

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA**

Tallahassee Division

FLORIDA DEMOCRATIC PARTY,

Plaintiff,

v.

Case No. 4:16-cv-626-MW-CAS

RICHARD SCOTT, in his official capacity
as Governor of the State of Florida, and
KEN DETZNER, in his official
capacity as Secretary of State of the
State of Florida,

Defendants.

MI FAMILIA VOTA EDUCATION FUND and
NEW FLORIDA MAJORITY,

Intervenor-Plaintiffs,

v.

KEN DETZNER, in his official
capacity as Secretary of State of the
State of Florida,

Defendant.

COMPLAINT-IN-INTERVENTION

Intervenor-Plaintiffs, MI FAMILIA VOTA EDUCATION FUND (MFVEF), and NEW FLORIDA MAJORITY (NewFM), by and through counsel, respectfully file this COMPLAINT for Injunctive and Declaratory Relief against Defendant KEN DETZNER, in his official capacity as Secretary of State of the State of Florida, and allege upon information and belief as follows:

INTRODUCTION

1. This is a challenge to the State's failure to extend the October 11 voter registration deadline for participation in the November general election, despite the massive disruptions caused by Hurricane Matthew and the State's response to the hurricane. Under the circumstances, the State's failure to extend the registration deadline amounts to the denial of critical voter registration opportunities in violation of the Fourteenth Amendment and Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a). Absent relief, tens of thousands of eligible Floridians will be prevented from participating in the November general election.

2. On October 6, as Hurricane Matthew was bearing down on the State, and with six days left in the voter registration period for the November election, Florida Governor Rick Scott issued an order designating various areas of the State for evacuation. 1.5 million people live in these evacuation zones, which encompass all or part of 25 counties.¹ Then, on the following day, October 7, County and State government offices were closed in 43 counties.² And U.S. post offices were shut down from Jacksonville to Miami.

3. These massive disruptions occurred during the busiest time for voter registration every four years: the last days of the registration period for participation in a presidential general election. Indeed, over 116,000 people registered to vote in Florida during the final six days of the

¹ These counties are: Brevard; Broward; Citrus; Clay; DeSoto; Duval; Flagler; Glades; Hendry; Indian; Lake; Manatee; Martin; Miami-Dade; Nassau; Okeechobee; Orange; Palm Beach; Pasco; Putnam; Seminole; Johns; Lucie; Sumter; and Volusia. *See* Office of Governor Rick Scott, "Gov. Scott Issues Updates on Hurricane Matthew Preparedness and Response Efforts as Storm Impacts Florida," Oct. 6, 2016, *available at* <http://www.flgov.com/2016/10/06/gov-scott-issues-updates-on-hurricane-matthew-preparedness-and-response-efforts-as-storm-impacts-florida/>.

² Alachua, Baker, Bradford, Brevard, Broward, Citrus, Clay, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hamilton, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lake, Levy, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, St. Lucie, Sumter, Suwannee, Union, and Volusia. *See id.*

registration period for the 2012 presidential election. The fact that registration activity is particularly high during this period is well-known to state and local elections officials. Nevertheless, without any legitimate justification, the State simply refused to follow the examples of neighboring states and extend the voter registration deadline in response to this disaster. In so doing, the State ensured that tens of thousands of voters who would have registered during this period will be unable to participate in the November election. Intervenor-Plaintiffs—two nonprofit organizations whose mission is to assist members of historically underrepresented communities in registering to vote—therefore bring this action to vindicate their right to conduct voter registration drives, and the voting rights of eligible Floridians disenfranchised by the State’s refusal to extend the voter registration deadline.

PARTIES

4. Intervenor-Plaintiff MI FAMILIA VOTA EDUCATION FUND (MFVEF) is a national non-profit organization dedicated to working with the Latino community to increase civic participation. MFVEF maintains a Florida office in Orlando, Florida. The organization’s primary mission is to ensure that every person who is eligible to vote, regardless of party affiliation, is able to exercise his or her fundamental and constitutionally protected right to vote. A core component of MFVEF's mission is to increase voter registration and voting by eligible Latino citizens. To achieve this goal, MFVEF registers voters and engages in voter education campaigns via voter registration drives, distribution of voter-registration literature, and voter mobilization efforts, including in areas affected by Hurricane Matthew.

5. Proposed Intervenor NEW FLORIDA MAJORITY, INC. (“NewFM”) is a Florida non-profit corporation and membership organization with its principal office in Miami-Dade County, Florida. Founded in 2009, NewFM is dedicated to organizing, educating, and mobilizing

disempowered communities in Florida to win equity and fairness throughout the State. NewFM's central focus is to expand democracy by ensuring that every person eligible to vote, regardless of party affiliation, is able to exercise his or her fundamental and constitutionally protected right to vote. To achieve its goal, NewFM works with individuals and organizations engaged in civic and democratic endeavors to assist underserved communities in voter registration, voter education and get out the vote efforts.

6. Defendant's refusal to extend the voter registration deadline will frustrate Intervenor-Plaintiffs' respective missions by interfering with their efforts to register eligible voters and increase civic engagement. Intervenor-Plaintiffs will be unable to undertake voter registration in the affected regions. Intervenor-Plaintiffs will be forced to divert resources from their regular activities and programs to complete all voter registration activities prior to the Tuesday, October 11 deadline (now October 12, consistent with this Court's temporary restraining order), despite the recent mandatory evacuation of large portions of Florida, and the closure of county elections offices, public transportation services, and U.S. mail service.

7. Defendant KEN DETZNER is sued in his official capacity as Secretary of State of the State of Florida. Pursuant to Florida Statute § 97.012, the Secretary of State is the chief elections officer of the State and is responsible for the administration of state laws affecting voting, including those pertaining to voter registration.

STATEMENT OF FACTS

8. The loss of voter registration opportunities immediately preceding the voter registration deadline in Florida is simply devastating. Generally speaking, voter interest in an election increases as the election draws closer, such that the highest rates of voter registration activity occur during the period immediately prior to the registration deadline for the election.

Voter interest in an election tends to grow closer to the election, and voters generally rely on the published deadlines for registration when making plans. During the final six days of the registration period for the 2012 presidential election, at least 116,000 people registered to vote in Florida. More than half of those voters – approximately 61.4% -- resided in one of the 25 counties touched by the Governor’s evacuation order this year.³

9. Racial and ethnic minorities tend to register at disproportionately higher rates during the last few days of the registration period. As of December 2012, approximately only 13.6% of registered voters in Florida were Black, and another approximately 13.6% were Hispanic. But by way of comparison, in the 2012 presidential election, of the people who registered to vote during the final six days of the registration period, approximately 18.1% were Black, and approximately 19.2% were Hispanic.

10. Younger voters also tend to register at disproportionately higher rates during the last few days of the registration period. In the 2012 presidential election, nearly half (44.2%) of registrants during the final six days of the registration period were between the ages of 18 and 29, a percentage that far exceeds that age group’s share of the registered voter population in Florida.

11. In particular, third-party voter registration drives see high rates of activity in the days immediately preceding the voter registration deadline. In the 2012 presidential election in Orange County – which, this year, was subject to the Governor’s evacuation order and saw its county and government offices shut down as a result – Plaintiff MFVEF assisted 1,000 people in registering to vote during the last week of the registration period.

³ Intervenor-Plaintiffs’ Intervention Motion (ECF No. 18) mistakenly states this figure as 64%. See ECF No., 18, Motion to Intervene, ¶3. The correct figure is 61%, as stated here.

12. This year, however, the opportunity to register to vote during the last six days of the registration period was largely lost. Over 1.5 million Floridians live in evacuation zones; and, in dozens of counties, government offices where voters can obtain voter registration forms and/or register to vote were closed. Tens of thousands of voters – who relied on the State’s published October 11 registration deadline, but then found themselves unable to register during the last few days of the registration period – likely lost their opportunity to register to vote as a consequence.

13. Voter registration drives also ground to a halt during this critical period. Intervenor-Plaintiffs MFVEF and NewFM had intended to engage in substantial voter registration activities during the final days of the voter registration period. Those plans, however, were largely dashed. As a result, hundreds of people whom Intervenor-Plaintiffs MFVEF and NewFM could have helped register will be disenfranchised and unable to participate in the November general election.

14. The State could have prevented this widespread disenfranchisement by extending its voter registration deadline an additional week to accommodate the tens of thousands of Floridians affected by Hurricane Matthew. It failed to do so.

JURISDICTION

15. Intervenor-Plaintiffs brings this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

16. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States, because Intervenor-Plaintiffs bring this action to redress the

deprivation, under color of State law, of rights, privileges, and immunities secured by the Constitution of the United States and federal law, and because Intervenor-Plaintiffs brings this action to secure equitable relief under federal law providing for the protection of voting rights.

17. This Court has personal jurisdiction over Defendants, who are sued in their official capacity only.

18. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that gave rise to Intervenor-Plaintiffs' claims occurred in this judicial district.

19. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

CLAIMS FOR RELIEF

COUNT ONE

Undue Burden on the Right to Vote in Violation of the Fourteenth Amendment

20. The Fourteenth Amendment prohibits undue burdens on the fundamental right to vote. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

21. Because of Hurricane Matthew, the Governor's evacuation order, and the closure of government offices throughout the state, tens of thousands of Floridians who would have registered to vote in the six-day period prior to the October 11 registration deadline have been prevented from registering.

22. The State has not provided any adequate justification for its refusal to extend the voter registration deadline in light of this situation. Notwithstanding the loss of the busiest time for voter registration, the Governor has simply stated "[e]verybody has had a lot of time to register," and, "[l]ook, this is, this is politics."

23. Under these circumstances, the State's enforcement of the October 11 voter registration deadline unduly burdens the right to vote, particularly for minority, young, and poor Floridians.

COUNT TWO
Violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a)

24. Section 2 of the Voting Rights Act of 1965 provides in relevant part that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).

25. Racial and ethnic minority voters disproportionately register to vote during the last days of the voter registration period immediately prior to the registration deadline. The loss of voter registration opportunities due to Hurricane Matthew and the government's response, coupled with the failure to extend the voter registration deadline to compensate for the loss of those opportunities, impose a discriminatory burden on minority voters.

26. This discriminatory burden is, in part, linked to social and historical conditions in the State of Florida. There is a long history of official discrimination in voting in Florida against African Americans and Hispanics, who also suffer from the effects of discrimination in many other areas of socio-economic life, including disparities in employment, health, education, and access to transportation. These disparities make the costs of voter registration more burdensome for African Americans and Hispanics, who thus have more difficulty than other members of the electorate in overcoming the barriers to registration caused by Hurricane Matthew and the State's response.

27. Under the circumstances, the State's refusal to extend the voter registration deadline has, at best, a tenuous connection to any legitimate government policy, and therefore violates Section 2 of the Voting Rights Act.

REQUEST FOR RELIEF

WHEREFORE, Intervenor-Plaintiffs respectfully request that this Court enter judgment:

- A. Preliminarily and permanently enjoining Defendants from enforcing the current October 11, 2016 voter registration deadline.
- B. Ordering Defendants to extend Florida's voter registration deadline by at least one week (from October 11, 2016 up to and including October 19, 2016).
- C. Awarding Intervenor-Plaintiffs their costs, expenses, and reasonable attorneys' fees pursuant to, inter alia, 42 U.S.C. § 1988 and other applicable laws; and
- D. Granting such other relief as the Court deems just and proper.

Respectfully submitted,

/s/Nancy G. Abudu
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**Motion for Admission pro hac vice
forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2016, I electronically filed the foregoing document with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties.

/s/Nancy G. Abudu