

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

LEAGUE OF WOMEN VOTERS OF
FLORIDA, INC., et al.,

Plaintiffs,

v.

LAUREL M. LEE, in her official
capacity as Florida Secretary of State,
et al.,

Defendants,

and

REPUBLICAN NATIONAL
COMMITTEE, and NATIONAL
REPUBLICAN SENATORIAL
COMMITTEE,

Intervenor-
Defendants.

Cases Consolidated for Trial:

Nos.: 4:21-cv-186-MW/MAF
4:21-cv-187-MW/MAF
4:21-cv-201-MW/MAF
4:21-cv-242-MW/MAF

**PLAINTIFFS' JOINT BRIEF IN RESPONSE TO COURT'S ORDER
REQUESTING BRIEFING ON SPECIFIC QUESTION RELATED TO
COMPELLED SPEECH**

Pursuant to the Court's Order for Briefing on Compelled Speech (ECF No. 554), Plaintiffs in the above-captioned consolidated cases respond to the Court's question as follows:

COURT'S QUESTION: What is the best controlling authority from the U.S. Supreme Court or the Eleventh Circuit addressing whether this Court's analysis differs, if at all, based on the method by which such notification occurs.

In other words, do different tests apply if the government requires a certain message to be spoken as opposed to posted, and which test applies here?

The method by which a compelled notification occurs does not affect the relevant test: in the absence of an applicable categorical exception (such as for certain commercial speech), compelled speech is subject to strict scrutiny regardless of whether the compelled speech requires literal speech, the posting of a sign, or the provision of a written warning.

- ***National Institute of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2369 (2018)**: In reviewing a law which required crisis pregnancy centers to “disseminate a government-drafted notice” by *either* “post[ing] it in the waiting room, print[ing] and distribut[ing it] to all clients, or prov[iding it] digitally at check-in,” the Supreme Court characterized the law as “compelling individuals to speak a particular message” and explained that it was therefore subject to strict scrutiny unless there was an applicable categorical exception to that standard of review. *Id.* at 2371.
- ***Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988)**: The Supreme Court struck down a North Carolina requirement that professional fund raisers disclose a potential donor’s percentage of charitable contributions collected during previous year which were actually turned over to charity as unconstitutional compelled speech. *Id.* at 800-01. The Court applied “exacting First Amendment scrutiny” to the content-based regulation. *Id.* at 798. While the regulation allowed the disclaimer to be “either oral or written,” *id.* at 811 (Rehnquist, J., dissenting), the form of the speech at issue did not affect the Court’s analysis.
- ***Wooley v. Maynard*, 430 U.S. 705 (1977)**: The Supreme Court held unconstitutional a New Hampshire law requiring drivers not to cover up the New Hampshire slogan, “Live free or die,” on their license plates, explaining that “the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.” *Id.* at 714.
- ***McClendon v. Long*, 22 F.4th 1330, 2022 WL 165992 (11th Cir. Jan. 19, 2022)**: The Eleventh Circuit held that a Sheriff’s placement of government-drafted warning signs on registered sex offenders’ front lawns was “a classic example of compelled government speech” and was therefore subject to strict scrutiny.

What are the best non-controlling persuasive cases on the same question?

- ***Tennessee State Conference of NAACP v. Hargett*, 420 F. Supp. 3d 683 (M.D. Tenn. 2019)**: The court held unconstitutional a law requiring organizations making communications regarding voter registration status to “display a disclaimer that such communication is not made in conjunction with or authorized by the secretary of state,” explaining that it implicated “the well-developed caselaw regarding government-compelled speech” and was therefore presumptively unconstitutional and could be justified only if the government proved it was narrowly tailored to serve compelling state interests—the strict scrutiny standard. *Id.* at 692, 707-08.
- ***Masonry Building Owners of Oregon v. Wheeler*, 394 F. Supp. 3d 1279 (D. Or. 2019)**: The court granted a preliminary injunction against enforcement of a municipal ordinance that required certain building owners to post a sign warning that their buildings would be unsafe in earthquakes, explaining that it was subject to strict scrutiny as compelled speech. *Id.* at 1298, 1305-10.

Respectfully submitted this 9th day of February, 2022.

/s/ Frederick S. Wermuth
Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
King, Blackwell, Zehnder
& Wermuth, P.A.
P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com

Elisabeth Frost
David R. Fox*
Lalitha D. Madduri*
Christina A. Ford

/s/ P. Benjamin Duke
P. Benjamin Duke*
Shira M. Poliak*
Covington & Burling LLP
620 Eighth Avenue
New York, NY 10018
Telephone: 212-841-1270
pbduke@cov.com
spoliak@cov.com

Benjamin L. Cavataro
Florida Bar No. 113534
Morgan E. Saunders*
Michael A. Fletcher II*
Elizabeth T. Fouhey*
Cyrus Nasser*
Covington & Burling LLP
850 Tenth Street, N.W.

Francesca Gibson*
Elias Law Group LLP
10 G St. NE, Suite 600
Washington, D.C. 20002
Telephone: (202) 968-4490
efrost@elias.law
dfox@elias.law
lmadduri@elias.law
cford@elias.law
fgibson@elias.law

*Admitted *Pro Hac Vice*

Counsel for Plaintiffs

Washington, DC 20001
Telephone: 202-662-5693
bcavataro@cov.com
msaunders@cov.com
mfletcher@cov.com
efouhey@cov.com
cnasseri@cov.com

Robert D. Fram*
Ellen Y. Choi*
Nia Joyner**
Covington & Burling LLP
415 Mission Street
San Francisco, CA 94105
Telephone: 415-591-7025
rfram@cov.com
echoi@cov.com
njoyner@cov.com

Michael Pernick*
Morenike Fajana*
Romane Paul*
NAACP Legal Defense & Educational
Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
Telephone: 212-965-2200
mfajana@naacpldf.org

Amia Trigg*
Mahogane D. Reed*
NAACP Legal Defense & Educational
Fund, Inc.
700 14th Street NW, Ste. 600,
Washington, DC 20005
Telephone: 202-682-1300
atrigg@naacpldf.org

Nellie L. King
Fla. Bar No. 0099562

The Law Offices of Nellie L. King, P.A.
319 Clematis Street, Suite 107
West Palm Beach, FL 33401
Telephone: 561-833-1084
Nellie@CriminalDefenseFla.com

**Admitted pro hac vice*

Counsel for NAACP Plaintiffs

/s/ John A. Freedman

Kira Romero-Craft
Florida Bar No. 49927
Miranda Galindo *
LatinoJustice, PRLDEF
523 W Colonial Dr.
Orlando, FL 32804
Telephone: 321-418-6354
Kromero@latinojustice.org
Mgalindo@latinojustice.org

Brenda Wright *
DEMOS
80 Broad St, 4th Flr
New York, NY 10004
Telephone: 212-633-1405
bwright@demos.org

Judith B. Dianis *
Gilda R. Daniels
Jorge Vasquez *
Sabrina Khan *
Esperanza Segarra
Florida Bar No. 527211
Sharion Scott *
ADVANCEMENT PROJECT
1220 L Street, N.W., Suite 850
Washington, DC 20005
Telephone: 202-728-9557
Jbrowne@advancementproject.org

/s/ Michelle Kanter Cohen

Nancy G. Abudu
Florida Bar No. 111881
Caren Short*
Jack Genberg*
Southern Poverty Law Center
P.O. Box 1287
Decatur, Ga 30031-1287
Telephone: 404-521-6700
Fax: 404-221-5857
nancy.abudu@splcenter.org
caren.short@splcenter.org
jack.genberg@splcenter.org

Michelle Kanter Cohen*
Jon Sherman*
Cecilia Aguilera*
Fair Elections Center
1825 K Street NW, Suite 450
Washington, DC 20006
Telephone: 202-331-0114
mkantercohen@fairelectionscenter.org
jsherman@fairelectionscenter.org
caguilera@fairelectionscenter.org

Debra A. Dandeneau
Florida Bar No. 0978360
William H. Devaney*
Baker McKenzie LLP
452 Fifth Avenue

Gdaniels@advancementproject.org
Jvasquez@advancementproject.org
Skhan@advancementproject.org
Esegarra@advancementproject.org
Sscott@advancementproject.org

New York, NY 10018
Telephone: (212) 626-4100
debra.dandeneau@bakermckenzie.com
william.devaney@bakermckenzie.com

**Admitted Pro Hac Vice*

John A. Freedman*
Jeremy C. Karpatkin
Elisabeth S. Theodore*
Janine M. Lopez*
Leslie C. Bailey*
Sam I. Ferenc*

Counsel for HTFF Plaintiff

Arnold & Porter Kaye Scholer LLP
601 Massachusetts Ave., NW
Washington, D.C. 20001-3743
Telephone: 202-942-5000
John.Freedman@arnoldporter.com
Jeremy.Karpatkin@arnoldporter.com
Elisabeth.Theodore@arnoldporter.com
Janine.Lopez@arnoldporter.com
Leslie.Bailey@arnoldporter.com
Sam.Ferenc@arnoldporter.com

Jeffrey A. Miller *
Arnold & Porter Kaye Scholer LLP
3000 El Camino Road
Five Palo Alto Square, Suite 500
Palo Alto, CA 94306-3807
Telephone: 650-319-4500
Jeffrey.Miller@arnoldporter.com

Aaron Stiefel*
Daniel R. Bernstein*
Ryan D. Buhdu*
Andrew R. Hirschel*
Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019-9710
Telephone: 212-836-8000
Aaron.Stiefel@arnoldporter.com

Daniel.Bernstein@arnoldporter.com
Ryan.Budhu@arnoldporter.com
Andrew.Hirshel@arnoldporter.com

**Admitted pro hac vice*

Counsel for Florida Rising Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 2022 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel in the Service List below.

/s/ Frederick S. Wermuth

Frederick S. Wermuth

Florida Bar No. 0184111

Counsel for League Plaintiffs

SERVICE LIST

Bradley R. McVay
Ashley E. Davis
Colleen E. O'Brien
William D. Chappell
Florida Department of State
RA Gray Building
500 South Bronough Street, Ste. 100
Tallahassee, FL 32399
Telephone: 850-245-6531
brad.mcvay@dos.myflorida.com
ashley.davis@dos.myflorida.com
colleen.obrien@dos.myflorida.com

William H. Stafford, III
Bilal A. Faruqui
Karen A. Brodeen
Rachel R. Siegel
William Chorba
Office of the Attorney General
PL-01 The Capitol
Tallahassee, Florida 32399
Telephone: 850-414-3785
william.stafford@myfloridalegal.com
bilal.faruqui@myfloridalegal.com
karen.brodeen@myfloridalegal.com

david.chappell@dos.myflorida.com

Mohammad O. Jazil
Gary V. Perko
Holzman Vogel Baran Torchinsky &
Josefiak PLLC
119 S. Monroe Street, Suite 500
Tallahassee, FL 32301
Telephone: 850-567-5762
mJazil@holtzmanvogel.com
gperko@holtzmanvogel.com

Phillip M. Gordon
Kenneth C. Daines
Holzman Vogel Baran Torchinsky &
Josefiak PLLC
15405 John Marshall Hwy.
Haymarket, VA 20169
Telephone: 540-341-8808
pgordon@holtzmanvogel.com
kdaines@holtzmanvogel.com

Counsel for Defendant Laurel M. Lee

Robert C. Swain
Diana M. Johnson
Alachua County Attorney's Office
12 SE First St.
Gainesville, FL 32602
Telephone: 352-374-5218
bswain@alachuacounty.us
dmjohnson@alachuacounty.us

Counsel for Defendant Kim A. Barton

rachel.siegel@myfloridalegal.com
william.chorba@myfloridalegal.com

Counsel for Defendant Ashley Moody

Edward P. Cuffe
Susan Erdelyi
Marks Gray, P.A.
1200 Riverplace Blvd, Ste. 800
Jacksonville, FL 32207
Telephone: 904-807-2110
sse@marksgray.com
pcuffe@marksgray.com

Counsel for Defendants Christopher Milton, Mark Anderson, Amanda Seyfang, Sharon Chason, Tomi S. Brown, Starlet Cannon, Heather Riley, Shirley Knight, Laura Hutto, Carol Dunaway, Travis Hart, Grant Conyers, Janet Adkins, Charles Overturf, Tappie

*Villane, Vicky Oakes, William Keen,
Jennifer Musgrove, Dana Southerland,
Deborah Osborne, Joseph Morgan,
Bobby Beasley and Carol Rudd*

Frank M. Mari
John M. Janousek
Roper, P.A.
2707 E. Jefferson St.
Orlando, FL 32803
Telephone: 407-897-5150
fmari@roperpa.com
jjanousek@roperpa.com

*Counsel for Defendants Mark Negley,
Connie Sanchez, John Hanlon, Marty
Bishop, Heath Driggers, Lori Scott,
Kaiti Lenhart, and Penny Ogg*

Ronald A. Labasky
Brewton Plante PA
215 S. Monroe Street, Ste. 825
Tallahassee, FL 32301
Telephone: 850-222-7718
rlabasky@bplawfirm.net

John T. LaVia
Gardner, Bist, Bowden, Bush, Dee,
Lavia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
Telephone: 850-385-0070
jlvia@gbwlegal.com

*Counsel for Defendants Chris H.
Chambless, Vicki Davis, Mary Jane
Arrington, Gertrude Walker and Lori
Edwards*

Andy V. Bardos
James T. Moore, Jr.
GrayRobinson PA
301 S. Bronough St, Ste. 600
Tallahassee, FL 32301
Telephone: 850-577-9090
andy.bardos@gray-robinson.com
tim.moore@gray-robinson.com

Stephen M. Todd
Office of The County Attorney
601 E. Kennedy Blvd., 27th Floor
Tampa, FL 33602
Telephone: 813-272-5670
todds@hillsboroughcounty.org

Counsel for Defendant Craig Latimer

*Counsel for Defendant Jennifer J.
Edwards, Leslie Swan, Alan Hays,
Tommy Doyle, Michael Bennett,
Wesley Wilcox, Joyce Griffin, Brian
Corley, Christopher Anderson and
Paul Stamoulis*

Jon A. Jouben
Kyle J. Benda
Hernando County
20 N. Main Street, Ste. 462
Brookesville, FL 34601-2850
Telephone: 351-754-4122
jjouben@co.hernando.fl.us
kbenda@co.hernando.fl.us

*Counsel for Defendant Shirley
Anderson*

Kia M. Johnson
Escambia County Attorneys
Office
221 Palafox Place, Ste. 430
Pensacola, FL 32502
Telephone: 850-595-4970
kmjohnson@myescambia.com

*Counsel for Defendant David H.
Stafford*

Dale Scott
Bell & Roper, P.A.
2707 E. Jefferson St.
Orlando, Florida 32803
Telephone: 407-897-5150
dscott@bellroperlaw.com

Counsel for Defendant Maureen Baird

Robert Shearman
Geraldo F. Olivo

Kelly L. Vicari
Pinellas County Attorney's Office
315 Court Street, 6th Floor
Clearwater, FL 33756
Telephone: 727-464-3354
kvicari@pinellascounty.org

Counsel for Defendant Julie Marcus

Benjamin Salzillo
Nathaniel A. Klitsberg
Joseph K. Jarone
Brendalyn V.A. Edwards
115 South Andrews Ave., Ste. 423
Ft. Lauderdale, FL 33301
Telephone: 954-357-7600
bsalizzo@broward.org
nklitsberg@broward.org
jkjarone@broward.org
breedwards@broward.org

Counsel for Defendant Joe Scott

Craig D. Feiser
Jason Teal
Mary Margaret Giannini
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202
Telephone: 904-255-5052
cfeiser@coj.net
mgiannini@coj.net

Counsel for Defendant Mike Hogan

Mark Herron
S. Denay Brown

Henderson, Franklin, Starnes
& Holt, P.A.
1715 Monroe Street
Ft. Myers, Florida 33901
Telephone: 239-334-1346
robert.shearman@henlaw.com
jerry.olivo@henlaw.com

*Counsel for Defendants Aletris
Farnam, Diane Smith, Brenda Hoots,
Therisa Meadows, Tammy Jones and
Melissa Arnold*

Gregory T. Stewart
Elizabeth D. Ellis
Kirsten H. Mood
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
Telephone: 850-224-4070
gstewart@ngnlaw.com
eellis@ngnlaw.com
kmood@ngnlaw.com

Counsel for Defendant Paul Lux

W. Kevin Bledsoe
London L. Ott
123 W. Indiana Avenue, Room 301
Deland, Florida 32720
Telephone: 386-736-5950
kbledsoe@volusia.org
lott@volusia.org

Counsel for Defendant Lisa Lewis

Michael B. Valdes
Oren Rosenthal
Miami-Dade Attorney's Office
Stephen P. Clark Center

Patrick O'Bryant
Messer Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, Florida 32308
Telephone: 850-222-0720
mherron@lawfla.com
dbrown@lawfla.com
pobryant@lawfla.com

Counsel for Defendant Mark Earley

Nicholas Shannin
Shannin Law Firm
214 S. Lucerne Circle East
Orlando, Florida 32801
Telephone: 407-985-2222
nshannin@shanninlaw.com

Counsel for Defendant Bill Cowles

Morgan Bentley
Bentley Law Firm, P.A.
783 South Orange Ave., Third Floor
Sarasota, Florida 34236
Telephone: 941-556-9030
mbentley@thebentleylawfirm.com

Counsel for Defendant Ron Turner

Ashley D. Houlihan
Palm Beach County Supervisor of
Elections
240 S Military Trail

111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Telephone: 305-375-5620
michael.valdes@miamidade.gov
oren.rosenthal@miamidade.gov

Counsel for Defendant Christine White

West Palm Beach, FL 33416
Telephone: 561-656-6200
ashleyhoulihan@votepalmbeach.gov

Ronald A. Labasky
Brewton Plante PA
215 S. Monroe Street, Ste. 825
Tallahassee, FL 32301
Telephone: 850-222-7718
rlabasky@bplawfirm.net

Counsel for Defendant Wendy Link

Benjamin J. Gibson
Daniel E. Nordby
George N. Meros, Jr.
Amber S. Nunnally
Frank A. Zacherl
Shutts & Bowen LLP
215 S. Monroe St., Ste. 804
Tallahassee, FL 32301
Telephone: 850-241-1720
bgibson@shutts.com
dnordby@shutts.com
gmeros@shutts.com
anunnally@shutts.com
fzacherl@shutts.com

Daniel J. Shapiro
Cameron T. Norris
Tyler R. Green
Steven C. Begakis
Consovoy McCarthy, PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
Telephone: 703-243-9423
daniel@consovoymccarthy.com
cam@consovoymccarthy.com
tyler@consovoymccarthy.com
steven@consovoymccarthy.com

*Counsel for Intervenor Defendants
Republican National Committee and
National Republican Senatorial
Committee*

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