

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

**Case No. 1:12-cv-22282-WJZ
Honorable Judge William J. Zloch**

KARLA VANESSA ARCIA, an individual, MELANDE ANTOINE, an individual, VEYEO, a civic organization based in Miami-Dade County, FLORIDA IMMIGRANT COALITION, INC., a Florida non-profit corporation, NATIONAL CONGRESS FOR PUERTO RICAN RIGHTS, a Pennsylvania non-profit corporation, and 1199SEIU UNITED HEALTHCARE WORKERS EAST, a Labor Union,

Plaintiffs,

v.

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

Defendant.

MOTION OF BIPARTISAN GROUP OF VOTERS LUIS I. GARCIA, DIANA K. WHITEHURST, HAL DAVID RUSH, AND BARBARA A. DEREUIL TO EXPEDITE CONSIDERATION OF THEIR MOTION FOR INTERVENTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 24 (D.E. #67)

Bipartisan Group of Voters Luis I. Garcia, Diana K. Whitehurst, Hal David Rush, and Barbara A. Dereuil (collectively, “Intervenors”), for the reasons set forth below and in light of Plaintiffs’ eleventh-hour requests for a temporary restraining order and for expedited consideration of preliminary injunction and summary judgment proceedings (“Plaintiff’s Motion to Expedite and for Temporary Restraining Order,” D.E. #66), hereby move for an expedited briefing schedule and expedited consideration of their Motion for Intervention (D.E. #67).

MEMORANDUM OF LAW

As explained in their Motion for Intervention, Intervenors are a bipartisan group of voters, properly registered and duly qualified to vote in the State of Florida, who intend to vote in the November 6, 2012 general election (the “General Election”). As further explained therein, Intervenors’ constitutional right to vote will be impaired in the event that Plaintiffs were to obtain injunctive relief that would prevent the Florida Secretary of State (“SOS”) from identifying and removing non-citizens from the voter rolls pursuant to Fla. Stat. § 98.075(7). Specifically, such relief would dilute Intervenors’ votes by allowing ineligible voters to cast ballots in the General Election. *See Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (the “right of suffrage 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.”); *see also Anderson v. United States*, 417 U.S. 211, 226 (1974) (“The right to an honest [count] is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States.”).

“A preliminary injunction is an extraordinary and drastic remedy.” *McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). With the General Election less than seven weeks from today, a preliminary injunction that would have the effect of diluting Intervenors’ constitutional right to vote would be even more extraordinary. More extraordinary still is that Plaintiffs now ask this Court to expedite the preliminary injunction proceedings and to impose a temporary restraining order in the interim. (D.E. #66). In light of the foregoing, it is imperative that Intervenors’ Motion for Intervention be considered prior to the Court’s considering the entry of any injunctive relief that would dilute their constitutional right to vote.

The SOS has already pointed out that Plaintiffs delayed filing their Motion for Preliminary Injunction and Summary Judgment (D.E. #65) for three months after filing their Complaint, and for a full week after filing their First Amended Complaint. *See* The Secretary's Opposition to Plaintiffs' Motion to Expedite Preliminary Injunction Proceedings and for Temporary Restraining Order ("The Secretary's Opposition") (D.E. #68). Accordingly, to the extent that Plaintiffs seek such extraordinary relief on the basis of an emergency, it is at best an emergency of their own making. Nonetheless, both Plaintiffs and the SOS have expressed a willingness to proceed on an expedited basis. *See* The Secretary's Opposition (D.E. #68) ("In the interest of quickly resolving Plaintiffs' unmeritorious claim, the Secretary is willing to proceed with briefing and argument on Plaintiffs' hybrid motion along the following schedule, which expedites the Court's default deadlines"); *see also* Plaintiffs' Motion to Expedite and for Temporary Restraining Order (D.E. #66) (seeking expedited preliminary injunction proceedings in light of "the particular need for expeditious treatment caused by the impending November 6, 2012, general election").

Intervenors therefore request that this Court consider their Motion for Intervention contemporaneously with, or prior to, consideration of Plaintiffs' motions for preliminary injunctive relief and for a temporary restraining order (D.E. #65, 66). Intervenors respectfully suggest that the most appropriate schedule would require responses and replies on the Motion to Intervene to be filed on the same dates that the SOS has proposed for responses and replies on Plaintiff's Motion for Preliminary Injunction and Summary Judgment. *See* D.E. #68, at 6.

However, in the event that this Court were to adopt the even more expedited briefing schedule that Plaintiffs propose in their Motion to Expedite and for Temporary Restraining Order, then Intervenors would request that this Court adopt that same schedule for briefing on

Intervenors' Motion for Intervention in order to ensure that Intervenors' interests are considered prior to considering any relief that would affect their constitutional right to vote.

In the interim, unless the Court orders otherwise, Intervenors intend to file a proposed Opposition to Plaintiffs' Motion for Preliminary Injunction and Summary Judgment in accordance with the SOS's proposed briefing schedule, so as not to delay these proceedings. *See Naples 9, LLC v. Everbank*, 2011 U.S. Dist. LEXIS 53120, at *3-*4 (M.D. Fla. May 18, 2011) (concluding that allowing intervention where intervenor intended to follow the same schedule as the current parties in the case would not prejudice plaintiffs).

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(3)

The undersigned counsel certifies that her office has conferred with counsel for Defendant Detzner, who indicated that Defendant Detzner does not oppose the relief sought in this Motion; and that her office has conferred with counsel for Plaintiffs, who indicated that Plaintiffs would oppose the relief sought.

CONCLUSION

For the foregoing reasons, Intervenor respectfully request that the Court issue an order setting an expedited briefing schedule on their Motion for Intervention in accordance with the proposal outlined above.

DATED: September 21, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 21, 2012, a true and correct copy of the foregoing was filed with the Clerk of Court via the CM/ECF system, causing a Notice of Electronic Filing to be sent to all counsel of record.

s/ Raquel A. Rodriguez
Raquel A. Rodriguez