

**CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT  
LEON COUNTY FLORIDA**

JON AUSMAN, ALMA GONZALEZ,  
LINDA LLOYD, TANYA RIVKA,  
JACK J. ALBUQUERQUE,  
and ARNOLD PERLSTEIN,

Plaintiffs,

v.

**CASE NO. 37-2007-CA-003233**

KURT S. BROWNING, in his capacity as  
Secretary of State of the State of Florida,

Defendant.

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**COMPLAINT**

**Introduction And Jurisdiction**

1. This is an action, for declaratory and injunctive relief, to restore Florida residents' constitutionally protected right to vote in the 2008 Democratic and Republican Presidential Primary elections, and to have their votes count. Florida's Presidential primary election has been rescheduled by statute for January 29, 2008, a date which violates the rules of both the Democratic and Republican Parties, and which will result in disenfranchising approximately eight million registered Florida voters.

2. By seeking to manipulate the selection of delegates to the Democratic and Republican national conventions, and by disenfranchising Florida voters from meaningful participation in their party primaries, Section 103.101, Florida Statutes (2007), violates the Equal Protection and Free Speech and Assembly provisions of the Florida and United States Constitutions. Violating a long history of precedent from the United States Supreme Court, the statute interferes with the internal processes of the national Democratic and Republican Parties,

and, for purely political purposes, attempts to influence each Party's selection of a candidate for the Presidency of the United States. In taking actions which interfere with the freedom of Florida residents to freely associate with other citizen-members of their political parties, in Florida and in other states across the nation, for the purpose of choosing delegates to their national conventions, and selecting their candidates for the Presidency of the United States at their party conventions, the statute violates the organic law of Florida and of the United States. The Legislative history of Section 103.101, Florida Statutes (2007), demonstrates persuasively that it was adopted for the purpose of increasing the influence of Florida voters over the selection of presidential candidates in the Republican and Democratic national party conventions. If this were a compelling State interest, it would be one possessed by every State in the nation, and the result would be chaos. The words of Justice Kennedy, concurring in *California Democratic Party v. Jones*, 530 U.S. 567, 590 (2000), echo the established principle that

[w]hen the State seeks to regulate a political party's nomination process as a means to shape and control political doctrine and the scope of political choice, the First Amendment gives substantial protection to the party from the manipulation.

*Id.* Because Democrats and Republicans across the nation have chosen to associate together as political parties, and to select their candidates for the Presidency by an orderly system of timing, which carefully accommodates the political and other interests of their varied national memberships, Florida has no compelling interest in disturbing their internal procedures and political accommodations. Moreover, whatever interest Florida has is not served by a statute which results in disenfranchising eight million Florida voters.

3. Plaintiffs bring this action for declaratory and injunctive relief, pursuant to Sections 86.011, 86.021, 86.061, 86.091, 86.101, Florida Statutes, seeking a declaration that Section 103.101, Florida Statutes (2007), is unconstitutional, and enjoining Defendant from

holding the 2008 Florida primary election prior to February 5, 2008, so that the votes and voices of Florida voters can be heard in the 2008 Presidential Nominating Conventions of the Democratic and Republican political parties. The Court has jurisdiction pursuant to Article V, Section 5 of the Constitution of the State of Florida. In addition, Title 42 of the United State Code, Section 1983, provides a right of action to parties who, as here, have suffered impairment of First and Fourteenth Amendment rights. A real controversy exists regarding the rights of Plaintiffs, and all Florida voters, to freely associate within their political parties, and with their party membership across the nation, in selecting a candidate to represent their parties for the Presidency of the United States. There is a bona fide practical need for the declaration and injunction, because, in the absence of judicial action, Plaintiffs and eight million other Floridians will be disenfranchised. Once again, their votes will not count. The Plaintiffs' interests are actual, present and adverse to the Defendant, who is required by law to enforce and implement the unconstitutional statute.

4. The principal place of business of the named defendant is in Tallahassee, Leon County, State of Florida. This cause of action arises out of actions taken by the Florida Legislature in Leon County. Venue is appropriate in Tallahassee, Florida.

#### **Parties To This Action**

5. Defendant Kurt S. Browning ("Browning"), is sued in his official capacity as the Florida Secretary of State. Defendant Browning, as head of the Florida Department of State, maintains custody of the Florida Constitution and statutes, and supervises the administration of election laws. §15.01, Fla. Stat. (2007); §15.13, Fla. Stat. (2007). The Secretary of State is Florida's chief election officer. §97.012, Fla. Stat. (2007). In common with all Florida Public

Officers, Defendant Browning has a mandatory duty to obey the Constitution of the State of Florida. Art. II, §5(b), Fla. Const. Defendant Browning has a mandatory duty to “[o]btain and maintain uniformity in the application, operation, and interpretation of the election laws,” and to “[b]ring and maintain such actions at law or in equity by mandamus or injunction to enforce . . . chapters 97-102 and chapter 105. . . .” §§97.012(1) and (14) Fla. Stat. (2007). Defendant Browning, as required by Section 103.101, Florida Statutes (2007), and acting under color and authority of Florida law, has planned a presidential primary election for January 29, 2008 – a date which, under the rules of the national Republican and Democratic Parties, will effectively result in disenfranchising eight million registered Florida Republican and Democratic voters.

6. Plaintiffs are registered Democratic and Republican Florida residents who plan to vote in the 2008 Florida Democratic and Republican Presidential Primary elections, and who wish to have their votes count, in selecting their respective Party’s candidates for the Presidency.

7. Plaintiff Jon Ausman meets the constitutional qualifications to vote in the 2008 Presidential Primary and general election, in that he is a citizen of the United States, a registered member of the Democratic Party, more than eighteen years of age, a permanent resident of the State of Florida, and registered to vote in Leon County, Florida. Plaintiff Ausman is a member of the Democratic Party National Committee; he will lose his automatic status as a delegate to the Democratic Party Nominating Convention if Defendant Browning conducts a party primary election in violation of his Party’s rules.

8. Plaintiff Linda Lloyd meets the constitutional qualifications to vote in the 2008 Presidential Primary and general election, in that she is a citizen of the United States, a registered member of the Republican Party, more than eighteen years of age, a permanent resident of the State of Florida, and registered to vote in Leon County, Florida.

9. Plaintiff Alma Gonzalez meets the constitutional qualifications to vote in the 2008 Presidential Primary and general election, in that she is a citizen of the United States, a registered member of the Democratic Party, more than eighteen years of age, a permanent resident of the State of Florida, and registered to vote in Leon County, Florida.

10. Plaintiff Jack J. Albuquerque meets the constitutional qualifications to vote in the 2008 Presidential Primary and general election, in that he is a citizen of the United States, a registered member of the Democratic Party, more than eighteen years of age, a permanent resident of the State of Florida, and registered to vote in Palm Beach County, Florida.

11. Plaintiff Arnold Perlstein meets the constitutional qualifications to vote in the 2008 Presidential Primary and general election, in that he is a citizen of the United States, a registered member of the Democratic Party, more than eighteen years of age, a permanent resident of the State of Florida, and registered to vote in Broward County, Florida.

12. Plaintiff Tanya Rivka meets the constitutional qualifications to vote in the 2008 Presidential Primary and general election, in that she is a citizen of the United States, a registered member of the Democratic Party, more than eighteen years of age, a permanent resident of the State of Florida, and registered to vote in Palm Beach County, Florida.

### **COUNT 1**

The foregoing paragraphs 1-12 are adopted by reference, and expressly made a part of this Count 1.

13. The purpose of the Florida Presidential primary elections is to select Florida's delegates to the Democratic and Republican National Conventions, at which the Democratic and Republican party nominees for President and Vice-President will be selected by vote of the

delegates seated at the conventions. Florida is entitled to a total of 210 delegates for the Democratic National Convention, most of which are allocated among the state's Congressional Districts according to the percentage of votes for a candidate in each congressional district. Florida is entitled to a total of 114 delegates for the Republican National Convention. These delegate numbers reflect Florida's importance as the fourth largest state in the country.

14. Both major political parties have rules regarding the selection of delegates to their National Conventions. Both Republican and Democratic Party delegate selection rules prohibit any state from holding a caucus or primary election to select party nominating convention delegates prior to February 5, 2008, except for the States of Iowa, Nevada, New Hampshire, and South Carolina, which are permitted to hold presidential primaries and caucuses earlier than February 5, 2008.

15. The rules of the Democratic and Republican Parties provide sanctions for parties or States that disregard the parties' assignments of dates for Presidential primaries and caucuses. Under the rules of the Democratic Party, no Democratic Party delegates selected in a presidential primary held in Florida prior to February 5, 2008, can be seated at the 2008 Democratic Party convention. Under the rules of the Republican Party, half of the Republican Party delegates selected in a Florida primary held prior to February 5, 2008, will not be seated at the 2008 Republican Party convention.

16. Notwithstanding the rules of the Democratic and Republican Parties for delegate selection, in May, 2007, the Florida Legislature passed, and Florida's Governor signed into law, Chapter 2007-30, which provides that the Florida Presidential Primary will take place on the last Tuesday in January, which in 2008 is January 29, 2008.

17. As a direct result of Defendant's holding the 2008 Florida presidential primary election on January 29, 2008, instead of one week later, on February 5, 2008, the Democratic Plaintiffs' votes in the primary election will not result in the seating of any delegates at the Democratic party nominating convention, and said Plaintiffs will be denied any representation at their Party's Convention. Instead, the Democratic Plaintiffs will be relegated to a "one man, no vote" status. The Republican Plaintiffs' votes in the primary election will result in the seating of disproportionately fewer delegates at the Republican Party Nominating Convention, and those Plaintiffs' votes will be substantially diluted, and the votes of Florida's Republican voters will not receive the weight to which they would otherwise be entitled.

18. In 2007-2008, a Presidential election contest is taking place that appears to be one of the most wide-open contests in decades. Not only are there multiple, serious and well-funded contenders for the nomination within each party, there is also no incumbent President or Vice President among the contenders. As a result, Floridians of both parties are not only being denied the right to vote and to associate with other members of their respective parties, they are also being excluded from one of the most important and open Presidential nominating elections ever held. Florida is the fourth most populous state in the United States, yet, as a result of Florida's actions, its citizens will effectively have no say in the selection of the Democratic and Republican Presidential nominees in a year in which the primary process is hotly contested and not at all a "rubber stamp" .

19. As a direct and proximate consequence of Florida's actions, Florida Democrats and Republicans will also be denied the right to serve as delegates to the Democratic National Convention and Republican National Convention, respectively, or even to be considered for such positions. For Plaintiff Ausman, a member of the Democratic National Committee, this

preclusion operates to divest him of political and associational rights as an automatic delegate to the Democratic Convention. The Legislature's change in the primary date was made with full awareness that it would impair the free speech and political association rights of delegates such as Plaintiff Ausman.

20. As a direct and proximate result of Florida's interference into the internal processes of the national Republican and Democratic Parties, many voters will be discouraged and disheartened, and will view the act of voting as futile; both political parties, their memberships, and the Plaintiffs will suffer the loss of this opportunity to associate politically with their fellow citizens.

21. Defendant Browning, acting as required by Florida statute, and unless restrained, will conduct a Presidential preference primary on January 29, 2008, which will result in the disenfranchisement of more than eight million Florida voters.

22. The rights of American citizens to freely associate as political parties, to nominate candidates for political office, to establish rules and procedures governing their political associations, and to cast meaningful ballots, are among the most cherished rights of our democratic society. The actions of the Florida Legislature, in attempting to influence and manipulate the outcomes of the Republican and Democratic Party Conventions, by conducting Presidential Primary elections in violation of each Party's rules – rules which represent political and other accommodations reached by the national membership of each Party in conducting their political associations – violate the freedom of speech and association provisions of the Florida Constitution, and the First and Fourteenth Amendments of the United States Constitution. In taking these actions under color of State law, Defendant's actions also violate Title 42, United States Code, Section 1983.

WHEREFORE Plaintiffs respectfully request an order and judgment:

1. Temporarily, preliminarily and permanently restraining defendant from holding the 2008 Florida Presidential Primaries prior to February 5, 2008;
2. Granting plaintiffs such other and further relief as to the Court may appear to be necessary and proper, and
3. Awarding Plaintiffs their costs in bringing this action, including attorneys' fees and costs, pursuant to Title 42, United States Code, Section 1988.

Respectfully submitted,

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