

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

KENNETH SULLIVAN, ALBERT LEO  
SULLIVAN, MICHAEL BERMAN,  
SEN. ARTHENIA JOYNER,  
REP. JANET CRUZ, HELEN GORDON DAVIS,  
JOYCE HAMILTON HENRY, HAROLD WEEKS,  
and OPHELIA ALLEN,

Plaintiffs,

v.

Civ. No.  
**Three-Judge District Court Requested**

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.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**THREE-JUDGE DISTRICT COURT REQUESTED**

1. This is an action to enforce rights guaranteed to Plaintiffs by Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. The Defendants have failed to obtain preclearance before implementing changes in voting standards, practices, and procedures contained in HB 1355 as required by Section 5. The Plaintiffs, all of whom are United States citizens and registered voters in their respective “covered counties,” seek declaratory and injunctive relief prohibiting the Defendants from enforcing HB 1355 absent preclearance.

**JURISDICTION AND VENUE**

2. This civil action is authorized by 42 U.S.C. § 1983 to redress the deprivation under color of state statute, ordinance, regulation, custom, or usage of rights, privileges, or immunities secured to plaintiffs by the Constitution and laws of the United States. This action is also authorized by 42

U.S.C. § 1973j to secure equitable and other relief under an act of Congress providing for the protection of civil rights. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 42 U.S.C. § 1973j(f). This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Pursuant to 42 U.S.C. § 1973c(a) and 28 U.S.C. § 2284(a), a district court comprised of three judges is required to hear Plaintiffs' claim that Defendants have failed to comply with Section 5 of the Voting Rights Act.

4. Venue properly lies in this Court under 28 U.S.C. § 1391 in that three 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.

#### **PARTIES**

5. Plaintiffs Kenneth Sullivan, Albert Leo Sullivan, and Michael Berman are citizens of the United States and registered voters in Monroe County, Florida. Plaintiff Kenneth Sullivan is a Black male; Plaintiff Albert Leo Sullivan is a White male; and Plaintiff Berman is a White male.

6. Plaintiffs Sen. Arthenia Joyner, Joyce Hamilton Henry, Rep. Janet Cruz, and Helen Gordon Davis are citizens of the United States and registered voters in Hillsborough County, Florida. Plaintiffs Joyner and Henry are Black females; Plaintiff Cruz is a Hispanic female; and Plaintiff Davis is a White female.

7. Plaintiffs Harold Weeks and Ophelia Allen are citizens of the United States and registered voters in Collier County, Florida. Plaintiff Weeks is a Black male, and President of the NAACP in Collier County; Plaintiff Allen is a Black female.

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 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 seeking preclearance under Section 5 of the Voting Rights Act of any changes affecting voting practices or procedures enacted by the state legislature. 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 complying with the provisions of the Voting Rights Act.

### **ALLEGATIONS**

10. HB 1355 was enacted by the Florida legislature amending the Florida Election Code (chapters 97-106, Florida Statutes), and became law (Chapter 2011-40, Laws of Florida) on May 19, 2011.

11. HB 1355 contains many changes in Florida voting standards, practices, and procedures including:

a. Reducing the number of days for early voting from 14 days to eight days - from the 10<sup>th</sup> to the 3<sup>rd</sup> day before the election. Fla. Stat. § 101.657(1)(d) (HB 1355, Sec. 39);

b. 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. § 97.057 (3)(d) (HB 1355, Sec. 4);

c. 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)(b) (HB 1355, Sec. 26);

d. 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).

12. On May 19, 2011, Defendant 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.”

13. 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.

14. Five counties in Florida - Collier, Hardee, Hendry, Hillsborough, and Monroe - are “covered counties” subject to the preclearance requirements of Section 5 of the Voting Rights Act. *See also* 28 C.F.R. Part 51, Appendix.

15. 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.

16. The voting changes occasioned by HB 1355 are changes within the meaning of Section 5

of the Voting Rights Act and thus are subject to Section 5's preclearance requirement.

17. 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.

18. Defendants have directed that the voting changes occasioned by HB 1355 be promptly implemented despite the fact that Defendants have not submitted the changes for preclearance under Section 5, either by making an administrative submission to the Department of Justice or by seeking judicial preclearance in the United States District Court for the District of Columbia and demonstrating that the changes have neither a discriminatory purpose or effect.

19. Under Section 5, Defendants have the burden of proof that proposed changes in voting standards, practices, or procedures have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or membership in a language minority, nor diminish the ability of minorities to elect their preferred candidates of choice.

#### **THE NEED FOR INJUNCTIVE RELIEF**

20. The Plaintiffs have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and this suit for declaratory and injunctive relief is their only means of securing adequate redress from the unlawful practices of the Defendants.

21. The Plaintiffs will continue to suffer irreparable injury from the acts, policies, and practices of the Defendants set forth herein unless enjoined by this Court.

22. The absence of preclearance for HB 1355 harms Plaintiffs and will deprive Plaintiffs of their rights under 42 U.S.C. § 1973c.

## **CLAIMS FOR RELIEF**

23. Five Counties in Florida are covered by Section 5 of the Voting Rights Act and as a result Florida must obtain preapproval or preclearance before seeking to administer or implementing any voting qualifications or prerequisites to voting, or standards, practices, or procedures with respect to voting that are different from those that were in force or effect on November 1, 1972.

24. HB 1355 is a “standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972” within the meaning of Section 5 of the Voting Rights Act.

25. Florida has “enact[ed],” has “administer[ed],” and “seeks to administer” HB 1355 within the meaning of Section 5.

26. The Defendants did not seek or obtain preclearance under Section 5 before enacting and administering HB 1355.

27. The Defendants’ failure to obtain preclearance prior to enforcing HB 1355 violates Section 5 of the Voting Rights Act.

## **PRAYER FOR RELIEF**

28. Wherefore, Plaintiffs respectfully request that this Court enter a judgment granting them:

a. a declaration that Defendants’ failure to obtain preclearance prior to enforcing HB 1355 violates Section 5 of the Voting Rights Act;

b. an injunction prohibiting Defendants and their officers, agents, employees, attorneys, and successors in office, and all other persons in concert or participation with them, from enforcing HB 1355 anywhere in the State of Florida unless and until they obtain preclearance under Section 5 of the Voting Rights Act;

c. an award of expenses, costs, fees, and other disbursements associated with the filing and

maintenance of this action, including reasonable attorney's fees, pursuant to 42 U.S.C. §§ 1973l(e) and 1988; and

d. such other relief at law or in equity as this Court may deem appropriate.

Dated June 3, 2011

Respectfully submitted,

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*\*Pro Hac Vice Motion  
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