UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

TIM NORRIS, and RANDY MAGGARD, Plaintiffs, v. KEN DETZNER, Secretary of State, in his official capacity Defendants.	)	CASE NO. _____

COMPLAINT

I. INTRODUCTION

1. Plaintiffs are individual registered voters who seek declaratory and injunctive relief to enforce the First Amendment to the United States Constitution, and the Fourteenth Amendment to the United States Constitution.

2. Plaintiffs seek a declaratory judgment that the first clause of Section 20(a) of Article III of the Florida Constitution and the first clause of Section 21(a) of Article III of the Florida Constitution, as interpreted by the Florida Supreme Court (collectively the "Challenged Clauses"), violate their constitutional rights because the Challenged Clauses are unconstitutionally vague, are an impermissible content based regulation of speech, violate the Petition Clause, and impermissibly discriminate against speech on the basis of the identity of the speaker.

3. The State Legislature is holding a Special Session from August 10, 2015 through August 21, 2015 for the purpose of drawing new congressional districts, and from October 19, 2015, through November 6, 2015, for the purpose of drawing new state senate districts.

4. Plaintiffs seek an injunction prohibiting the Secretary of State from enforcing the Challenged Clauses, and directing that all other state officials acting in concert with the Secretary be enjoined from enforcing the Challenged Clauses.

5. Plaintiffs also seek a declaratory judgment that the Challenged Clauses violate the United States Constitution.

6. Plaintiffs further seek costs and attorneys' fees.

II. JURISDICTION

7. Jurisdiction is based upon 28 U.S.C. §§ 1343a (3) & (4) and upon 28 U.S.C. § 1331. Specifically, jurisdiction for Plaintiffs' claims under the First and Fourteenth Amendments to the U.S. Constitution is based upon 42 U.S.C. §§ 1983 and 28 U.S.C. § 1331. This Court can issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202. Jurisdiction for Plaintiffs' claim for attorney's fees is based on 42 U.S.C. §§ 1973L(e) and 1988. Venue is proper in this court under 28 U.S.C. § 1391(b).

III. PLAINTIFFS

8. Plaintiff Tim Norris is a registered voter of Florida. He resides in Walton County, Florida. In the congressional map recently voided by the Florida Supreme Court,

he resides in Congressional District 1. In the Florida Senate map enacted in 2012 and recently voided by consent judgment, he resides in Florida Senate District 1.

9. Mr. Norris is Chairman of the Walton County Republican Executive Committee, and has an interest in the maps that determine his representative districts at the federal and state level both in his capacity as an individual voter and as Chairman of his local political party executive committee.

10. The Walton County Republican Executive Committee has members under the current configuration of the Congressional Districts who reside in District 1 and under the current configuration of legislative districts who reside in Senate District 1.

11. Mr. Norris – as a result of the Challenged Clauses on their face and as interpreted by the Florida Supreme Court – now fears communicating with the public and his elected representatives about his views on the soon-to-be-proposed redistricting maps for fear of entanglement in the inevitable litigation to follow, and for fear of having his speech invalidate an otherwise legitimate state law.

12. Plaintiff Randy Maggard is a registered voter of Florida. He resides in Pasco County, Florida. In the congressional map recently voided by the Florida Supreme Court, he resides in Congressional District 12. In the Florida Senate map enacted in 2012 and recently voided by consent judgment, he resides in Florida Senate District 17.

13. Mr. Maggard is Chairman of the Pasco County Republican Executive Committee, and has an interest in the maps that determine his representative districts at the

federal and state level both in his capacity as an individual voter and as Chairman of his local political party executive committee.

14. The Pasco County Republican Executive Committee has members under the current configuration of the Congressional Districts who reside in District 12 and under the current configuration of legislative districts who reside in Senate Districts 17 and 18.

15. Mr. Maggard – as a result of the Challenged Clauses on their face and as interpreted by the Florida Supreme Court – now fears communicating with the public and his elected representatives about his views on the soon-to-be-proposed redistricting maps for fear of entanglement in the inevitable litigation to follow, and for fear of having his speech invalidate an otherwise legitimate state law.

16. Plaintiffs wish to exercise their First Amendment rights and speak with legislators and the legislature as a whole about their concerns with redistricting maps for Congress and the State Senate. This includes any concerns regarding the partisan composition of the redistricting maps.

17. But the Plaintiffs are chilled in their speech because their intended speech risks embroilment in the inevitable legal process to follow this remedial round of redistricting. *See League of Women Voters of Fla. v. Detzner*, 40 Fla. L. Weekly S432, 2015 Fla. LEXIS 1474 *131 (Fla. July 9, 2015).

18. Plaintiffs are further chilled because their speech risks having the whole map declared unconstitutional under the Challenged Clauses as interpreted by the Florida Supreme Court. *See Virginia v. American Booksellers Ass'n*, 484 U.S.

383, 492-93 (1988); *Wollschlaeger v. Governor of Fla.*, 760 F.3d 1195, 1209-10 (11th Cir. 2014); *Bankshot Billiards, Inc. v. City of Ocala*, 634 F.3d 1340, 1349-50 (11th Cir. 2011).

19. Furthermore, Plaintiffs are injured by the Challenged Clauses because these provisions are unconstitutionally vague, discriminate on the basis of content, violate the petition clause, and discriminate against them on the basis of their identity.

20. Specifically, the Plaintiffs ("forbidden speakers") are chilled from exercising their rights under the Challenged Clauses because if they exercise their First Amendment right to communicate with their legislators or the Legislature as a whole about the legislative and congressional redistricting process, they risk being deemed to have "infected" any adopted redistricting plans.

21. The forbidden speakers are left without any discernable or manageable standard to understand what speech from them may be permissible and what may not be permissible, illustrating the vagueness inherent in the Challenged Clauses as interpreted by the Florida Supreme Court.

22. These forbidden speakers are aware of the legal costs, reputational costs, and other allegations made against others associated with their political party who took steps to make their views known during the 2011-12 redistricting process.

23. The Challenged Clauses provide that these forbidden speakers face a choice of either refraining from speaking, or speaking and risking entanglement in costly, expensive, and lengthy legal processes while the Florida courts, legislators,

executive branch defendants, and litigants try to divine whether a redistricting map has been "tainted" or "infected" and therefore invalidated by a "partisan" intent as a result of their speech and communications with their elected officials.

IV. DEFENDANTS

24. Defendant Ken Detzner is sued in his official capacity as Secretary of State for the State of Florida. Defendant Detzner is the State's chief elections officer and as such is responsible for overseeing the conduct of elections within the State.

V. FACTS

25. On September 28, 2007, individual Florida citizens filed an Initiative Petition with the Florida Secretary of State regarding political, racial, ethnic, and incumbent gerrymandering. *See Brown v. Sec'y of Fla.,* 668 F.3d 1271, 1273 (11th Cir. 2012).

26. In 2010, Florida voters adopted the amendments proposed by the Initiative Petition, which together became known as the "Fair Districts" Amendments to the Florida Constitution.[1] *Id*.

27. The "Fair Districts" Amendments impose requirements that congressional districts and legislative districts not be drawn to favor or disfavor an incumbent or political party, or to deny racial or language minorities the equal opportunity to participate in the political process and elect representatives of their choice; that the districts must be contiguous, compact, and as equal in population as feasible,

[1] The Initiative Petition filed with the Secretary of State proposed Amendment No. 6 and Amendment No. 5, which were redesignated as Section 20 and Section 21, respectively, of Article III of the Florida Constitution, to conform with to the format of the State Constitution.

and wherever feasible, must make use of existing city, county and geographical boundaries. *See* Fla. Const. art. III, § 20(a-b), § 21(a-b).

28. Specifically, the first of these amendments applies to congressional districts and requires that:

> (a) **No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent**; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
>
> Fla. Const. art. III, § 20(a).

29. Similarly, the second of these amendments, applicable to legislative districts, also requires that:

> (a) **No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent**; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
>
> Fla. Const. art. III, § 21(a).

30. These provisions of the "Fair Districts" Amendments contain the Challenged Clauses which impose a requirement that "[n]o apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent." Fla. Const. art. III, § 20(a); *see also* Fla. Const. art. III, § 21(a).

31. In February 2012, under the new requirements imposed by the "Fair Districts" Amendments, the Florida Legislature approved—and the Governor signed—the

Congressional Redistricting Plan at issue. *See League of Women Voters of Fla. v. Detzner*, 40 Fla. L. Weekly S432, 2015 Fla. LEXIS 1474, *14 (Fla. July 9, 2015).

32. Upon adoption of the Congressional Redistricting Plan, the League of Women Voters and individual citizens (led by Rene Romo) filed a suit challenging the Congressional Redistricting Plan in the Second Circuit Court in and for Leon County, Florida ("state trial court"). *Id*. at *15.

33. In March 2012, the Florida Legislature approved a Florida Senate Plan. *See* Senate Joint Resolution 2-B (2012).

34. Following the adoption of the Florida Senate Plan, the League of Women Voters and individual citizens similarly filed a suit challenging the Florida Senate Plan in the Second Circuit Court in and for Leon County, Florida. *See League of Women Voters of Florida et al. v. Kenneth W. Detzner, et al.*, Case No. 2012-CA-2842 (Fla. Cir. Ct.) (the "Senate case").

35. The Florida Supreme Court had previously determined that the Fair Districts Amendments' prohibition against drawing districts with intent to favor or disfavor a political party or an incumbent is a tier-one requirement. *In re Senate Joint Resolution of Legislative Apportionment 1176,* 83 So. 3d 597, 614-15 (Fla. 2012) A tier-one requirement is one that the Legislature must follow. *Id*; *see also* Fla. Const. art. III, § 20(b) ("Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law...").

36. By contrast, tier-two requirements allow for some flexibility, requiring only that the Legislature "[d]raw districts utilizing existing political and geographical

boundaries where feasible..” *League of Women Voters*, 40 Fla. L. Weekly S432, 2015 Fla. LEXIS 1474, at *163.

37. On July 9, 2015, the Florida Supreme Court issued an opinion finding that congressional districts 5, 13, 14, 21, 22, 25, 26, and 27 were drawn with unconstitutional intent to favor or disfavor a political party or incumbent. *See generally id*. at *111-124.

38. Although the Florida trial court had concluded that certain aspects of the map drawing process reflected partisan intent, the trial court considered compactness and the maintenance of geographical boundaries as the “more reliable indicators of improper intent.” *See id.* at *90. The other evidence of partisan intent would “serve to strengthen or weaken this inference of improper intent.” *Id*. Under this analysis, the trial court had declared only Districts 5 and 10 unconstitutional and had approved a legislative-adopted remedial map correcting the insufficiencies in these districts.

39. The Florida Supreme Court disagreed, holding that once improper intent was discovered, the burden shifted to the Legislature to justify its districts on neutral redistricting criteria. *Id*. at *92-93. Under the Florida Supreme Court’s interpretation, the effect of the map does not matter, rather, the intent is all that matters.

40. This is an important distinction because, like the trial court, courts generally judge maps on the effect of the districts. But now when a “non-partisan” individual submits a draft map for analysis, it will be judged under different standards than

when anyone associated or identified with a political party or candidate submits a draft map for consideration.

41. Although conceding that "not every meeting held or every communication made was improper, illegal, or even violative of the letter of the Fair Districts Amendment[,]" the Florida Supreme Court affirmed the trial court's ruling that political operatives "managed to taint the redistricting process and the resulting map with improper partisan intent. There is just too much circumstantial evidence of it, too many coincidences, for me to conclude otherwise." *Id*. at 26.

42. Specifically, the trial court found, and the Florida Supreme Court affirmed, that the Speaker of the House organized a meeting in December 2010 involving "Republican political consultants and legislative staffers, to discuss the upcoming redistricting process", which, among other things, "tainted" the Redistricting Plan. *League of Women Voters*, No. SC14-1905, 2015 Fla. LEXIS 1474, at *30.

43. According to the Florida Supreme Court, such "communications of individual legislators or legislative staff members, if part of a broader process to develop portions of the map, could directly relate to whether the plan as a whole or any specific districts were drawn with unconstitutional intent", and noted that there is "no acceptable level of improper intent." *Id*. at 57-58.

44. Specifically, the trial court found that individuals identified or associated with a political party impacted the drawing of congressional districts 5 and 10 because of specific evidence about their suggestions for these districts which appear to have

been adopted by the Legislature. *See Romo v. Detzner,* 2012-CA-412, 2012-CA-490, slip op. at 31-32 (Fla. Cir. Ct. July 10, 2014).

45. On July 9, 2015, the Florida Supreme Court affirmed the trial court's finding that Districts 5 and 10 are unconstitutional under the Challenged Clauses. However, the Florida Supreme Court also found that Districts 13, 14, 21, 22, 25, 26, and 27 were similarly unconstitutional, and ordered the Redistricting Plan to be redrawn to correct those Congressional Districts, and any other districts affected by the redraw. *League of Women Voters*, No. SC14-1905, 2015 Fla. LEXIS 1474, at *111-124.

46. The Florida Supreme Court, upon reviewing the State trial court's analysis, found that since "the 'resulting map' had been 'taint[ed] by unconstitutional intent,' the burden should have shifted to the Legislature to justify its decisions." *Id*. at *93.

47. The Florida Legislature has been asked by the Florida Supreme Court to preserve all documents, communications, emails, voicemail and text messages in personal or official communications channels related to the redrawing of the map so that courts, litigants, and the executive branch may pore over and examine each communication. *Id*. at *129-131.

48. The Florida Supreme Court's interpretation of the Challenged Clauses harms the First Amendment Rights of registered individual voters in the State of Florida. Under the Florida Supreme Court's interpretation, the First Amendment rights of those who wish to speak with their representatives and petition their representatives concerning redistricting—especially the First Amendment rights

of those who are engaged in the political process and those who are aligned with a political party—are now chilled.

49. This is demonstrated by the Florida Legislature's July 20, 2015, memo titled "Tentative Procedure for Special Session on Congressional Reapportionment." Attached as Exhibit 1.

50. That memo provided in part:

> [W]e are instructing redistricting staff to have ***no interactions with any member of the Legislature, a member's staff or aide, political consultants or others concerning their work on the base map prior to its public release.*** **…**Furthermore, staff will be instructed to have no interactions with any member of Congress, any Congressional staffer or aide, any political consultant, or any state or national political party personnel *at any time before* ***or during*** *the Special Session*….While every citizen of Florida has a guaranteed constitutional right to petition their government, we encourage members to be circumspect and to ***avoid*** *all communications that reflect or might be construed to reflect an intent to favor or disfavor a political party or an incumbent*.

See Memorandum from Andy Gardiner, President of the Florida Senate, and Steve Crisafulli, Speaker of the Florida House to Members of the Florida Legislature 2-3 (July 20, 2015) (attached as Exhibit 1).

51. This gag order is the direct result of the Florida Supreme Court's interpretation of the Challenged Clauses. It prohibits certain forbidden speakers such as Plaintiffs from discussing redistricting matters with legislators or legislative staff.

52. As a result of the Florida Supreme Court's opinion in the Congressional case, on or about July 28, 2015, the parties to the Senate case agreed to the entry of a consent judgment requiring that the state Senate district map be redrawn as well.

53. The Legislature will convene on August 10, 2015, for the purpose of drawing Congressional district maps and on October 19, 2015, for the purpose of drawing state senate maps. At each session, it appears that the Legislature will attempt to operate in a manner that the state courts will approve under the Challenged Clauses.

54. In *Davis v. Bandemer*, 478 U.S. 109, 123 (1986), the Supreme Court warned of the problem of "judicially discernable and manageable standards by which political gerrymander cases are to be decided."

55. As the U.S. Supreme Court noted as recently as 2004 while reviewing a progression of lower court decisions, the court said, "To think that this lower court jurisprudence has brought forth judicially discernable and manageable standards would be fantasy." *Vieth v. Jubelirer*, 541 US 267, 281 (2004).

56. The U.S. Supreme Court in *Vieth* concluded that there are no "judicially discernable and manageable standards for adjudicating political gerrymandering claims." 541 U.S. at 281.

57. The Supreme Court continued:

> [A] person's politics is rarely as readily discernible — and *never* as permanently discernible — as a person's race. Political affiliation is not an immutable characteristic, but may shift from one election to the next; and even within a given election, not all voters follow the party line. We dare say (and hope) that the political party which puts forward an utterly incompetent candidate will lose even in its registration stronghold. These facts make it impossible to assess the effects of partisan gerrymandering, to fashion a standard for evaluating a violation, and finally to craft a remedy.

Id. at 287

58. Rather than heed the teachings of the Supreme Court, the Challenged Clauses, as interpreted by the Florida Supreme Court, have simply resulted in an attempt to eliminate the potentially "problematic" speech – both speech that contains partisan content or speech from partisan speakers.

59. Both of these approaches are an affront to the First Amendment.

60. According to its latest interpretation, the Challenged Clauses are vague, operate to harm the First Amendment Rights of registered individual voters in the State of Florida who are engaged in the political process or are aligned with a certain political party when it comes to exercising their right to communicate with legislators, and violate the Petition Clause of the First Amendment.

61. At all times relevant herein, the Defendant has acted under color of State law.

VI. CAUSES OF ACTION

COUNT 1

Violation of both the First And Fourteenth Amendments of the United States Constitution Because The Challenged Clauses Are Void For Vagueness

62. The allegations contained in paragraphs 1 through 61 are incorporated by reference as if fully set forth herein.

63. In its opinion, the Florida Supreme Court emphasized that the Challenged Clauses prohibit the Legislature's drawing of districts *with the intent* to favor or disfavor a political party or incumbent and that there "[i]s no acceptable level of improper

intent." *League of Women Voters*, 40 Fla. L. Weekly S432, 2015 Fla. LEXIS 1474, at *20.

64. But the Florida Supreme Court also concluded that "not every meeting held or every communication made was improper, illegal, or even violative of the letter of the Fair Districts Amendment." *Id*. at *28. Instead, all of the facts recounted in the Court's opinion, *when viewed* "*collectively*" amounted to a violation of the Fair Districts Amendment. *Id*. (emphasis added).

65. The Court agrees with the trial court's criticism of Republican consultants for submitting maps through surrogates. *See id.* at *23-24; *40-41,

66. But the Court also says that it is acceptable under the Challenged Clauses to submit maps anonymously or through surrogates. It was just wrong to do so "in the specific context of the facts and circumstances of this case." *Id*. at *12, n.4.

67. Plaintiffs therefore "must necessarily guess at [the law's] meaning and differ as to its application." *Citizens United v. FEC*, 558 U.S. 310, 324 (2010) (alterations in the original).

68. Plaintiffs are unsure and unclear as to when speaking with legislators about redistricting or any concerns about the partisan composition of the map would violate the Challenged Clauses. Furthermore, Plaintiffs are unsure and unclear as to when it would be acceptable to submit maps to legislators anonymously or through third-parties and when doing so would cause the Legislature's map to be declared unconstitutional. Because of this uncertainty and lack of clarity, Plaintiffs refuse to speak with legislators.

69. A state constitutional amendment that limits a person's freedom of expression but fails "[t]o give fair notice of what acts will be punished..." violates both the procedural due process rights of a person as well as the free speech rights. *See Winters v. New York*, 333 U.S. 507, 509-10 (1948).

70. "[T]he void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *FCC v. Fox TV Stations, Inc*., 132 S. Ct. 2307, 2317 (2012). Therefore "*rigorous* adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech." *Id*. (emphasis added).

71. Because of the language of the Challenged Clauses and because of the Florida Supreme Court's interpretation of the Challenged Clauses, Plaintiffs must guess which of their communications with legislators may cause the Legislature to violate the Challenged Clauses. This chills speech because, rather than risk violating the Fair Districts Amendment, Plaintiffs will self-censor their speech. *See Buckley v. Valeo*, 424 U.S. 1, 41, n.48 (1976) ("In such circumstances, vague laws may not only "trap the innocent by not providing fair warning" or foster "arbitrary and discriminatory application" but also operate to inhibit protected expression by inducing "citizens to 'steer far wider of the unlawful zone… than if the boundaries of the forbidden areas were clearly marked.'").

72. This is why statutes and state constitutional amendments regulating protected political speech must be drafted with narrow specificity to give First Amendment protected activity breathing room to survive. *See id*. at 41 n.48 ("Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.") (*quoting NAACP v. Button*, 371 U.S. 415, 433 (1963)).

73. Furthermore, because the Challenged Clauses regulate the content of speech, namely partisan speech between Plaintiffs and legislators, this "[r]aises special First Amendment concerns because of its obvious chilling effect." *Fox TV Stations, Inc*., 132 S. Ct. at 2318 ("The vagueness of [a content-based regulation of speech] raises special First Amendment concerns because of its obvious chilling effect") (alterations in the original).

COUNT 2

Violation of the First Amendment of the United States Constitution By Prohibiting Speech Based on its Content

74. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

75. The Challenged Clauses violate the First Amendment of the United States Constitution by prohibiting speech based on its content. *See R.A.V.*, 505 U.S. at 382 ("The First Amendment generally prevents government from proscribing speech, or even expressive conduct, because of disapproval of the ideas

expressed. Content-based regulations are presumptively invalid.") (citations omitted).

76. There are very few limited areas where the content of speech has been traditionally regulated because their societal value is *de minimis* and the societal benefit of proscribing such speech is great. *Id*. at 382-83. These traditional areas of limitation include defamation and fighting words. *Id*. at 383. Neither of these content based exceptions to the First Amendment guarantee of Free Speech is at issue in this case.

77. Specifically, the Florida Supreme Court prohibited communications between Plaintiffs and the Legislature and/or individual legislators that discuss redistricting or the partisan impact of redistricting plans. Violating this prohibition will invalidate the legislative enactment.

78. Speech before the Legislature, and communications with the Legislature or legislators about other aspects of redistricting including, for example, political subdivision boundaries, equal population between the districts, and Voting Rights Act concerns are not similarly prohibited, limited or restricted.

79. As a result, Plaintiffs who wish to address matters of public concern about the impact of their congressional and legislative districts are chilled by the Challenged Clauses and will choose to refrain from speaking unless the Challenged Clauses, as interpreted by the Florida Supreme Court, are declared unconstitutional.

80. Therefore, this Court must declare the Challenged Clauses unconstitutional because the clauses violate rights guaranteed under the First Amendment, namely the right to speak with the Legislature or with individual legislators on matters of public concern.

COUNT 3

Violation of First Amendment of the United States Constitution Because The Fair Districts Amendment Prohibits The Forbidden Speakers From Exercising His Rights To Petition The Government For A Redress Of Grievances

81. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

82. The First Amendment guarantees the right to petition the government for a redress of grievances. U.S. Const. amend. I.

83. "The First Amendment's ban against Congress "abridging" freedom of speech, the right peaceably to assemble and to petition, and the "associational freedom" that goes with those rights create a preserve where the views of the individual are made inviolate." *Schneider v. Smith*, 390 U.S. 17, 25 (1968) (citations omitted).

84. "The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms." *Eastern R. Presidents Conference v. Noerr Motor Freight, Inc*., 365 U.S. 127, 138 (1961) (holding that the "Sherman Act does not apply to the activities of the railroads at least insofar as those activities comprised mere

solicitation of governmental action with respect to the passage and enforcement of laws.").

85. "The right of the people to inform their representatives in government of their desires with respect to the passage or enforcement of laws cannot properly be made to depend upon their intent in doing so. It is neither unusual nor illegal for people to seek action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors." *Id*. at 139.

86. The right to petition the government for a redress of grievances guarantees the right to lobby the Legislature, regardless of whether those lobbyists are compensated. *See Autor v. Pritzker*, 740 F.3d 176, 182 (D.C. Cir. 2014).

87. Furthermore, the Supreme Court in *Noerr* recognized that the Sherman Act could not be applied to businesses lobbying Congress, even when the lobbying was about issues the Sherman Act prohibits.

88. Florida's Supreme Court has interpreted the Fair Districts Amendments to prohibit citizens from talking to their legislative representatives about the partisan impact of redistricting. *See generally League of Women Voters*, 40 Fla. L. Weekly S432, 2015 Fla. LEXIS 1474 at *29-51 (citing several examples of communications between consultants and legislators).

89. The Florida Supreme Court cannot interpret the Fair Districts Amendment in a manner that will necessarily abridge Plaintiffs' First Amendment right to petition the government. *See* Memorandum from Andy Gardiner, President of the Florida Senate, and Steve Crisafulli, Speaker of the Florida House to Members of the

Florida Legislature 2-3 (July 20, 2015)(attached as Exhibit 1); and *League of Women Voters*, 40 Fla. L. Weekly S432, 2015 Fla. LEXIS 1474, at *129-130.

90. The Challenged Clauses, as interpreted by the Florida Supreme Court, prohibit citizens of Florida from communicating with their legislators about prohibited subjects, and must be declared unconstitutional and unenforceable.

COUNT 4

Violation of the First Amendment of the United States Constitution through Intentional Discrimination against a Class of Individuals Based on Identity

91. The Challenged Clauses violate the First Amendment of the United States Constitution by discriminating against a class of individuals on the basis of identity.

92. Throughout its opinion, the Florida Supreme Court and the Florida trial court view comments from individuals associated or identified with a political party concerning draft redistricting maps with suspicion. For example, even though the Florida trial court did not declare unconstitutional Congressional Districts 13 and 14, the Florida Supreme Court reversed. The Supreme Court found dispositive an email communication between two individuals associated or identified with the Republican party that considered District 14 "far from perfect." *League of Women Voters*, 40 Fla. L. Weekly S432, 2015 Fla. LEXIS 1474, at *112. This email alone was sufficient for the Supreme Court to overturn the trial court and declare both Congressional Districts 13 and 14 unconstitutional under the Fair Districts Amendment. *Id*. at *113-14; *see generally id. at* *111-124.

93. The Supreme Court cited no evidence that this email ever made it to the hands of anyone at the Legislature. This was an internal email between Republican consultants, but nonetheless was used to declare these districts unconstitutional.

94. This interpretation of the Challenged Clauses violates the First Amendment. *See R. A. V. v. St. Paul,* 505 U.S. 377, 392 (1992) ("St. Paul has no such authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules.").

95. And yet the Supreme Court's interpretation and ruling had the desired effect. *See* Memorandum from Andy Gardiner, President of the Florida Senate, and Steve Crisafulli, Speaker of the Florida House to Members of the Florida Legislature 2-3 (July 20, 2015)(attached as Exhibit 1). Under the Florida Supreme Court's interpretation of the Challenged Clauses, individuals associated with or identified with a political party have been singled out as explicitly prohibited from speaking with redistricting staff or for speaking with legislators about the partisan impact of districts.

96. Plaintiffs are similarly situated to the individuals associated or identified with a political party in the earlier case, and are subject to the July 20, 2015 procedural ruling from the Florida Legislature as it attempts to comply with the Challenged Clauses.

97. Therefore, this Court must declare the Challenged Clauses, as interpreted by the Florida Supreme Court, unconstitutional because the clauses violate rights guaranteed under the equal protection clause – namely the right not to have

Plaintiffs' speech discriminated against on the basis of their identities – in particular their affiliations with a political party.

VII. ATTORNEYS' FEES

98. In accordance with 42 U.S.C. §§ 1973L(e) and 1988, Plaintiffs are entitled to recover reasonable attorneys' fees, expenses and costs.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

(a) issue a declaratory judgment finding that the Challenged Clauses violate the First Amendment of the United States Constitution; and

(b) issue a preliminary injunction prohibiting the Secretary of State and all state officials acting in concert with him from taking any actions to enforce the Challenged Clauses, and directing that all state officials are enjoined from taking any actions to enforce the Challenged Clauses; and

(c) grant Plaintiffs' attorneys' fees and costs pursuant to statute; and

(d) grant any other relief as the Court deems appropriate.

Respectfully submitted this _____ of August, 2015,

/s/Jason Torchinsky _____

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Counsel for Plaintiffs

VERIFICATION

VERIFICATION OF TIM NORRIS

I, Tim Norris, declare as follows:

1. I am the Walton County Republican Executive Committee Chairman.
2. I have personal knowledge of the facts set forth in this Complaint with respect to me, and if called upon to testify, I would testify competently as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint are true and correct.

Executed this 3 of August, 2015

TIM NORRIS

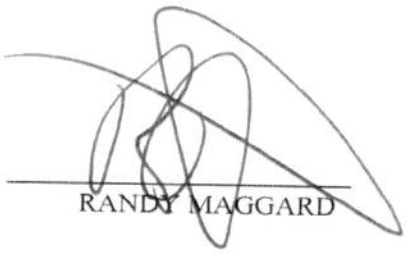
VERIFICATION

VERIFICATION OF RANDY MAGGARD

I, Randy Maggard, declare as follows:

1. I am the Pasco County Republican Executive Committee Chairman.
2. I have personal knowledge of the facts set forth in this Complaint with respect to me, and if called upon to testify, I would testify competently as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint are true and correct.

Executed this 4 of August, 2015



RANDY MAGGARD