of Elections more than 48 hours after it was completed and in an envelope that was not clearly postmarked, the Law would impose mandatory fines.

70. RTV would not be able to track all of the voter registration applications bearing its 3PVRO number. Especially in Democracy Class, we would feel compelled to pre-mark any forms used by teachers rather than place the burden on public servants trying to engage young voters. Each of these pre-stamped forms is a floating liability for RTV. For example, a teacher could make a copy of a stamped application to give to a colleague or friend or for additional

students. If that person completed the application but did not submit the application within 48 hours, RTV would be liable.

71. RTV would also be unable to comply with the Law's requirement that it report the number of blank voter registration forms it distributes in Democracy Class. Even if RTV sent out unmarked voter registration applications, teachers and others could make copies of these blank applications, and RTV would have no way of knowing how many applications were copied and distributed. While we do try to assess the number of forms we send out to teachers to track the efficacy of our work, our overarching goal is to get voter registration forms out to those who wish to fill them out. We are not in the business of telling teachers *not* to copy and distribute blank voter registration forms, as we want nothing to hinder the ultimate goal of increasing voter registration.

72. The Law will prevent RTV from incorporating voter registration into Democracy Class. Without the voter registration component, Democracy Class will be significantly less effective in advancing RTV's mission of getting young people involved in the political process.

73. RTV does not have the resources to run an entirely different model of Democracy Class in Florida than it does in the rest of the country in an attempt to somehow comply with the illogical and excessively stringent requirements of the Law. It would be practically impossible for RTV to adequately ensure that neither RTV nor teachers participating in the Democracy Class accidentally create liability for civil fines or criminal penalties.

### **Conclusion**

74. Sadly, the Law has forced us to discontinue Democracy Class in Florida despite the fact that our successful pilot program in 2010 was based here. The Law now undermines Florida's policy of encouraging young people to register to vote by making it effectively impossible for

RTV and teachers to collaborate to help high school students register to vote. Florida is effectively banning RTV from continuing what has been a very successful mission.

75. The Law's provisions governing voter registration directly undermine RTV's ability to express and engage in our mission. RTV's registration events are a central aspect of our advocacy for encouraging and inculcating civic participation in all young citizens. But the Law's provisions requiring registration agents certify to criminal penalties will alienate young students just as they begin their volunteerism through RTV, stigmatizing volunteerism as an activity fraught with risk. Requiring RTV volunteers to be formal agents of RTV, and making them swear to acknowledge serious criminal penalties, are disincentives that will make civic participation with RTV an intimidating, formalistic, and complex process. Similarly, the Law's 48-hour turnaround period and the fines and penalties for failing to strictly satisfy this requirement place undue burdens on our staff and volunteers and will drive away those who would otherwise seek to join RTV in our mission of encouraging political participation.

76. Put simply, Florida's new Law makes voter registration in the state an activity that is simply too costly and too perilous for RTV to engage in. Under the Law's vague but ominous enforcement provisions, the Attorney General could bring an action against RTV for even the most mundane and innocent violation of the law's confusing and complex requirements. The financial and reputational harm RTV could suffer in the likely event that it accidentally failed to comply with one of the Law's incomprehensible provisions would severely impede RTV's ability to engage an entire generation of potential voters, both in Florida and across the nation.

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I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 13<sup>th</sup> day of December 2011.

A handwritten signature in black ink, appearing to read "Heather Smith", written over a horizontal line.

Heather Smith

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Heather Smith Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19<sup>th</sup> day of December, 2011 upon the following:

Kurt S. Browning  
Secretary of State of Florida  
500 S. Bronough Street  
Tallahassee, Florida 32399

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**COFFEY BURLINGTON**

/s/ Kendall Coffey  
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# Exhibit F

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA

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

Plaintiffs,

v.

KURT S. BROWNING, 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. \_\_\_\_\_

**Affidavit of Brad Ashwell**  
**Submitted in Support of**  
**Plaintiffs' Motion for**  
**Preliminary Injunction**

I, Brad Ashwell, hereby declare as follows:

1. I am the Advocate at the Florida Public Interest Research Group Education Fund ("FL PIRG"). I represent FL PIRG in public, including at legislative and administrative hearings, at public events, and in the media. I supervise and coordinate FL PIRG's voter registration activity in close coordination with the New Voters Project, which is run by the Student Public Interest Research Group ("Student PIRG"). I am in daily contact with staff and volunteers from both FL PIRG and Student PIRG. I have current and extensive knowledge of all aspects of FL PIRG's mission, activities, and voter registration work. I was also formerly the Senior Research Associate of Florida Common Cause. I submit this affidavit in support of Plaintiffs' motion for a preliminary injunction to prevent enforcement of the provisions of the newly enacted 2011 Fla. Laws 40 § 40 (codified at Fla. Stat. § 97.0575) ("the Law") that impose onerous new registration, reporting, and submission deadlines on individuals and civic groups engaged in voter

registration, and which are preventing FL PIRG from fully carrying out its mission of fostering civic participation.

2. FL PIRG, which was founded in 1987, is a network of researchers, organizers, advocates, and students across the state. FL PIRG is an affiliate of the U.S. Public Interest Research Group Education Fund (“U.S. PIRG”), a national network of researchers, advocates, organizers and students based in state capitals across the country, which opposes the influence of special interests in issues such as voting rights, political corruption, prescription drugs, and product safety, when these interests stand in the way of reform and progress.

3. Florida Public Interest Research Group Education Fund is a (501)(c)(3) organization. It works to provide an independent voice on behalf of the public interest when public debate is being dominated by special interests with narrow agendas that fail to benefit the greater good. The organization works to protect consumers and promote good government by investigating problems and crafting solutions, educating the public, and offering Floridians meaningful opportunities for civic participation.

4. FL PIRG also has a 501(c)(4) sister organization called the Florida Public Interest Research Group Citizen Lobby (“The Citizen Lobby”). The Citizen Lobby stands up for the public by advocating for the passage of new laws and other protections at the local, state and federal levels. It has won victories for Floridians on a wide range of issues, including the protection of voting rights, healthcare reform, and product safety. The Citizen Lobby is our membership organization, but members also receive updates about the activities of the broader FL PIRG network.

5. FL PIRG has a single office located at 310 N. Monroe St., Tallahassee, FL 32301. I am currently the only full time staff member of FL PIRG.

6. The Citizen Lobby has approximately 6,000 members statewide, along with an e-mail list of 10,455 people who are interested in keeping apprised of its work and the work of its sister organization, FL PIRG.

7. In a given week, there are usually one to ten people volunteering at the state office in Tallahassee. During specific activities and projects, there may be up to thirty people volunteering in the state office

and many more volunteers in the field engaged in direct advocacy, voter registration, or “get out the vote” efforts.

8. FL PIRG opted to register as a third-party voter registration organization under Florida’s prior law. In 2010, FL PIRG did not fail to transmit any voter registration forms to election officials by deadline. FL PIRG has never received a fine or warning from the state for inadequate handling of voter registration forms in all its years of its voter registration work.

9. FL PIRG has not registered with the state since the passage of the Law. But FL PIRG intends to re-launch our voter registration work in Florida in 2012 because it is too high of a priority for us to eliminate. As described below, however, the Law has already severely burdened our registration efforts, and will continue to do so. It has required a huge amount of resources and staff time to analyze and decipher, and still leaves many questions unanswered about how best to comply, if such compliance is even possible. Moving forward, our good faith efforts to comply with the Law will demand a greater amount of funding and other resources. The bottom line is that the Law will make voter registration substantially more difficult for FL PIRG, and will decrease the number of voters we are ultimately able to help register.

#### **FL PIRG’S Voter Registration Activity**

10. Voter registration is a key part of FL PIRG’s mission because it supports the organization’s core belief that in order for democracy to work, as many people as possible must be engaged in the process. Increasing participation in our democracy underscores every activity on which FL PIRG works, and civic engagement is crucial to ensuring that our members’ voices are heard and counted on every issue for which we advocate. An integral part of FL PIRG’s work is putting “boots on the ground” both to register new voters and to get out the vote by encouraging registered voters to go to the polls on Election Day. Because we believe that citizens should begin to exercise their voting rights early in their adult lives, student voter registration and mobilization are particularly important aspects of our registration and voting efforts.

11. FL PIRG's voter registration drives are part of a nationwide effort by PIRG affiliates to increase civic engagement. It is my understanding that nationally, U.S. PIRG had active voter registration programs in 24 states in 2008 and in 14 states in 2010. In addition to our on-the-ground voter registration drive work detailed below, FL PIRG has publicized the opportunity to register to vote online.

12. FL PIRG has run voter registration programs in Florida for over twenty years. FL PIRG ran a large voter registration project in 2004, and also run large voter registration drives in Florida in 2008 and 2010. FL PIRG registered approximately 16,000 Florida voters in 2004, 5,000 in 2008, and 2,000 in 2010.

13. In addition to being part of the U.S. PIRG federation, FL PIRG also works with Florida branches of the national Student PIRG network. Student PIRG branches focus on engaging students in the political process; in particular, the Student PIRG "New Voters Project" focuses on registering students to vote. We work in close collaboration with Student PIRG to plan and engage in campus-based voter registration drives, train volunteers on proper voter registration activity, and collect data about our voter registration work.

14. FL PIRG focuses a large percentage of its voter registration efforts on students and other young people. Most individuals registered by FL PIRG are between the ages of 18 and 22. FL PIRG's voter registration efforts have been particularly successful in engaging minority citizens. For example, in 2008, 42% of the citizens we registered self-identified as members of a racial or ethnic minority group.

15. Voter registration is funded as a separate activity within our organization to ensure dedicated and adequate funding for this core piece of FL PIRG's mission. Sustained voter registration presence depends on adequate funding levels. For example, in 2004, FL PIRG only had sufficient funding to support two campus organizers, who worked at different campuses throughout the state. In 2008, FL PIRG had sufficient funding to be able to put organizers on the ground in four universities across the state: the University of Florida, Florida State University, the University of Miami, and the University of South Florida. In 2010, FL PIRG was only able to place two organizers in the state, one at University of Florida and one based in Miami-Dade County.

16. FL PIRG's voter registration activity is primarily grant-based, and we are currently working to secure adequate funding for our aspirational 2012 registration efforts. We are very aware that, in order to successfully register voters in compliance with the Law, we will require significantly more funding than in past years. Regardless of how much funding is secured, ensuring compliance with the new Law's complex and confusing requirements will require us to scale back our registration efforts and spend proportionately less money, time, and resources on voter registration.

#### **Registration Drive Organizing and Staffing**

17. FL PIRG has developed a standardized program for engaging in voter registration drive activity, including model procedures and training for volunteers. The voter registration program is scalable, such that FL PIRG can run voter registration efforts for small as well as large target audiences.

18. Generally, there is one full-time FL PIRG staff member, known as a "campus organizer," at each campus voter registration drive. The rest of the participants are all unpaid volunteers under the training and supervision of the campus organizer. Campus organizers are not paid by the number of voter registrations they collect or distribute.

19. Campus organizers are usually recent college graduates who have been working with FL PIRG for one to two years. Most FL PIRG volunteers are students from the campus where FL PIRG's registration drives are held. In addition to general outreach efforts, FL PIRG runs an internship program and holds targeted recruitment drives to attract volunteers.

20. FL PIRG relies on its campus organizers to oversee and implement campus-based voter registration efforts. Campus organizers do register some voters, but they mostly supervise volunteers who, in turn, register the majority of voters at campus drives.

21. FL PIRG provides campus organizers with a job description to outline their responsibilities, and U.S. PIRG provides state-specific training for voter registration activities. U.S. PIRG's senior staff members train campus organizers at national training sessions in August and January. There is also ongoing in-state training throughout the year, run by Student PIRG's New Voters Project staff. After receiving their training, campus organizers are responsible for training volunteers. U.S. PIRG attorneys,



or, in some cases, attorneys paid by Student PIRG, write state-specific voter registration guidelines to help guide campus organizers and staff.

22. Before being allowed to assist anyone in registering to vote, campus organizers provide volunteers with clear ground rules, including an overview of applicable state law, as well as written materials that stress the rules. Volunteers are given a script and are taught to instruct registrants to fill out registration forms properly to ensure that individuals are registered successfully. Volunteers are instructed to obtain confirmation from a senior volunteer or campus organizer to make sure each voter registration form is properly completed by the applicant.

23. At voter registration events, FL PIRG typically sets up a table from which volunteers distribute and collect voter registration forms. Prospective volunteers can sign up at any time and—once trained in the registration procedures—they can help register voters.

24. During voter registration activities, FL PIRG volunteers hand out brochures describing FL PIRG internships and a “New Voters Project” pamphlet that provides information about the FL PIRG website, [www.floridapirg.org/voting-democracy](http://www.floridapirg.org/voting-democracy), shows where voters can find their nearest polling place, and explains what registered voters need to do to vote in their county. Volunteers are trained to encourage people registering with FL PIRG to become volunteers themselves. FL PIRG volunteers are also instructed to ask everyone who newly registers, or is already registered, to turn out to vote at the polls.

25. Voter registration events are geared toward attracting spontaneous applicants and new volunteers. For example, at one Florida State University event, volunteers dressed as super heroes to attract other volunteers. FL PIRG operates on the principle that any student or voter who is engaged in the political process enough to help others register to vote will, in turn, have a greater stake in the elections process and will therefore be more likely both to vote and to be civically engaged in all aspects of our democracy. Many volunteers join our voter registration activities on a whim, attracted by the concept. Other than training, we do not require them to enter into any formal relationship with us. We broadly encourage any level of volunteerism that we are able to attract, especially on campus. We really thrive by offering spontaneous opportunities for civic engagement.

26. Weekends are the most successful time to conduct voter registration events. FL PIRG often does door-to-door registration and “dorm storming” (door-to-door voter registration in campus buildings and dormitories) on Sundays, when students are least likely to be in class or engaged in other regularly scheduled activities.

**Applications, Recording, and Collection Procedures for Registration Events**

27. Prior to registering voters, FL PIRG Campus organizers typically obtain voter registration forms from the local Supervisor of Elections. FL PIRG prefers to use the Florida state voter registration forms because it is easier to obtain the physical forms; accordingly, use of the national form provided by the Election Assistance Commission is rare at our registration drives. Since I am based in Tallahassee, I frequently go to the Division of Elections or the local Supervisor of Elections’ office to obtain forms to hand out to our volunteers and staff.

28. Because of the decentralized nature and large scale of FL PIRG’s voter registration activity, FL PIRG requires a large amount of voter registration forms. For example, it is common for us to set a goal of 2,000 registered voters at a campus drive. FL PIRG requires approximately one-third more forms than the number of voters we seek to register, to ensure that campus organizers and volunteers do not run out. Many registrants will take a blank form or begin completing a form and then take it with them before completing it. This is common on campus, especially when students are on their way to class. Therefore, for a given campus, FL PIRG may need more than 2,600 applications.

29. Last election cycle, during a voter registration drive at Florida State University, the Leon County Supervisor of Elections’ office (which is usually a very effective office) ran out of forms and had to get more forms from the Florida Department of State. This was only possible because the Leon County Supervisor of Elections took extraordinary steps to get more forms and because the Florida Department of State is located nearby in Tallahassee.

30. Whether registering people door-to-door, in classrooms, or at campus events, at the end of any registration event, a campus organizer fills out a “batch form” that tracks the date of the event, the names

of campus organizers and volunteers working at the event, the number of people that were registered, and which volunteer registered each set of voters.

31. Where allowed by the school's administrators, the campus organizer makes copies of voter registration forms and mails copies to U.S. PIRG's office in Chicago to enter information into U.S. PIRG's national voter database. This is allowed on most campuses, but if a campus instructs a FL PIRG campus organizer not to make copies of voter registration forms, we do not do so. FL PIRG also attempts to electronically input data from the form whenever possible.

32. Where FL PIRG is not allowed to make copies, campus organizers keep data by copying batch forms listing the number and names of voters registered during a voter registration drive. This is used for "get out the vote" efforts if registrants give FL PIRG permission to contact them. Registrants who give permission will provide their phone number to FL PIRG's volunteers and will receive a day-of text message or phone call reminder to vote on Election Day. Based on a study done by the Analyst Institute, FL PIRG estimates that this increases voter participation among those whom FL PIRG registers to vote by 4.4%.

33. FL PIRG instructs campus organizers to try to submit completed voter registration forms as quickly as they can. But we recognize that in certain cases, such as an evening event or multi-day registration drives where forms are collected and consolidated before submission, more time is needed. Consolidating forms allows organizers to check them for completeness and accuracy prior to submitting them to the Supervisor of Elections and reduces the possibility that any forms will be misplaced or lost.

34. FL PIRG prefers that its campus organizers physically drop off voter registration forms at Supervisors of Elections' offices whenever possible, so that the organizer can confirm delivery by getting a receipt from the Supervisor of Elections listing how many voter registration forms were dropped off. If necessary, campus organizers may mail the forms. This may be necessary when a campus is not close to a Supervisor of Elections' office and the campus organizer does not have a car. A two-day return is our default goal; however, during crunch times or multiday drives in particular, we do not routinely turn in all forms within 48 hours of receipt. Following such a tight deadline would drain critical resources from our

organizers, as they would have to spend much more time in transit and on administrative responsibilities, rather than registering others to vote. Thus, it can take between two and four days after a form has been filled out and given to a FL PIRG volunteer for our organization to properly process it and submit it to a Supervisor of Elections.

35. If a campus organizer or senior volunteer is unable to go directly to the Supervisor of Elections' office after an event, completed forms are locked somewhere secure, such as a student government office, the office of the dean of students, or the FL PIRG office.

36. There are three stages at which FL PIRG checks voter registration forms for accuracy. First, the volunteer helping an individual register to vote checks the form to make sure it is complete. Second, the campus coordinator (or other supervising staff member) double-checks the application. Third, the campus organizer reviews all voter registration forms to make sure they are fully and properly completed. If FL PIRG notices a problem with a voter registration form, we will use the contact information collected from the applicant to inform him or her that the form has not been completely or properly filled out and to ask whether he or she would like to correct the application. In most cases, FL PIRG is able to get the form corrected, but this may take some additional time. In all cases, FL PIRG submits forms to a Supervisor of Elections. If there is a problem with a form that has not been corrected, FL PIRG flags it for the Supervisor of Elections.

37. In some cases, it takes more than two days for registrants to correct mistakes on their voter registration forms after filling out the form. If FL PIRG had to submit all forms within two days, it would not be able to submit as many correctly completed forms.

38. Although FL PIRG prefers to collect voter registration applications, it is very common for us to distribute forms without collecting them after they are completed. Frequently, individuals who express interest in registering to vote may not have the time, information, or inclination to complete a voter registration form either at a voter registration drive event or during door-to-door voter registration activity. In these situations, FL PIRG's volunteers and staff will always provide a blank voter registration form to the individual, encourage him or her to fill it out, explain that FL PIRG is happy to collect a form

if and when it is complete, and explain how the applicant can submit the voter registration form on his or her own. We do everything we can to make it as easy as possible for people to register to vote. We would never refuse to provide someone with a registration form.

39. FL PIRG frequently places stacks of voter registration forms near classroom doors, near the cafeteria cash register, on tables in student centers, and in other similar locations. Individuals may then submit their own forms or may return their completed forms to any FL PIRG staff member or volunteer for FL PIRG to submit.

40. Indeed, it is not always clear whether an individual will complete the form and turn it in to us, or submit it on his or her own. As noted, it is very common for someone to start filling out a form with FL PIRG at a campus drive table, intending to give the completed form to us, and then suddenly leave with it upon realizing he or she is late for a class or other obligation. In those types of circumstances, we would never demand that individuals hand us their partially completed applications; instead, we encourage them to complete the forms at their own convenience.

#### **Chill on Registration Efforts**

41. I have read the provisions of HB 1355. Many of the provisions are confusing, and I am not clear how they would apply to FL PIRG. The provisions are also very burdensome and would seriously compromise our ability to engage in voter registration activities.

42. In order to understand and comply with these confusing and complicated provisions, FL PIRG will be required to hire additional administrators and organizers, and take costly preparation measures in order to continue our voter registration activities.

#### **The Law's 48-Hour Requirement**

43. The Law's requirement that forms be submitted within 48 hours of collection will be extremely difficult to comply with in many circumstances. Also, I am confused about how this requirement applies when completed forms are collected after the close of usual business hours, and over weekends and holidays.

44. The Law states that when a Supervisor of Elections office is closed “for” the 48-hour return period, the form may be submitted on the next business day. However, it is unclear to me when exactly this grace period applies. It is not apparent whether the office must be closed for the entire 48-hour period; if so, the grace period would only be available in very limited circumstances. On the other hand, if the grace period does apply when the relevant office is closed for only some of the 48 hours, it is unclear whether this applies equally to office hours (for example, forms collected after 5 p.m.) or only to office closures for an entire day. If the latter, I do not understand exactly when such forms would be due—whether the due date would be a specific time, or any time before the next business day closed. For example, if a form is collected Friday afternoon and would be due Sunday afternoon, when an office is closed, I do not know if the form is eligible for the grace period, such that it is due the next business day—Monday—and if so, at what time .

45. The 48-hour turnaround time is particularly troubling as it relates to FL PIRG’s frequent voter registration work during the evening. Nighttime events are extremely effective on campus, after classes are over and when students have more time to complete voter registration applications. But under the law, conducting voter registration efforts after 5:00 p.m. becomes more complicated because of the 48-hour requirement. Because both post offices and Supervisor of Elections’ offices generally close at 5 p.m., they would thus be unavailable for submission of forms during the final hours of the 48-hour deadline. If no grace period goes into effect, and these forms must be submitted within 48-hours, this means that all registration forms collected after 5 p.m. are effectively required to be turned in even before 48 hours has elapsed.

46. According to its website, the Division of Elections is apparently forbidding registered groups from having their registration agents submit completed forms. It is unclear who, other than me, would be authorized to turn in forms on behalf of FL PIRG if our registration agents—campus coordinators and volunteers—are unable to do so. Thus it seems FL PIRG volunteers must first send all forms to FL PIRG, presumably for me, as the sole full-time employee of FL PIRG, to submit. Given our structure and limited resources, we could not possibly comply with the Law if this central submission of forms were



required. FL PIRG places volunteers throughout the state, and many of them are located hundreds of miles from my office in Tallahassee. It would be difficult to ensure those forms reached me within 48 hours, let alone in time for me to then take those forms to election officials. I do not have the capacity to be at the FL PIRG office at all times to receive forms from our staff and volunteers across the state, or to constantly deliver those forms when they arrive. Indeed, I travel a lot for my job, and am only in the Tallahassee office about 70% of the time. Furthermore, having our staff or volunteers mail those forms to the main FL PIRG office would increase the movement of completed voter registration forms in a manner that would create the unnecessary possibility that they could get lost or delayed in the mail. It would also dramatically increase the cost of submitting these forms, especially because—if there was any remote hope of getting these forms in on time—we would have to make expensive overnight shipments on a daily basis.

47. To avoid the risk of violating the difficult and confusing 48-hour requirement, campus organizers and volunteers will have to focus on getting forms copied and sent to the Supervisor of Elections' offices (or, if the rule requiring centralized submission applies, to FL PIRG in Tallahassee) almost constantly—in lieu of registering people to vote. This not only drains valuable resources from our voter registration work, but increases the constant traffic and movement of voter registration forms, which I believe reduces the security of these applications. The constant movement of forms places a special burden on student staff and volunteers, who frequently have no automobiles and are therefore unable to drive to a Supervisor of Elections' office or post office during business hours.

48. The 48-hour requirement will be especially difficult to comply with during particularly busy periods for voter registration. For example, on a large campus such as Florida State, it is common for FL PIRG to collect forms from 1,000 people in the days leading up to a voter registration deadline. During these busy times, for the security of the voter registration applications, FL PIRG's limited staff and volunteers may retain the voter registration forms collected at that event in one place for three to four days and then submit the entire lot at once. The new Law prohibits this and requires our staff and volunteers to take time away from direct voter registration activity to dedicate it to daily travel. Because

we are only comfortable permitting campus organizers or staff to handle completed forms on their own, this would require that the most experienced staff and volunteers be constantly pulled away from supervising voter registrations events in order to drive forms to a post office or Supervisor of Elections' office. This will lead directly to fewer registered voters, and to the unnecessary constant movement and separation of voter registration applications.

49. Although regulations implementing the new Law permit us to submit completed voter forms by mail, the date of mailing only counts as a delivery for purposes of the 48-hour deadline if the mailing envelope bears a clear postmark. Because our campus organizers and staff have no control over whether the postal service properly and clearly postmarks an envelope, I am concerned that even a timely mailing may result in liability for FL PIRG if a package of forms arrives more than 48 hours after the forms were completed.

#### **Registration Agent Requirements**

50. The sworn statements that each staff member, campus coordinator, or volunteer must sign, coupled with potential personal liability they must agree to assume, will have a chilling effect on voter registration drives.

51. As I understand HB 1355, FL PIRG will have to require every person assisting with voter registration to sign sworn statements threatening criminal prosecution for false registrations before they can engage in registration activities. From my experience working with students and other young people, I believe the intimidating registration agent form will significantly burden FL PIRG's ability to recruit volunteers. Some students will hesitate to join our volunteer efforts, particularly those drawn in spontaneously, if they must first sign a form listing multiple felony penalties. Moreover, certain school administrators will not want their students to participate in voter registration drives for fear of fines or reputational damage to the school.

52. It is unclear to me whether our volunteers could face personal liability for failing to turn in a form within 48 hours. I know they could be held personally liable for late submissions under the prior law's ten-day deadline, and the statute's language on fines is unchanged by HB 1355. I also know that a third-

party voter registration organization can be held liable for high fines even where a delay may be out of their control, because the Law does not require the Secretary of State to waive fines even when forms are delayed by a natural disaster or freak occurrence—like a car accident. Students cannot risk any amount of fines or any other potential liability, and will be unlikely to take that risk in order to help fellow students register to vote—particularly where such fines may be wholly outside of their control.

53. I also understand that FL PIRG will have to register every volunteer as a “registration agent,” and then subsequently report the “termination” of each volunteer. Requiring volunteers to become “registered agents” of FL PIRG runs contrary to FL PIRG’s tradition to welcome individuals spontaneously motivated to engage in the political process. We never insist that our volunteers inform us if they intend to continue to be involved in voter registration activities after a single event, as we do not wish to formalize or dissuade spontaneous democratic participation. As such, it will be both impractical—if not impossible—and contrary to FL PIRG’s mission to require each volunteer to specify the precise scope of their volunteerism with FL PIRG.

#### **Form-Marking and Tracking Requirements**

54. As I understand it, under HB 1355, any voter registration form marked with FL PIRG’s third-party voter registration organization identifier will need to be submitted within 48 hours of completion or FL PIRG will risk significant fines. This will require FL PIRG to constantly monitor and control every voter registration form containing its “3PVRO” identifying number in order to stop individuals who might choose to complete it later and submit it on their own. If an individual takes a pre-marked form, completes it on her own but fails to submit it within 48 hours, FL PIRG will be liable for the “late” submission, over which FL PIRG never had custody or control.

55. Because FL PIRG does not always know which individuals will complete a form and return it to us on the spot and which might keep the form for later submission, it is impractical for FL PIRG to work with two separate stacks of applications—i.e., one for people FL PIRG registers in person and one to give out as blank applications. Moreover, even if FL PIRG were to try doing so, it could no longer rely on obtaining forms from Supervisors’ offices. This is because, under the Law, forms must be pre-stamped

with a group's 3PVRO number before distribution by election officials. To the extent we want to protect the organization and have blank forms solely for distribution or copying, we will need to obtain these forms in another manner. But, of course, if a volunteer forgets to put our 3PVRO number on any blank forms that is ultimately completed and submitted by us, this too could result in liability.

56. The Law also requires every registered organization to report, each month, the number of forms provided to and collected by its registration agents. FL PIRG will thus have to keep track of all voter registration forms, including blank forms that we simply distribute and do not collect.

57. It is unclear whether this requirement applies to blank forms that are copied or printed by our staff or volunteers. FL PIRG's volunteers may print out or photocopy voter registration forms on their own, without FL PIRG's knowledge. Assuming that copies count as forms "provided to" our agents, it would be extremely difficult for FL PIRG to track all forms provided to its agents. FL PIRG depends on many volunteers making voter registration forms available at many different locations, and we will have no way of tracking every form that volunteers acquire. Moreover, we feel that we should not have to dedicate significant administrative resources to tracking the distribution of publicly-available forms.

58. Information on Florida voter registration forms is generally available to the public, and it is my understanding that voter registration forms stamped with FL PIRG's 3PVRO number will publicly associate each of our registered voters with us. FL PIRG believes that when voters realize that their registration forms will publicly identify that they registered with us, there will be a set of people that will not register at our events. In fact, this is one reason FL PIRG separates voter registration work from other advocacy work; FL PIRG wants to register as many people as possible regardless of their political beliefs or affiliation.

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I declare under penalty of perjury under the laws of the state of Florida that the foregoing is true and correct to the best of my knowledge.

DATED this 14 day of December 2011.

A handwritten signature in cursive script, appearing to read "Brad Ashwell", is written over a horizontal line.

Brad Ashwell

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that a copy of the foregoing *Affidavit of Brad Ashwell Submitted in Support of Plaintiffs' Motion for Preliminary Injunction* was served via HAND DELIVERY this 19<sup>th</sup> day of December, 2011 upon the following:

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