


UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

FILED BY  03.  
2007 JUN 14 07  
U.S. DISTRICT COURT  
MIAMI, FLORIDA

EMMA YAIZA DIAZ; EBONY ROBERTS; ANDRE  
NEAL BEMBRY; AMERICAN FEDERATION OF  
LABOR AND CONGRESS OF INDUSTRIAL  
ORGANIZATIONS; AMERICAN FEDERATION OF  
STATE, COUNTY AND LOCAL EMPLOYEES,  
AFL-CIO; FLORIDA PUBLIC EMPLOYEES COUNCIL  
79, AFSCME, AFL-CIO; AND SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO,

Plaintiffs,

v.

CASE NO. 04-22572-CIV-KING

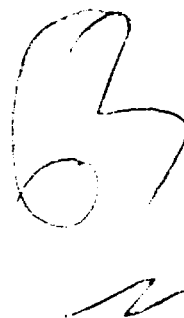
GLENDIA HOOD, Secretary of State of Florida;  
BRENDA SNIPES, Broward County Supervisor of  
Elections; JOHN STAFFORD, Duval County Supervisor  
Of Elections; CONSTANCE KAPLAN, Miami-Dade  
Supervisor of Elections; BILL COWLES, Orange County  
Supervisor of Elections; and THERESA LEPORE, Palm  
Beach County Supervisor of Elections,

Defendants.

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**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**SUBMITTED BY DEFENDANTS SECRETARY OF STATE AND**  
**PALM BEACH COUNTY SUPERVISOR OF ELECTIONS**

This cause comes before the Court on Plaintiffs' Motion for Preliminary Injunction and the responses thereto, as well as the Motions to Dismiss filed by Defendants and Plaintiffs' response thereto.



## STANDING

### Findings of Fact

Based upon the pleadings, the briefs, and the exhibits submitted in connection with the various motions pending before this Court, the Court finds the following:

1. None of the Individual Plaintiffs has had their voter registration application rejected as incomplete due to a failure to check the citizenship checkbox on the Florida Voter Registration Application (the "Application"). *See* (Affidavits of Y. Diaz, G. Diaz, A. Bembry, and E. Roberts, attached to Pls.' Mot., at Exhs. 6-8, 10).

2. None of the Individual Plaintiffs has had their voter registration application rejected as incomplete due to a failure to provide unique identifying numbers, such as driver's license or partial social security numbers, on the Application. Although Plaintiff Roberts initially believed that she was not registered, she has in fact been added to the voter rolls for Duval County. *See* Affidavit of Richard F. Carlberg, attached to Duval County's Mem. of Law.

3. Other than Plaintiff Bembry in Duval County, the Court finds that none of the Individual Plaintiffs has had their voter registration application rejected as incomplete due to a failure to check the non-felon checkbox on the Application.

4. Other than Plaintiff Diaz in Miami-Dade County, none of the Individual Plaintiffs has had their voter registration application rejected as incomplete due to a failure to check the mental competency checkbox.

5. The Application's requirements of responding to several specific questions regarding an applicant's qualifications to register as a voter constitute at best a *de minimis* burden, are clearly identified on the application, are not misleading, and do not constitute

any realistic impediment to successful completion of the Application by qualified prospective voters.

6. The requirement of completing the check-boxes regarding felony conviction and mental competency was not the proximate cause of the claimed injury to Plaintiffs Bembry and Diaz. Rather, the Court finds that the claimed injury to Plaintiffs Bembry and Diaz was due to the intervening cause of their own failure to follow the clear instructions in the Application.

7. There is no evidence that any members of the Union Plaintiffs have had their voter registration application rejected by Duval, Orange, or Palm Beach Counties as incomplete due to a failure to complete the citizenship, felon, or mental capacity checkboxes, or the unique identifying numbers requirement (collectively, the “challenged requirements”). *See* Declarations of D. Graham, D. Silvers, A. Gonzalez, and Monica Russo, attached to Pls.’ Mot., at Exhs. 11-14. The Court finds the conjecture in the Silvers Declaration, ¶ 11, and the Gonzalez Declaration, ¶ 12, of injury to union members in those counties as pure speculation and insufficient to support a finding of fact in Plaintiffs’ favor.

8. There is insufficient credible evidence that any members of the Union Plaintiffs have had their voter registration applications rejected by Broward or Miami-Dade Counties as incomplete due to a failure to complete the challenged requirements. In this regard, the Court finds the Graham declaration, Plaintiffs’ Exhibit 11, to not be credible or sufficient to establish injury to union members from the challenged requirements. None of the individuals identified by Mr. Graham as being affiliated with the Union Plaintiffs and aggrieved by the challenged requirements is before the Court as

a party or affiant. *See id.* As a result, the Court cannot independently verify that those individuals are associated with the Union Plaintiffs, nor can the Court determine that those individuals in fact satisfy the substantive qualifications to vote in this State.

9. The Union Plaintiffs have not been injured by the challenged requirements. Any administrative expense or inconvenience occasioned by the bringing of this lawsuit itself is not an injury from the challenged activities and will remain the same regardless of the final disposition of this lawsuit.

### **Conclusions of Law**

In light of the foregoing findings of fact, and in consideration of the various briefs and arguments submitted by the parties, the Court draws the following conclusions of law:

10. All Plaintiffs lack standing to challenge the citizenship and felon checkboxes. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Because no plaintiff has had their voter registration application rejected due to a failure to complete either of those checkboxes, Plaintiffs have failed to meet their burden on this claim. *See Parker v. Scrap Metal Processors*, 2004 WL 2160758 (11<sup>th</sup> Cir. 2004).<sup>1</sup>

11. Plaintiffs lack standing to bring their claim based on the felon checkbox against the Secretary of State and the Supervisors of Election for Broward, Miami-Dade, Orange, and Palm Beach Counties because Plaintiffs have not alleged, much less

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<sup>1</sup> In evaluating standing for purposes of the pending motions, this Court addresses only the claims and relief sought in the original Complaint, and does not consider the potential effect of the proffered Amended Complaint. All of the briefing to this point was based on the original Complaint as filed, and the Court will not simply assume, without according defendants an opportunity to brief the matter, that the Amended Complaint cures all of their objections or is not subject to its own further defects. This ruling thus will address only the claims for relief based on the original Complaint while leaving for separate consideration and possible briefing any new or renewed motions relating to or based upon the Amended Complaint.

demonstrated, that any plaintiff was denied the opportunity to register to vote by any of those defendants based upon the felon checkbox.

12. Plaintiffs lack standing to bring their claims based on the mental capacity checkbox against the Secretary of State and the Supervisors of Election for Broward, Duval, Orange, and Palm Beach Counties because Plaintiffs have not alleged, much less demonstrated, that any plaintiff was denied the opportunity to register to vote by any of those defendants based upon the mental capacity checkbox. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

13. Plaintiffs Diaz and Roberts lack standing to bring any of their claims because they have failed to establish a causal relationship between defendants' conduct and the rejection of their voter registration applications. The Court finds that these Plaintiffs' own conduct in failing to complete the clear and unambiguous Application is an intervening cause of the precise harm about which they are complaining.

14. The Union Plaintiffs lack associational standing because they have not established that any of their members have been aggrieved by the challenged requirements. *National Alliance for Mentally Ill, St. Johns Inc. v. Board of County Com'rs of St. Johns County*, 376 F.3d 1292, 1296 (11<sup>th</sup> Cir. 2004).

15. The Union Plaintiffs also lack standing because they have not established that they have suffered any "concrete and particularized" injury from the challenged requirements, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), or that their claimed administrative injuries associated with bringing this lawsuit itself are cognizable for purposes of standing or can be remedied by a favorable decision on the merits of their claims.

## **EQUITABLE PRINCIPLES/LACHES**

### **Findings of Fact**

16. The Court finds that Plaintiffs were aware – or should have been aware – of all of the challenged requirements months, if not years, before this suit was filed.

17. Plaintiffs could have sought earlier a declaratory judgment with respect to the state laws in question. *See* Ch. 86, Fla. Stat. (2004). Plaintiffs also could have sought a formal declaratory statement from the Florida Department of State as to the applicability of those laws. *See* § 120.565, Fla. Stat. (2004).

18. There is no credible evidence of any excuse for Plaintiffs' delay in bringing their challenges.

19. The Court finds that Defendants were prejudiced by Plaintiffs' late filing of this lawsuit only six days before the commencement of the general elections in Florida.

20. The Court finds that Plaintiffs' failure to apprise it of the Help America Vote Act of 2002 ("HAVA") was intentional and inexcusable.

### **Conclusions of Law**

In light of the foregoing findings of fact, and in consideration of the various briefs and arguments submitted by the parties, the Court draws the following conclusions of law:

21. The Court concludes that because of Plaintiffs' inexcusable and prejudicial delay in bringing their claims, and because of their lack of candor in raising their claims without citation to controlling provisions of HAVA, Plaintiffs' claims for equitable relief must be dismissed on the basis of laches and other equitable principles.

*See Fouts v. Harris*, 88 F. Supp. 2d 1351, 1353-54 (S.D. Fla. 1999), *aff'd*, 529 U.S. 1084 (2000).

## **SECTION 1983 CLAIMS**

### **Findings of Fact**

22. The evidence establishes that Defendants' acted in good faith in attempting to interpret and apply the requirements of State and Federal law and of the Constitution.

23. The deficiencies and violations alleged by Plaintiffs at most constitute reasonable differences in interpretation of the law or sporadic examples of potential irregularities in voting registration in two of Florida's sixty-seven counties.

24. The alleged irregularities (such as the time delay), even if true, were inevitable due to the substantial administrative burden of processing a high number of voter registration applications submitted close to the registration deadline. There is no credible evidence that Defendants' conduct was willful or done with invidious intent in relation to the few irregularities brought to the Court's attention.

### **Conclusions of Law**

In light of the foregoing findings of fact, and in consideration of the various briefs and arguments submitted by the parties, the Court draws the following conclusions of law:

25. "[N]ot every election irregularity, . . . will give rise to a constitutional claim and an action under section 1983." *Bodine v. Elkhart County Election Bd*, 788 F.2d 1270, 1271 (7<sup>th</sup> Cir. 1986) (quoting *Hennings v. Grafton*, 523 F.2d 861, 864 (7<sup>th</sup> cir. 1975)). As in *Hennings*, the Court rejects Plaintiffs' claims under section 1983 because

“the record here shows at most irregularities caused by mechanical or human error and lacking in invidious intent; it does not show conduct which is discriminatory by reason of its effect or inherent nature.” 523 F.2d at 864.

26. Plaintiffs failed to establish the requisite willful conduct undermining organic election processes on the part of Defendants. *See Bodine*, 788 F.2d at 1271. Accordingly, Plaintiffs’ section 1983 claims, which are predicated upon an alleged violation of the Voting Rights Act’s “materiality provision,” 42 U.S.C. § 1971(A)(2)(B), alleged violation of the Voting Rights Act’s “uniformity provision,” 42 U.S.C. § 1971(A)(2)(A), and alleged violations of equal protection and due process under the Fifth, Fourteenth and Fifteenth Amendments of the U.S. Constitution (the First, Third and Fourth Causes of Action in the Complaint, respectively), must be dismissed.

### **FAILURE TO JOIN INDISPENSABLE PARTIES**

#### **Findings of Fact**

27. The Court finds that any remedy applied only to the Supervisor Defendants in this case would be incomplete and would raise potential statutory and constitutional questions regarding disuniformity in the application of state and federal election laws.

28. The only means to avoid the potential problems from such disuniformity would be to apply the requested relief to all Supervisors of Election throughout the State, sixty-two of whom were not joined as defendants to this suit.

29. The joinder of those absent Supervisors is necessary for complete resolution of the issues in this case, yet, having not already been joined by Plaintiffs, is impractical at this late date relative to the election.

### **Conclusions of Law**

In light of the foregoing findings of fact, and in consideration of the various briefs and arguments submitted by the parties, the Court draws the following conclusions of law:

30. Because Plaintiffs did not join as defendants all of Florida's sixty-seven Supervisors of Elections, complete relief cannot be accorded among those already parties, thereby barring the Court from granting Plaintiffs' requested relief. *See* Fed. R. Civ. P. 19(a)(1). Any relief the Court might grant would apply to, at most, five of the sixty-seven. To maintain a case under those circumstances would raise significant questions under the Supreme Court's decision in *Bush v. Gore*, 531 U.S. 98, 106 (2000) based on the resulting disuniformity of the practices and procedures throughout the state.

31. Where the court cannot grant complete relief with the present parties, the absent parties are considered "necessary" to the action. *See Laker Airways, Inc. v. British Airways, Inc.*, 182 F. 3d 843, 847 (11<sup>th</sup> Cir. 1999). Because Plaintiffs have failed to join all necessary parties and cannot reasonably cure that failure at this late date, the Court dismisses Plaintiffs' Complaint. *See* Fed. R. Civ. P. 19(b) (court must determine whether, "in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person thus regarded as indispensable.").

### **MERITS**

#### **Findings of Fact**

##### ***The Application***

32. The Court finds that the checkboxes on the Application are clear, unambiguous, and not likely to mislead or confuse an applicant. *See* Compl., Exh. A.

33. The Court finds that the request for unique identifying numbers, including driver's license, state identification, and social security numbers, are clear, unambiguous, and not likely to mislead or confuse an applicant.

34. The Court finds that the instructions in the Application are clear and unambiguous and provide applicants clear and ample notice of the consequences of failure to complete the Application and the challenged requirements. *See id.*

35. The Court finds that the challenged requirements pose only a *de minimis* burden on applicants. *See id.*

36. The Court finds that the checkbox requirements are likely to focus an applicant's attention on the specific substantive requirements involved and thus to elicit a considered answer to each of the identified criteria requiring a checkbox response.

37. The Court finds that the checkbox requirements benefit Florida residents' interests in preventing voter registration fraud.

38. The checkbox requirements serve as notice to unqualified registrants that they should not submit the Application. Without such notice, the individuals may claim that they were unfairly prosecuted.

#### ***Voter Fraud***

39. The Court finds that the possibility of voter fraud is real and significant. Specifically, the Court gives significant weight to the affidavit of Richard Lober, who is the Chief Inspector with the Office of Executive Investigations at the Florida Department of Law Enforcement ("FDLE"). He averred that there are current voter fraud investigations in several Florida counties, including Miami-Dade, Broward, Orange, and Leon. (Lober Aff., ¶¶ 1-2) (attached to Def. Sec'y of State's Mem. of Law, Exh. A). The

Court finds the concern over voter registration fraud particularly credible based on the Lober affidavit's description of the FDLE's current investigation of suspected violations of the Florida Election Code by third party organizations conducting voter registration drives. *Id.*, ¶ 3. The investigations have revealed that these organizations "may have engaged in misconduct, including but not limited to: (i) intentionally disregarding Florida law by assisting convicted felons whose rights have not been restored to register to vote, (ii) failing to submit otherwise valid voter registration applications, (iii) fraudulently completing voter registration applications, and (iv) illegally obtaining absentee ballots for qualified voters." *Id.*

40. The voter qualification checkboxes provide substantial assistance in prosecuting individuals who fraudulently submit voter applications. *See id.*, ¶ 4. The Court credits Chief Inspector Lober's testimony that "if a registrant fraudulently checks a box on the registration form, the registration form is a critical element of proof regarding voter fraud." *Id.*, ¶ 4.

41. The Court also credits Mr. Lober's testimony that "the information provided on the registration form serves as an identifier to verify the accuracy and validity of the information." *Id.*, ¶ 6.

### ***The Right to Vote***

42. There is no evidence that any of the Plaintiffs have been categorically denied the right to vote or that they lacked the capacity to satisfy the challenged requirements in order to perfect their voter registration.

### **Conclusions of Law**

In light of the foregoing findings of fact, and in consideration of the various briefs and arguments submitted by the parties, the Court draws the following conclusions of law:

#### ***Heightened Review of Plaintiffs' Requested Injunctive Relief***

43. Plaintiffs are not entitled to injunctive relief unless they can demonstrate: (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction were not granted; (3) that the threatened injury to the Plaintiffs outweighs the harm an injunction may cause the defendants; and (4) that granting the injunction would not disserve the public interest. *See Suntrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1265 (11<sup>th</sup> Cir. 2001).

44. The Court notes that “the following types of preliminary injunctions are disfavored and they require that the movant satisfy an even heavier burden of showing that the four factors listed above weigh heavily and compellingly in movant’s favor before such an injunction may be issued: (1) a preliminary injunction that disturbs the status quo; (2) a preliminary injunction that is mandatory as opposed to prohibitory; and (3) a preliminary injunction that affords the movant substantially all the relief he may recover at the conclusion of a full trial on the merits.” *SCFC ILC, Inc. v. Visa USA, Inc.*, 936 F.2d 1096, 1098-99 (10<sup>th</sup> Cir. 1991). Upon review of Plaintiffs’ request for injunctive relief, the Court concludes that the relief sought by Plaintiffs squarely falls within each of these categories and is subject to heightened scrutiny.

### *The Citizenship Checkbox*

45. The Court concludes that the separate citizenship “checkbox” and “attestation” requirements are explicitly required by federal law. Specifically, the Court concludes that the “attestation” requirement is required by the National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973gg-7(b). Moreover, the Court concludes that the citizenship box requirement of the Help America Vote Act (“HAVA”), 42 U.S.C. 15483(b), is *in addition to*, not instead of, the oath required under the NVRA. The Court concludes that Congress intended for the citizenship checkbox, in which applicants must specifically affirm their citizenship, to be an anti-fraud tool. *See* H.R. Rep. 107-807, Report on the Activities of the Committee on the Judiciary, 2003 WL 131168, at \*80.

46. The Court concludes that an Application is incomplete and invalid if the applicant does not complete the citizenship checkbox. In particular, HAVA’s use of the term “shall” in requiring the “anti-fraud” citizenship question means that applicants may not simply disregard it. *See Hill v. Winn-Dixie Stores, Inc.*, 934 F.2d 1518, 1525 (11<sup>th</sup> Cir. 1991) (“The mandatory language of the statute . . . (‘shall be liable . . .’) contrasts with the discretionary language with respect to equitable relief (‘may be enjoined’)”). Similarly, the text of HAVA strongly implies that Applications are incomplete if the citizenship checkbox is not completed. *See* 42 U.S.C. § 15483(b)(4)(B). Moreover, the Court concludes any determination that the citizenship checkbox were not “necessary” under federal law would render meaningless HAVA’s command that election officials contact applicants who fail to complete the citizenship box to provide them an opportunity to cure that deficiency. *See Ced's Inc. v. U.S. E.P.A.*, 745 F.2d 1092,

1100 (7<sup>th</sup> Cir. 1984) (“We will not interpret a statute to require a meaningless act . . . if a more plausible interpretation is available.”). It would likewise render HAVA’s checkbox requirement itself meaningless if it could be disregarded without consequence. The Eleventh Circuit “look[s] askance at interpretations that render statutory language devoid of purpose and effect.” *Florida Right to Life, Inc. v. Lamar*, 273 F.3d 1318, 1327 (11<sup>th</sup> Cir. 2001).

47. The Court finds that the citizenship checkbox requirement is both “material” and “necessary” under federal law. The materiality and necessity requirements of the Voting Rights Act and the NVRA must be read in *pari materia* with other provisions of federal law and any action required by federal law must be deemed both material and necessary by definition and by any reasonable interpretation of congressional intent. This Court will not denigrate a congressional enactment by assuming or holding that Congress adopted requirements that it believed to be immaterial or unnecessary to its purposes. This Court accordingly rejects Plaintiffs’ claims under the NVRA and Voting Rights because Congress determined that the citizenship “checkbox” requirement is both material and necessary to administering elections and voter registration.

48. Furthermore, to the extent that there may be any conflict between prior legislation and the HAVA, the Court finds that the specific requirements of the HAVA supercede any general limitations imposed by prior law. It is a basic “canon of statutory construction that the more specific takes precedence over the more general.” *Medberry v. Crosby*, 351 F.3d 1049, 1060 (11<sup>th</sup> Cir. 2003). It would be anomalous for broad statutory provisions addressing “immaterial” voting requirements (the Voting Rights Act) and

“unnecessary” information (NVRA) to trump two specific federal laws intended to combat a particular species of voter registration fraud (the specific provisions of NVRA and HAVA cited above). Congress is presumed to know existing law. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32, 111 S. Ct. 317, 325 (1990) (“We assume that Congress is aware of existing law when it passes legislation.”). It cannot be inferred that Congress intended to enact a law that violated the Voting Rights Act or the general provisions of the NVRA.

49. Plaintiffs’ claims based upon the citizenship checkbox, therefore, lack merit and are hereby dismissed.

***Felon and mental capacity checkboxes***

50. The Court concludes that the felon checkbox does not violate the “uniformity” provision of the Voting Rights Act. 42 U.S.C. § 1973gg-4(a) of the NVRA provides an exception to strict uniformity by expressly allowing states to develop varying forms. Moreover, HAVA likewise provides an exception to any absolute uniformity requirement by authorizing state registration forms to be stricter than those promulgated by the federal government. Allowing state forms that uniformly impose additional requirements on all who use those forms, and which do not bar the lawful use of the federal forms, reconciles any tension between the various statutes and gives meaning to both the uniformity requirement and the provisions allowing a degree of State discretion. Those provisions allowing States discretion would be rendered meaningless if the uniformity rule were construed as an absolute requirement for a single federal form, and the elimination of any and all State discretion would raise troubling constitutional questions under Article II and the Tenth Amendment of the United States Constitution.

This Court thus interprets the uniformity requirement so as to harmonize it with the other statutory provisions allowing state discretion regarding registration forms and to avoid potential constitutional questions.

51. The Court concludes that the Application's felon and mental incapacity inquiries are required by Florida law. § 97.052(2)(s), (t), Fla. Stat. (felon and mental incapacity, respectively). Moreover, the Court concludes that those inquiries are reasonable time, place, and manner restrictions, which Defendants are entitled to implement. *See Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 1279 (1974) (“[T]he States have evolved comprehensive . . . election codes regulating in most substantial ways . . . the time, place, and manner of holding primary and general elections [and] the registration and qualifications of voters.”); *see also Colorado Common Cause v. Donetta Davidson*, Case No. 04cv7709 (court recognized the state's inherent authority to regulate elections, provided that the regulations are rationally related to legitimate state interests, including preventing voter fraud and vote dilution)

52. The Court rejects Plaintiffs' argument that the State may not ask applicants about their felon status or mental incapacity because it has an “independent” duty to learn such information. The limitations on the State's ability to accurately and timely obtain such information from its records leads the Court to conclude that the additional measure of asking specific questions of the applicant is reasonably necessary to the effective and orderly administration of elections and to prevent, *ex ante*, any unqualified applicants from intentionally or inadvertently registering to vote. Indeed, Plaintiffs have failed to explain why the State's duty to track this information as a “fail safe” mechanism should prevent it from asking applicants to affirm their eligibility.

53. Plaintiffs' claims based upon the felon status and mental incapacity checkboxes, therefore, lack merit and are hereby dismissed.

***Unique Identifying Numbers***

54. Under the Florida Voter Registration Act ("FVRA"), a voter registration application that does not contain an identification number is incomplete and cannot be accepted. *See* § 97.053(5)(a)(5), Fla. Stat. (2004).

55. HAVA also requires that registration applications contain an identification number. 42 U.S.C. § 15483(a)(5). HAVA's anti-fraud scheme makes identification numbers a critical and material aspect of determining the eligibility of voters.

56. An identification number is both material and reasonably necessary to aid the State in ensuring that non-citizens, convicted felons, and others not entitled to vote are not permitted to register. It helps ensure that the voter is registering under his or her true identity, as previously verified by the Department of Motor Vehicles or the Social Security Administration. The state has made the reasonable determination, which will not be second-guessed by this Court, that with only a name and birth date, election officials would have a difficult time discerning if an individual had registered to vote in Florida multiple times. Likewise, if an individual changes his or her name, an identification number ensures that an individual is not registered to vote under multiple names. The identification number also helps to identify deceased individuals and remove them from the list of registered voters and to ensure that living individuals with names similar to deceased persons are not erroneously removed from the voter rolls.

57. Plaintiffs' claims based upon the unique identifying numbers requirement is dismissed. This Court concludes that such information is material and necessary both

to assessing applicants' qualifications, verifying their identity, and to preventing voter fraud.

***Disparate Impact***

58. To establish a violation of Section 2 of the Voting Rights Act, Plaintiffs must prove invidious discrimination. Specifically, Plaintiffs must “[p]rove either: (1) discriminatory intent on the part of legislators or other official responsible for creating or maintaining the challenged system; or (2) objective factors that, under the totality of the circumstances, show the exclusion of the minority group from meaningful access to the political process due to the interaction of racial bias in the community with the challenged voting scheme.” *Osburn v. Cox*, 369 F.3d 1283, 1289 (11<sup>th</sup> Cir. 2004).

59. Plaintiffs have not established discriminatory intent. Nor have they demonstrated, under the totality of the circumstances, discriminatory effect.

60. This Court finds that Plaintiffs' discussion of only two of the nine factors relevant to proving disproportionate impact does not take into consideration the totality of the circumstances and does not establish a prima facie case of discrimination. Furthermore, this Court finds that an accurate consideration of the “totality of the circumstances” is impossible due to the time constraints of this case. The Court concludes that the late filing precludes the fact intensive inquiry necessary to determine the discriminatory effect, if any, of the challenged requirements.

61. The Court further finds that Plaintiffs have failed to establish the existence of a disparate impact at all and hence have failed to state even the minimal components of their claim. The only data they cite are alleged statistics that African Americans submitted 36 percent of incomplete application in Miami-Dade County, 37 percent of

incomplete applications in Broward County, and more incomplete applications than any other group in Duval County. (Pls.' Mem. of Law, at p. 14). Such numbers do not speak to the relative rejection rate based on race, however, absent information about what percentage of the applications in total were submitted by African Americans and the comparative submission and error rates of other groups. Given the highly active get-out-the-vote and registration efforts targeting African American voters, as described in Plaintiffs' own exhibits, the Court cannot conclude that the error rate for African Americans was disproportionate to their application rate. By citing only gross numbers, with no basis for comparison, Plaintiffs have not satisfied their burden of stating a *prima facie* case of discrimination.

62. Given the above deficiencies in Plaintiffs' allegations, the Court concludes that Plaintiffs cannot show a likelihood of success on their discrimination claim at this point.

#### ***Procedural Due Process***

63. Florida law requires that twenty-nine days before the election, "the registration books must be closed . . . and must remain closed until after that election." *See* § 97.055, Fla. Stat. (emphasis added). Florida law also requires the supervisors to notify each applicant of the disposition of the applicant's voter registration application, and if the application was incomplete, "the supervisor must request that the applicant supply the missing information in writing and sign a statement that the additional information is true and correct." *See* Fla. Stat. § 97.073. There is no requirement that the request and opportunity for cure come prior to the closing of the books for the next

imminent election, particularly where the deficiency in the application is only discovered in close proximity to the book closing for that election.

64. The notification requirements and the book closing requirements are part of a complex statutory scheme that was enacted by the legislature to prevent voter fraud, keep registrants informed of the status of their applications, and ensure the orderly operation of the election. A book closing deadline is an important part of this scheme and its constitutionality has been consistently upheld. *See Key v. Board of Voter Registration of Charleston County*, 622 F. 2d 88 (4<sup>th</sup> Cir. 1980); *see also Marston v. Lewis*, 410 U.S. 679, 681 (1973).

65. The Court notes that the individual Plaintiffs were in fact provided with the requisite notice of the disposition of their voter registration applications. Plaintiffs concede that they each received letters from their respective supervisors of elections informing them that their application was incomplete and requesting that they supply the missing information. This is all that Florida law and Federal law require the supervisors to do, and they complied with their statutory obligation. *See* §97.073, Fla. Stat.; 42 U.S.C. § 1971gg-6(a)(2). There is no claim that Plaintiffs will not be permitted to cure the deficiencies or that they will be denied registration if and when such cure is complete. The only claim is that such registration will not be effective for the upcoming election for which the books are now closed, but only for the *next* election. Neither Florida nor Federal law requires that the cure be given effect for any particular election notwithstanding ordinary book closing deadlines, merely that the registration be accepted in general.

66. Plaintiffs have therefore failed to demonstrate that the Defendants' enforcement of Florida's statutory elections scheme resulted in any due process violations. Plaintiffs admittedly submitted incomplete applications within weeks of the registration book closing deadline at a time when the county supervisors of elections were inundated with thousands of new applications each day. *See Rosario v. Rockefeller*, 410 U.S. 752, 757 (1973) (noting that if the plaintiffs' "plight can be characterized as disenfranchisement at all, it was not caused by [the challenged law], but by their own failure to take timely steps to effect their enrollment"). Nevertheless, Plaintiffs received the required notification and can complete their applications and register to vote for the next election when the registration books reopen. By doing so, Defendants provided Plaintiffs with all the due process that was due. There is no evidence that the ordinary administrative delay in sending out notices of deficiency was either intentional, discriminatory, or unreasonably long in light of the numerous last-minute applications to be processed. Plaintiffs have failed to show that any of their procedural due process rights were violated and such claim is, therefore, dismissed.

#### ***The Right to Vote***

67. Plaintiffs have failed to establish that the time Defendant Supervisors took to provide them notice of their failure to complete material portions of the FVRA was unreasonable under the circumstance or denied any right.

68. Notwithstanding the fundamental nature of the right to vote, states may impose certain reasonable and even-handed qualifications and regulations on the exercise of the franchise. *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50 (1959). Those regulations play an integral and essential role in our democracy.

69. Given the essential role of such regulations, a provision regulating the registration of voters that does not absolutely disenfranchise a class of individuals does not impinge on the fundamental right to vote as long as it advances a legitimate state interest. *See Rosario v. Rockefeller*, 410 U.S. 752, 760 (1973). In this case, the book closing deadline advances the legitimate state interest of ensuring orderliness and avoiding fraud in elections. That some people will fail to complete their applications prior to book closing for any *particular* election is an inherent aspect of *any* deadline, and does not disenfranchise voters insofar as their post-deadline submissions or cures will be effective for the next scheduled election.

70. The Court concludes that Plaintiffs have not shown that Defendants are impinging upon the rights of any individual to vote.

***No Irreparable Injury***

71. Plaintiffs offer no legitimate excuse for the delay in bringing this action. Their delay, standing alone, is sufficient to deny Plaintiffs' request for injunctive relief. *See Manhattan State Citizens' Group, Inc. v. Bass*, 524 F. Supp. 1270 (S.D.N.Y. 1981) (An unjustified delay in seeking a preliminary injunction militates against the claim of irreparable injury and may be grounds for barring injunctive relief.). Consequently, the Court finds that this factor favors denial of Plaintiffs' Motion for Preliminary Injunction.

***Balancing of Interests***

72. Plaintiffs' requested relief, if awarded, would allow voters in the 2004 elections who may not be United States citizens or who are otherwise unqualified to vote. Moreover, it would eviscerate Florida's ability to enforce anti-fraud measures. Allowing these unqualified individuals to vote would dilute the votes of qualified, registered

Florida voters. The few individuals who may have been aggrieved by the Application, if any, have created their own situation by failing to read the Application's clear instruction. Moreover, the injunction would create administrative havoc for election workers who are already feverishly working on the elections which began on October 18. Asking that these overburdened workers sort through incomplete applications and attempt to infer the applicants' intent at this late date would be extremely burdensome. The Court finds that this factor also favors denial of Plaintiffs' requested equitable relief.

***Public Interest***

73. The balance of public interests weighs heavily against granting the extraordinary relief Plaintiffs request at this late date. The interest of the State here is clear: enabling all eligible voters to register, while preventing voter fraud and mistaken registrations by ineligible voters. On the other hand, Plaintiffs assert an interest in being allowed to vote without living up to – intentionally or otherwise – federal and state-mandated anti-fraud requirements in Florida's voter registration process. Plaintiffs' asserted interest is outweighed by the State's interest, which serves to protect the value of all votes cast by Florida's eligible voters.

***Meaningful Relief***

74. The Court concludes that Plaintiffs' late filing of the Complaint hinders its ability to grant meaningful relief. Indeed, the Court lacks sufficient time to fully consider the numerous constitutional and statutory issues raised by Plaintiffs and grant meaningful relief. *See Libertarian Party of Colorado v. Buckley*, 938 F. Supp. 687, 691 (D. Col. 1996). Any attempt to do so would cause havoc and result in a post-election debacle reminiscent of the 2000 Presidential election. The relief requested by Plaintiffs is also

impracticable. Plaintiffs request that the Court order Defendants to unravel and redo in less than two-weeks' time well-established registration procedures developed, modified, and fine-tuned over a span of several years.

75. Injunctive relief is also inappropriate here because Plaintiffs have named only five of the sixty-seven Supervisors of Elections in this State. Granting the requested relief against five of the Supervisors could lead to inconsistent adjudication of the same issue. An incomplete application in Dade County could be considered valid (under Plaintiffs' view), while one in Leon County would not.

76. The Court's inability to provide meaningful relief in this case requires that Plaintiffs' request for injunctive relief be denied.

#### **CONCLUSION**

Based upon the foregoing, the Court hereby (1) dismisses all of Plaintiffs' claims; and (2) denies all pending motions as moot.

Respectfully submitted, this 21<sup>st</sup> day of October, 2004.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been served by facsimile this 21<sup>st</sup> day of October 2004, to the following:

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