

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 10-80062-CV-MARRA/JOHNSON

SOUTH FLORIDA TEA PARTY, INC.,
A Florida non-profit corporation,
EVERETT WILKINSON,
An Individual,
FLORIDA TEA PARTY, LLC
A Florida non-profit corporation,
JUST PATRIOTS, INC.,
d/b/a UNITED AMERICAN
TEA PARTY,
A Florida non-profit corporation,
TIM MCCLELLAN,
An individual,
MARTIN 9/12 TEA PARTY COMMITTEE,
A group of concerned citizens,
NAPLES TEA PARTY,
A group of concerned citizens,
COLUMBIA SOUTH CAROLINA TEA PARTY,
A group of concerned citizens,
DEBBIE GUNNOE,
An individual,
NAVARRE PATRIOTS,
A group of concerned citizens,
CARL IKEN,
An individual,
TREASURE COAST TEA PARTY,
A group of concerned citizens,
JOHN STAHL,
An individual,
MAUREEN HOURIGAN,
An individual,
JACKSON TEA PARTY,
A group of concerned citizens,
GERRI IRVINE,
An individual,
TOBY MARIE WALKER,
An individual,
WACO TEA PARTY,
A group of concerned citizens,
DAVID VON GUTEN,
An individual,

NORTH LAKE TEA PARTY,
A group of concerned citizens,
SUZANNE S. SOLOMON,
An individual,
DON FORWARD,
An Individual,
TITUSVILLE PATRIOTS,
A group of concerned citizens,
BLANCA PERALES-SMITH,
An individual,
LEON HOWARD,
An Individual,
TRI-CITIES TEA PARTY,
A group of concerned citizens,
RON S. KOLSKY,
An individual,
MARY BETH ERDMANN,
An individual,
PORT HURON TEA PARTY,
A group of concerned citizens,
WILLIE LAWSON,
An individual,
EUGENE LACROSSE,
An Individual,
MARCEL G. VARRANDO III,
An individual,
MARY CLARK,
An individual,
TEA PARTY SOLUTIONS, INC.,
A group of concerned citizens,

Plaintiffs,

vs.

TEA PARTY,
A registered Florida Political Party,
Legal entity unknown at this time,
FRED O'NEAL,
An Individual and Chairman of
Defendant Tea Party,
DOUG GUETZLOE,
An Individual,
NICHOLAS EGOROFF,
An individual,

Defendants. _____/

**FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF
NON-INFRINGEMENT OF TRADEMARK "TEA PARTY"**

COMES NOW, Plaintiff, South Florida Tea Party, ("Plaintiff" or "SOUTH FLORIDA TEA PARTY"), Everett Wilkinson, ("WILKINSON"), Florida Tea Party, LLC, ("FLORIDA TEA PARTY"), Just Patriots, Inc., d/b/a United American Tea Party, Inc., ("UNITED AMERICAN TEA PARTY"), Tim McClellan, ("MCCLELLAN"), Martin 9/12 Tea Party Committee, ("MARTIN 9/12"), Naples Tea Party, ("NAPLES TEA PARTY"), Columbia South Carolina Tea Party, ("COLUMBIA SOUTH CAROLINA"), Debbie Gunnoe, ("GUNNOE"), and Navarre Patriots, ("NAVARRE PATRIOTS"), Carl Iken ("IKEN"), Treasure Coast Tea Party ("TREASURE COAST"), John Stahl ("STAHL"), Maureen Hourigan ("HOURIGAN"), Jackson Tea Party ("JACKSON TEA PARTY"), Gerri Irvine ("IRVINE"), Toby Marie Walker ("WALKER"), Waco Tea Party ("WACO TEA PARTY"), David Von Guten ("VON GUTEN"), North Lake Tea Party ("NORTH LAKE TEA PARTY"), Suzanne S. Solomon ("SOLOMON"), Don Forward ("FORWARD"), Titusville Patriots ("TITUSVILLE PATRIOTS"), Blanca Perales-Smith ("PERALES"), Leon Howard ("HOWARD"), Tri-Cities Tea Party ("TRI-CITIES TEA PARTY", Ron S. Kolsky ("KOLSKY"), Mary Beth Erdmann ("ERDMANN") and Port Huron Tea Party ("PORT HURON TEA PARTY"), Willie Lawson ("LAWSON), Eugene Lacrosse ("LACROSSE), Ocala Activist ("OCALA ACTIVIST"), Marcel G. Verrando III ("BERRANDO"), Mary Clark ("CLARK"), and Tea Party Solutions, Inc. ("TEA PARTY SOLUTIONS, INC."), by and through their attorneys hereby file this Amended Complaint for Declaratory Judgment against Defendants Florida Tea Party ("FLORIDA TEA PARTY"), Fred O'Neal ("O'NEAL"), Doug Guetzloe, ("GUETZLOE"), Nicholas Egoroff, ("EGOROFF"), and Does 1- 10 and request that this Court enter a Declaratory Judgment which sets forth that:

(1) Plaintiffs' use of the phrase "Tea Party" is not an infringement of any trademark or other intellectual property right; (2) Plaintiffs' have not violated Florida Statute §103.081; (3) Plaintiffs' have not violated Florida Statute §865.09; (4) the Federal Lanham Act expressly or impliedly pre-empts Florida Statute 103.081; (5) the Federal Lanham Act expressly or impliedly pre-empts Florida Statute §865.09; (6) Plaintiffs are entitled to use "TEA PARTY" under the First Amendment's Right of Association; (7) Plaintiffs are entitled to use "TEA PARTY" under the First Amendment's Right of Free Speech; (8) Defendants do not have exclusive intellectual property rights in the phrase "Tea Party" as used in the political field; and (9) Defendants shall not make any false associations between their political party and any other person or entity that utilizes the phrase "Tea Party" in order to confuse the public into believing that the political party is associated with, or otherwise endorsed, or approved by any grass roots movements that utilize the historical phrase "Tea Party." And as support for this Amended Complaint for Declaratory Judgment, Plaintiffs offer the following allegations:

JURISDICTION AND VENUE

1. This is an action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, for a declaration that under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125 (the "Lanham Act"), requesting Court declarations of law and fact of: (1) non-infringement of trademarks; (2) pre-emption of Federal Lanham Act over Florida State Statutes; and (3) other findings.

2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1338, as this action arises under the laws of the United States, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

3. This Court has jurisdiction over Defendants as Defendants conduct ongoing and continuous business in the State of Florida.

4. Venue is proper under 28 U.S.C. §1391(b) in that a substantial part of the events giving rise to the claims asserted herein occurred in this Judicial District.

THE PARTIES

5. Plaintiff SOUTH FLORIDA TEA PARTY is a Florida non-profit corporation with an address of 4045 Pinella Circle, 640, Palm Beach Gardens, Florida 33410.

6. Plaintiff EVERETT WILKINSON is an individual and resident of the State of Florida.

7. Plaintiff FLORIDA TEA PARTY is a Florida non-profit corporation with an address of 4045 Pinella Circle, 640, Palm Beach Gardens, Florida 33410.

8. Plaintiff UNITED AMERICAN TEA PARTY is a fictitious name of Just Patriots, Inc., a Florida non-profit organization that is doing business at 1960 U.S. Highway 1 South, No. 96, St. Augustine, Florida 32086.

9. Plaintiff TIM MCCLELLAN is an individual residing in the State of Florida and can be found at 2637 East Atlantic Boulevard, No. 128, Pompano Beach, Florida 33062.

10. Plaintiff MARTIN 9/12 TEA PARTY COMMITTEE is a group of concerned citizens that reside in Martin County, Florida.

11. Plaintiff NAPLES TEA PARTY is a group of concerned citizens that reside in Naples, Florida.

12. Plaintiff COLUMBIA SOUTH CAROLINA is a group of concerned citizens that reside in

13. Plaintiff GUNNOE is an individual and resident of the State of Florida.

14. Plaintiff NAVARRE PATRIOTS is a group of concerned citizens that reside in Santa Rosa County, Florida.

15. Plaintiff CARL IKEN is an individual and a resident of the State of Florida.

16. Plaintiff TREASURE COAST TEA PARTY is a group of concerned citizens that reside in St. Lucie County, Martin County and Indian River County, Florida.

17. Plaintiff JOHN STAHL is an individual and a resident and the State of Pennsylvania.

18. Plaintiff MAUREEN HOURIGAN is an individual and a resident and the State of New Jersey.

19. Plaintiff JACKSON TEA PARTY is a group of concerned citizens that reside in Monmouth County and Ocean County, New Jersey.

20. Plaintiff GERRI IRVINE is an individual and a resident and State of Texas.

21. Plaintiff TOBY MARIE WALKER is an individual and a resident of the State of Texas.

22. Plaintiff WACO TEA PARTY is a group of concerned citizens that reside in McLennan County, Texas.

23. Plaintiff DAVID VON GUTEN is an individual and a resident of the State of Florida

24. Plaintiff NORTH LAKE TEA PARTY is a group of concerned citizens that reside in Lake County, Florida.

25. Plaintiff SUZANNE S. SOLOMON is an individual and a resident of the State of Florida.

26. Plaintiff DON FORWARD is an individual and a resident of the State of Florida.

27. Plaintiff TITUSVILLE PATRIOTS is a group of concerned citizens that reside in Brevard County, Florida.

28. Plaintiff BLANCA PERALES-SMITH is an individual and a resident of the State of Florida.

29. Plaintiff LEON HOWARD is an individual and a resident of the State of Washington.

30. Plaintiff TRI-CITIES TEA PARTY is a group of concerned citizens that reside in Benton County, Washington.

31. Plaintiff RON S. KOLSKY is an individual and a resident of the State of Florida.

32. Plaintiff MARY BETH ERDMANN is an individual and a resident of the State of Michigan.

33. Plaintiff PORT HURON TEA PARTY is a group of concerned citizens that reside in St. Clair County, Michigan.

34. Plaintiff WILLIE LAWSON is an individual and a resident of the State of Florida.

35. Plaintiff EUGENE LACROSSE is an individual and a resident of the State of Florida.

36. Plaintiff MARCEL G VERRANDO III is an individual and a resident of the State of Florida.

37. Plaintiff MARY CLARK is an individual and a resident of the State of Florida.

38. Plaintiff TEA PARTY SOLUTIONS, INC. is a group of concerned citizens that reside in Marion County, Florida.

39. Defendant TEA PARTY is a registered political party in the State of Florida. Upon information and belief, TEA PARTY operates and conducts business at 7798 Snowberry Circle, Orlando, Florida 32819.

40. Defendant O'NEAL is an individual and Chairman of the Tea Party political party.

41. Defendant GUETZLOE is an individual and upon information and belief is an organizer or other moving force behind the Defendant political party TEA PARTY.

42. Defendant EGOROFF is an individual and upon information and belief is the communications director for the political party TEA PARTY.

FACTUAL BACKGROUND
THE HISTORICAL AND MODERN USE OF THE PHRASE "TEA PARTY"

43. The phrase "Tea Party" as used in the political arena dates back to the early days of this country. At least as early as grade school children learn about the infamous "Boston Tea Party." Since the first historical use of that phrase, "Tea Party" has been associated in the public mind with movements that consists of loosely organized group of persons that protest against political parties, governments, or other dominant political paradigms.

44. Over the past several years, this sentiment has once again become popular. Numerous persons and entities have adopted the use of the phrase "Tea Party" either alone or in connection with other terms or phrases in order to voice modern dissent or otherwise publicize their displeasure with today's broken government.

45. Plaintiffs are grassroots, collaborative volunteer organizations made up of everyday American citizens from all across Florida, the region, and the United States. They are united by their shared core values. The Plaintiffs are also united in their dedication to America's

founding principles of fiscal responsibility, limited government, and free markets. The Plaintiffs recognize the strength of grassroots organizations powered by activism and civic responsibility at a local level. The “Tea Party” movement’s mission is to unite like-minded individuals, educate and inform others based on their core values, and to secure public policy consistent with those values.

46. Plaintiffs are not a political party, but a movement.

47. On April 15, 2009, 1.2 million people in over 850 cities across the United States of American held “Tea Parties” to protest the bailouts and fiscal abuse perpetrated by the government. This was just the beginning of a larger movement aimed at restoring the basic free-market principles our country was built on and holding the government responsible for excessive spending.

The Plaintiff South Florida Tea Party's "Tea Party" Organization

48. As one of the original organizers of the April 15, 2009 "Tea Parties," Plaintiff Everett Wilkinson decided to continue the fight in South Florida by forming South Florida Tea Party. South Florida Tea Party is a nonprofit and has filed with the IRS as a 501(c)4. Since April 15th, 2009, South Florida Tea Party has held hundreds of rallies/protests, and have placed and responded to thousands of phone calls and emails to help influence public policy. The organization's goals are to: (1) Stop the out of control spending by the government, at all levels; (2) Assist organizations and citizens in having their voices heard; (3) Provide a platform/coalition for all organizations to communicate and coordinate their efforts; (4) Promote issues that Americans can stand united on, such as Fiscal Responsibility, Constitutional Rights, and a Smaller Government.; and (5) Provide a non-partisan view of candidates and their voting records to assist citizens in making informed choices about their representatives. The organization's goals are consistent with the historical basis surrounding those that participated in the infamous "Boston Tea Party."

Plaintiffs Are Not Alone, Extensive Third Party Usage of "TEA PARTY"

49. Apart from Plaintiff South Florida Tea Party, the remaining Plaintiffs are either non-profit corporations, or groups of concerned citizens that utilize the phrase "Tea Party" in connection with their organization's name, or promotional activities such as raising awareness of the Tea Party Movement and its ideals. Even a cursory search of the Internet utilizing any Internet search engine will reveal that the use of the phrase "Tea Party" is extremely prevalent as used in connection with a variety of goods and services. Most poignant to this matter, is that the use of the phrase "Tea Party" has been used by arguably thousands, in addition to the named Plaintiffs, of "organizations" to denote a general sentiment about the displeasure with today's

government. Most of these “organizations” are self described “grass roots,” and share the vision of the Plaintiffs as noted above.

50. There is such extensive third party usage of the phrase “Tea Party” in the political field (organized and grass roots) that Defendants could not possibly claim that they have any intellectual property rights to that phrase. Apart from claiming Intellectual Property rights, it is inequitable for Defendants to rely upon any state statute that purports to provide Defendants with any exclusive/monopolistic rights in “TEA PARTY” merely because “TEA PARTY” was registered as a political party.

51. For instance, judicial notice can be taken of the vast number of political rallies that occurred last year throughout the United States. Most of which were organized by grass roots organizations that shared some political visions, but that were not affiliated in a corporate or legal sense.

52. For instance, in the City of Orlando, Florida, a Tea Party rally was held in March, 2009 with over 4,000 attendees. See <http://bit.ly/5Ecna2>

53. Other, non-party organizations utilizing the phrase “Tea Party” in connection with grass roots political awareness groups and rallies include:

- Indian River Tea Party, www.indianriverteaparty.com (owned by Paul Tanner, see Domain Tools).
- Jacksonville’s First Coast Tea Party, www.firstcoastteaparty.org (owned by First Coast Tea Party)
- Lakeland TEA Party, www.lakelandfteaparty.com
- North Lake TEA Party, www.northlaketeaparty.com (Patricia Sullivan)
- St. Johns County’s United American Tea Party, www.justpatroits.com

- Volusia Tea Party Patriots, www.volusiapatriots.com (owned by CGI Design)
- Taxdayteaparty.com (owned by Eric Odom)

54. Apart from the numerous references to modern/contemporary third party usage of the phrase, the phrase has been used for over 200 years.

55. Plaintiff Everett Wilkinson (who is also affiliated with Plaintiff South Florida Tea Party) was recently interviewed on National Television, namely, The Chris Matthews Show. During the interview Mr. Wilkinson discussed the basic premises and goals behind the modern day Tea Party as a movement and not necessarily as a political party. <http://bit.ly/6YSHt1> It was clear from that interview that Mr. Wilkinson, and similarly situated persons and organizations, utilize the phrase “Tea Party” in a historical and non-trademark sense. The phrase is liberally shared with all persons or organizations that do not fit the two party system.

DEFENDANTS’ THREATS AMOUNT TO AN “ACTUAL CONTROVERSY”

56. In mid-2009, Defendants formed and registered a Florida political party known as the “Tea Party”. See Exhibit A. Since forming that political party, Defendants have sent threatening letters and otherwise have engaged in an oral and written campaign to assert intellectual property rights over the phrase “Tea Party.”

57. Apart from asserting what amounts to trademark rights, Defendants have also claimed the exclusive and monopolistic right to exclude all “persons, groups, and organizations” from using the name “TEA PARTY” or any confusingly similar designation, unless such persons, groups, or organizations are granting affiliate party status.

58. The Defendant’s Tea Party will become one of 32 minor political parties certified by the state of Florida, which also includes: Real Food Party of the United States, the Prohibition Party, and the Florida Socialist Workers Party. See Exhibit B.

59. Defendant O'NEAL is an attorney licensed to practice in the State of Florida, and upon information and belief is one of the moving forces behind the registration of the Florida political party registered as "Tea Party."

60. The fact that Defendant O'NEAL is an attorney and personally issued the threats to at least some of the Plaintiffs, presents a realistic threat of litigation in the minds of all of the Plaintiffs since they are similarly situated.

61. Defendant GUETZLOE, upon information and belief, is associated with the Tea Party movement, or is otherwise alleged to be the joint moving force behind same. In fact, Defendant GUETZLOE identifies himself as co-founder of the Tea Party on a recent Internet podcast found at http://strangeradio.podomatic.com/entry/2010-01-09T18_38_56-08_00 (33:10 - 65:05).

62. Recently, Defendant O'NEAL communicated with Plaintiff EVERETT WILKINSON and Plaintiff SOUTH FLORIDA TEA PARTY by way of email correspondence. See Exhibit C (reproduced in part below).

63. Defendants demanded that these Plaintiffs cease use of the phrase "Tea Party" on at least two recent occasions. The first email exchange between the parties reads:

A suspended member has sent you a message on FLORIDA TEA PARTY.
Frederic Bennett O'Neal (fredonealatlaw@aol.com) writes:

Unbelievable. I just don't understand. Is it that you just like to get together and complain, but don't really want to do anything about the problems you are complaining about? It seems to me that if you really wanted to do something about the problems you are complaining about, you would want as many allies as you could find. Simply unbelievable.

Fred O'Neal
407-719-6796

P.S. If you're not going to talk to me, then you really need to stop using "Florida

Tea Party" on your website. Ask your attorney to take a look at Section 865.09, Florida Statutes.

See Exhibit C.

64. The post script in this email is clearly an imminent threat and places all Plaintiffs (since they are all similarly situated) in a state of legal uncertainty wherein they require a declaration from this Court that their acts are not in violation of any trademark rights and/or of Florida Statute Section 865.09.

65. The threats continued until very recently. Namely, as recent as December 12, 2009 Defendants have claimed superior rights in "TEA PARTY" as set forth below:

From: fredonealatlaw@aol.com

Date: December 12, 2009 7:16:16 AM EST

To: attorneytimothylucero@yahoo.com

Subject: Re: From Attorney Timothy Lucero

Tim:

I give up.

I tried to communicate with your client over politics to see where possibly we might be able join forces to help our common cause.

But he won't talk to me.

Instead, he has a lawyer send me a bunch of threats and insults.

I certainly don't want to spend time and energy trading insults and threats with you.

And, I'm not very good at that thing anyhow.

So, I'm going to leave you and your client alone.

And, per your request, I won't make any more attempts to try to communicate with your client.

So, have a nice day,

Fred

P.S. Tim, I hope at least you advised your client not to "do business" (e.g. sell T-shirts) under the name "Florida Tea Party" lest he get me in trouble since the name is registered to me.

See Exhibit D.

66. The post script is a clear threat that Defendants intend to protect "TEA PARTY" as a trademark or otherwise enforce some sort of exclusivity or monopoly of that phrase. Defendant O'NEAL represents that the term is "registered" to him. However, a review of Florida trademark records as well as the trademark records of the United States Patent and Trademark Office did not uncover any trademark applications or registrations for any trademark which includes the terms "Tea Party" owned by Defendants. Rather, there are a variety of trademarks which include the term "Tea Party" for a variety of goods/services owned by numerous non-related third parties. To the extent that Defendant O'NEAL is claiming that the name is "registered to him" by virtue of his registration of the political party, this "registration" and reliance thereon presents a conflict between traditional notions of trademark law and certain state statutes for which Defendant O'NEAL and the other Defendants rely.

67. While Defendant O'NEAL stated that "he gives up" there is no formal agreement between the parties that he in fact has. Further, there is no clear determination of whether any of the Defendants will refrain from attacking any of the Plaintiffs' use of the phrase "Tea Party" in the political realm. Without a formal agreement (or other Court declaration) that the Plaintiffs are not in violation of the Federal Lanham Act, or any Florida State statute, a controversy continues to exist.

68. Apart from the claims of trademark infringement and violation of Florida Statute Section 865.09, Defendant O'NEAL has also recently claimed (on January 10, 2010) that Plaintiff Naples Tea Party's use of the phrase "Tea Party" is a violation of Florida Statute Section 103.081:

From: fredonealatlaw@aol.com

To: Barry Willoughby

Sent: Sunday, January 10, 2010 9:48 AM

Subject: Re: Naples Tea Party Blog Entry

"I suggest you take a look at whether your Naples Tea Party needs to get a new name. Specifically, take a look at the first sentence of sub-section (2) of Section 103.081 ("Use of party name; political advertising"), Florida Statutes. It says: "(2) No person or group of persons shall use the name, abbreviation, or symbol of any political party, the name abbreviation, or symbol of which is filed with the Department of State, in connection with any club, group, association, or organization of any kind unless approval and permission have been given in writing by the state executive committee of such party."

Like it or not, the "Tea Party" of the State of Florida, a registered political party, is entitled to the same protection under the law as the Republican Party or the Democratic Party. And don't complain to me. I didn't write the law. The legislature did. So, if you have a problem with it, take it up with them, not me. But, until the law is changed, I suggest obeying it.

Oh, I missed two things. One, there is an exemption under that statute for groups that have been existence for more than 10 years? Has the "Naples Tea Party" been in existence for more than 10 years? Two, as the statute says you can use the name of a registered political party in connection with your group if you have permission from the state executive committee. Barry, if I were you, I wouldn't hold my breath waiting for that permission to come any time soon.

Fred O'Neal, a registered member of the Tea Party , a Florida political party"

69. Commentary on Defendant O'NEAL's attempt to monopolize on the phrase "Tea Party" has been posted at <http://bit.ly/8b1NZt>. See Exhibit E.

70. As the Court will see from the facts alleged herein, there is a substantial controversy, between the parties since they have adverse legal interests. These facts demonstrate that the controversy is of sufficient immediacy and reality to warrant the issuance of declaratory judgment.

71. Further, the Defendants' "Amended Constitution of the Tea Party" states:

Article 5: Affiliate Parties

- 1. No person, group or organization may use the name "Tea Party" or any confusingly similar designation except an organization to which the Party grants affiliate party status.***

See Defendant, Tea Party and O'Neal's Motion to Dismiss (D.E. 9, p. 6 of 18).

72. The Plaintiffs' state of legal uneasiness requires a Court Order where the parties and more importantly the public will be protected from Defendants' overreaching claim of intellectual property or other rights in the phrase "TEA PARTY". Since at least some of the Plaintiffs and the Defendants raise money for their respective interests there is a great public interest in avoiding confusion. Further, the public should be protected against the Defendants' attempt to capitalize on the swell of public sentiment arising from the efforts of the numerous grass roots groups. By holding themselves out as "The" "Tea Party" political party, they are furthering public deception.

73. It is reasonable for each of the named Plaintiffs to believe that they qualify as a "person," "group," or "organization" that uses "Tea Party" or other similar terms/phrases as a designation. Thus, Defendants' registration of the Political Party "Tea Party" in Florida would give him unfettered protection to stop any "person," "group," or "organization" that uses "Tea Party." Apart from the named Plaintiffs herein, this would allow Defendants to wield Florida Statute for their own purposes.

THE PUBLIC IS BEING CONFUSED AND MISLEAD

74. The Defendants' organization of a political party that utilizes the phrase "Tea Party" is not in and of itself objectionable or unlawful. Rather, it is the overreaching claim of intellectual property rights in the phrase "Tea Party," coupled with the intentional misrepresentation to the public that the political party is somehow directly proffering the theme, agenda, and collective vision of the nationwide "Tea Party Movement" (which is not a political party) that is objectionable.

75. Evidence of this is demonstrated in a well-known political blog known as "POLITICO" found at <http://www.politico.com>. That blog posted an article on November 9, 2009 wherein the author stated: "It's unclear if O'NEALhas the wherewithal to organize a movement that prides itself on spontaneity and existing outside party structures." See Exhibit F. Likewise, an article in The New York Times published January 6, 2010, shed additional light on this. See <http://bit.ly/4SGMAX>. See Exhibit G.

76. Thus, it is evident that political commentators recognize that Defendants are attempting to associate themselves with the grass roots movement, in a manner that is the antithesis of the movement, the forming of a political party. Worse still, it is evident that Defendants fully intend to "hijack" the phrase "Tea Party" for their political will and objectives.

77. There is nothing political about the discrete relief sought in this action. The Plaintiffs do not request that this Court make any findings that are political in nature or that otherwise overstep the State of Florida's election laws.

78. Plaintiffs seek immediate judicial resolution of these disputes such that they will not have to await the commencement of legal action by any of the Defendants. Since the Tea

Party movement is in the media on a daily basis, the Plaintiffs believe that an immediate judicial resolution of the matter is appropriate to avoid further delay and public confusion.

I. DECLARATORY JUDGMENT RE: FLORIDA STATUTE §103.081.

79. Plaintiffs incorporates paragraphs 1 through 78, and brings the following claim for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

80. The Plaintiffs are separate persons, entities, or groups of concerned citizens that have been either directly or indirectly threatened with legal action by Defendants.

81. Defendants have made explicit and implicit threats against some of the Plaintiffs regarding the use of the phrase “Tea Party.”

82. These threats have placed all of the Plaintiffs in reasonable fear that they will be sued by the Defendants for Trademark Infringement, or other causes of action.

83. Specifically, these threats have placed all of the Plaintiffs in a state of uncertainty whether their use of the phrase “Tea Party” is a violation of Florida Statute §103.081.

84. Florida Statute §103.081 as written sets forth that:

103.081. Use of party name; political advertising

(1) No person shall use the name, abbreviation, or symbol of any political party, the name, abbreviation, or symbol of which is filed with the Department of State, in political advertising in newspapers, other publications, handbills, radio or television, or any other form of advertising in connection with any political activities in support of a candidate of any other party, unless such person shall first obtain the written permission of the chair of the state executive committee of the party the name, abbreviation, or symbol of which is to be used.

(2) No person or group of persons shall use the name, abbreviation, or symbol of any political party, the name, abbreviation, or symbol of which is filed with the Department of State, in connection with any club, group, association, or organization of any kind unless approval and permission have been given in writing by the state executive committee of such party. This subsection shall not apply to county executive committees of such parties and organizations which are chartered by the national executive committee of the party the name, abbreviation,

or symbol of which is to be used, or to organizations using the name of any political party which organizations have been in existence and organized on a statewide basis for a period of 10 years.

(3) A political party may file with the Department of State names of groups or committees associated with the political party. Such filed names may not be used without first obtaining the written permission of the chair of the state executive committee of the party.

85. As written, it is reasonable to assume that Defendants could seek to enforce this statute against all Plaintiffs (and others that use “TEA PARTY”) even though Plaintiffs and other third parties use of that phrase may pre-date Defendants’ registration of the name as a political party.

86. Plaintiffs are uncertain of their legal position and seek an immediate declaratory judgment regarding whether they are entitled to use the phrase “Tea Party” without fear of litigation from Defendants, or others.

87. Plaintiffs seek a declaration from this Court that their use of “TEA PARTY” is not a violation of Florida Statute §103.081.

II. DECLARATORY JUDGMENT RE: FLORIDA STATUTE §865.09.

88. Plaintiffs incorporates paragraphs 1 through 78, and brings the following claim for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

89. The Plaintiffs are separate persons, entities, or groups of concerned citizens that have been either directly or indirectly threatened with legal action by Defendants.

90. Defendants have made explicit and implicit threats against some of the Plaintiffs regarding the use of the phrase “Tea Party.”

91. These threats have placed all of the Plaintiffs in reasonable fear that they will be sued by the Defendants for Trademark Infringement, or other causes of action.

92. Specifically, these threats have placed all of the Plaintiffs in a state of uncertainty whether their use of the phrase “Tea Party” is a violation of Florida Statute §865.09.

93. Florida Statute §865.09 as written sets forth that:

865.09. Fictitious name registration

(1) Short title.--This section may be cited as the “Fictitious Name Act.”

(2) Definitions.--As used in this section:

(a) “Fictitious name” means any name under which a person transacts business in this state, other than the person's legal name.

(b) “Business” means any enterprise or venture in which a person sells, buys, exchanges, barter, deals, or represents the dealing in any thing or article of value, or renders services for compensation.

(c) “Division” means the Division of Corporations of the Department of State.

(3) Registration.--A person may not engage in business under a fictitious name unless the person first registers the name with the division by filing a sworn statement listing:

(a) The name to be registered.

(b) The mailing address of the business.

(c) The name and address of each owner and, if a corporation, its federal employer's identification number and Florida incorporation or registration number.

(d) Certification by the applicant that the intention to register such fictitious name has been advertised at least once in a newspaper as defined in chapter 50 in the county where the principal place of business of the applicant will be located.

(e) Any other information the division may deem necessary to adequately inform other governmental agencies and the public as to the persons so conducting business.

Such statement shall be accompanied by the applicable processing fees and any other taxes or penalties owed to the state.

(4) Change of ownership.--If the ownership of a business registered under this section changes, the owner of record with the division shall file a cancellation and reregistration that meets the requirements set forth in subsection (3) within 30 days after the occurrence of such change.

(5) Term.--A fictitious name registered under this section shall be valid for a period of 5 years and expires on December 31 of the 5th year.

(6) Renewal.--

(a) Renewal of a fictitious name registration shall occur on or after January 1 and on or before December 31 of the expiration year. Upon timely filing of a renewal statement, the effectiveness of the name registration is continued for 5 years as provided in subsection (5).

(b) In the last year of the registration, the division shall notify the owner or registrant of the expiration of the fictitious name. If the owner or registrant of the fictitious name has provided the department with an electronic mail address, such notice shall be by electronic transmission.

(c) If the owner of the name registration fails to file a renewal and pay the appropriate processing fees prior to December 31 of the year of expiration, the name registration expires. The division shall remove any expired or canceled name registration from its records and may purge such registrations. Failure to receive the statement of renewal required by paragraph (b) shall not constitute grounds for appeal of a registration's expiration or removal from the division's records.

(7) Exemptions.--A business formed by an attorney actively licensed to practice law in this state, by a person actively licensed by the Department of Business and Professional Regulation or the Department of Health for the purpose of practicing his or her licensed profession, or by any corporation, partnership, or other commercial entity that is actively organized or registered with the Department of State is not required to register its name pursuant to this section, unless the name under which business is to be conducted differs from the name as licensed or registered.

(8) Effect of registration.--Notwithstanding the provisions of any other law, registration under this section is for public notice only, and gives rise to no presumption of the registrant's rights to own or use the name registered, nor does it affect trademark, service mark, trade name, or corporate name rights previously acquired by others in the same or a similar name. Registration under this section does not reserve a fictitious name against future use.

(9) Penalties.--

(a) If a business fails to comply with this section, the business, its members, and those interested in doing such business may not maintain any action, suit, or proceeding in any court of this state until this section is complied with. An action, suit, or proceeding may not be maintained in any court of this state by any successor or assignee of such business on any right, claim, or demand arising out of the transaction of business by such business in this state until this section has been complied with.

(b) The failure of a business to comply with this section does not impair the validity of any contract, deed, mortgage, security interest, lien, or act of such business and does not prevent such business from defending any action, suit, or proceeding in any court of this state. However, a party aggrieved by a noncomplying business may be awarded reasonable attorney's fees and court costs necessitated by the noncomplying business.

(c) Any person who fails to comply with this section commits a misdemeanor of the second degree, punishable as provided in [s. 775.082](#) or [s. 775.083](#).

(10) Powers of department.--The Department of State is granted the power reasonably necessary to enable it to administer this section efficiently, to perform the duties herein imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this section.

(11) Forms.--Registration, cancellation, and renewal shall be made on forms prescribed by the Department of State, which may include the uniform business report, pursuant to [s. 606.06](#), as a means of satisfying the requirement of this part. [\[FN1\]](#)

(12) Processing fees.--The Department of State shall charge and collect nonrefundable processing fees as follows:

- (a) For registration of a fictitious name, \$50.
- (b) For cancellation and reregistration of a fictitious name, \$50.
- (c) For renewal of a fictitious name, \$50.
- (d) For furnishing a certified copy of a fictitious name document, \$30.
- (e) For furnishing a certificate of status, \$10.

(13) Deposit of funds.--All funds required to be paid to the Department of State pursuant to this section shall be collected and deposited into the General Revenue Fund.

(14) Prohibition.--A fictitious name registered as provided in this section may not contain the words "Corporation" or "Incorporated," or the abbreviations "Corp." or "Inc.," unless the person or business for which the name is registered is incorporated or has obtained a certificate of authority to transact business in this state pursuant to chapter 607 or chapter 617.

(15) Legal designation of entity.--Notwithstanding any other provision of law to the contrary, a fictitious name registered as provided in this section for a corporation, limited liability company, limited liability partnership, or limited partnership is not required to contain the designation of the type of legal entity in which the person or business is organized, including the terms "corporation," "limited liability company," "limited liability partnership," "limited partnership," or any abbreviation or derivative thereof.

94. As written, it does not appear that Defendants could enforce this statute against any of the Plaintiffs merely because Defendant registered "FLORIDA TEA PARTY" as a Fictitious Name with the Florida Department of State. However, Defendant O'NEAL has cited to this statute against some Plaintiffs and therefore all Plaintiffs are concerned that could seek to enforce this statute against all Plaintiffs (and others that use "TEA PARTY") even though Plaintiffs and other third parties use of that phrase may pre-date Defendants' registration of the name as a political party.

95. Plaintiffs are uncertain of their legal position and seek an immediate declaratory judgment regarding whether they are entitled to use the phrase "Tea Party" without fear of litigation from Defendants, or others.

96. Plaintiffs seek a declaration from this Court that their use of "TEA PARTY" is not a violation of Florida Statute §865.09.

III. DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF TRADEMARK.

97. Plaintiffs incorporates paragraphs 1 through 78, and brings the following claim for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

98. The Plaintiffs are separate persons, entities, or groups of concerned citizens that have been either directly or indirectly threatened with legal action by Defendants.

99. Defendants have made explicit and implicit threats against some of the Plaintiffs regarding the use of the phrase “Tea Party.”

100. Defendant O’NEAL has threatened at least one Plaintiff not to use “TEA PARTY” on any t-shirt. This threat was reasonably understood to mean that Defendant O’NEAL was asserting some intellectual property or other right in the phrase “TEA PARTY”.

101. These threats have placed all of the Plaintiffs in reasonable fear that they will be sued by the Defendants for Trademark Infringement.

102. Specifically, these threats have placed all of the Plaintiffs in a state of uncertainty whether their use of the phrase “Tea Party” is a violation of any common law, state, or federal trademark laws.

103. The Defendants have obtained gains, profits, and advantages as a result of their unlawful acts that they are the “original” or “authorized” Tea Party. Upon information and belief, the public is confused whether the Florida registered political party is indeed endorsed or associated with the “Tea Party” movement, or any of the Plaintiffs.

104. Plaintiffs seek a declaration from this Court that their use of “TEA PARTY” is not a violation of any common law, state, or federal trademark laws.

IV. DECLARATORY JUDGMENT: FREE SPEECH TO USE “TEA PARTY.”

105. Plaintiffs incorporates paragraphs 1 through 78, and brings the following claim for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

106. The Plaintiffs are separate persons, entities, or groups of concerned citizens that have been either directly or indirectly threatened with legal action by Defendants.

107. Defendants have made explicit and implicit threats against some of the Plaintiffs regarding the use of the phrase “Tea Party.”

108. Plaintiffs each believe that they have a First Amendment Free Speech Right to use “TEA PARTY” in connection with their organizations and activities to voice dissent against the government.

109. The phrase “TEA PARTY” has been used in American history as a symbol of the people’s dissent of government.

110. Defendants’ reliance on trademark rights and rights allegedly afforded under Florida Statute §§103.081 and 865.09 conflicts with the public’s long standing tradition of using the phrase “TEA PARTY” communicatively to express dissent with the government.

111. The language set forth in Florida Statute §103.081 is an abridgment of that Right of Free Speech.

112. Plaintiffs seek a declaration from this Court that their use of “TEA PARTY” is protectable under the First Amendment’s Free Speech.

V. DECLARATORY JUDGMENT: RIGHT OF ASSOCIATION.

113. Plaintiffs incorporates paragraphs 1 through 78, and brings the following claim for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

114. The Plaintiffs are separate persons, entities, or groups of concerned citizens that have been either directly or indirectly threatened with legal action by Defendants.

115. Defendants have made explicit and implicit threats against some of the Plaintiffs regarding the use of the phrase “Tea Party.”

116. Plaintiffs each believe that they have a First Amendment Right of Association to organize and use “TEA PARTY” in connection with their organizations and activities to voice dissent against the government.

117. The phrase “TEA PARTY” has been used in American history as a symbol of the people’s dissent of government.

118. Defendants’ reliance on trademark rights and rights allegedly afforded under Florida Statute §§103.081 and 865.09 conflicts with the public’s long standing tradition of using the phrase “TEA PARTY” to freely associate with others to join their voices of dissent against the government.

119. The language set forth in Florida Statute §103.081 is an abridgment of that Right of Association.

120. Plaintiffs seek a declaration from this Court that their use of “TEA PARTY” is protectable under the First Amendment’s Free Speech.

VI. DECLARATORY JUDGMENT: PRE-EMPTION.

121. Plaintiffs incorporates paragraphs 1 through 78, and brings the following claim for a Declaratory Judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

122. The Plaintiffs are separate persons, entities, or groups of concerned citizens that have been either directly or indirectly threatened with legal action by Defendants.

123. Defendants have made explicit and implicit threats against some of the Plaintiffs regarding the use of the phrase “Tea Party.”

124. The language contained in Florida Statute §103.081 expressly or at least impliedly is inconsistent or frustrates the objective of the Lanham Act.

125. One of the main purposes of the Lanham Act is to protect the public. The public is not protected by Florida Statute §103.801. Rather, the statute fosters public deception by allowing anyone to register the name of a political party and to thereafter claim a monopoly on the particular name over all, regardless of whether the name is protectable as a trademark, and without regard as to whether prior trademark rights are enjoyed by any third party.

126. Florida Statute 103.801 does not complement or supplement the Lanham Act, but rather directly conflicts with same.

127. Plaintiffs seek a declaration from this Court that Florida Statute §103.081 is pre-empted by the Lanham Act.

VII. FALSE ASSOCIATION UNDER THE LANHAM ACT.

128. Plaintiffs incorporate paragraphs 1 through 78 and bring the following the claim for False Association under the Lanham Act 15 U.S.C. §1125, against all Defendants.

129. Plaintiffs each operate their respective organizations and each generally subscribe to the principals of the grass roots movement know as the “Tea Party.”

130. Plaintiffs do not operate, nor do they intend to register as a political party. Officers of the Defendants’ new party have also pledged to run third party candidates against both Republicans and Democrats. In contrast, longtime Florida tea party activists, such as the Plaintiffs, are working toward reform within the Republican Party and view third party candidacies as counter-productive.

131. In fact, the entire vision behind the Plaintiffs and their organizations is antithetical to political parties. They are a dissenting voice working toward profound organizational reform, and not a political party.

132. By registering the phrase “Tea Party” as a political party and by promoting to the public that this political party encompasses all of the tenets of the grass roots Tea Party movement, Defendants are falsely suggesting an association with Plaintiffs and therefore are confusing the public.

133. Defendants have admitted in the press that their choice to register “TEA PARTY” as the name of their political party was to communicate to the public that the political party means: “TAXED ENOUGH ALREADY”. As such, the political party is an acronym for this phrase. If that is the case, the political party should be named “TAXED ENOUGH ALREADY” and not “TEA PARTY”.

134. Plaintiffs have no adequate remedy at law.

135. Plaintiffs seek judicial intervention to avoid public confusion on a subject that is of great public concern, i.e., the false endorsement of a grass roots political movement for the benefit of a political party.

136. Plaintiffs seek a declaration from this Court that the political party “TEA PARTY” was intentionally chosen to deceive the public.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand a entry of a declaratory judgment setting forth the rights of the Parties as the Court finds just, namely, that:

- Plaintiffs’ use of the phrase “Tea Party” is not an infringement of any trademark or other intellectual property right;
- All Plaintiffs, and similarly situated persons or entities, are free to use the phrase “Tea Party” alone or in connection with other terms, phrases, design elements for

use in connection with their political activities, whether such political activities have a commercial purpose or not;

- Defendants do not have exclusive intellectual property rights in the phrase “Tea Party” as used in the political field;
- Plaintiffs have not, and will not, violate Florida Statute §103.081 merely by using “TEA PARTY” or any other phrases that are confusingly similar;
- Plaintiffs have not, and will not, violate Florida Statute §865.09 merely by using “TEA PARTY” or any other phrases that are confusingly similar;
- Plaintiffs have a First Amendment Right of Free Speech to use “TEA PARTY” in connection with their organizations;
- Plaintiffs have a First Amendment Right of Association to use “TEA PARTY” in connection with their organizations;
- Defendants shall not make any false associations between their political party and any other person or entity that utilizes the phrase “Tea Party” in order to confuse the public into believing that the political party is associated with, or otherwise endorsed, or approved by any grass roots movements that utilize the historical phrase “Tea Party”.
- Defendants chose to the name of their registered political party as “TEA PARTY” and not “TAXED ENOUGH ALREADY” in order to deceive the public.
- All Defendants, their officers, agents, servants, employees and attorneys, and all those in active concert or participation with them, be restrained from issuing any threat, by word or deed, to any of the Plaintiffs, or similarly situated persons or

entities, that would suggest that they own any intellectual property rights in and to the phrase “Tea Party”;

- The phrase “Tea Party” as used in connection with political parties, movements, or other political activities is weak in the hierarchy of trademark protection, and thus, is entitled to no trademark protection;
- Defendants, their officers, agents, servants, employees and attorneys, and all those in active concert or participation with them, be required to amend their filings with the appropriate office of the State of Florida such that their registered political party currently registered as “Tea Party” must include other terms in order to avoid public confusion that the Florida “Tea Party” is somehow endorsed or approved by the Plaintiffs, and other persons or entities that are similarly situated. Alternatively, Defendant TEA PARTY must amend the name of the political party to comport with the admitted meaning of the acronym, namely, “TAXED ENOUGH ALREADY;” and
- Such other relief as this Court finds proper and just.

Dated: February 17, 2010.

Respectfully submitted,

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