



June 20, 2011

T. Christian Herren
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 30530

Re: Section 5 Comment Letter
Submission Number: 2011-2187
Chapter 2011-40, Laws of Florida (CS/CS/HB 1355)

AMERICAN CIVIL LIBERTIES
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Dear Mr. Herren:

This is to request the Department of Justice to deny preclearance to Chapter 2011-40, Laws of Florida (CS/CS/HB 1355). Many of the provisions of HB 1355 will cause retrogression in minority voting strength in violation of Section 5 of the Voting Rights Act. There is also evidence that the provisions were adopted with a discriminatory purpose.

The provisions of HB 1355 that we believe violate Section 5 are:

1. Reducing the number of days for early voting from 14 days to eight days - from the 10th to the 3rd day before the election. Fla. Stat. § 101.657(1)(d) (HB 1355, Sec. 39);
2. Requiring third-party voter registration organizations to submit voter registration applications within 48 hours of receipt instead of ten days as provided by existing law, and imposing a fine of \$50 for each failure to comply with the deadline, and imposing fines up to \$1,000 for failing to comply with other provisions. Fla. Stat. § 97.0575(3)(a) (HB 1355, Sec. 4);
3. Disallowing voters who move from one Florida county to another to make an address change at the polls on the day of an election and vote a regular ballot, except for active military voters and their family members. Fla. Stat. § 101.045(2)(d) (HB 1355, Sec. 26);
4. Reducing the shelf-life of citizen initiative petition signatures proposing constitutional amendments from four years to two years. Fla. Stat. § 100.371(3) (HB 1355, Sec. 23).

There was no legitimate purpose for this legislation relating to the improvement of election administration. In fact, Jerry Holland, the Duval County Supervisor of Elections, has been reported as saying: “The State Association of Election Supervisors did not support this bill; we actively opposed it.” And notably, every member of the Florida Conference of Black State Legislators voted against HB 1355 because it was unnecessary and would have an adverse impact on racial and language minorities.

Florida is now implementing HB 1355. On May 19, 2011, Secretary of State Kurt Browning issued Directive 2011-01 providing that: “I hereby issue this directive for the purpose of ensuring that specific new changes are uniformly interpreted and implemented and that the elections are conducted in a fair and impartial manner.” Also on May 19, 2011, the Florida Division of Elections sent a memo to Supervisors of Elections summarizing the provisions of HB 1355. And on May 20, 2011, the Florida Division of Elections issued Emergency Rules Regulating Third-Party Voter Registration Organizations. The rules contain, among other things, registration forms and a form for Complaint against Third-Party Voter Registration Organization.

Collier County is one of the five counties in Florida covered by Section 5. Despite the fact that HB 1355 has not been precleared, the Collier County Supervisor of Elections has posted on its website a link to the Third-Party Voter Registration rules promulgated by the Florida Division of Elections. Hillsborough County is also covered by Section 5, and its Supervisor of Elections has posted on its website links to HB 1355 as well as the May 19, 2011 memo from the Florida Division of Elections summarizing the provisions of the bill.

Reducing the Opportunities for Early Voting

The changes in HB 1355 will significantly reduce the opportunities for early voting and have an adverse racial impact. Since Florida initiated early voting, African Americans constitute a higher percentage of early voters in Florida than is their proportion of the voting age population. While African Americans are more likely to use early voting, whites are more likely to cast absentee ballots. For example, in the 2008 general election, 2.1 million Floridians voted early. African Americans cast 22% of the early votes, though they comprised only about 13% of the electorate. Nearly 54% of the African American who voted cast ballots before Election Day at early-

voting sites. In contrast, only 27% of white voters used the early-voting sites.

In the five Florida counties covered by Section 5 (Collier, Hardee, Hendry, Hillsborough, and Monroe) African Americans were 12.15% of the voting age population, but were 18.86% of the early voters in the 2008 general election. During the first week of early voting, African Americans were an even larger percentage of early voters - 20.08% - in the covered counties. See Florida Division of Elections Early Voting Report; Florida Voter Registration File; U.S. Census Bureau. Reducing the days for early voting will have an obvious disparate impact upon African Americans.

Aside from reducing the number of days for early voting from 14 to eight, early voting on the Sunday before Election Day was also eliminated. The larger, more urban counties, which include those with the largest African American populations, chose to make early voting available on the Sunday before the election, and according to Justin Levitt, a professor at Loyola School of Law, “voters responded.” That analysis was backed up by the research of Michael McDonald, a professor of government and politics at George Mason University, which showed on the final Sunday before the 2008 presidential election, black voters accounted for 32% of the daily early-voting turnout in Florida.

The fact that reducing early voting would have an adverse racial impact was a reason given by Florida Republican Senator Mike Bennett for passage of HB 1335. Senator Bennett was reported in PolitiFact as saying:

Do you read the stories about the people in Africa? The people in the desert, who literally walk two and three hundred miles so they can have the opportunity to do what we do, and we want to make it more convenient” How much more convenient do you want to make it? Do we want to go to their house? Take the polling booth with us? This is a hard-fought privilege. This is something people die for. You want to make it convenient? The guy who dies to give you that right, it was not convenient. Why would we make it any easier? I want ‘em to fight for it. I want ‘em to know what it’s like. I want them to go down there, and have to walk across town to go over and vote.

In contrast, Florida Democratic Representative Perry Thurston was quoted in the press as saying, “When we should be encouraging participation, we’re suppressing it.”

We do not believe Florida can carry its burden of proof that the reduction in early voting does not have a discriminatory purpose and will not have a discriminatory effect within the meaning of Section 5.

Burdens on Third Party Voter Registration Organizations

The proposed changes will impose significant and undue burdens on third-party voter registration organizations that seek to register racial and language minorities. Based on nationwide statistics, in 2008, more than one-third of voters who registered through third-party drives were racial minorities. And according to the League of Women Voters, black and Hispanic voters register with third-party groups at twice the rate of other voters. See “Voting laws Sunday punch,” *The Herald-Tribune*, June 15, 2011. Minority voters in Florida, as in the rest of the country, have benefitted from community-based registration drives.

HB 1355 imposes onerous paperwork requirements on organizations planning to conduct a drive, as well as a 48-hour deadline for turning in applications (in contrast to the 10-day deadline provided in federal law for a public assistance agency to submit applications it collects from its clients). This law also imposes a penalty of \$50 per application for missing the deadline, and up to \$1000 per application for other infractions. The law requires agents working with third-party voter registration organizations to sign a sworn statement that “I understand the penalties for false registration may include a term of imprisonment up to 5 years and a fine up to 5,000,” which will surely deter many from affiliating with such organizations. In addition, an organization conducting a voter registration drive would have to account for every application given to it, whether it was used or not. Finally, the partisan Secretary of State would have authority over all of these provisions, including the ability to seek an injunction to shut down a voter registration drive upon “reasonable belief” the organization failed to track every application. All of these requirements would have a disproportionate impact upon minority voters, whose reliance on voter registration drives is disproportionate to their share of the voting-eligible population.

Not surprisingly, it has been reported that as a result of the new restrictions on third-party voter registration groups, the League of Women Voters “has halted registration in Florida.” “Voting laws Sunday punch,” The Herald-Tribune, June 15, 2011. Several other groups are reconsidering their plans to conduct voter registration in Florida in 2012. The adverse impact of the new restrictions on minorities is apparent.

Restrictions on Casting a Regular Ballot

The new rules will prevent many voters who move from one Florida county to another to make an address change at the polls on the day of an election and vote a regular ballot - as has been the policy in Florida for decades. According to a 2008 Pew Research Center survey on Social and Demographic Trends, 68% of African Americans will end up moving during their lifetimes, compared to 61% of whites. And in the preceding five years, 43% of African Americans and 48% of Latinos had moved, compared to just 27% of whites. Since African Americans and Latinos tend to be more mobile than whites, the restrictions on making an address change at the polls on the day of an election and voting a regular ballot will have an adverse racial impact.

The evidence also shows that statewide, 74.27% of provisional ballots were counted, but only 55.64% were counted in the five covered counties. See Florida Division of Elections. Requiring voters who move to a different county to cast a provisional ballot on election day will have an obvious adverse impact upon racial and language minorities.

Restrictions on Citizen Initiative Petitions

The new rules will make it more difficult to present citizen initiative petitions by reducing the shelf-life of petition signatures proposing constitutional amendments from four years to two years. Since African Americans have a depressed socio-economic status compared to whites, reducing the period of validity for signed petitions to two years will make it more difficult, more expensive, and likely prohibitive for African Americans to conduct citizen initiatives.

According to the 2009 American Community Survey, the median household income for whites in Florida was \$47,378, and the per capita income was \$27,239. For Blacks or African Americans, the median

household income was \$32,560, and the per capita income was \$15,107. These numbers underscore the disparate impact the new law will have on racial minorities and the added difficulties they will face in conducting citizen initiatives.

For the above reasons, we do not believe Florida can carry its burden of proof that its submission does not have a discriminatory purpose or effect, and accordingly respectfully request the Department of Justice to deny preclearance to Chapter 2011-40, Laws of Florida (CS/CS/HB 1355).

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

Sincerely,

A handwritten signature in black ink that reads "Laughlin McDonald". The signature is written in a cursive, slightly slanted style.

Laughlin McDonald
ACLU Voting Rights Project

Howard Simon
Randall Marshal
Florida ACLU

Estelle H. Rogers
Project Vote