

**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.

**MEMORANDUM OF LAW IN SUPPORT OF MI FAMILIA VOTA EDUCATION
FUND AND NEW FLORIDA MAJORITY'S MOTION TO INTERVENE
AS OF RIGHT OR, IN THE ALTERNATIVE, BY PERMISSION**

Proposed Intervenors, MI FAMILIA VOTA EDUCATION FUND (MFVEF), and NEW FLORIDA MAJORITY (NewFM), non-profit, non-partisan organizations, by and through counsel, respectfully submit the following Memorandum of Law in Support of their concurrently-filed Motion for Leave to Intervene. MFVEF and NewFM respectfully request this Court grant their motion to intervene as a matter of right under Fed. R. Civ. P. 24(a) or, in the alternative, by permissive intervention pursuant to Fed. R. Civ. P. 24(b).

INTRODUCTION

Plaintiff Florida Democratic Party is a political party that represents the interests of its member voters and candidates and focuses on voter registration and turnout among its constituents. State Defendants Governor Rick Scott and Secretary of State Ken Detzner are publicly elected officials, who are also members of the Republican Party. Proposed Intervenors

MFVEF and NewFM are non-profit, non-partisan organizations that represent the interests of all voters, in particular voters from racial and language minority groups in underserved communities throughout Florida.

Proposed Intervenor MI FAMILIA VOTA EDUCATION FUND is a national non-profit organization dedicated to working with the Latino community to increase civic participation. MFVEF maintains a Florida office at 5449 S. Semoran Blvd, Suite 19A, Orlando, FL 32822. 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. The State Defendants' refusal to extend the voter registration deadline will frustrate MFVEF's mission by interfering with its efforts to register eligible voters and increase civic engagement in the Latino community. Further, it will force MFVEF to divert resources from its regular activities 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.

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. The State Defendants' refusal to extend the voter registration deadline beyond Tuesday, October 11 will frustrate NEWFM's mission by interfering with its efforts to register eligible voters during the key voter registration period immediately prior to book closing. NEWFM will be unable to undertake voter registration in the affected regions, or will have to shift resources to maintain operations in the affected areas, at the expense of its regularly-conducted programs and activities.

Allowing MFVEF and NewFM to participate in this lawsuit as intervenors will ensure that this lawsuit does not become a partisan battle, but instead one that is about the integrity of the election process and the importance of all eligible citizens and residents, regardless of who they vote for, have an opportunity to vote. Therefore, MFVEF and NEWFM seek to intervene not on behalf of either party to this suit, but rather to protect the rights of their members and other Florida voters who face the real and serious danger of being disenfranchised if Florida's voter registration deadline is not extended. MFVEF and NewFM easily satisfy the requirements of intervention as of right. They have moved to intervene in a timely fashion, have a significant, legally protectable interest in the outcome of this litigation, their interests will be substantially impaired by an adverse decision, and their interests are not adequately represented by the existing parties.

Alternatively, MFVEF and NEWFM should be granted permission to intervene to safeguard their significant interests in protecting their constituents' right to vote, especially

minority voters. MFVEF and NEWFM satisfy the requirements of permissive intervention because their motion is timely, they present questions of both law and fact in common with the underlying litigation, and their intervention will not unduly delay, burden, or prejudice any existing party.

LEGAL ARGUMENT

I. MFVEF AND NEWFM SATISFY THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT.

A party seeking to intervene as of right under Fed. R. Civ. P. 24(a) must demonstrate that its petition is timely and that: 1) it has a recognized interest in the subject matter of the litigation; 2) the interest is one that might be impaired by the disposition of the case; and 3) the interest is not adequately protected by the existing parties. *Georgia v. United States Army Corps of Eng'rs*, 302 F.3d 1242, 1250 (11th Cir. 2002). MFVEF and NEWFM satisfy all of these requirements.

A. MFVEF and NewFM's Motion is Timely.

Timeliness is a prerequisite for either intervention as of right or permissive intervention. District courts must consider four factors in determining whether a motion for intervention is timely: (1) the length of time that passed between when the proposed intervenor became aware of its interest in the case and when it sought intervention; (2) prejudice to the existing parties as a result of the proposed intervenor's failure to apply as soon as it was aware of its interest; (3) prejudice to the proposed intervenor if its petition is denied; and (4) unusual circumstances militating either for or against a determination that the application is timely. *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1516 (11th Cir. 1983) (internal citation omitted). *See also Stallworth v. Monsanto Co.*, 558 F.2d 257, 263 (5th Cir. 1977) ("Timeliness is not limited to chronological considerations but 'is to be determined from all the circumstances'."). In *Georgia*

v. U.S. Army Corps of Engineers, the court emphasized that: “‘Timeliness is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigation if it is to be successfully employed to regulate intervention in the interest of justice.’” 302 F.3d 1242, 1259 (11th Cir. 2002) (quoting *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970). Where intervention will not delay resolution of the litigation, intervention should be allowed. *Texas v. United States*, 802 F. Supp. 481, 482 n.1 (D. D.C. 1992) (affirming the propriety of granting intervention); *Cummings v. United States*, 704 F.2d 437,441 (9th Cir. 1983) (it was an abuse of discretion for the trial court to deny intervention in the absence of a showing of prejudice to the government).

Proposed Intervenors’ motion is timely. Plaintiff filed its Complaint for Emergency Injunctive and Declaratory Relief on Sunday, October 9, 2016. [DE 1]. MFVEF and NewFM immediately began to gather information regarding the harm to their voter registration and outreach efforts by Governor Scott’s refusal to extend the voter registration deadline, and despite the difficulty of accessing information in the areas affected by Hurricane Matthew. Given the emergency nature of this lawsuit, a hearing regarding Plaintiff’s Motion for a Preliminary Injunction is scheduled for Wednesday, October 12, 2016. No status conference has been held, no discovery has been undertaken, and no dispositive orders beyond this Court’s order extending the voter registration deadline to October 12, 2016 pending the outcome of the hearing have been entered in the case. Moreover, as of the filing of this motion, counsel for the State Defendants have not entered an appearance in the case. Therefore, granting intervention would not cause any delay in the trial of the case nor prejudice the rights of any existing party. *See Bossier Parish School Board v. Reno*, 157 F.R.D. 133, 135 (D.D.C. 1994) (intervention granted as timely

where motion was filed on the same day the court held its first status conference). Thus, MFVEF and NewFM's motion is timely.

B. MFVEF and NewFM Have a Direct, Substantial and Legally Protectable Interest in Protecting the Ability of Citizens to Register and Vote.

As non-partisan, non-profit community-based organizations, MFVEF and NewFM plainly have a direct, substantial, and legally protectable interest in the “transaction that is the subject of the action.” Fed. R. Civ. P. 24(a)(2). *See, e.g., Clark v. Putnam County*, 168 F.3d 458, 462 (11th Cir. 1999) (“black voters had a right to intervene” in action challenging county redistricting, and listing recent voting cases allowing intervention); *Arcia v. FL Sec’y of State*, 772 F.3d 1335, 1341-42 (11th Cir. 2014) (ruling that organizational plaintiffs had standing to challenge Secretary Detzner's voter purge program based on both a diversion-of-resources theory and an associational standing theory).

In some cases, intervenors played not merely an important, but a crucial role. In *City of Lockhart v. United States*, for example, the intervenors presented the sole argument in the Supreme Court on behalf of the appellees. No argument was presented on behalf of the United States. 460 U.S. 125, 130 (1983). The court in *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1480 (11th Cir. 1993), actually reversed a district court's denial of intervention to county residents in a voting rights case, reasoning that, “[th]e intervenors sought to advance their own interests in achieving the greatest possible participation in the political process. Dade County, on the other hand, was required to balance a range of interests likely to diverge from those of the intervenors.”).

Intervention is particularly appropriate in this case because MFVEF and NewFM engage in non-partisan voter registration and education efforts, and their constituents and members include residents and voters of throughout the state of Florida. Therefore, MFVEF and NewFM

are uniquely positioned to provide the Court with a local appraisal of the facts and circumstances involved in the litigation. In particular, as set forth in MFVEF's declaration, they historically have registered hundreds of voters in the week leading up to the voter registration deadline. *See* Ex. A. NewFM, in fact, had canvassers prepared to do voter registration the week of October 3, but were completely foreclosed as a result of the State of Emergency Governor Scott issued, albeit with good reason given the impending storm and predictions regarding its harm to human life and destruction of property. *See* Ex. B. In *County Council of Sumter County v. United States*, 555 F.Supp. 694, 697 (D.D.C. 1983), the court allowed African American citizens to intervene in a Section 5 preclearance action in part specifically because of their "local perspective on the current and historical facts at issue." MFVEF and NewFM have an interest in the subject matter of this action sufficient to warrant intervention. Indeed, as one of the few organizations with staff dedicated to voter registration and outreach, they are uniquely positioned to provide firsthand experiences regarding the harm of not extending the voter registration deadline. Therefore, no entity or individuals could have a greater interest in the subject matter of the litigation.

C. MFVEF and NewFM's Ability to Protect Their Interests Will Be Impaired or Impeded if Intervention Is Denied.

The outcome of this action may, as both a legal and practical matter, impair or impede MFVEF and NewFM's ability to protect their interests, thus satisfying Rule 24(a)(2). The test of practical impairment is a flexible one which can be met in a variety of contexts. *See Fleming v. Citizens for Albemarle, Inc.*, 577 F.2d 236 (4th Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (citizens and taxpayers allowed to intervene in rezoning action alleging that plan would contaminate county water supply); *Natural Res. Def. Council v. Costle*, 561 F.2d 904 (D.C. Cir. 1977) (manufacturers allowed to intervene in action brought to require rule making which would

regulate the manufacturers' industries). An extension of the voter registration deadline has a direct impact on the voter registration and outreach work MFVEF and NewFM will do in communities around the State. It would be inefficient to force them to pursue their rights separately in another lawsuit and result in unnecessary delay. Thus, MFVEF and NewFM have substantial interests at stake in the lawsuit and should be allowed to intervene to protect those interests.

D. MFVEF and NewFM's Interests Cannot Be Adequately Represented by the Existing Parties.

Applicants can satisfy Rule 24(a)(2)'s inadequate representation requirement by showing merely that representation of their interests “‘may be’ inadequate” and “the burden of making this showing should be treated as ‘minimal.’” *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989). *See also In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991) (same). Rule 24 “underscores both the burden of those opposing intervention to show the adequacy of the existing representation and the need for a liberal application in favor of permitting intervention.” *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967). Inadequate representation will most commonly be found when the interests of the existing parties are adverse to, or different from, those of the applicant for intervention. *Thurman v. FDIC*, 889 F.2d 1441 (5th Cir. 1989). *See also Stone v. First Union Corp.*, 371 F.3d 1305, 1312 (11th Cir. 2004) (“Although all of the plaintiffs allege to have been subject to the same plan of age discrimination, the manner in which they were discriminated against may not be identical.”). However, “[a]ny doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action.” *Federal Sav. & Loan v. Falls Chase Sp. Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993).

Here, the Plaintiff is a political party seeking to vindicate the rights of its members. MFVEF and NewFM, on the other hand, are non-partisan organizations that represent the interests of all voters, regardless of political persuasion. The groups' outreach efforts are not limited to Democrats or Republicans, nor are their interests limited to members and candidates of a political party; their mission to ensure equal access to the ballot box for the electorate as a whole. Moreover, MFVEF and NewFM are on the ground on a daily basis and can present this court with valuable information regarding the number of people they historically have registered in the last week leading up to the voter registration deadline, the amount of time that is truly necessary to make up for the days and hours that were lost in registering voters due to the hurricane, and can provide this court with real-life experiences regarding the importance of having the full amount of days allocated for voter registration.

Moreover, Plaintiff has brought a Section 2 claim under the Voting Rights Act. As *City of Lockhart* demonstrates, the government and minorities have sometimes disagreed on the proper application of the Voting Rights Act and what constitutes adequate protection of voting rights. *See also Blanding v. DuBose*, 454 U.S. 393, 398-399 (1982) (minority plaintiffs, but not the United States, appealed and prevailed in the Supreme Court in voting rights case); *County Council of Sumter County*, 555 F.Supp. 694, 696 (D.D.C. 1983) (United States and minority intervenors took opposite positions regarding the application of Section 2 to Section 5 preclearance). The same can be said of a political party serving the interests of its members and candidates which may not be coextensive with minorities' voting rights. The Supreme Court has "recognized that when a party to an existing suit is obligated to serve two distinct interests, which, although related, are not identical, another with one of those interests should be entitled to intervene." *United Guaranty Residential Insurance v. Philadelphia Sav. Fund Soc.*, 819 F.2d

473, 475 (4th Cir. 1987) (referring to *Trbovich*, 404 U.S. 528, 538-539 (1972)). In *Trbovich*, the Supreme Court allowed a union member to intervene in an action brought by the Secretary of Labor to set aside union elections for violation of the Labor-Management Reporting and Disclosure Act of 1959, even though the Secretary was broadly charged with protecting the public interest. The Court reasoned that the Secretary of Labor could not adequately represent the union member because the Secretary had a “duty to serve two distinct interests,” 404 U.S. at 539, a duty to protect both the public interest and the rights of union members. MFVEF and NewFM’s interests in this litigation are, in like fashion, sufficiently different from those of Plaintiff and the State Defendants to justify intervention. Consequently, even if the State Defendants vigorously perform their duties to represent Florida citizens, representation of MFVEF and NewFM’s distinct interests may still be inadequate because the State Defendants must balance the competing interests presented by the proposed intervenors as well as those individuals or entities, like Plaintiff, who oppose it. While the interests of Plaintiff, the State Defendants, and the proposed intervenors may converge on issues such as the need to extend the voter registration deadline, they may diverge when it comes to the length of time for the extension, whether only certain counties should be covered or the entire state, arguments to be made before the Court, and deciding to appeal any adverse decisions. For other decisions holding that government parties could not adequately represent the interests of a subset of the general public, *see Chiles v. Thornburgh*, 865 F.2d 1197, 1214-15 (11th Cir. 1989) (federal prison detainees’ interests may not be adequately represented by county); *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (private party seeking to protect narrow financial interest allowed to intervene despite presence of government which represented general public interest); *Natural Resources Defense Council, Inc. v. United States Environmental Protection*

Agency, 99 F.R.D. 607, 610 n.5 (D.D.C. 1983) (pesticide manufacturers and industry representatives allowed to intervene even though EPA was a party); *New York Public Interest Research Group, Inc. v. Regents of the University of the State of New York*, 516 F.2d 350, 352 (2nd Cir. 1975) (pharmacists and pharmacy association allowed to intervene where “there is a likelihood that the pharmacists will make a more vigorous presentation of the economic side of the argument than would” the state Regents); *Associated General Contractors of Connecticut, Inc. v. City of New Haven*, 130 F.R.D. 4, 11-12 (D. Conn. 1990) (minority contractors allowed to intervene because “its interest in the set-aside is compelling economically and thus distinct from that of the City”). MFVEF and NewFM, therefore, meet the standards for intervention as of right, and their motion should be granted.

II. MFVEF AND NewFM SATISFY THE STANDARDS FOR PERMISSIVE INTERVENTION.

Alternatively, this Court should find that MFVEF and NEWFM meet the standards for permissive intervention under Fed. R. Civ. P. 24(b). Pursuant to Rule 24(b) “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.” Fed. R. Civ. P. 24(b)(1)(B). “A court is given broad discretion to allow a nonparty to intervene in a lawsuit where [1] the nonparty’s claim contains a common question of law or fact and [2] intervention will not hinder the adjudication of the original lawsuit.” *Georgia* 302 F.3d at 1250. When, as is true here, an issue involved in the litigation is of critical importance to a proposed intervenor, its participation in the litigation should not be discouraged. *See Arizona v. California*, 460 U.S. 605, 614 (1983) (finding that Indian tribes should be granted permissive intervention in lawsuit involving water rights).

Rule 24(b)(1)(B) also permits intervention upon timely application by anyone who “has a claim or defense that shares with the main action a common question of law or fact.” As

discussed above, MFVEF and NewFM seek to extend the voter registration deadline, which claim and defense shares common factual and legal questions with the main action. Also, as discussed above, intervention will not “unduly delay or prejudice the adjudication of the original parties’ rights,” Rule 24(b)(3). MFVEF and NewFM have an interest in the voter registration deadline being extended, and they should be permitted to intervene to do so.

WHEREFORE, MFVEF and NewFM respectfully request permission to intervene in this lawsuit.¹

Respectfully submitted,

/s/Nancy G. Abudu

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**Motion for Admission pro hac vice
forthcoming*

¹ Proposed Intervenors’ Proposed Complaint will be filed separately.

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