

**FILED IN CHAMBERS**  
**U.S.D.C. Rome**

**MAY 26 2009**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

**JAMES N. HATTEN, Clerk**  
**By: *Jayus* Deputy Clerk**

FAYE COFFIELD, JASON CROWDER,  
and BEATRICE WILLIAMS,

Plaintiffs,

v.

KAREN C. HANDEL, in her  
official capacity as Georgia  
Secretary of State and  
Chairperson of the Georgia  
State Election Board,

Defendant.

CIVIL ACTION

NO. 1:08-CV-2755-RLV

O R D E R

This is an action for declaratory judgment and injunctive relief wherein the plaintiffs challenge the constitutionality of O.C.G.A. § 21-2-170(b), which requires that an independent candidate for a congressional seat submit a petition containing the signatures of at least five percent of the total number of registered voters in the previous election in order to be included on the ballot. Pending before the court are the defendant's motion to dismiss [Doc. No. 3] and the plaintiffs' motion for summary judgment [Doc. No. 14].

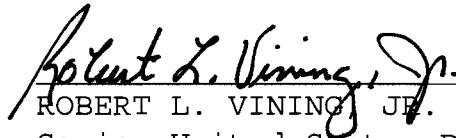
The plaintiffs' case is foreclosed by *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970 (1971), in which the Supreme Court

specifically upheld the five percent requirement of this code section. More recently, the Court of Appeals for the Eleventh Circuit upheld this identical provision in *Cartwright v. Barnes*, 304 F.3d 1138 (11th Cir. 2002). See also *Swanson v. Worley*, 490 F.3d 894 (11th Cir. 2007) (upholding Alabama's three percent requirement and citing *Jenness* and *Cartwright*).

In *Swanson*, the Eleventh Circuit noted that it had rejected a strict scrutiny analysis in determining the constitutionality of a percentage signature requirement. In their complaint, the plaintiffs suggest that the Supreme Court has now mandated a strict scrutiny analysis in such cases, citing language used by Justice Scalia in *Crawford v. Marion County Election Board*, 553 U.S. \_\_\_\_, 128 S.Ct. 1610 (2008). That case dealt with Indiana's voter ID law, and the Supreme Court upheld that law but did so without a majority opinion. Justice Scalia's language, relied upon by the plaintiffs in this case, was in a concurring opinion, joined only by Justices Thomas and Alito. This court concludes that Justice Scalia's concurring language does not provide a sufficient basis for the court to ignore the holdings of both *Jenness* and *Crawford*.

For the foregoing reasons the defendant's motion to dismiss [Doc. No. 3] is GRANTED; the plaintiffs' motion for summary judgment [Doc. No. 14] is DISMISSED as moot.

SO ORDERED, this 26<sup>th</sup> day of May, 2009.

  
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ROBERT L. VINING, JR.  
Senior United States District Judge