UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-22282-CIV-ZLOCH

KARLA VANESSA ARCIA, et al.,

Plaintiffs,

vs.

KEN DETZNER,

Defendant.
_____/

O R D E R

THIS MATTER is before the Court upon the Motion Of Bipartisan Group Of Voters Luis I. Garcia, Diana K. Whitehurst, Hal David Rush, And Barbara A. Dereuil For Intervention Under Federal Rule Of Civil Procedure 24 (DE 67). The Court has carefully reviewed said Motion, the entire court file and is otherwise fully advised in the premises.

The above-styled cause concerns the State of Florida's implementation of the program entitled "Processing Ineligible Registered Voters-Non-Immigrants" (hereinafter "the Program"). By the instant Motion (DE 67), Luis I. Garcia, Diana K. Whitehurst, Hal David Rush, And Barbara A. Dereuil (hereinafter "the Prospective Intervenors") assert that they should be allowed to intervene as of right, or in the alternative, be granted a permissive intervention, in the above-styled cause. The Prospective Intervenors are "a bipartisan group of properly registered and duly qualified voters of the State of Florida who intend to vote in the November 6, 2012 general election" who wish

to intervene lest their votes be allegedly "diluted, cancelled out, or effectively nullified by votes from non-citizens who are otherwise ineligible to vote but remain on the voter rolls." DE 67, pp. 1-2. By this Motion (DE 67), the Intervenors also state that Defendant Ken Detzner does not oppose the proposed intervention. DE 67, p. 12. Plaintiffs contest the proposed intervention and have filed an Opposition To The Motion To Intervene (DE 83).

To intervene as of right under Rule 24(a)(2), a party must establish that "(1) [its] application to intervene is timely; (2) [it] has an interest relating to the property or transaction which is 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." Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989) (citing Athens Lumber Co. v. FEC, 690 F.2d 1364, 1366 (11th Cir. 1982)). Intervention as of right is proper only where all four requirements have been established.

The Court's first concern is one of timeliness. The Prospective Intervenors state that "[t]his case is but three months old" and that Plaintiffs' current claim "did not materialize until September 12, 2012." DE 67, pp. 9-10. These remarks altogether miss the point. First, the above-styled cause was filed June 19,

2012, three months prior to the Intervenors' filing of the instant Motion (DE 67). That initial Complaint (DE 1) also included a claim that the "Alleged Non-Citizen Purge Program" violates Section 8(c)(2)(A) of the National Voter Registration Act, the sole claim which remains by Plaintiffs' First Amended Complaint (DE 57). While Plaintiffs' initial Complaint (DE 1) may have contained claims other than the sole claim which remains in the First Amended Complaint (DE 57), that does not affect the time in which Intervenors' interest, if any, vested. If the Prospective Intervenors find it necessary to intervene at this point in the litigation, they would have presumably found it necessary to intervene on June 19, 2012. And the Court is aware that on June 20, 2012, the same four Prospective Intervenors in the above-styled cause filed a Motion to Intervene in a case pending in the Northern District of Florida involving the same underlying facts and the same allegations under Section 8(c)(2)(A) of the National Voter Registration Act. See Docket Entry 2 in Case No. 12-CIV-00285-HINKLE, The United States of America v. State of Florida and Ken Detzner.[1]

[1]While the Court is aware of the Prospective Intervenors' September 26, 2012, Notice Of Correction (DE 85), the Court is indeed concerned with their initial representation to the Court that "[t]he Northern District court allowed Intervenors to intervene" in Case No. 12-CIV-00285-HINKLE. DE 67, p. 11. Of course, the Prospective Intervenors' Motion For Permissive Intervention in the Northern District of Florida has not been ruled upon.

Finally, the Court is acutely mindful of the fact that the Preliminary Injunction hearing has been set for Monday, October 1, 2012. See DE 74. Allowing the Prospective Intervenors to intervene at this late hour would surely prejudice Plaintiffs in this case, as discovery has closed, the date of the November 6, 2012, election is approaching, and the Preliminary Injunction hearing is just days away.

The Court next considers whether the Prospective Intervenors have a legally protectable interest in the present litigation. While the Prospective Intervenors state they are concerned with the possibility of voter dilution, the Court finds that this asserted interest is no different from that of any other Floridian who is duly registered to vote. See League of Women Voters of Florida v. Detzner, 2012 WL 3194950, at *1 (N.D. Fla. Aug. 6, 2012) (denying a motion to intervene because, among other reasons, any interest of the prospective intervenors was "precisely the same interest as every registered voter in the state.")

This purported interest brings the Court to a consideration of the related third and fourth factors under Rule 24(a)(2)——whether disposition of this action may impede or impair the Prospective Intervenors' ability to protect their interest, and whether Defendant Detzner is inadequately representing that interest. Chiles, 865 F.2d at 1213. The Court has been given no indication that Defendant Detzner might cease implementation of the Program,

or attempt to moot any litigation over the State's implementation of the Program, as the Prospective Intervenors claim. See DE 67, pp. 8-9. In fact, Defendant Detzner's interest seem to align with that of the Prospective Intervenors. See Defendant Detzner's Memorandum In Opposition To Plaintiffs' Motion For Preliminary Injunction And Summary Judgment, DE 79, p. 2 ("Under both state and federal law, Secretary of State Detzner . . . has a clear responsibility to protect the votes of citizens by preventing voter fraud.") Defendant Detzner has also alleged to the Court that since entering into the August 14, 2012, Memorandum of Agreement with the Department of Homeland Security in regard to the State of Florida's access to the Department's "SAVE" database, the State has used the SAVE database to "identif[y] at least scores of registered voters who have either personally attested to their lack of citizenship or who, after the data-matching process described above, appear to be ineligible registered voters based on non-citizenship." DE 79, p. 6. The Court further echoes the sentiments of the Northern District of Florida in League of Women Voters: "The defendants are, after all, officials of the State of Florida. Whatever might be said of the litigation stance of public officials generally, the State of Florida has recently—repeatedly—shown little reluctance to pursue litigation on matters of this kind; the state is no shrinking violet." 2012 WL 3194950, at *1.

Therefore, the Court finds that the Prospective Intervenors have failed to satisfy each element of the four factors set forth in Rule 24(a)(2), and the Court will deny their request to intervene as of right.

The Court now turns to the alternative relief sought by the instant Motion (DE 67): permissive intervention under Rule 24(b)(1)(B). Permissive intervention may be granted if the applicant is able to demonstrate that (1) the application to intervene is timely and (2) the claim asserted and the main action have a question of law or fact in common. Chiles, 865 F.2d at 1213. Further, "[i]f there is no right to intervene as of right under Rule 24(a), it is wholly discretionary with the court whether to allow intervention under Rule 24(b) and even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied, the court may refuse to allow intervention." Worlds v. Dep't of Health & Rehab. Servs., 929 F.2d 591, 595 (11th Cir. 1991) (citation omitted).

As articulated above, the instant Motion (DE 67) is woefully late. Timeliness is, as stated, of paramount concern to the Court. See also NAACP v. New York, 413 U.S. 345, 365 ("Thus, the court where the action is pending must first be satisfied as to timeliness.") The Court further finds that the interest set forth by the Prospective Intervenors will be adequately represented by Defendant Detzner, and therefore the presence of the Prospective

Intervenors will only serve to raise a further risk of delay. See Wollschlaeger v. Scott, 2011 WL 2672250, at * 3 (S.D. Fla. July 8, 2011) (holding that "[t]he duplicative nature of the [prospective intervenor's] claims or interests will unduly delay the adjudication of the rights of the parties to this lawsuit and unlikely shed any new light on the constitutional issues in this case."). Therefore, insofar as it alternatively seeks permissive intervention, the instant Motion (DE 67) will be denied.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that the Motion Of Bipartisan Group Of Voters Luis I. Garcia, Diana K. Whitehurst, Hal David Rush, And Barbara A. Dereuil For Intervention Under Federal Rule Of Civil Procedure 24 (DE 67) be and the same is hereby **DENIED.**

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 28th day of September, 2012.

WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record