

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 04-22572-CIV-KING

EMMA YAIZA DIAZ et al.

Plaintiffs,

vs.

GLEND A HOOD, et al.

Defendants.

PLAINTIFFS' PROPOSED FINDINGS OF FACT

Pursuant to the Court's scheduling order of October 19, 2004, Plaintiffs hereby submit their Proposed Findings of Fact.

BACKGROUND

1. This action was filed on October 13, 2004 by several individual plaintiffs and several labor unions suing on behalf of their members and on their own behalf against Florida Secretary of State Glenda Hood (the "Secretary") and the Supervisors of Election for five Florida counties – Palm Beach, Miami-Dade, Broward, Orange and Duval (collectively, the "Supervisor Defendants").

2. Plaintiffs bring claims under Voting Rights Act of 1957, as amended by the Civil Rights Act of 1964, 42 U.S.C. §§1971(a)(1), (a)(2)(A) and 1971(a)(2)(B); the Voting Rights Act of 1965, 42 U.S.C. §§1973 *et seq.*; the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. §§1973gg *et seq.*; 42 U.S.C. §1983; and the Fifth, Fourteenth and Fifteenth Amendments to the United States Constitution. Specifically,

plaintiffs allege that Defendants violate plaintiffs' rights under these statutes by improperly refusing – or, in the case of the Secretary, improperly instructing Supervisors of Elections to refuse – to process their voter registration applications. Plaintiffs seek preliminary or permanent injunctive relief and declaratory relief.

PARTIES

3. The individual plaintiffs in this matter are Karen Boving and Jorge A. Gonzalez, who are residents of Broward County; Jennifer Albritton, Andre Bemby, Ebony Roberts, who are residents of Duval County; Lesonia G. Adams, Fernando Canada, and Emma Yaiza Diaz, who are residents of Miami-Dade County; Eliezer Igelsias, John A. Lanman, who are residents of Orange County; and Brenda F. Alizzi, Bridget Leia Goodman and Linda S. Delpiano, who are residents of Palm Beach County.

4. Plaintiff American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) is a federation of 60 national and international unions (the “affiliate unions”) with a total membership of approximately 13 million working men and women, including in excess of 500,000 members in Broward, Duval, Miami-Dade, Orange and Palm Beach Counties, and elsewhere throughout the State of Florida.

5. Plaintiff American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME”) is an Affiliate Union of the AFL-CIO that represents approximately 1.4 million working men and women, including in excess of 110,000 workers throughout the State of Florida, including Broward, Duval, Miami-Dade, Orange and Palm Beach Counties.

6. Plaintiff Florida Public Employees Council 79, AFSCME, AFL-CIO

("AFSCME Council 79"), is a labor organization, an affiliate of AFSCME and an Affiliate Union of AFL-CIO. AFSCME Council 79 represents more than 110,000 workers in the State of Florida, including workers in every county in the State.

7. Plaintiff Service Employees International Union, AFL-CIO ("SEIU") is an Affiliate Union of the AFL-CIO with more than 1.6 million members, including in excess of 30,000 members in Broward, Duval, Miami-Dade, Orange and Palm Beach Counties, and elsewhere throughout the State of Florida.

8. Defendant Glenda Hood is the Florida Secretary of State. As such, she is the state's Chief Elections Officer, and is responsible for supervising and administering the election laws, including the Voting Rights Act and NVRA, and in particular with ensuring that Federal election laws are interpreted and applied properly and in a uniform and non-discriminatory manner throughout Florida. *See* 42 U.S.C. §§ 1973gg-7-8; Fl. Stat. 97.012. Under Florida law, it is the Secretary's responsibility to

- (1) Obtain and maintain uniformity in the application, operation, and interpretation of the election laws. (2) Provide uniform standards for the proper and equitable implementation of the registration laws. . . .
- (7) Coordinate the state's responsibilities under the National Voter Registration Act of 1993. . . . (9) Ensure that all registration applications and forms prescribed or approved by the department are in compliance with the Voting Rights Act of 1965.

Fla. Stat. § 97.012. The Secretary's office also is tasked with developing a uniform state-wide voter registration application. Fla. Stat. § 97.052(1).

9. Defendants Brenda Snipes ("Snipes"), John Stafford ("Stafford"), Constance Kaplan ("Kaplan"), Bill Cowles ("Cowles") and Theresa LePore ("LePore") (collectively, the "Supervisor Defendants") are Supervisors of Elections for Broward, Duval, Miami-Dade, Orange and Palm Beach Counties, respectively.

10. Supervisors of Elections oversee voting matters in their Counties including maintaining voter registration books and ensuring that all voter registration activities in that County comply with applicable Federal law. *See Fla. Stat. §§ 97.012(11), 98.015.*

STATUTORY BACKGROUND

The Voting Rights Acts

11. The “materiality provision” of the Voting Rights Act of 1957, as amended, prohibits elections officials from denying the right to vote because of an error or omission on a voter registration application where “such error is not material in determining whether such individual is qualified under State law to vote in such election.” 42 U.S.C. § 1971(a)(2)(B).

12. The Voting Rights Act of 1957 also prohibits persons acting under color of law from applying different standards to individuals within the same county in determining whether an individual is qualified to vote. *See* 42 U.S.C. § 1971(a)(2)(A); U.S. Const. Amend. V and XIV.

13. Section 2 of the Voting Rights Act of 1965 prohibits the denial or abridgment of voting rights on the basis of race or color, *see* 42 U.S.C. § 1973(a)(1), *see also id.* § 1971(a)(1), and provides that such an unlawful denial is established by a showing that a state’s voter registration procedures have a disparate impact on a particular class of protected citizens, including racial minorities. *Id.* § 1973(b).

The National Voter Registration Act

14. The NVRA establishes national procedures for voter registration for Federal elections. It contemplates three means of voter registration: (1) by application

made simultaneously with an application for driver's license, (2) by mail-in application, and (3) by application in person. 42 U.S.C. § 1973gg-2(a).

15. The NVRA requires the Election Assistance Commission ("EAC") to prescribe a form for mail-in registration. *Id.* § 1973gg-4(a)(1), -7(a)(2). It provides that this form "may require only such identifying information (including the signature of the applicant) and other information (including data relating to previous registration by the applicant), as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." *Id.* § 1973gg-4(7)(b). It also states that the form "shall include a statement" that "(A) specifies each eligibility requirement (including citizenship); (B) contains an attestation that the applicant meets each such requirement; and (C) requires the signature of the applicant, under penalty of perjury." *Id.* § 1973gg-7(b)(2).

16. The NVRA also allows states to develop and use for federal elections a mail-in registration form "the meets all of the criteria" that govern the federal mail-in form, *id.* § 1973gg-4(a), and an in-person registration form that is "equivalent to" the federal mail-in form. *Id.* § 1973gg-5(a)(6)(A).

The Help America Vote Act ("HAVA")

17. HAVA adds another layer to this statutory framework. Section 15483(b)(4) of HAVA includes requirements for "the mail voter registration form developed under . . . 42 U.S.C. § 1973gg-4," that is, the federal mail-in form. Specifically, HAVA states that such form shall include

- (i) The question "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

(ii) The question “Will you be 18 years of age on or before election day?” and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

(iii) The statement “If you checked ‘no’ in response to either of these questions, do not complete this form.”

(iv) A statement informing the individual that if the form is submitted by mail and the individual is registering for the first time, the appropriate information required under this form must be submitted with the mail-in registration form in order to avoid the additional identification requirements upon voting for the first time.

42 U.S.C. § 15483(b)(4)(A).

18. Section 15483(b)(4)(B), entitled “Incomplete forms,” provides:

If an applicant for voter registration fails to answer the question included on the mail voter registration form pursuant to subparagraph (A)(i), the registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election for Federal office (subject to state law).

42 U.S.C. § 15483(b)(4)(B).

19. Section 15483(a)(5)(A)(i)-(iii), entitled “Requiring provision of certain information by applicants,” provides:

(i) Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes--

(I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or

(II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

(ii) Special rule for applicants without driver's license or social security number. If an applicant for voter registration for an election for Federal office has not been issued a current and valid driver's license or a social security number, the State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the State has a computerized

list in effect under this subsection and the list assigns unique identifying numbers to registrants, the number assigned under this clause shall be the unique identifying number assigned under the list.

(iii) The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with state law.

42 U.S.C. § 15483(a)(5)(A)(i)-(iii).

20. Section 15483(b)(2)(A), entitled “Requirements” provides:

(A) An individual meets the requirements of this paragraph if the individual

(i) in the case of an individual who votes in person—

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or

(ii) in the case of an individual who votes by mail, submits with the ballot—

(I) a copy of a current and valid photo identification; or

(II) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

42 U.S.C. § 15483(b)(2)(A).

21. Section 15483(b)(3), entitled “Inapplicability” provides:

Paragraph (1) shall not apply in the case of a person—

(A) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4*) and submits as part of such registration either—

(i) a copy of a current and valid photo identification; or

(ii) a copy of a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter;

(B) (i) who registers to vote by mail under section 6 of the National Voter Registration Act of 1993 (*42 U.S.C. 1973gg-4*) and submits with such registration either —

(I) a driver's license number; or

(II) at least the last 4 digits of the individual's social security number; and

(ii) with respect to whom a State or local election official matches the information submitted under clause (i) with an existing State identification record bearing the same number, name and date of birth as provided in such registration . . .

42 U.S.C. § 15483(b)(3).

The Florida Election Code

22. Chapter 97 of the Florida Statutes includes provisions regarding voter eligibility and voter registration forms.

23. Among other requirements, the statute provides that to be eligible to vote, a person must be a United States citizen; must not have been a convicted of a felony without having had is voting rights restored; and must not have been adjudicated mentally incapacitated with respect to voting without having his or her rights restored. Fla. Stat. §§ 97.041(1)(a)2, -(2)(a)-(b). A person also must register “pursuant to the Florida Election Code.” *Id.* § 97.041(a)5. Possession of a driver’s license, Florida identification card, or Social Security Number is not a qualification to vote.

24. Section 97.052 governs sets forth requirements for a “[u]niform statewide voter registration application.” It requires the Department of State to develop a registration form for use throughout the state. *Id.* § 97.052(1). The form must “elicit”

various types of information, including citizenship, felony and mental capacity status, driver's license of Florida identification card number, and partial social security number; must contain an oath in a form described below; and must require the applicant's signature attesting to the oath. *Id.* § 97.052(2)-(3).

25. A "completed voter registration application" under this statute is one that "contains the necessary information to establish an applicant's eligibility," *id.* § 97.053(2), including "an" indication of citizenship; "an" indication as to felony status; "an" indication as to adjudication of mental capacity; a signature subscribing to the oath; and a driver's license or Florida identification number or partial social security number. *Id.* § 97.053(5)(a).

REGISTERING TO VOTE IN FLORIDA

26. Florida citizens may register to vote by completing one of several forms, including the Florida Voter Registration Application Form ("FVRAF") (Amended Compl. Ex. A); one or more state-specific in-person registration forms (*id.*); and the federal mail-in and postcard application forms. (Amended Compl. Exs. E, F)

27. The FVRAF contains, on Line 17, the following oath:

OATH: I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida. I am qualified to register as an elector under the Constitution and laws of the State of Florida. I am a U.S. Citizen. I am a legal resident of Florida. All information on this form is true. I understand that if it is not true, I can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to five years.

Amended Compl. Ex. A.

28. The eligibility requirements referred to in Line 17 appear in bold type in a

box located at the top and center of the form. The box states in pertinent part: “TO REGISTER, YOU MUST ... [b]e a U.S. citizen (Box # 2); [b]e a Florida resident (Box # 8); [n]ot now be adjudicated mentally incapacitated with respect to voting in Florida or any other state (Box #4); . . . [n]ot have been convicted of a felony in Florida, or any other state, without your civil rights having been restored (“Box # 3)[.]” *Id.*

29. Line 2 of the Florida Voter Registration Application Form contains the question, “Are you a U.S. citizen?” followed by check boxes labeled “yes” or “no.” Next to the box labeled “no,” is the statement, “if NO, you cannot register to vote.” *Id.*

30. Line 3 of the Florida Voter Registration Application Form contains a checkbox followed by the statement, “I affirm I am not a convicted felon, or if I am, my rights relating to voting have been restored.” *Id.*

31. Line 4 of the Florida Voter Registration Application Form contains a checkbox followed by the statement, “I affirm I have not been adjudicated mentally incapacitated with respect to voting or, if I have, my competency has been restored.” *Id.*

32. Line 6 of the Florida Voter Registration Application Form states, “FL DL# or FL ID# / if you do not have either, provide the last four Digits of SSN.” *Id.* The application purports to “require” a partial social security number only as a fallback option, although Fla. Stat. § 97.053(5)(a) states that this is part of a “complete” application.

33. Florida citizens may also register to vote by submitting the federal mail-in application form, known as the National Voter Registration Application, as well as the Federal Post Card Application for registration “if the completed application or postcard

contains the information required by the constitution and laws of this state.” Fla. Stat. § 97.052(5); Amended Compl. Ex. E.

34. The National Voter Registration Application (the “federal mail-in form”) does not require applicants to complete a checkbox indicating their felony status or mental competence, which are not federal voter eligibility requirements.

35. The federal mail-in form does require the applicant to affirm by signature that “I meet the eligibility requirements of my state and subscribe to any oath required.” Amended Compl. Ex. E. The eligibility requirements of each state are included in an attached instruction book. *Id.* For Florida, the instruction book states in part “To register in Florida you must: be a citizen of the United States; . . . not now be adjudicated mentally incapacitated with respect to voting in Florida or any other state; [and] not have been convicted of a felony in Florida, or any other state, without your civil rights having been restored. . . .” *Id.* at 8.

FLORIDA’S PROCESSING OF VOTER APPLICATIONS

36. In late August or September 2004, plaintiffs AFL-CIO, AFSCME, AFSCME Council 79 and SEIU learned that the Supervisor Defendants were refusing to process Florida Voter Registration Application Forms in which the citizenship box on Line 2 was not checked even though the applicant had signed Line 17 and thereby affirmed that he or she was a U.S. citizen. Silvers Decl. ¶ 7; Gonzalez Decl. ¶ 9; Russo Decl. ¶ 7.

37. On September 24, 2004, the Secretary, through her General Counsel Richard Perez, wrote a letter to Judith Browne (“Browne”), acting Co-Director of

Advancement Project, “conclude[ing]” that Florida law requires voting registrars to refuse to process applications on which the citizenship box is not checked, even where the applicant has also signed the oath containing the statement “I am a U.S. citizen.” Amended Compl. Ex. B.

38. The Perez Letter also asserts that Florida law “require[s] applicants to provide such identification numbers in their voter registration applications before such application may be deemed complete.” *Id.* at 2.

39. Although written in direct response to concerns that Browne had raised, Perez forwarded a copy of his letter to each of Florida’s 67 Supervisors of Elections, among others. Amended Compl. Ex. B.

40. The Perez Letter was issued less than one week before the October 4th deadline for registering to vote in the November 2nd general election. *Id.*

41. Defendant LePore, the Palm Beach County Supervisor, has continued to deny registration to applicants that do not both complete the citizenship checkbox and sign the oath. Supervisors in some counties, including Broward, Duval, Miami-Dade, Orange and Leon Counties, have decided to process applications on which the affirmation in Line 17 is executed but the citizenship box is left blank. Sancho Decl. ¶ 7.

42. Other states have chosen to honor applications on which applicants did not check the citizenship box but did sign a similar oath. *See* Ohio Secretary of State Directive No. 2004-31, dated September 7, 2004; Susan Gilmore, *3,000 Denied Right to Vote*, SEATTLE TIMES, Sept. 22, 2003 at http://seattletimes.nwsourc.com/html/localnews/2002042713_voters22m.html.

43. All of the Supervisor Defendants have refused to process applications on which one or more of the other categories of information at issue – the felony and mental capacity boxes and the identification number line – are not executed.

IMPACT ON PLAINTIFFS

Individual Plaintiffs

44. The individual plaintiffs all submitted timely registration applications but have all been denied registration on one or more of the disputed grounds.

45. On September 17, 2004, Plaintiff Diaz and her father registered to vote outside of the Miami Convention Center, in Miami-Dade County, where she had just been sworn in as a U.S. citizen. Diaz Decl. ¶ 3. When he had not received any information about their applications for several weeks, Diaz's father telephoned Defendant Kaplan's office on October 5, 2004 to inquire about the status of their applications. Diaz Decl. ¶ 5. He was told that his application was accepted, but that the office would have to check into the status of his daughter's application. Diaz Decl. ¶ 5.

46. On October 6, 2004, Diaz's father called the Miami-Dade Elections office a second time and was told that Diaz's application had been rejected because she had not checked the box confirming that she had not been declared mentally incompetent. Diaz Decl. ¶ 6; G. Diaz Decl. ¶ 4. Kaplan's office further advised that it was too late for anything to be done to allow Diaz to vote in the November 2nd general election. Diaz Decl. ¶ 6; G. Diaz Decl. ¶ 4.

47. Diaz called the election protection hotline, and was advised to go to the Miami-Dade Elections Office to make a statement that she is mentally competent. Diaz Decl. ¶ 7. Diaz went to the elections office, but was informed that it was too late to

correct her application because the deadline had passed. Diaz Decl. ¶¶ 8-9; G. Diaz Decl. ¶ 6.

48. It was not until October 8, 2004, four days after the registration deadline, that Diaz received written notice from Kaplan's office that her application was deemed incomplete and that she was not yet registered to vote. Diaz Decl. ¶ 11 & Ex. 6A; G. Diaz Decl. ¶ 7.

49. Plaintiff Roberts completed a voter registration application on August 16, 2004 at a voter registration drive at the Duval County Courthouse. Roberts Decl. ¶ 3. In mid-September, Roberts called the Duval County Elections office to check on the status of her application. The clerk told her she should have already received a voter registration card in the mail, and did not inform her that her application was incomplete. Roberts Decl. ¶ 4. Plaintiff Roberts received no notice of the status of her application until October 5th – more than forty days after her application was submitted, and the day after the deadline for registering to vote in the November 2nd general election. Roberts Decl. ¶ 5. The notice indicated that Plaintiff Roberts' registration application was rejected because she did not provide the last four digits of her Social Security Number, and stated that she would not be eligible to vote in the November 2nd general election unless she resubmitted her application by 5:00 p.m. on October 4th – a deadline which had already passed by the time that she received the notice. Roberts Decl. ¶¶ 5-7. Subsequent to the filing of this action, Duval County permitted Plaintiff Roberts to register to vote.

50. Plaintiff Bembry completed a voter registration application at a church on August 31, 2004, in Jacksonville, Florida. Bembry Decl. ¶ 4. Plaintiff Bembry received

no notice of the status of his application until October 5, 2004 - the day after the deadline for registering to vote in the November 2nd general election. Bembry Decl. ¶ 6. Plaintiff Bembry received a letter from the Duval County Board of Elections, dated October 1, 2004 and postmarked on October 2, 2004 informing him that his application was being rejected because he had failed to check the box confirming that he had not been convicted of a felony. Bembry Decl. ¶¶ 5-6. Plaintiff Bembry was told to mail back the enclosed form before the registration deadline, but no form was enclosed with the letter. Bembry Decl. ¶ 5.

51. Plaintiff Delpiano mailed a voter registration application to the Palm Beach Elections Office on October 2, 2004. On October 20, 2004 she learned that the Palm Beach Elections Office deemed her application to be incomplete because she failed to check the box indicating that she had not been adjudicated mentally incompetent and failed to provide her driver's license number, state identification number or the last four digits of her social security number. Delpiano Decl. ¶¶ 4-5.

52. Plaintiff Bridget Leia Goodman filled out a voter registration form in approximately August 2004. She has not received any letters or communications from the Palm Beach County Elections Office informing her of the status of her application. Goodman Decl. ¶¶ 3, 5.

53. On October 19, 2004, Plaintiff Goodman learned that the Palm Beach County Elections Office deemed her application to be incomplete because she failed to check off the box indicating that she is a United States citizen. Goodman Decl. ¶ 6.

54. Plaintiff Lanman filled out a voter registration form in August or early September 2004. He has not received any letters or communications from the Orange

County Elections Office informing him of the status of his application. Lanman Decl. ¶¶ 3, 5.

55. On October 19, 2004, Plaintiff Lanman learned that the Orange County Elections Office deemed his application to be incomplete because he failed to check off the box indicating that he has not been convicted of a felony and has not been adjudicated mentally incapacitated. Lanman Decl. ¶ 6.

56. Plaintiff Gonzalez filled out a voter registration form at his place of employment in early September 2004 and mailed it to the Broward County Elections Office. J. Gonzalez Decl. ¶ 3.

57. On October 5, 2004, the day after the application deadline, Plaintiff Gonzalez received a notice from the Elections Office notifying him that he had not checked the citizenship, felony, or mental incapacity boxes on the application and directing him to check those boxes and return his completed application to the Elections Office no later than October 4, 2004. J. Gonzalez Decl. ¶¶ 4 & Ex. 1. Because he received the notice after the deadline, Plaintiff Gonzalez did not submit a completed application. J. Gonzalez Decl. ¶ 5.

58. Plaintiff Boving received a phone call from an individual associated with a voter registration group who filled out information on the registration form and mailed it to Boving to complete. Boving completed the application, signed the form, and mailed it to the Elections Office. Boving Decl. ¶ 3.

59. During the week of October 3, 2004, Plaintiff Boving received a notice in the mail from the Elections Office notifying her that her application was incomplete

because she had not provided her driver's license number, state identification number, or social security number. Because she received the notice after the deadline, Plaintiff Boving did not respond to the notice. Boving Decl. ¶¶ 5-6.

60. Plaintiff Adams filed out a voter registration application in June 2004, which was given to her at a voter registration drive. Adams Decl. ¶ 3.

61. During the week of October 3, 2004, Plaintiff Adams received a notice in the mail from the Elections Office notifying her that her application was incomplete because she had not checked the boxes indicating that she is a citizen, has not been convicted of a felony, and has not been adjudicated mentally incapacitated. Because she could not meet the deadline, Plaintiff Adams did not respond to the notice. Adams Decl. ¶¶ 5-7.

62. On or about August 5, 2004, Plaintiff Albritton completed a voter registration application with a voter registration drive in Duval County. On October 5, 2004, Albritton received a notice in the mail postmarked October 2, 2004, from the Duval County Elections Office informing her that her voter registration application was incomplete because she had not provided the last four digits of her Social Security Number. The notice instructed Albritton to complete the enclosed application and mail it in time for the Elections Office to receive it by 5:00 p.m. on October 4, 2004 in order to be eligible to vote in on November 2, 2004. No form was enclosed. Albritton Decl. ¶¶ 3-6.

63. In early to mid-August 2004, Plaintiff Alizzi completed a voter registration form that her husband had obtained from the Department of Motor Vehicles and mailed it to Defendant LePore's office. Since that time, Plaintiff Alizzi has received

no communications from LePore regarding the status of her application. Records of incomplete voter registration applications produced by Palm Beach County reveal that Alizzi's application was deemed incomplete because she did not check the felony box on her application. *See* Plaintiffs' Motion for Filing Documents Under Seal ("Motion for Seal"), Exhibit S5.

64. On September 28, 2004, Plaintiff Canada registered to vote by mailing an application to the Miami-Dade County Elections Office. On or about October 1 or 2, 2004, he received a letter from the Elections Office, informing him that his application was incomplete because he had not provided his driver's license number, state identification or Social Security Number. Several days later, he responded to the letter and provided the last four digits of his Social Security Number. On or about October 11, 2004, Canada received a second letter from the Elections Office, reiterating its request for his Social Security Number. That same day, Canada again provided his Social Security Number on the form and mailed the form to the Elections Office. To date, Canada has not received a voter registration card. Canada Decl. ¶¶ 3-7. Records of incomplete voter registration applications produced by Miami-Dade County reveal that Canada's application was deemed incomplete because he did not provide his driver's license, identification or the last four digits of his Social Security Number. *See* Motion for Seal, Exhibit S3.

Organizational Plaintiffs

65. Each of the union plaintiffs have members in every county of Florida who are qualified to register to vote – in that they are citizens of the United States, at least eighteen years of age, permanent residents of the State of Florida and have never been

adjudicated a felon or mentally incompetent – who applied to register to vote, whose applications have been rejected because defendants deemed them incomplete because one or more of the citizenship box, felony box, mental capacity box, or identification number line was not completed, and who were not provided with an opportunity to cure the deficiencies before October 4, 2004. Silvers Decl. ¶¶ 5, 11-12; Russo Decl. ¶¶ 5, 8; Gonzalez Decl. ¶¶ 5, 10.

NUMBERS OF INCOMPLETE APPLICATIONS

66. Based on the data provided by Broward County, 1163 applicants were rejected for failure to check the felony status box; 1,540 applicants were rejected for failure to check the mental incapacity box; and 1,532 applicants were rejected for failure to include a driver's license, Florida identification number or social security number. Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, in Further Support of Plaintiffs' Motion for Preliminary Injunction, or in the Alternative, Motion to Consolidate Hearing on Motion for Preliminary Injunction with Trial on the Merits, and in Opposition to Proposed Intervenor's Motions to Intervene and to Dismiss ("Plaintiffs' Memorandum of Law") at Ex. A, Tab 1.

67. Based on the data provided by Duval County, 187 applicants were rejected for failure to check the felony status box; 117 applicants were rejected for failure to check the mental incapacity box; and 575 applicants were rejected for failure to include a driver's license, Florida identification number or social security number. *Id.*

68. Based on the data provided by Miami-Dade County, 2,904 applicants were rejected for failure to check the felony status box; 3,447 applicants were rejected for failure to check the mental incapacity box; and 2495 applicants were rejected for failure

to include a driver's license, Florida identification number or social security number. *Id.*

69. Based on the data provided by Orange County, 1047 applicants were rejected for failure to check the felony status box; 1329 applicants were rejected for failure to check the mental incapacity box; and 894 applicants were rejected for failure to include a driver's license, Florida identification number or social security number. *Id.*

70. Based on the data provided by Palm Beach County, 492 applicants were rejected for failure to check only the citizenship box; 626 applicants were rejected for failure to check only the felony status box; 330 applicants were rejected for failure to check only the mental incapacity box; and 624 applicants were rejected for failure to only include a driver's license, Florida identification number or social security number. *Id.*

RACIAL DISPARITIES IN REJECTION OF APPLICATIONS

71. In Broward, Duval, Orange, and Palm Beach Counties combined, Blacks comprise 47.62 percent of those applicants who identified race and whose applications were deemed incomplete based on failure to check the felony status box, citizenship box, mental incapacity box, or include a driver's license, Florida identification number or social security number. Hispanics comprise 29.06 percent of those applicants who identified race and whose applications were deemed incomplete based on failure to check the felony status box, mental incapacity box, citizenship box or include a driver's license, Florida identification number or social security number. *Id.* Palm Beach County did not provide race data. Plaintiffs' Memorandum of Law at 26.

72. In Broward County, Blacks comprise 52.67 percent who identified race and whose applications were deemed incomplete because the felony and/or mental

incapacity were not checked and/or the applicant failed to include a driver's license, Florida identification number or social security number. Hispanics comprise 17.69 percent of those applicants who identified race and whose applications were deemed incomplete. Blacks comprise only 20.5 percent of the population of Broward County and only 17 percent of the registered voters in Broward County. Amended Compl. ¶ 111; Plaintiffs' Memorandum of Law at Ex. D. Hispanics comprise only 16.7 percent of the population of Broward County. *Id.*

73. In Duval County, Blacks comprise 51.54 percent of those applicants who identified race and whose applications were deemed incomplete because the felony and/or mental incapacity were not checked and/or the applicant failed to include a driver's license, Florida identification number or social security number. Blacks comprise only 27.8 percent of the population of Duval County and only 26 percent of the registered voters in Broward County. Amended Compl. ¶ 111.

74. In Orange County, Blacks comprise 38.42 percent of those applicants who identified race and whose applications were deemed incomplete because the felony and/or mental incapacity were not checked and/or the applicant failed to include a driver's license, Florida identification number or social security number. Hispanics comprise 22.15 percent of those applicants. Blacks comprise only 18.2 percent of the population of Orange County. Hispanics comprise only 18.8 percent of the population of Orange County. Plaintiffs' Memorandum of Law at Ex. E.

75. In Miami-Dade County, Blacks comprise 49.44 percent of those applicants who identified race and whose applications were deemed incomplete because the felony and/or mental incapacity were not checked and/or the applicant failed to include a

driver's license, Florida identification number or social security number. Hispanics comprise 40.34 percent of those applicants. Blacks comprise only 20.3 percent of the population of Miami-Dade County and only twenty percent of the registered voters in Miami-Dade County. Amended Compl. ¶ 111; Plaintiffs' Memorandum of Law at Ex. F. Hispanics comprise only 57.3 percent of the population of Miami-Dade County. Plaintiffs' Memorandum of Law, Ex. F.

PROCEDURAL HISTORY

76. Plaintiffs filed their original complaint on October 12, 2004, together with a Motion for Expedited Case Management.

77. On October 13, 2004, Plaintiffs moved for preliminary or permanent injunctive relief, or, in the alternative, to consolidate a preliminary injunction hearing with a trial on the merits.

78. The Court held a case management hearing on October 15, 2004, at which the Court established an expedited schedule for submission of motions and papers, and granted limited discovery to plaintiffs.

79. On October 19, 2004, the Republican Party of Florida filed a motion to intervene pursuant to Fed. R. Civ. P. 24(b) and a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

80. On October 22, 2004, the Court held a hearing on the parties' various motions.

Dated this 21st day of October, 2004.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

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