

Regulation of Third-Party Voter Registrations

League of Women Voters of Florida v. Browning (Cecilia M. Altonaga, S.D. Fla. 1:08-cv-21243)

On April 28, 2008, the League of Women Voters filed a federal action in the Southern District of Florida challenging Florida's regulation of voter registration as so burdensome as to cause the League to suspend its voter-registration efforts. On the following day, the district judge held a hearing, ordered the parties to submit a proposed consent order on the next day, and set a preliminary-injunction hearing for June 19. On August 6, the court denied the League a preliminary injunction. Similar cases were filed in 2006 in the Southern District and in 2011 in the Northern District.

Subject: Registration procedures. *Topics:* Registration procedures; case assignment.

The League of Women Voters and other organizations filed a federal complaint on April 28, 2008, in the Southern District of Florida's Miami courthouse claiming that burdensome Florida regulation of voter registration caused the League to suspend its voter-registration activities.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order.² On the following day, Judge Cecilia M. Altonaga set a hearing on the motion for 4:30 that afternoon.³

When Judge Altonaga got a motion for a temporary restraining order, it was her practice to schedule a hearing as soon as possible.⁴ The hearing was set for the afternoon to accommodate her other matters that day.⁵

A May 18, 2006, federal complaint in Miami by the League⁶ resulted in an August 28, 2006, preliminary injunction by Judge Patricia A. Seitz against Florida's 2005 third-party voter-registration law.⁷ Judge Seitz held that the

1. Complaint, *League of Women Voters of Fla. v. Browning*, No. 1:08-cv-21243 (S.D. Fla. Apr. 28, 2008), D.E. 1; *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1302 (S.D. Fla. 2008); see Damien Cave, *Voting Group Sues Florida Over Penalties*, N.Y. Times, Apr. 29, 2008, at A11; Gary Fineout, *Groups Oppose Voter Registration Law*, Miami Herald, Apr. 29, 2008, at B8.

2. Temporary-Restraining-Order Motion, *League of Women Voters of Fla.*, No. 1:08-cv-21243 (S.D. Fla. Apr. 28, 2008), D.E. 2.

3. Order, *id.* (Apr. 29, 2008), D.E. 4.

Tim Reagan interviewed Judge Altonaga for this report by telephone on October 10, 2012.

4. Interview with Hon. Cecilia M. Altonaga, Oct. 10, 2012.

5. *Id.*

6. Complaint, *League of Women Voters of Fla. v. Browning*, No. 1:06-cv-21265 (S.D. Fla. May 18, 2006), D.E. 1; see Amended Complaint, *id.* (Sept. 29, 2006), D.E. 67; see also Steve Bousquet, *Voter Groups Sue State Over Tardiness Law*, St. Petersburg Times, May 19, 2006, at 6B.

7. *League of Women Voters of Fla. v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006); *League of Women Voters of Fla. v. Browning*, 575 F. Supp. 2d 1298, 1300, 1302, 1304 (S.D. Fla. 2008); see Vanessa Blum, *Federal Judge Declares New Voter Registration Law Unconstitu-*

law’s “combination of heavy, strict, joint and several liability fines is unconstitutional as it chills Plaintiffs’ First Amendment speech and association rights” and that the law unconstitutionally discriminated in favor of political parties by exempting them from the fines.⁸

In 2007, Florida amended the voter-registration law by

(1) significantly reducing the amount of fines; (2) implementing a \$1,000 annual limit or cap on the amount of fines that may be levied against a “third-party voter registration organization, including affiliate organizations”; (3) removing the exception for political parties under the Original Law; and (4) adding a provision waiving the applicable fine upon “a showing that the failure to deliver the voter registration application promptly is based upon force majeure or impossibility of performance.”⁹

The plaintiffs in the 2008 case filed a notice on that case’s second day that it was related to the 2006 case.¹⁰ Judge Altonaga contacted Judge Seitz to discuss whether the 2008 case needed to be reassigned, but the two judges agreed that it did not.¹¹

After her April 29, 2008, hearing, Judge Altonaga ordered the parties to submit a proposed consent order by noon on the following day.¹² The consent order (1) suspended enforcement of Florida’s amended voter-registration law until Florida’s secretary of state adopted implementation rules and (2) set a preliminary-injunction hearing for June 19.¹³ The parties stipulated that the court could rely upon their joint factual statement filed in the 2006 case.¹⁴

On August 6, 2008, Judge Altonaga denied the plaintiffs a preliminary injunction, finding that Florida’s interests in preventing the mishandling of voter-registration applications by third parties were sufficient to justify the

tional, S. Fla. Sun-Sentinel, Aug. 29, 2006, at 1B; Alisa Ulferts, *Judge Rejects “Chilling” Voter Registration Law*, St. Petersburg Times, Aug. 29, 2006, at 1A; Jay Weaver, *Ruling Helps Voter Registration Groups*, Miami Herald, Aug. 29, 2006, at B3.

8. *League of Women Voters of Fla.*, 447 F. Supp. 2d at 1316, 1331–42.

The district court awarded the plaintiffs \$341,558.99 in attorney fees and costs. Order, *League of Women Voters of Fla.*, No. 1:06-cv-21265 (S.D. Fla. Mar. 16, 2009), D.E. 129; see Order, *League of Women Voters of Fla. v. Browning*, No. 09-12202 (11th Cir. July 1, 2009) (dismissing as settled an appeal of the attorney fee award), *filed as* Order, *League of Women Voters of Fla.*, No. 1:06-cv-21265 (S.D. Fla. July 7, 2009), D.E. 157.

9. *League of Women Voters of Fla.*, 575 F. Supp. 2d at 1304.

10. Notice, *League of Women Voters of Fla. v. Browning*, No. 1:08-cv-21243 (S.D. Fla. Apr. 28, 2008), D.E. 6.

11. Interview with Hon. Cecilia M. Altonaga, Oct. 10, 2012.

12. Docket Sheet, *League of Women Voters of Fla. v. Browning*, No. 1:08-cv-21243 (S.D. Fla. Apr. 28, 2008) (minutes, D.E. 8).

13. Consent Order, *id.* (Apr. 30, 2008), D.E. 15; *League of Women Voters of Fla.*, 575 F. Supp. 2d at 1302.

14. *League of Women Voters of Fla.*, 575 F. Supp. 2d at 1301 n.1.

burden on the plaintiffs' First Amendment rights.¹⁵ An appeal was voluntarily dismissed on October 23.¹⁶

On December 15, 2011, the league and other organizations brought a third action, in the Northern District of Florida's Tallahassee courthouse, against Florida's 2011 amended regulation of voter registration.¹⁷ Judge Robert L. Hinkle granted the league a preliminary injunction on May 31.¹⁸

The Statute and rule impose a harsh and impractical 48-hour deadline for an organization to deliver applications to a voter-registration office and effectively prohibit an organization from mailing applications in. And the statute and rule impose burdensome record-keeping and reporting requirements that serve little if any purpose, thus rendering them unconstitutional even to the extent they do not violate the [National Voting Rights Act].¹⁹

So that an appeal could be heard on a final order, at the request of the parties, Judge Hinkle converted his preliminary injunction into a permanent injunction on August 30, 2012.²⁰ The appeal was voluntarily dismissed.²¹

Pursuant to section 5 of the Voting Rights Act, Florida pursued both judicial and administrative preclearance of its amendments to regulation of third-party voter registration and early voting.²²

15. *Id.* at 1319–25; see Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 *Wm. & Mary Bill Rts. J.* 453, 488–90 (2008).

16. Order, *League of Women Voters of Fla. v. Browning*, No. 08-15156 (11th Cir. Oct. 23, 2008), filed as Order, *League of Women Voters of Fla. v. Browning*, No. 1:08-cv-21243 (S.D. Fla. Nov. 12, 2008), D.E. 87.

17. Complaint, *League of Women Voters of Fla. v. Browning*, No. 4:11-cv-628 (N.D. Fla. Dec. 15, 2011), D.E. 1; see Amended Complaint, *id.* (Dec. 16, 2011), D.E. 5; see also Fla. Stat. § 97.0575; Kathleen Haughney, *Scott Signs Elections Overhaul Into Law*, *S. Fla. Sun-Sentinel*, May 20, 2011, at 1B.

18. *League of Women Voters of Fla. v. Browning*, 863 F. Supp. 2d 1155 (N.D. Fla. 2012); see Lizette Alvarez, *Judge Blocks Florida's Voter Drive Rules*, *N.Y. Times*, June 1, 2012, at A15; Steve Bousquet & Marc Caputo, *Federal Judge Strikes Down Part of Law*, *Miami Herald*, June 1, 2012, at 3B; Jerry Markon, *Federal Judge Blocks Parts of Florida Voting Law*, *Wash. Post*, June 1, 2012, at A6.

19. *League of Women Voters of Fla.*, 863 F. Supp. 2d at 1158.

20. Permanent Injunction, *League of Women Voters of Fla.*, No. 4:11-cv-628 (N.D. Fla. Dec. 15, 2012), D.E. 83; see Lizette Alvarez, *Judge to Toss Out Changes in Florida Voter Registration*, *N.Y. Times*, Aug. 30, 2012, at A13; Steve Bousquet, *Judge Throws Out Part of Voter Registration Law*, *Tampa Bay Times*, Aug. 30, 2012, at 3B; Bill Kaczor, *Voter Registration Ruling to Be Finalized*, *Miami Herald*, Aug. 30, 2012, at 6B.

Department of State spokesman Chris Cate said the agency agreed to the settlement because Hinkle's order did not cover a provision requiring third-party registration groups to be identified on the registration forms that they collect. Without that provision, no deadline, whether 48 hours or 10 days, could be enforced, he said.

Kaczor, *supra*.

21. Order, *League of Women Voters of Fla. v. Secretary*, No. 12-13522 (11th Cir. Aug. 4, 2012).

22. *Florida v. United States*, 885 F. Supp. 2d 299 (D.D.C. 2012); Stipulation, *Florida v. United States*, No. 1:11-cv-1428 (D.D.C. Oct. 15, 2012), D.E. 163 (resolving action); Status Report, *id.* (Sept. 25, 2012), D.E. 162; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5,

79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination).

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013).