Opening Statement

May it please the Court:

Good Morning, I am Christian Adams, counsel for the Plaintiff American Civil Rights Union.

The American Civil Rights Union is a nonprofit charity under Section 501(c)(3). Among the policy board members are a former Attorney General of the United States as well as a former chief election official of one of the largest states in the country. The ACRU has dedicated itself to an effort to ensuring that state and local election officials are using all of the available tools to comply with the National Voter Registration Act and maintain current and accurate voter rolls. It has worked cooperatively with state and local election officials across the country to improve election systems and the accuracy of voter rolls. The ACRU brought this case because it cares about good government and the integrity of elections.

In some ways, this case should not even be before you. This case is here because, as the evidence will show, the response by the ACRU's initial

inquiries to the Defendant was unlike any response they had received before. What was meant to be a transparent and genuine opportunity to cure potential problems was instantly contentious. The evidence will show that the Defendant was unwilling engage in substantive discussions – essentially saying all counties in Florida who received a letter from the ACRU must be involved in those discussions.

Of course the reason one county is made a party to a lawsuit and another county is not is not an element the plaintiff must address under the NVRA. Nor is it a defense under the NVRA. The reason one county is made a party and another is not is wholly irrelevant. But as a practical matter, as a 501(c)(3), the ACRU did not have the ability to manage simultaneous pre-litigation efforts with multiple Florida counties.

In any event, it doesn't matter why, and we are here.

This is a case about the federal obligations to reasonably maintain accurate and current voter rolls. Unfortunately, the defendants have failed to satisfy this obligation.

The earliest and most obvious indication that something was wrong in Broward is the evidence you will hear that year after year, people eligible to cast a ballot surpassed the number of citizens who lived in Broward County and were old enough to vote. You will hear terms such as CVAP, TVAP, REG numbers. While the election jargon might be unfamiliar, the concept behind it is simple: more people have been on the voter rolls in Broward than people alive.

When the ACRU sought to address this problem with the defendant, the defendant went into, what our expert will call, a defensive crouch. No progress could be made to remedy a situation when an election official takes that position.

This was unfortunate because Florida election code provides a number of list maintenance tools to the defendant that are deliberately or unwittingly not being used.

The Plaintiff will provide you five different bundles of evidence to support a finding that the Defendant has failed to comply with the obligation to reasonably maintain roles. Each of these five bundles of

evidence could, standing alone, support a finding of liability in this case. But when taken and considered together, when viewed in their totality, they reach a critical and compelling mass of evidence that the defendant is not reasonably maintaining accurate and current lists. The five different bundles of evidence the plaintiff will present are:

1. **Simple Mathematical Ratios.** Data show that the number of registrants eligible to cast a ballot sometimes exceeds the number of eligible citizens actually living in the county and regularly reaches implausible levels. This is ratio of registrants over CVAP. It provides a clear alarm that something has gone wrong in Broward with list maintenance. Making matters worse, you will hear evidence that the Defendant never monitored the ratio of registrants over CVAP until this lawsuit. Indeed, Intervenors have proffered an expert suggesting that this common sense ratio should be disregarded, or even praised if it reaches implausible heights. Simple mathematical ratios is the first bundle of evidence.

2. Expert opinion. Dr. Steven Camarota will testify about the statistical ratio of registrants to citizen voting age population. Former Colorado Secretary of State Scott Gessler will provide his opinion testimony and help explain the significance of each of these important bundles of evidence – the statistical data, the citizens' complaints, the defendant's own records, and most of all, what basic reasonable list maintence should look like. Mr. Gessler has run a statewide elections office and has an intimate familiarity with the mechanics of list maintence. Mr. Gessler will also testify about the elementary solutions available to the Defendant which, had they been implemented prior to this case, would have gone a long way to fixing the problem. The solutions are simple, sometimes entirely free, and sitting right there gathering dust in Florida election code.

3. Citizen testimony. You will hear the testimony of citizens who detected concrete problems with the voter rolls regarding dead registrants, registrants who moved, duplicate registrants, voters registered in Broward and also in New York state and registrants who

were registered at invalid commercial addresses. These citizens will tell you they were motived by the desire to have well run elections. Unfortunately, they will also tell you about the response of the Defendant to their work. In some cases, there was no response. In others, it took years for the Defendant to take any action. In other circumstances, the action taken by the Defendant was itself suspect – such as instantly converting the registration addresses of enormous numbers of voters to the Defendant's business office address.

4. **Statements against interest.** Defendant's own statements and statements of office employees indicating a lack of situational awareness of the list maintenance tools available under Florida law. You will hear how voter registration cards were mailed containing mismatched name and addresses. Because these mailings have list maintence implications, particularly when they are returned as undeliverable, you will see that the failures to reasonably maintain the rolls come in many different forms. You will hear statements blaming a third party vendor for these mistakes, but you will also see there is little to no effective quality

control over this vendor. You will see that these third party vendor issues complicated discovery and in one instance saw Defendant flatly refusing to provide documents. These statements against interest alone could justify a finding of liability.

5. **Defendant's own records.** Records detailing failure to follow list maintence procedures. You will see evidence of invoices and mailing records. Where Florida law might detail an process where all voters who did not vote in two years or contact the office are to be mailed, impossibly small numbers of mailpieces were mailed. Or, when all voters are to receive a nonfowardable piece of mail, the mail according to the records was instead sent forwardable. Or, when all voters who could cast a ballot were to be mailed, only a portion of those voters were in fact mailed. Defendant's records alone could support a finding of liability in this case.

Again, these are the five bundles of evidence Plaintiff will present, and Plaintiff believes anyone of these can support a liability finding:

1. Simple mathematical ratios showing more people eligible to cast ballots than people alive or implausible registration rates.

2. The expert opinion and recommended low-impact solutions of Secretary of State Gessler.

3. Concerned citizen who found empirical problems with the voter rolls.

4. Statements against interest showing a lack of situational awareness of what is wrong with the rolls and how to improve them.

5. The Defendant's own records showing tools in Florida election code aren't being satisfied.

The central issue in this case is whether the Defendant is undertaking a reasonable list maintenance program so that the voter rolls are accurate and current.

It is true that this case involves a **novel issue of law**. No court has yet to opine on the reasonableness of a list maintenance program in the 24-year history of Section 8. In candor, that is in some measure because, other than the United States, no Plaintiff has undertaken a case that has reached this stage. The case brought by the United States, *US v Missouri*, never reached this stage of the proceedings.

How this novel issue of law is addressed will affect elections elsewhere across the United States. This is because we face a situation where more than 100 counties across the country have more registrants on the rolls than eligible citizens. Voter rolls with implausible rates of registration are not unique to South Florida. But no court has ever reached the issue of what constitutes reasonable list maintenance under the NVRA until today.

It bears serious consideration that the NVRA would have never become law without the reasonable list maintence provisions now before this court. An original Act was vetoed by President Bush in 1992. It did not contain these list maintenance obligations. When a bill was reintroduced in 1993, also without the provisions today before this court, Senate Republicans successfully imposed and maintained a filibuster on the bill. A compromise was reached between Republicans and Democrats allowing the bill to move through the Senate. The provisions now before this court **were** the compromise. Obligations to reasonably maintain the rolls, and keep them clean were added as an amendment.

While some special interest groups disliked these amendments then, as now, they are the law of the land. It is no defense in this case to say that the NVRA was meant to increase registration, and high registration rates are a good thing. That is a description of the act vetoed by President Bush in 1992 that never became law. What became law has a very different architecture: one part makes it easier to register to vote, and the part amended in in 1993 imposes obligations on the defendant to do reasonable list maintenance. Without the obligation to maintain accurate voter rolls, the portions of the NVRA that made it easy to register would have never become law. The legislative intent of the NVRA now expressly says it was also meant to keep rolls clean.

This is the first time that a court will need to enforce that compromise from 1993 and determine what is or is not reasonable list maintenance.

But just because a question is novel does not mean it is unanswerable. **Plaintiff would submit that reasonableness means prudence, what an ordinary election official using ordinary care would do, of using**

list maintence tools provided in Florida statute, whenever a problem with the rolls is detected or suspected.

Using this standard for liability under Section 8 is sound for multiple reasons. It is measured.This is not a strict liability standard, but one that matches the needs with the response. Outcomes matter.

Also, while the issue before this court may be novel, it luckily comes in a forum and venue that makes it in some ways easier for you to decide. Florida has enacted an array of statutory tools for the election officials to use to keep rolls clean. Florida law has a clarity and effectiveness that is admirable, and relevant to this case. Simply, the Florida Legislature has enacted a statutory toolbox to keep the rolls clean in 98.065 and 98.075. When a local election official disregards these tools, or as the evidence will show, doesn't even KNOW about some of them, this novel issue becomes easier to decide. When other tools are used haphazardly or ineffectively, this novel issue becomes easier to decide.

While this case is novel, it arises in a state statutory environment that allows this court to find the defendant is not reasonably maintaining the

roles because she is negligent or not using ordinary care in list maintenance procedures, and not using simple common sense tools to maintain the rolls.

Such an approach to this novel issue also allows this court to respect and maintain the federalist balance, where the states run their own elections, not federal courts. Plaintiff does not seek the court to impose new burdensome practices over local officials. That has been the position of the Plaintiff throughout. The Florida Legislature has already provided the Defendant with tools to keep the rolls clean, if she used them, and used them effectively.

Plaintiff is not seeking an upheaval in the how Supervisor Snipes manages her office. Plaintiff believes the implementation of just a few commonsense and statutorily approved list maintenance tools would remedy this problem. Plaintiff is not seeking to remove eligible voters from the rolls, an unfounded fear of the intervenors. Indeed, **Plaintiff is not seeking the particular cancellation of any single specific voter registration in this case.** Plaintiff is asking for the list maintence

procedures to improve so that the Defendant uses all of the best practices she can, and that are already allowed by law.

But it is important that the balance in the NVRA mean something. If an election official can disregard state statutory tool after state statutory tool, have demonstrably bad registrations - with dead registrants, registrants at impermissible commercial addresses, duplicate registrations, people registered in both Broward and New York state - then the federal obligations in the NVRA will be rendered toothless.

The compromise reached in 1993 that allowed the NVRA to pass cannot be meaningless. Dr. Snipes and the Intervenors cannot succeed where others in Congress failed – by essentially turning an Act that was vetoed in 1992 into the law of the land – that is, an NVRA without effective list maintence provisions. The list maintence obligations of the NVRA cannot be stripped out except by an Act of Congress signed by the President. But the Defendants and the Intervenors have so far asked this court to do just that. That's asking too much, considering there wouldn't

even be an NVRA without the compromise provisions now before this court.

Finally, one unfortunate theme you will hear is a recurring lack of responsiveness by the Defendant. You will meet a series of regular citizens who were interested in good government, who brought problems with the rolls to the defendants attention, and their reports and communications were sometimes not treated seriously, and not processed expeditiously. When the Defendant attacks the reliability of these citizen witnesses and their data, it is important to remember that in some instances the Defendant actually did use their work to fix problems on the rolls – but those fixes came months and months after being informed of the problem, if they were fixed at all.

This is a case about good government, responsiveness, and helping to ensure citizens have confidence in our elections. Plaintiff isn't asking the Defendants to do anything unreasonable, but Plaintiff is asking that the list maintence practices allowed by law and common sense be undertaken, because the status quo isn't what citizens expect. ###