

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO.: 4:16-cv-626-MW/CAS

FLORIDA DEMOCRATIC PARTY,

Plaintiff,

v.

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.

**MOTION TO INTERVENE
AND MEMORANDUM OF LAW IN SUPPORT**

SANDRA DEL CASTILLO, by and through her undersigned counsel, respectfully moves this Court for leave to intervene as of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure, or in the alternative, permissively under Rule 24(b)(1)(B). Pursuant to Federal Rule of Civil Procedure 24, SANDRA DEL CASTILLO's Proposed Complaint for Emergency Injunctive and Declaratory Relief is attached to this motion as **Exhibit "A"**. The Affidavit of SANDRA DEL CASTILLO is attached to this motion as **Exhibit "B"** as further support for this motion and her Proposed Complaint.

INTRODUCTION

SANDRA DEL CASTILLO requests that the Court grant her leave to intervene as a Plaintiff as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2). SANDRA DEL CASTILLO has a direct interest in this litigation that will be necessarily impaired if Defendants prevail and the voter registration deadline is not extended beyond October 15, 2016.

SANDRA DEL CASTILLO is a resident of the State of Florida and has been a lawful Permanent Resident of the United States of America since April 22, 2009. SANDRA DEL CASTILLO was assigned to attend a Naturalization Oath Ceremony on Saturday, October 8, 2016 at 10:00 a.m. for her formal induction as a United States Citizen. However, the October 8, 2016 ceremony was cancelled as a direct result of Hurricane Matthew. SANDRA DEL CASTILLO's formal induction as a United States Citizen is now scheduled to take place on October 15, 2016, which is after the current voter registration deadline.

Alternatively, SANDRA DEL CASTILLO requests the Court grant permissive leave to intervene pursuant to Federal Rule of Civil Procedure 24(b)(1)(B), on the grounds that she has claims that share common questions of law and fact with the main action here.

This motion to intervene is timely filed as SANDRA DEL CASTILLO only learned of her disenfranchisement on Monday, October 10, 2016 after being

informed that (i) her Citizenship Oath Ceremony would not be rescheduled until after the current voter registration deadline; and, (ii) that no exceptions can be made that would permit her to be sworn in prior to the October 12, 2016 voter registration deadline.

RELEVANT FACTS SUPPORTING INTERVENTION

1. The voter registration deadline for Florida has been extended to Wednesday, October 12, 2016 by this Court's Order Granting Plaintiff's Temporary Restraining Order [ECF No 15].

2. Eligible United States Citizens in Florida who fail to register by October 12, 2016 will be unable to cast a ballot in the upcoming 2016 general election scheduled to occur on November 8, 2016.

3. Florida voters, however, faced a daunting and, indeed, life- threatening obstacle to registering to vote in the form of Hurricane Matthew, a massive and dangerous weather event that has threatened Florida with substantial damage and loss of life.

4. Many elected officials, Citizens, and organizations, including Plaintiffs, believe extending Florida's voter registration deadline beyond October 12, 2016 is in the public's interest.

5. SANDRA DEL CASTILLO is an individual that will be disenfranchised if the voter registration deadline is not extended beyond October

15, 2016.

6. SANDRA DEL CASTILLO was assigned to attend a Naturalization Oath Ceremony on Saturday, October 8, 2016 at 10:00 a.m. for her formal induction as a United States Citizen. After being sworn in at the October 8, 2016 Oath Ceremony, SANDRA DEL CASTILLO would have been able to register to vote before the original and current registration deadline.

7. However, on Saturday, October 8, 2016, SANDRA DEL CASTILLO appeared at the USCIS Hialeah Citizenship Center for the Oath Ceremony. Approximately fifty (50) other would-be American Citizens and their loved ones also appeared to take the Citizenship oath and witness the ceremony.

8. Unfortunately, upon her arrival to the Oath Ceremony on October 8, 2016, three (3) police officers informed SANDRA DEL CASTILLO that the USCIS Hialeah Citizenship Center was closed and the Oath Ceremony was cancelled as a result of Hurricane Matthew. The police officers also asked the large crowd to vacate the premises. Simply put, the Oath Ceremony was cancelled through no fault SANDRA DEL CASTILLO or the approximately fifty (50) other would-be American Citizens who were ready, willing, and able to take their Oath of Citizenship on October 8, 2016

9. On Monday, October 10, 2016, at approximately 9:30 a.m., SANDRA DEL CASTILLO received a phone call from the USCIS Hialeah Citizenship Center

informing her that her Oath Ceremony had been rescheduled for Saturday, October 15, 2016. SANDRA DEL CASTILLO was instructed to report to the USCIS Hialeah Citizenship Center for Citizenship induction at 10:00 a.m. on that date.

10. SANDRA DEL CASTILLO was further informed by the USCIS Hialeah Citizenship Center that she cannot be sworn in as a United States Citizen prior to the October 15, 2016 Oath Ceremony, and that no exceptions can be made that would permit her to be sworn in prior to the October 12, 2016 voter registration deadline. SANDRA DEL CASTILLO had no part in rescheduling the Oath Ceremony for October 15, 2016, rather, she was ready, willing, and able to take her Oath of Citizenship prior to the original and current voter registration deadline.

11. The unfortunate result of these events is that if the voter registration deadline is not extended, SANDRA DEL CASTILLO will be prevented from casting her first vote as an American Citizen – a vote she would have been able to register for and make but for Hurricane Matthew and the cancellation of her Oath Ceremony. Put another way, SANDRA DEL CASTILLO's first experience as a United States Citizen will be her immediate disenfranchisement at the hands of the State of Florida.

GROUND FOR INTERVENTION

A. THE COURT SHOULD GRANT INTERVENTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 24(a)(2)

Rule 24 (a) of the Federal Rules of Civil Procedure provides two instances in which a party can intervene as a matter of right. Rule 24 reads in pertinent part:

On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a); *See generally Karsner v. Lothian*, 532 F.3d 876, 881 n.4 (D.C. Cir. 2008). Further, it is well settled that Rule 24(a) should be construed liberally in favor of permitting intervention. *See Trbovich v. United Mine Workers of America*, 404 U.S. 528 (1972).

In the instant action, SANDRA DEL CASTILLO satisfies the requirements for intervention pursuant to Federal Rule of Procedure 24(a)(2). Her motion to intervene is timely filed as SANDRA DEL CASTILLO only learned she will not be permitted to vote in the upcoming general election on Monday, October 10, 2016. Further, her claims directly relate to the subject of the action, which is the extension of the voter registration deadline. It is without question that her direct interest in this litigation that will be necessarily impaired if Defendants prevail and the voter registration deadline is not extended beyond October 15, 2016.

Furthermore, SANDRA DEL CASTILLO's interest in this matter may not be

adequately represented, especially since the specific facts giving rise to her disenfranchisement have only recently occurred, and the cancellation of Naturalization Oath Ceremonies scheduled for October 8, 2016 is not addressed by any of the pending pleadings. It is important to note that the Supreme Court has dictated that the burden to prove inadequacy of representation “should be treated as minimal.” *Trbovich*, 404 U.S. at 538 n.10. This “requirement of the Rule is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate.” *Id.*

Thus, SANDRA DEL CASTILLO should be allowed to intervene in this matter as of right.

B. THE COURT SHOULD GRANT INTERVENTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 24(B)(1)(B)

Federal Rule of Civil Procedure 24(b)(1)(B) provides in pertinent part that “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” A district court has broad discretion in deciding whether to let a nonparty intervene under Rule 24(b), even when the nonparty has met the requirements of the rule. *Worlds v. Dep’t of Health & Rehab. Servs.*, 929 F.2d 591, 595 (11th Cir. 1991).

SANDRA DEL CASTILLO clearly has “an interest that is relating to the action pending before the court.” *Mt. Hawley Ins. Co. v. Sandy Lake Properties, Inc.*, 425 F.3d 1308, 1312 (11th Cir. 2005). SANDRA DEL CASTILLO is claiming that she will not be permitted to vote in the upcoming election if the voter registration

deadline is not extended beyond October 15, 2016.

CONCLUSION

This Court should exercise its broad discretion under Rule 24 to allow SANDRA DEL CASTILLO to intervene in this action because the failure to extend the voter registration deadline beyond October 15, 2016 threatens to strip SANDRA DEL CASTILLO of her vote in the upcoming election simply because a hurricane cancelled her Citizenship Oath Ceremony thereby delaying her official status as a United States Citizen until after the current voter registration deadline.

CERTIFICATION PURSUANT TO RULE 7.1(B)

The undersigned counsel certifies that Plaintiffs' Counsel responded that they take no position on SANDRA DEL CASTILLO's motion to intervene. The undersigned counsel has unable to confer with counsel for the Defendants due to time restrictions.

Dated: October 11, 2016

Respectfully submitted,

/s/Kyle T. Berglin, Esq._____

Kyle T. Berglin, Esq.

Florida Bar No.: 84027

Boyd Richards Parker & Colonnelli, P.L.

100 S.E. Second Street – Suite 2600

Miami, Florida 33131

Telephone: (786) 425-1045

Facsimile: (786) 425-3905

kberglin@boydlawgroup.com

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on October 11, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I **ALSO CERTIFY** that the foregoing documents are being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Kyle T. Berglin, Esq._____
Kyle T. Berglin, Esq.

SERVICE LIST

Mark Herron, Esq.

Florida Bar No. 199737

mherron@lawfla.com

Robert J. Telfer III

Florida Bar No. 0168694

rtelfer@lawfla.com

MESSER CAPARELLO

2618 Centennial Place

Tallahassee, FL 32308

Telephone: (850) 222-0720

Facsimile: (850) 558-0659

Marc E. Elias, Esq.

D.C. Bar No. 44207

MElias@perkinscoie.com

Kevin J. Hamilton, Esq.

Wash. Bar No. 15648

KHamilton@perkinscoie.com

PERKINS COIE LLP

700 Thirteenth Street, N.W., Suite 600

Adam S. Tanenbaum, Esq.

Florida Bar No. 117498

Florida Department of State

General Counsel

500 S. Bronough Street – Suite 100

Tallahassee, Florida 32399

adam.tanenbaum@dos.myflorida.com

Counsel for Defendant Ken Detzner

William N. Spicola, Esq.

Florida Bar No. 70732

Executive Office of the Governor

400 S. Monroe Street – Room 209

Tallahassee, Florida 32399

william.spicola@eog.myflorida.com

Counsel for Defendant Richard Scott

Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211

Counsel for Plaintiff