

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.

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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.

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