

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, STATE OF FLORIDA

CABLE NEWS NETWORK LP, LLLP,

Plaintiff,

CASE NO.: 04 CA 1259

v.

FLORIDA DEPARTMENT OF STATE,
DIVISION OF ELECTIONS and
EDWARD C. KAST, in his capacity as
Director of the Florida Department of
State, Division of Elections,

Defendants.

**MOTION OF THE AMERICAN CIVIL LIBERTIES
UNION OF FLORIDA, INC. TO INTERVENE**

Pursuant to Florida Rule of Civil Procedure 1.230, the American Civil Liberties Union of Florida, Inc. ("ACLU of Florida") moves to intervene in this case as an interested party in order to join in the briefs and other papers and arguments made by Cable News Network LP, LLLP ("CNN"). In support of this Motion, the ACLU of Florida states:

1. The ACLU of Florida is a non-profit, non-partisan membership organization dedicated to the protection and defense of the individual rights and liberties guaranteed by the federal and Florida constitutions and the nation's civil rights laws. Among these fundamental constitutional rights are the right of all qualified persons to be able to cast their votes in public elections and to have those votes accurately counted; the right to enjoy the equal protection of the laws of this nation and this state; and the right of

access to government records. Legislative, public education, public assistance, and advocacy activities in support of individuals' civil rights all require that the ACLU of Florida have meaningful access to the records at issue in this case, which the state Division of Elections will not provide.

2. The ACLU of Florida concurs in the arguments of CNN and the other news media intervenors that FLA. STAT. § 98.0979 unconstitutionally infringes the fundamental right of public access to government records. *See* FLA. CONST. ART. I § 24 (right of access to records of the executive, legislative and judicial branches of government). The ACLU of Florida likewise agrees that the statute's creation of a preferred class of persons and entities, consisting of government officials and political partisans, cannot withstand scrutiny under the Florida Constitution's equal protection guarantee. *See* FLA. CONST. ART. I § 2 ("All natural persons . . . are equal before the law. . ."). However, the ACLU's interest in this matter goes beyond the desire or ability to disseminate information from the voter rolls or from the list of voters who have been identified as ineligible because of felony convictions.

3. Because the statute broadly prohibits copying or taking notes from the information unless one is a member of a preferred class, it functionally prohibits study and analysis of the information by persons and organizations independent of government and the political parties. It therefore prohibits organizations such as the ACLU of Florida from performing their critical role in a democratic society, namely serving as a check on the power of an incumbent government to affect, on purpose or by misadventure, the conduct of free elections. The legislative abridgement of the fundamental constitutional rights of access to government records and equal protection

before the law stands to abet the abridgement of a third fundamental right: to participate in the democratic process by voting. The right to vote is “preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

4. Furthermore, the ACLU of Florida cannot fulfill its mission to ensure as fully as possible that every eligible voter retains the right to vote if it cannot have meaningful access – meaning the ability to extract information from and copy – the list of ineligible voters prepared by the State of Florida. The prospective voters themselves cannot determine their status in advance of Election Day unless they individually seek out the list of ineligible voters provided by the Division of Elections to each of 67 counties and search through it. Their only other recourse is to hope that Supervisors of Elections conduct thorough reviews of the lists the Division of Elections provides and that notices of their government-declared ineligibility reach the voters so identified in time for them to take action to secure their rights. Certainly, “in time” is not likely to be in the crush of activity on Election Day as the illegally purged voter appears at the polling place seeking to cast his or her ballot. The statute at issue in this case thus raises the specter of qualified voters being denied their rights to vote simply because they could not determine sufficiently in advance that their government had inaccurately labeled them ineligible. The ACLU of Florida seeks to secure equal protection before the law not only for itself but for all persons whose fundamental right to vote is thus affected.

5. In addition, prospective voters who are eligible to have their voting rights restored may have no opportunity in advance of Election Day to be advised of and to obtain the assistance of the ACLU of Florida unless there is an ability to reach out to these prospective voters specifically, now. The right to vote is a core democratic value.

The ACLU of Florida is committed to assist all eligible persons who seek to secure that right. Legislative restrictions on meaningful access to government records are preventing the ACLU of Florida (and other non-governmental organizations) from performing its obligations to its members and to society.

6. Florida Rule of Civil Procedure 1.230 allows anyone claiming an interest in pending litigation to intervene as a party. The outcome of CNN's lawsuit against the State Division of Elections will directly affect the ACLU of Florida's ability to exercise its fundamental right to meaningful access to this state's public records, and its ability to protect and defend other fundamental civil rights and liberties that are affected by the records themselves. Therefore, the ACLU of Florida is entitled to intervene in this action.

WHEREFORE, the American Civil Liberties Union of Florida, Inc. respectfully requests that the court grant it leave to intervene in this action.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via facsimile transmission and U.S. Mail to **Gregg D. Thomas, Esq.**, (Fax: 813-229-0134), Holland & Knight LLP, P.O. Box 1288, Tampa, Florida 33601-1288; **Dawn Roberts, General Counsel**, (Fax: 850-245-6125), Department of State, Division of Elections, Room 316, R.A. Gray Building, 50 South Bronough Street, Tallahassee, Florida 32399-0250; **Walter J. Harvey, Esq.**, (Fax: 305-577-7027), Steel Hector & Davis LLP, 200 S. Biscayne Blvd., Suite 4000, Miami, Florida 33131; **David S. Bralow, Esq.**, (Fax: 407-420-5760), 633 North Orange Avenue, Orlando FL 32601 and **Jonathan D. Kaney, Jr., Esq.**, (Fax: 386-238-7003), Cobb & Cole, 150 Magnolia Avenue, Daytona Beach, FL 32115; and **Major B. Harding, Esq.**, **Michael J. Glazer, Esq.**, and **Jennifer Heckman, Esq.**, (Fax: 850-222-7560), 227 South Calhoun Street, Tallahassee FL 32301, this 17th day of June, 2004.



Attorney