UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-22282-CIV-ZLOCH

KARLA VANESSA ARCIA, et al.

Plaintiffs,

vs.

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

Defendant.
_____/

O R D E R

THIS MATTER is before the Court upon Mandate of the United States Court of Appeals for the Eleventh Circuit (DE 141). The Court has carefully reviewed said Mandate, the entire court file and is otherwise fully advised in the premises.

The above-styled cause concerns the implementation of the program known as "Processing Registered Voters - Non-Immigrants" (hereinafter "the Program") by Defendant Florida Secretary of State Ken Detzner (hereinafter "Secretary Detzner"), which sought to remove non-citizens from the voting rolls in the State of Florida. One of the laudable goals of this effort certainly was to prevent voter fraud. On June 19, 2012, Plaintiffs initiated this case with the filing of their Complaint (DE 1), alleging that the Program violated certain provisions of the Voting Rights Act (hereinafter "the VRA"), 42 U.S.C. §§ 1973 et seq., and the National Voter Registration Act (hereinafter "the NVRA"), 42 U.S.C. 1973gg-1 et seq.

On September 12, 2012, the Parties stipulated to the dismissal of all claims except for Plaintiffs' claim that the Program violates

the NVRA's prohibition on completing "not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official list of eligible voters." 42 U.S.C. § 1973gg-6(c)(2)(A)(hereinafter "the 90-Day Provision"). See DE 56. After holding an evidentiary hearing, the Court ultimately entered an Order (DE 124) and Final Judgment (DE 125) in favor of Defendant Secretary Detzner, finding that the Program did not violate the 90-Day Provision of the NVRA.[1] The Court held that interpreting the NVRA in this manner allowed the Court to avoid reaching the constitutional question of whether Congress has the right to deprive the states of their authority to determine the qualifications of eligible voters in Federal elections, pursuant to Article I, Section 2 of the United States Constitution. See DE 124. An appeal was then taken to the Eleventh Circuit Court of Appeals. DE 126.

The above-styled cause has now been reversed and remanded to this Court by a two-judge majority of the Eleventh Circuit with instructions for this Court to enter an Order declaring that Secretary Detzner's actions were in violation of the 90-Day Provision of the NVRA. See DE 141.

Throughout this litigation, this Court has been mindful of the Supreme Court's "guiding principle" that "where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such

[1] This was also the conclusion reached by the Court in United States v. Florida, 870 F. Supp. 2d 1346 (N.D. Fla. 2012).

questions are avoided, our duty is to adopt the latter." Jones v. United States, 529 U.S. 848, 857 (2000). In this Court's view, such "grave and doubtful constitutional questions" are raised by interpreting the 90-Day Provision in the manner now required by the two-judge majority. Id. The possibility of a potential constitutional problem was also touched upon in the now withdrawn concurrence of the Circuit Judge Adalberto Jordan.[2] However, instead of remanding the case to have the constitutionality question developed and addressed, the two-judge majority has now left it for another court on another day——or left it for Congress to correct. In the meantime, non-citizens, who were never eligible to vote in the first instance, will remain on the voting rolls within 90 days of a Federal election, and there is nothing practical the State of Florida can do about it.

As the 90-Day Provision applies only to programs which "systematically" remove the names of ineligible voters, this two-judge majority suggests that it "does not bar a state from investigating potential non-citizens and removing them on the basis

---

[2] The withdrawn Concurrence states, in pertinent part:

> Any constitutional problems would arise only in a future case squarely presenting the application of the General Removal Provision. Before any such case arises, Congress has the ability to change the language of the General Removal Provision (as well as the ability to modify the exceptions to the 90-Day Provision if it so desires). Should it not do so, the court addressing such a future case may have to confront the argument that Congress drafted a portion of the NVRA in an unconstitutional manner.

Arcia v. Florida Secretary of State, 746 F.3d 1273, 1288 (11th Cir. 2014) (Jordan, J., concurring).

of individualized information, even within the 90-day window." DE 141. Therefore, the specious method of removing non-citizens from the voting rolls within 90 days of a Federal election proposed by the two-judge majority is one based upon "individual correspondence or rigorous individualized inquiry." DE 141. This Court seriously questions how any such individualized process could ever be implemented and undertaken by a state in an effective and orderly fashion 90 days before a Federal election.

The Supreme Court has long recognized that the United States Constitution undeniably "protects the right of all qualified citizens to vote" in federal elections. Reynolds v. Sims, 377 U.S. 533, 554 (1964)(emphasis added). Indeed, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). This most fundamental and constitutionally protected right "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Reynolds, 377 U.S. at 555. It is not lost on this Court that with every vote that is cast by those whose voter registrations are void ab initio because of their status as non-citizens, debasement and dilution of the votes of American citizens will naturally follow.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Court's prior Order (DE 124) and Final Judgment (DE 125)

be and the same are hereby **VACATED**, set aside and of no further force or effect; and

2. Pursuant to the instruction of the Eleventh Circuit (DE 141), the Court finds that Secretary Detzner's actions were in violation of the 90-Day Provision of the NVRA; and

3. Final Judgment will be entered by separate Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 12th day of February, 2015.

WILLIAM J. ZLOCH
United States District Judge

Copies Furnished:

All Counsel of Record

Amy Nerenberg, Acting Clerk of Court
United States Court of Appeals
for the Eleventh Circuit
(Eleventh Circuit Case # 12-15738)