

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

THE LEAGUE OF WOMEN VOTERS
OF FLORIDA, THE FLORIDA STATE
CONFERENCE OF NAACP BRANCHES,
DEMOCRACIA AHORA, SARAH
FOWLER, ROSANNE POTTER,
MICHAEL E. BERMAN, CHARLES
MAJOR, JR., and PATRICIA M. LENNY,

Civil Action No.:

Three-Judge District Court Requested

Plaintiffs

v.

RICK SCOTT, in his official capacity
as Governor of the State of Florida;
and KURT BROWNING, in his official
capacity as Florida Secretary of
State,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs THE LEAGUE OF WOMEN VOTERS OF FLORIDA, THE FLORIDA
STATE CONFERENCE OF NAACP BRANCHES, DEMOCRACIA AHORA, SARAH
FOWLER, ROSANNE POTTER, MICHAEL E. BERMAN, CHARLES MAJOR, JR., and
PATRICIA M. LENNY allege:

1. This action is brought on behalf of Plaintiffs pursuant to Sections 5 and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c, and §1973l and pursuant to 28 U.S.C. §§ 2201 and 1343(4), to enforce rights guaranteed by Section 5 of the Voting Rights Act as well as the Fourteenth and Fifteenth Amendments to the United States Constitution.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 1973c(a), 42

U.S.C. § 1973i, 28 U.S.C. § 2284, 28 U.S.C. § 1331 and 28 U.S.C. § 1343(4). Venue properly lies in this Court under 28 U.S.C. § 1391 in that Plaintiffs reside in this Judicial District, the Defendants' actions which are the subject of this lawsuit occurred and will continue to occur in this District, and Defendants reside in or conduct business in this District.

3. Pursuant to 42 U.S.C. § 1973c(a), “[a]ny action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.”

PARTIES

4. Plaintiffs Sarah Fowler, Rosanne Potter, Michael E. Berman, Charles Major, Jr., and Patricia M. Lenny are citizens of the United States and registered voters in Monroe County, Florida. All the individual plaintiffs voted in the last General Election and supported the redistricting reforms known as Amendments 5 and 6. Plaintiffs Fowler and Major are African-Americans.

5. The League of Women Voters of Florida (“LWV”) is the Florida chapter of the League of Women Voters, a nonpartisan political organization that has fought since 1920 to improve our systems of government and impact public policies through citizen education and advocacy. In addition to its mission of encouraging an active and informed electorate, it is the League's goal to help protect representative government and the individual liberties established in the Constitutions of the United States and Florida. The LWV believes that every citizen should be protected in the right to vote.

6. The Florida State Conference of NAACP Branches is an organization dedicated to removing barriers of racial discrimination through democratic processes and is comprised of branches throughout the State of Florida, with over 11,000 members statewide.

7. Democracia Ahora is a Florida-based civic organization that is affiliated with the national Hispanic civic organization, Democracia U.S.A. It has offices in Florida and individual members throughout the state. Democracia Ahora's primary purposes are to empower Hispanic citizens who are engaged in civic and democratic endeavors; and to assist members of Hispanic communities in identifying and articulating issues of concern, including voting rights issues. Democracia Ahora is an organization dedicated to increasing the prominence and participation of Hispanics in every aspect of the political process.

8. Defendant Governor Rick Scott is the Governor of the State of Florida, the chief executive officer of the State of Florida. Defendant Scott is bound by the oath of office he took to uphold the laws of the United States and the laws of the State of Florida, which includes implementing amendments to the Florida Constitution approved by the voters, as well as complying with the provisions of the Voting Rights Act.

9. Defendant Kurt Browning is the Secretary of State for the State of Florida and the chief elections officer for the State. Defendant Browning is the state official responsible for making preclearance submissions to the United States Department of Justice of any changes affecting voting occasioned by state constitutional amendments or state laws. Defendant Browning is bound by the oath of office he took to uphold the laws of the United States and the laws of the State of Florida, which includes implementing amendments to the Florida Constitution approved by the voters, as well as complying with the provisions of the Voting Rights Act.

ALLEGATIONS

10. In November 2010, voters in the State of Florida overwhelmingly approved two amendments to the Florida Constitution. Amendment 5 created Article III, Section 21 of

Florida's Constitution, which sets forth new criteria that must be followed by the State Legislature when it undertakes state legislative redistricting. Amendment 6 created Article III, Section 20, which specifies new criteria that must be followed by the State Legislature when it undertakes congressional redistricting. These criteria impact the way legislative and congressional districts are drawn in Florida, likely changing the composition of the electorate in numerous legislative and congressional districts all over the State.

11. Defendants have authority under Florida law to implement or administer voting qualifications or prerequisites to voting, or standards, practices, or procedures with respect to voting different from those in force or effect on November 1, 1972.

12. Monroe County is one of five political subdivisions within the State of Florida that are "covered counties" subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c ("Section 5"). *See also* 28 C.F.R. Part 51, Appendix.

13. Section 5 states that any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from that in force or effect on November 1, 1972, in any of Florida's covered counties, may not be lawfully implemented unless and until such change has been submitted to the United States Attorney General, and the Attorney General has not interposed an objection within sixty days, or the jurisdiction obtains a declaratory judgment from the United States District Court for the District of Columbia that the proposed change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

14. The voting changes occasioned by Amendments 5 and 6 are changes within the meaning of Section 5 of the Voting Rights Act and thus are subject to the Section 5 preclearance

requirement.

15. According to the preclearance regulations issued by the United States Department of Justice, jurisdictions subject to Section 5 should submit voting changes for preclearance “as soon as possible after the changes become final.” *See* 28 C.F.R. § 51.21.

16. The voting changes occasioned by the passage of Amendments 5 and 6 became final when the State Canvassing Board certified the election on November 16, 2010. On December 10, 2010, the Florida Department of State submitted the voting changes contained in Amendments 5 and 6 to the United States Attorney General for preclearance on behalf of the five designated preclearance counties (Collier, Hardee, Hendry, Hillsborough and Monroe) pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

17. On January 4, 2011, Defendant Scott assumed his office and the next day he appointed Defendant Browning to his post. Prior to his appointment by Scott, Browning had served as chair of “Protect Your Vote,” a political committee with the sole purpose of defeating Amendments 5 and 6. In that effort, Defendant Browning formally aligned himself with U.S. Representatives Corrine Brown and Mario Diaz-Balart, who had unsuccessfully sued to block the Amendments from being placed on the ballot, *Roberts v. Brown*, 43 So.3d 673 (Fla. 2010), and who have sued once again to block the Amendments’ enforcement, *see Brown v. Florida*, No. 10-23968 (S.D. Fl.). Mr. Browning publicly championed the Amendments’ defeat, proclaiming that Protect Your Vote would spend “at least \$4 [million] maybe more” to defeat the Amendments, and standing with Reps. Brown and Diaz-Balart “to kill the constitutional amendments.” Mr. Browning appeared on numerous occasions in public and in the media to argue against the Amendments.

18. Two days after Defendant Scott appointed Defendant Browning as Secretary of

State, Browning's office wrote to the Department of Justice withdrawing Florida's Section 5 request for preclearance of Amendments 5 and 6. The voting changes occasioned by Amendments 5 and 6 have not been re-submitted for preclearance.

19. Defendants have not filed an action in the United States District Court for the District of Columbia pursuant to Section 5 of the Voting Rights Act seeking a declaration that the voting changes occasioned by Amendments 5 and 6 have neither the purpose nor the effect of denying or abridging the right to vote on account of race or color or membership in a language minority group.

20. On information and belief, Defendants do not intend to submit a new application for preclearance to the Attorney General or to seek preclearance through a declaratory judgment action in the District Court for the District of Columbia.

CAUSE OF ACTION

21. Defendants and the State of Florida are in violation of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, because they withdrew a timely submission for pre-clearance and have failed to re-submit it "as soon as possible after the changes become final," *see* 28 C.F.R. § 51.21.

22. Florida's House of Representatives and Senate have already begun implementation of the new redistricting standards. Notwithstanding the failure to obtain preclearance, the Florida Senate has convened its Reapportionment Committee on numerous occasions and informed its members and the public that redistricting plans will be drawn utilizing the new criteria set forth in Amendments 5 and 6. The Florida House has published a website listing the new constitutional provisions as law that will govern the redistricting process. Further, the Legislature has announced statewide public hearings on redistricting to begin in July

2011 that will be convened utilizing the new standards.

23. Proceeding with this process notwithstanding failure to obtain the requisite preclearance of the redistricting criteria set forth in Amendments 5 and 6 will not only continue the violation of Section 5, but will cause uncertainty, delay and confusion among Plaintiffs, among other voters, and all those involved in the redistricting process.

24. Plaintiffs have a personal stake in bringing about compliance with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. As a result of a long history of racial discrimination by the State of Florida and Monroe County (and four other Florida counties), and its continuing effects, the United States Department of Justice (or a special court in the District of Columbia) must review all voting changes to be implemented in Monroe County to ensure that such voting changes are free of racially discriminatory purpose and retrogressive effect. The absence of preclearance for Amendments 5 and 6 harms Plaintiffs and will deprive Plaintiffs of their rights under 42 U.S.C. § 1973c. Moreover, Amendments 5 and 6 provide Plaintiffs – some of whom are minority voters – with state constitutional voting protections they did not enjoy before those Amendments were enacted. Defendants’ purposeful withdrawal of the State’s preclearance submission will, if not remedied, deprive Plaintiffs of those critical protections by rendering them unenforceable.

25. Plaintiffs supported the standards set forth in Amendments 5 and 6, and want to see them employed by the Legislature as it complies with its obligations to draw congressional and legislative districts. The absence of preclearance for Amendments 5 and 6 jeopardizes the application of the new standards and renders the ongoing redistricting process legally uncertain, harming voters who intend to participate meaningfully in that process.

26. It has now been over three months since the November 2010 elections. While their predecessors in office followed federal law and promptly made a Section 5 submission seeking preclearance of the new redistricting criteria, Defendants Scott and Browning have acted instead in complete defiance of the Voting Rights Act by withdrawing Florida's timely filed preclearance request, failing to resubmit a request on behalf of Florida and the covered counties in our State, and by allowing implementation of Amendments 5 and 6 without preclearance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that a court of three judges be convened to hear this action pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284 and thereafter enter a judgment:

- (1) Declaring that the voting changes occasioned by Amendments 5 and 6 are subject to the preclearance requirements of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c;
- (2) Ordering the Defendants to seek the required Section 5 preclearance of the voting changes occasioned by Amendments 5 and 6 within thirty (30) days, by either filing an action in the United States District Court for the District of Columbia or by seeking administrative preclearance from the United States Attorney General;
- (3) Ordering such further relief as may be necessary and appropriate, including an award of attorneys' fees, as well as all costs and disbursements in maintaining this action.

Respectfully Submitted,

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**REQUEST FOR APPOINTMENT OF A THREE-JUDGE COURT
ATTACHED PURSUANT TO S.D. FLA. LOCAL RULE 9.1**

Pursuant to 42 U.S.C. § 1973(a), “[a]ny action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court.” Plaintiffs, by their counsel, therefore, request the Court to notify the Chief Judge of the Eleventh Circuit Court of Appeals that Plaintiffs’ claim that Defendants have failed to comply with the preclearance provisions of Section 5 of the Voting Rights Act is required to be heard by a district court of three judges pursuant to 28 U.S.C. § 2284 and 42 U.S.C. § 1973c.