

UNITED STATES DISTRICT COURT
NORTH DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA DEMOCRATIC PARTY,

Plaintiff,

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

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 Florida,

Defendants.

THE FLORIDA SENATE'S EMERGENCY MOTION TO INTERVENE

Pursuant to Federal Rule of Civil Procedure 24, the Florida Senate respectfully moves to intervene in this case to oppose plaintiff's Emergency Motion to Enforce Preliminary Injunction. *See* Doc. 32. As explained in the memorandum of law attached hereto as Exhibit A, plaintiff's motion is an improper attempt to obtain a new injunction under the guise of enforcing the existing injunction, where plaintiff cannot meet the requirements for a new injunction.

Grounds for Intervention

Federal Rule of Civil Procedure 24 provides for two types of intervention: intervention as a matter of right and permissive intervention. *See, e.g., Loyd v. Alabama Dep't of Corr.*, 176 F.3d 1336, 1339 (11th Cir. 1999). The Senate is entitled

to intervention as a matter of right. Alternatively, this Court should allow permissive intervention.

To intervene as a matter of right, the moving party must demonstrate that: (1) its motion to intervene is timely; (2) it has an interest relating to the subject of the action; (3) it is so situated that disposition of the action, as a practical matter, may impede or impair its ability to protect that interest; and (4) its interest is represented inadequately by the existing parties to the suit. *Id.* at 1339–40 (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989)). If a moving party satisfies these four requirements, the district court must allow intervention. *Chiles*, 865 F.2d at 1213. The Senate satisfies each requirement.

First, this motion is timely. Plaintiff filed its emergency motion only yesterday, and intervention will not delay or prejudice the adjudication of the original parties' rights in any way. This Court has already granted the Republican Party of Florida's motion to intervene, which was filed earlier today. *See* Doc. 49.

Second, the Florida Senate has an interest relating to the relief plaintiff seeks in its motion. As one of the democratically elected bodies responsible for enacting the election law provisions at issue, the Senate and its members have a substantial interest in seeing that those laws are upheld and properly executed. And as one of the bodies whose membership will be affected by the upcoming election, the Senate and its members have a substantial interest in ensuring that the election is con-

ducted fairly, properly, and in accordance with law in order to ensure that the Senate, as an elected body, is lawfully constituted. Elections that are conducted without clearly defined rules or under circumstances where the rules are changed arbitrarily, creating opportunity for voter fraud or abuse, invariably produce results of uncertain validity, eroding the people's trust in their election processes and in their government.

Furthermore, under the Florida Constitution, the Florida Senate is “the sole judge of the qualifications, elections, and returns of its members.” Fla. Const. art. III, § 2. Given this unique role, the Senate has a keen and substantial interest in Florida's election processes—election processes that will determine who will represent the citizens of Florida at various levels of government, including those in its own chamber. The Senate has a strong interest in ensuring such elections are conducted in a lawful, orderly, and fair manner, producing valid results upon which the people of Florida may justly rely. In the absence of such orderly and faithful administration, the Senate's ability to determine the qualifications, elections, and returns of its members is significantly compromised.

Third, the relief plaintiff seeks would impair and impede the Florida Senate's ability to protect these interests. Through its motion, plaintiff seeks to suspend the application of Florida's provisional ballot statute. That provision, and the State's election laws of which it is a part, represents a careful balancing of the pub-

lic interest in voter access, on the one hand, and in upholding the integrity of the electoral process, on the other. Because plaintiff seeks to overturn duly-enacted legislation only days before early voting begins, the Senate has no other recourse to vindicate these interests except by intervening in this action.

Fourth, no other party adequately represents the Senate's interests in this action. The Senate is one of the two chambers responsible for enacting State election laws. It is accountable to the voters of Florida for those laws. And it is a body comprised of members elected under those same laws. None of the parties that has appeared or been named in this litigation represents the same important interests.

For these reasons, the Senate satisfies the criteria for intervention as a matter of right. Alternatively, if this Court denies intervention as a matter of right, it should grant permissive intervention under Rule 24(b)(2). *See Chiles*, 865 F.2d at 1213. This timely motion and the accompanying memorandum demonstrate that the Florida Senate's defenses share common factual and legal questions with the main action and do not interject unrelated questions.

Finally, given that the plaintiff has proceeded by emergency motion, and has left other parties less than two days to respond before this Court's hearing, the Florida Senate files this motion under Local Rule 7.1, which allows for "a ruling more promptly than would occur in the ordinary course of business."

WHEREFORE, the Florida Senate respectfully requests entry of an order granting it leave to intervene, and permitting the Florida Senate to participate, through counsel and by telephone, if permissible, in this Court's October 20, 2016 hearing on plaintiff's motion.

Respectfully submitted,

/s/ Andy Bardos

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(B)–(C), counsel for the Florida Senate have conferred with counsel for all parties in this case with respect to the relief sought. Plaintiff, the Florida Democratic Party, opposes the relief sought. Defendants, the Governor and the Secretary of State, plaintiff-intervenors Mi Familia Vota Education Fund and the New Florida Majority, and defendant-intervenor the Republican Party of Florida, do not object. Plaintiff-intervenor Sandra Del Castillo takes no position.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion was filed through the Court’s CM/ECF System this nineteenth day of October, 2016, and thus served on all counsel of record.

Respectfully submitted,

/s/ Andy Bardos
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