

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF FLORIDA,

Plaintiff

v.

UNITED STATES OF AMERICA and
ERIC H. HOLDER, Jr., in his official
capacity as Attorney General of the United
States,

Defendant.

FLORIDA STATE CONFERENCE OF THE
NAACP, *et al.*,

Defendant-Intervenors,

KENNETH SULLIVAN, *et al.*,

Defendant-Intervenors,

and

NATIONAL COUNCIL OF LA RAZA, and
LEAGUE OF WOMEN VOTERS OF
FLORIDA,

Defendants-Intervenors.

NO. 1:11-CV-01428
(CKK-MG-ESH)
THREE JUDGE COURT

UNITED STATES' RESPONSE TO THE BENCHMARK QUESTIONS
RAISED BY THE JULY 3, 2012 MINUTE ORDER

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The United States respectfully submits the following response to the Court's questions regarding the benchmark for early voting, raised in the Court's July 3, 2012 minute order.

The Early Voting Benchmark Practices

The Court asked the Defendants to identify "in terms of specific days and hours of early voting" the benchmark practices in the five counties subject to the preclearance requirements of Section 5 of the Voting Rights Act: Collier, Hardee, Hendry, Hillsborough, and Monroe Counties.

In 2004, the Department precleared, under Section 5 of the Voting Rights Act, amendments to Florida Stat. § 101.657, which required early voting to be conducted by county Supervisors of Elections, beginning on the 15th day before Election Day and ending on the day before Election Day. Submission No. 2004-2149. In 2005, the Department precleared additional amendments to Florida Stat. § 101.657 that eliminated the day of early voting immediately before Election Day. Submission No. 2005-2390 & 2005-2391. The amendments also required that county Supervisors of Elections designate early voting sites no later than 30 days before an election, that all early voting sites must be open the same number of hours, and that early voting sites must open no sooner than 7 a.m. and close no later than 7 p.m. on each applicable day. The law also required that early voting must be provided 8 hours per weekday and for an aggregate of 8 hours on the weekend. In short, this benchmark state law, precleared by the Department, mandated 96 hours of early voting in each of the five covered counties, with no discretion on that total number of hours.

In recent elections, each of the five covered counties has offered 96 hours of early voting on 12 days over a 14-day period, with eight hours on each day, consistent with the practice precleared in Submission Numbers 2005-2390 & 2005-2391. Each of the five covered counties

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began early voting on the Monday 15 days before Election Day and concluded on the Saturday three days before Election Day (with no early voting on Sundays). The State's responses to the United States' interrogatories indicate that this practice was used during the November 2006 general election, the January 2008 presidential preference primary, the August 2008 primary election, the November 2008 general election, the August 2010 primary election, and the November 2010 general elections. *See* Appendix Volume 15 A8533 to A8622 (Exhibit D to Florida's Responses to First Set of Interrogatories of Defendant United States), *see specifically* V15 8533, 8539, 8560-61, 8581, 8604 (Collier); V15 8533, 8542, 8564, 8584, 8607 (Hardee); V15 8533, 8542, 8564, 8584, 8607 (Hendry); 8533-34, 8543-44, 8525, 8585-86, 8608-09 (Hillsborough); V15 8534, 8549, 8570, 8591, 8614 (Monroe).¹

Hillsborough County, for example, offered early voting from October 20, 2008 to November 1, 2008 (Monday through Saturday, excluding Sundays) before the November 4, 2008 general election. Locations offered early voting each day from either 9 a.m. to 5 p.m. or 10 a.m. to 6 p.m., depending on the location. The total number of early voting hours offered at each site (eight hours per day over 12 days) totals 96 hours of early voting. *See* V15 8533-34. Similarly, for the November 2, 2010 election, Hillsborough County offered early voting from October 18 to October 30, 2010 (Monday through Saturday, excluding Sundays), again with hours ranging from either 9 a.m. to 5 p.m. or 10 a.m. to 6 p.m. depending on the location. Again, the total number of early voting hours offered was 96. *See* V15 8585-86.

A review of the Department's Section 5 records indicates the following information on submissions from the five covered counties in Florida. The Department precleared Collier

¹ A portion of Exhibit D was omitted from the Joint Appendix. Those pages, which include information on the January 2008 and November 2006 early voting periods, have been attached to this filing. *See* Attachment 1.

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County's plan for early voting, which included eight hours per day (10:30 a.m. to 6:30 p.m.) from Monday through Saturday before Election Day (with no Sunday early voting). *See* Submission 2006-5090. Hillsborough County made a number of submissions adjusting the locations for early voting in the county, without specifically addressing the hours of early voting. *See* Submission No. 2004-2789, 2004-4491, 2005-2013, 2006-5146, & 2007-4026. It further appears that Hardee, Hendry, and Monroe Counties did not make individual submissions regarding the hours of early voting. Because the last precleared state law required a mandatory 96 hours, and because the Department has not precleared a submission of any changes from that mandatory total, the benchmark total number of early voting hours for each county is 96 hours based on the state submissions. Submission Numbers 2005-2390 & 2005-2391.

In its minute order, the Court asks, "(1) If this court were to preclear the early voting changes in Fla. Stat. § 101.657(d) (2011), what is the benchmark, in terms of specific days and hours of early voting, by which the covered counties' early voting plans would be judged when they are submitted for section 5 preclearance?" If the reduction in the number of early voting days mandated by Chapter 2011-40 became effective pursuant to preclearance from this Court, the new benchmark number of early voting *days* would be eight days of early voting (Saturday to Saturday, the 10th day before Election Day to the third day before Election Day), which each county would be required to implement. The benchmark total number of early voting *hours* for each county would remain 96 hours. Preclearance of Chapter 2011-40 would newly allow each county the discretion to choose its total number of early voting hours between 48 and 96 hours, which would then be judged against the benchmark 96 hours.

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The Court's Second Question Regarding the Benchmark

In its Minute Order, the Court also asks, “(2) If this court were to preclear the early voting changes in Fla. Stat. § 101.657(d) (2011), and a covered county then submits its specific proposal for early voting hours, and this court declines to preclear that proposal on a finding that it would result in retrogression, what specific days and hours of early voting would that covered county then be required to offer?” Under this scenario, assuming the Court judicially precleared the reduction in the number of early voting days from 12 days to a mandatory 8 days, the benchmark practice would be 96 total hours of early voting over 8 days (Saturday to Saturday, the 10th day before Election Day to the third day before Election Day). Until each covered county received preclearance of an alternative number of total hours, the counties would be required to continue with 96 hours of early voting.

Date: July 6, 2012

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Respectfully submitted,

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