UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI CIVIL DIVISION
Case No. 1:12-cv-22282-WJZ
Honorable Judge William J. Zloch

KARLA VANESSA ARCIA, an individual, MELANDE ANTOINE, an individual, VEYE YO, 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, FLORIDA NEW MAJORITY, INC., a Florida 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.

PLAINTIFFS' OPPOSITION TO THE MOTION TO INTERVENE

Pursuant to this Court's September 21, 2012, Order (Docket No. 74), Plaintiffs Karla Vanessa Arcia, Melande Antoine, Veye Yo, Florida Immigrant Coalition, Inc., National Congress for Puerto Rican Rights, Florida New Majority, Inc., and 1199SEIU United Healthcare Workers East (collectively, "Plaintiffs") respond to the Motion to Intervene (Docket No. 67) ("Mot.") filed by Luis I. Garcia, Diana K. Whitehurst, Hal David Rush, and Barbara A. Dereuil (collectively, "Proposed Intervenors"). Proposed Intervenors cannot establish sufficient grounds for intervention in this election-related litigation. Their only asserted interests are more than adequately represented in this case by Defendant Ken Detzner ("the Secretary"), who is ardently

defending Florida's plan to purge the voter rolls at this late hour. Discovery has closed, the deadline for dispositive motions has passed, and with the conclusion of briefing in two days, this case will be ripe for resolution of its only claim: a pure legal question. Allowing movants to intervene here potentially could delay a swift resolution of this time-sensitive case. Time is of the essence – even a brief delay at this stage of the litigation could prevent this Court from resolving this case with sufficient time to spare before voters begin going to the polls.

I. FACTUAL BACKGROUND

The Florida Department of State ("DOS") is presently seeking to identify and remove certain registered voters – alleged non-citizens – from the voting rolls prior to the upcoming November 6, 2012 federal election. *See e.g.*, Declaration of Ion V. Sancho, No. 12-cv-22282, ¶¶ 17-24 (S.D. Fla. Sept. 19, 2012), ECF 65-3. As part of these efforts, in April 2012, DOS sent the State's Supervisors of Elections ("SOEs") the names of 2,625 "potential non-citizens." According to DOS, those names were drawn from a larger list of "potential non-citizens" that was generated by the Florida Department of Highway Safety and Motor Vehicles ("FDHSMV"). *See* Plaintiffs' Statement of Undisputed Facts ("Pl. Undisp. Facts"), Docket No. 65-1, ¶ 2. Also in April, DOS presented a webinar directing local SOEs to review the list and ultimately remove any ineligible voters. The Secretary suspended the program on April 30, 2012, but in May, indicated the purge would eventually be resumed. Pl. Undisp. Facts ¶ 3-4. In August, the Secretary announced that Florida had reached an agreement to access the Department of Homeland Security's Systematic Alien Verification for Entitlements ("SAVE") database and that it would use that database to attempt a new systematic method to remove alleged non-citizens from the voting rolls; it trained SOEs on the program on September 10 with the intent to use it before the November election . Pl. Undisp. Facts ¶ 5.

Plaintiffs filed this action on June 19, 2012, to enjoin Florida's systematic removal of registered voters in violation of Section 8 of the National Voter Registration Act ("NVRA") and Section 2 of the Voting Rights Act of 1965. On August 13, 2012, this Court scheduled the pretrial conference in this case for October 5, 2012. On September 7, 2012, contemplating the narrowing of issues in the case, the parties stipulated to a revised schedule, which this Court entered shortly thereafter. *See* Consent Motion for Extension of Time (Docket No. 53); Sept. 10, 2012 Paperless Order (Docket No. 54). On September 12, the parties reached a settlement in which Defendant agreed to take certain steps to remedy the harm caused by their prior actions and, in return, Plaintiffs agreed to dismiss some of their claims. On that same day, the parties filed a stipulation narrowing the claims at issue in the litigation, and Plaintiffs filed an amended complaint applying their remaining legal claim to Defendant's planned use of the SAVE database.[1] The remaining disputed issue is a legal question involving the statutory construction of Section 8(c)(2) of the NVRA, 42 U.S.C. 1973-gg(6)(c)(2)(A). *See* Joint Pretrial Stip. ¶ (1)(a), (b), ¶ (8). The question before the Court is whether Defendant's continued program , including use of the SAVE database, that aims to remove non-citizens is a "program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters" fewer than 90 days prior to the date of a primary or general election for Federal office." *Id.* ¶ 8. Plaintiffs filed their Motion for Preliminary Injunction and Summary Judgment on September 19, 2012, with briefing to be complete on September 28, 2012. Less than six weeks

[1] Proposed Intervenors, without support, assert that Plaintiffs withdrew the "bulk" of their suit as a result of the state using the SAVE database. Mot. at 4. That is an inaccurate and unfounded characterization of the parties' settlement. Plaintiffs' continue to seek relief that would halt Defendants' purge efforts, using SAVE or any database, prior to the 2012 general election, or 90 days prior to any federal election. *See* Ex. A, Stip. of the Parties, Sept. 12, 2012; First Amended Complaint (Docket No. 57).

remain before the general election, and only days remain before the State's October 8, 2012 deadline to register to vote.[2]

Proposed Intervenors moved to intervene on September 20, 2012 – the same day discovery closed in this case. *See* Sept. 10, 2012 Paperless Order (Docket No. 54). Proposed Intervenors describe themselves as "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." Mot at 1. As a basis for their intervention, Proposed Intervenors allege that their right to vote will be diluted if Plaintiffs prevail on the merits of this case. *Id.* at 7-8. For the following reasons, the Court should not permit their intervention in this case.

II. MOVANTS ARE NOT ENTITLED TO INTERVENE AS OF RIGHT

A. Legal Standard

Intervention as a matter of right is a tightly circumscribed mechanism through which nonparties are entitled to enter an existing action. Federal Rule of Civil Procedure 24(a)(2) imposes stringent limitations on potential intervenors because "'[t]he original parties have an interest in the prompt disposition of their controversy and the public also has an interest in efficient disposition of court business.'" *Fox v. Tyson Foods, Inc.*, 519 F.3d 1298, 1302 (11th Cir. 2008) (per curiam) (quoting 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1904 (3d ed. 2007)). Thus, before Proposed Intervenors are entitled to become parties in an action, they must establish four independent elements, *Sierra Club, Inc. v. Leavitt*, 488 F.3d 904, 910 (11th Cir. 2007), but, as discussed below, do not meet their burden on any of the four required elements under Rule 24(a). *Id.*

[2] The deadline is October 9 in some counties whose offices are closed on Columbus Day.

B. To the Extent Proposed Intervenors Have Any Protectable Interest, It Is Adequately Represented by the State's Participation

Proposed Intervenors must demonstrate that their interest in the proceeding is not adequately represented by the existing parties to the action. Fed. R. Civ. P. 24(a)(2); *Athens Lumber Co., Inc. v. Federal Election Comm'n,*, 690 F.2d 1364 at 1367 (11th Cir. 1982). Because courts "presume adequate representation when an existing party seeks the same objectives as the would-be intervenors," Proposed Intervenors must meet a high burden to show that Secretary Detzner will not protect their asserted interests in continuing to remove voters from the rolls. *See Sierra Club, Inc. v. Leavitt*, 488 F.3d 904, 910 (11th Cir. 2007). They cannot do so.

Proposed Intervenors have precisely the same objective and underlying motivation as Defendant Detzner, who therefore adequately represents their interests in this litigation. *United States v. City of Miami*, 278 F.3d 1174 (11th Cir. 2002); *Athens*, 690 F.2d at 1367 (denying motion where both party and intervenor had "precisely the same objective" of upholding constitutionality of federal statute) . Like Defendant, Proposed Intervenors argue that the State may remove purported non-citizens from its list of eligible voters within 90 days before the upcoming general election. *See* Mot. at 10. Proposed Intervenors' asserted interest – concern that their own votes will be diluted in the event that non-citizens vote – is identical to Florida's rationale for conducting its purge program.[3] Florida's Governor Scott, in support of the removals, stated, "We gotta make sure a U.S. citizen's right to vote is not diluted." Kevin

[3] Unlike Defendant, because this litigation seeks only to interpret and enforce a federal statute, the NVRA, against state actors, it is unclear what role a private defendant might play. *See Williams Island Synagogue, Inc. v. City of Aventura*, 222 F.R.D. 554, 557 (S.D. Fla. 2004) (denying permissive intervention where federal law governed only state actors). No private party can conduct systematic list maintenance, and the Secretary is vigorously defending its own right to do so.

Robillard, "Rick Scott: Other states can purge voter rolls," *Politico*, July 16, 2012, http://www.politico.com/news/stories-/0712/78551.html.

Moreover, Proposed Intervenors' position is already adequately represented by Defendant's participation. Plaintiffs' claim here does not require any balancing of constitutional interests or countervailing factual arguments; rather, the sole issue is one of statutory interpretation. *See* Pretrial Stip. at (1)(a), (b). The Secretary's vigorous defense of its own ability to systematically remove a broad array of voters in the 90 days before federal elections adequately addresses the interests germane to the l interpretation of Section 8(c)(2) of the NVRA. For this reason alone, movants fail to qualify for intervention as of right. *See, e.g.*, *SEIU, Local 1 v. Husted*, 2012 U.S. Dist. LEXIS 121032, *27-28 (S.D. Ohio Aug. 27, 2012) ("Proposed Intervenors [as alleged duly qualified and registered voters in Ohio] are adequately represented in this case by the Secretary [of State], who has an official duty to represent the interests of all voters statewide.").

Proposed Intervenors make only two arguments to support a claim that their interests are not represented – both of which are flawed. They claim, first, that the Secretary may "cease or halt" purge efforts in order to reach a settlement during mediation; second, they claim that the Secretary may postpone purge efforts in order to render the case moot. Mot. at 8-9. The record supports neither premise. The mediation concerns proved unfounded. Following the parties' agreed motion, the Court vacated its mediation order, and this case is now quickly proceeding. *See* Docket Nos. 73-74. Likewise, far from "postponing" or "ceasing activities" in response to the case, the Secretary has announced new developments in the continuation of purge efforts utilizing the SAVE database prior to the upcoming general election. *See* Pretrial Stip. ¶ 6. Moreover, both arguments miss the point because if Defendant decided to cease its purge efforts

for whatever reason, the participation of Proposed Intervenors in this litigation would not lead to a different result. Any relief granted in this litigation could not *force* the state to undertake a purge that it not desire to pursue. Thus, neither hypothetical scenario demonstrates any divergence of the Secretary's interests with those of Proposed Intervenors.

However, even when a would-be intervenor successfully shows evidence of diverging interests, "the court returns to the general rule that adequate representation exists if no collusion is shown between the representative and an opposing party, if the representative does not have or represent an interest adverse to the proposed intervener, and if the representative does not fail in fulfillment of his duty." *Clark v. Putnam Cnty*, 168 F.3d 458, 461 (11th Cir. 1999) (internal quotes omitted). Proposed Intervenors have failed to demonstrate that any of these circumstances is present here.

Nothing in this case "casts doubt on the will of the [government] to defend the legality" of its own actions. *Sierra Club, Inc. v. Leavitt*, 488 F.3d 904, 911 (11th Cir. 2007). Indeed, in *League of Women Voters of Florida v. Detzner*, No. 4:11-cv-00628-RH-CAS (N.D. Fla. 2012), another court just last month considered precisely this question in denying a motion to intervene filed on behalf of Florida voters by the same counsel representing Proposed Intervenors in the present case. Contrary to Proposed Intervenors' suggestion that "the SOS's past actions demonstrate an openness to ceasing activities related to identifying non-citizens on the voter rolls and settling similar voter litigation," Mot. at 9, the *League of Women Voters* court noted Florida's tenacity in defending its elections practices:

> [T]here is little reason to believe the defendants will not vigorously pursue or abandon the appeal precisely as appropriate in light of their conscientious assessment of the law and the likely outcome of the litigation. 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.

Id., No. 4:11-cv-00628-RH-CAS, 2012 WL 3194950, at *1 (N.D. Fla. Aug. 6, 2012) (Ex. B).

Proposed Intervenors point to another NVRA case pending in the Northern District, *United States v. Florida*, No. 4:12-CV-285-RH/CAS (N.D. Fla. 2012), to argue they are making "in part, different" legal arguments from the Secretary's interpretation of the 90-day provision, albeit in support of the same objectives. Mot. at 11. First, Plaintiffs find no order in that case granting intervention, and Proposed Intervenors cite none. In any event, variations in legal argument, however, are insufficient to establish that the Secretary is failing to adequately represent movants' interest. *See Mass. Food Ass'n v. Mass. Alcohol Bevs. Control*, 197 F.3d 560, 567 (1st Cir. 1999) (would-be intervenors' offer of different legal arguments in support of same objective did not show that defendant would inadequately represent their interests); *see also Meadowfield Apts, Ltd. v. United States*, 261 Fed. Appx. 195, 196 (11th Cir. 2008) (unpublished) (existing party provided adequate representation where intervenor sought the same relief and made "substantially the same" arguments).

Proposed Intervenors' asserted interests in a judgment that the Secretary may continue its non-citizen purges in the last 90 days before a federal election are more than adequately represented. The Motion to Intervene fails on this basis alone.

C. Proposed Intervenors Have No Interest Protectable by Their Intervention Here

Proposed Intervenors' Motion should also be denied because they allege "precisely the kind of undifferentiated, generalized grievance" that the Eleventh Circuit and other courts have refused to recognize in the context of a motion to intervene. *See Dillard v. Chilton Cnty Comm'n*, 495 F.3d 1324 at 1332-1333 (11th Cir. 2007) (quoting *Lance v. Coffman*, 549 U.S. 437 (2007) (per curiam)); *see also Chiles*, 865 F.2d at 1212. "In determining sufficiency of interest,

this circuit requires that the intervenor must be at least a real party in interest *in the transaction which is the subject of the proceeding*. This interest has also been described as a direct, substantial, legally protectable interest *in the proceedings*." *Purcell v. BankAtlantic Fin. Corp.*, 85 F.3d 1508, 1512 (11th Cir. 1996) (quoting *Worlds v. Dep't of Health & Rehab. Serv.*, 929 F.2d 591, 594 (11th Cir. 1991) (per curiam) (emphasis added; footnotes, citations, quotation marks omitted)).

Nothing alleged in Proposed Intervenors' Motion differentiates them from every other registered Florida voter or demonstrates how their generalized concerns about non-citizen voting differentiates their asserted interest from "every citizen's interest in proper application of the Constitution and laws." *Lance*, 549 U.S. at 439. These assertions are thus insufficient to support a motion to intervene. *United States v. State of Alabama*, 2006 WL 2290726, at *4 (M.D. Ala. Aug. 8, 2006); *see also League of Women Voters of Fla. v. Detzner*, No. 4:11cv628–RH/WCS, 2012 WL 3194950, at *1 (N.D. Fla. Aug. 6, 2012).

Taken to its inevitable conclusion, movants' arguments suggest that every single Florida voter should be entitled to intervene in any case related to voting, regardless of the issues in the litigation. Such a precedent would have negative implications for Florida's – and the nation's – ever-growing docket of election litigation and put a serious strain on the resources of courts in "battleground states" that must manage it. Indeed, in the *League of Women Voters*, a case involving constitutional and NVRA challenges to Florida voter-registration laws, the court recently rejected just such an attempt. *Id.*, No. 4:11-cv-00628-RH-CAS, 2012 WL 3194950, at *1. There, the court denied four individual Florida voters' motion to permissively intervene in litigation where they asserted the same purported interest asserted here: that "if people are improperly registered to vote, it will dilute the votes of properly registered voters, including the

four individuals." *Id.* *See also Applewhite v. Pennsylvania*, No. 330 M.D. 2012 (Pa. Commw. Ct. May 29, 2012) (attached as Ex. C) (denying intervention under state law in suit challenging voter-identification statute, where registered voters based putative intervention on "vote dilution," because "any interest the Putative Intervenors have in preventing fraudulent voters from casting votes in the general election is the same interest shared by all Pennsylvanians," and was therefore not "a legally enforceable interest"); *SEIU Local 1 v. Husted*, Nos. 2:12–CV–562 (proposed intervenors were a "bipartisan group of properly registered and duly qualified voters of the State of Ohio who intend to vote in the November 6, 2012 general election"). Further, as in *League of Women Voters*, Proposed Intervenors have no right to make it harder for other qualified applicants to register to vote. *See* No. 4:11-cv-00628-RH-CAS, 2012 WL 3194950, at *2.

Conversely, Proposed Intevenors' interests are unlike the rights at stake in cases they cite in which the intervenor's own particular voting district was at issue, and intervention was thus allowed. *See, e.g., League of United Latin Am. Citizens v. City of Boerne*, 659 F.3d 421, 434-35 (5th Cir. 2011) (intervenor's interest sufficient where intervenor sought "to protect his right to vote in elections to choose all five city council members, a right which the [consent decree in place] abrogate[d].") (citing *Johnson v. Mortham*, 915 F. Supp. 1529, 1536 (N.D. Fla.1995) ("Registered voters have ... a sufficiently substantial interest to intervene[ ] in an action challenging the voting district in which the voters are registered."). *Johnson* does not support Proposed Intervenors' position; in fact, while that court permitted some voters to intervene, it also held that voters *not* registered in the particular district at issue did *not* have sufficient interest to intervene, either permissively or as of right. 915 F. Supp. at 1536-37.Of course, the general fact that Proposed Intervenors have a fundamental right to vote is not in question. *See* Mot. at 5.

The issue instead here is whether they have a legally protectable interest *in this litigation*. *See Athens*, 690 F.2d at 1366 ("intervenor must be at least a real party in interest in the transaction *which is the subject of the proceeding*.") (emphasis added); *Purcell*, 85 F.3d at 1512 (interest must be "direct, substantial, legally protectable interest *in the proceedings*) (emphasis added). They do not. Because they have no demonstrated interest that exceeds the generalized grievance of any Florida voter, their motion to intervene must be denied.

D. Proposed Intervenors Are Not Situated Such That Resolution of This Litigation Would Impeded or Impair Their Ability to Protect Any Purported Interest

"A party seeking to intervene as of right under Rule 24(a)(2) must show that . . . he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect [a direct, substantial legally protectable] interest." *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989). As discussed above, no such interest exists.

E. Proposed Intervenors' Motion Should Be Denied as Untimely

Finally, Proposed Intervenors' Motion should be denied as untimely. *See* Fed. R. Civ. P. 24(a). Timeliness is a threshold issue determined from all the circumstances. *See NAACP v. New York*, 413 U.S. 345, 365-366 (1973). Less than six weeks remain before the general election, and only days remain before the October 8, 2012 deadline to register to vote. The Court and the parties should focus on expeditiously resolving the remaining legal claim. The time-sensitive nature of this particular case is an unusual circumstance that weighs against an order granting the Motion to Intervene. *See United States v. Jefferson Cnty.*, 720 F.2d 1511, 1516 (11th Cir. 1983).

First, Plaintiffs could be prejudiced by adding new parties at this stage in the litigation. *See id.* at 1516 (citing *Stallworth v. Monsanto Co.*, 558 F.2d 257, 264-66 (5th Cir. 1977)). Proposed Intervenors made a number of unsupported factual assertions in their motion, most of which appear false, but on which Plaintiffs have had no discovery. And here discovery has

already closed. If Proposed Intervenors are permitted to intervene, Plaintiffs will either be forced to ask this Court to reopen discovery–delaying resolution of this important case–or face factual assertions they have been unable to test Proposed Intervenors brought their motion after Plaintiffs' Motion for Preliminary Injunction and Summary Judgment had been filed, and just one day before the parties' filed their Join Pretrial Stipulation. This action is thus at a critical stage. *See NAACP*, 413 U.S. at 366-67. As a result, Plaintiffs will suffer substantial prejudice if Proposed Intervenors are permitted to disrupt the current case schedule set by this Court. *See United States v. Alabama*, 2006 U.S. Dist. LEXIS 55305, *26 (M.D. Ala. Aug. 8, 2006) (noting that "time is of the proverbial essence" due to upcoming elections).[4] Any delay could jeopardize whether election officials can restore improperly removed voters to the rolls prior to the election. In addition, delay would force Plaintiffs to divert further resources from their core mission and spend them on issues related to the non-citizen purge. *See* Memo. in Support of Mot. for Prelim. Inj. and Summ. Judgment, at 17-18 (Docket. No. 65-1).

Further, in suggesting an intent to continue even if Defendant decided to settle, Proposed Intervenors' motion suggests that, by intervention, they intentionally will seek to impede, rather than facilitate, resolution of this case. *See League of Women Voters of Florida*, 2012 WL 3194950, at *2 (denying intervention in part because "the tenor of the motion to intervene suggests the four individuals may impede, rather than contribute to, the reasoned determination of the action"). Further, movants cannot be bound one way or another by a final judgment, since a judgment ordering Florida to comply with its obligations under the NVRA, or a judgment that Florida is not violating the NVRA, does not bind Proposed Intervenors. *Jefferson Cnty.*, 720 F.2d at 1517.

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[4] Plaintiffs dispute that movants have expressed a legitimate "vote dilution" claim or defense.

Finally, Proposed Intervenors knew or reasonably should have known that they had a stake (if at all) in this action long ago, as demonstrated by their attempt to intervene in the Northern District litigation. *See Jefferson Cnty.*, 720 F.2d at 1516. Though Plaintiffs' original complaint was focused on a different systematic method than the one currently at issue, Plaintiffs' argument that a systematic non-citizen purge violates Section 8(c)(2) of the NVRA has remained consistent since this action was filed on June 19, 2012. *See id.*; First Am. Compl., Doc. No. 57, ¶¶ 44-51. The following day, the same four individuals who seek to intervene in this action, represented by the same counsel, filed a motion to intervene in the Northern District NVRA litigation. *United States v. Florida*, No. 4:12-cv-00285-WS-CAS, Mot. of Bipartisan Group of Voters Luis I. Garcia, Diana K. Whitehurst, Hal David Rush, and Barbara A. Dereuil for Permissive Intervention ("N.D. Fla. Mot. for Permissive Intervention"), Doc. No. 18 (N.D. Fla. June 20, 2012). That motion has not been decided. *See* No. 12-cv-00285.[5] Their request was premised on the same argument raised in the instant motion -- . *See id.*, Doc. No. 18, at 4-6. At the same time, the instant action generated extensive media coverage.[6] Proposed Intervenors could have raised this identical argument in June in relation to the April-May purge addressed in Plaintiffs' initial Complaint with respect to the August primary. *See NAACP*, 413 U.S. at 366-67.

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[5] Though Proposed Intervenors' assert that their motion was "allowed," their reply in support of their motion to intervene was filed *after* the order on the TRO that they cite in support, and the court does not appear to have ruled on that motion. *See* Reply in Support of Motion to Intervene, *United States v. Florida*, 4:12-cv-00285-WS-CAS, (N.D. Fla. July 16, 2012), Docket. No. 40.

[6] *E.g.*, Steve Bousquet, Voter groups sue Florida over purge, Miami Herald, June 19, 2012, http://www.miamiherald.com/2012/06/19/2857717/voter-groups-sue-florida-over.html; Marc Caputo and Steve Bousquet, Feds Demand voter-purge info from Florida counties, August 9, 2012, http://www.miamiherald.com/2012/08/09/2942966/feds-demand-voter-purge-info-from.html;

III. THE COURT SHOULD NOT PERMIT MOVANTS TO INTERVENE

A. Legal Standard

Proposed Intervenors alternatively seek permissive intervention pursuant to Rule 24(b). Permissive intervention may be granted in the Court's discretion where: (1) a timely motion is filed and (2) the movant's claims share a common question of law or fact with the claims in the case. Fed. R. Civ. P. 24(b)(1)-(2); *Worlds v. Dep't of Health and Rehabilitative Servs.*, 929 F.2d 591, 595 (11th Cir. 1991). . The Court may deny Proposed Intervenors' Motion even when Rule 24(b)(1)'s requirements are satisfied. *Worlds*, 929 F.2d at 595. Courts deciding whether to grant permissive intervention consider many factors including those considered for intervention as of right. Those factors weight against permitting intervention here.

B. Intervention Could Unduly Delay Adjudication of the Parties' Rights

Unlike intervention as of right under Rule 24(a), permissive intervention under Rule 24(b) explicitly requires that the Court evaluate whether intervention will cause undue delay or prejudice to the adjudication of the parties' rights. Fed. R. Civ. 24(b)(3); *Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc.*, 425 F.3d 1308, 1312 (11th Cir. Fla. 2005); *Athens*, 690 F.2d at 1367 ("introduction of additional parties inevitably delays proceedings"); . As discussed above, given the time-sensitive nature of this case, it is imperative that the Plaintiffs' remaining legal claim be resolved quickly so that relief can be implemented prior to the November 6, 2012, election and in order that organizational Plaintiffs may educate their membership regarding the outcome in time to be effective prior to the election. *See Mt. Hawley Ins. Co*, 425 F.3d, at 1312 (affirming denial of nonparty's motion for permissive intervention where nonparty raised issues unrelated to core action); Ewart Decl. ¶ 2-4 (Docket. No. 65-6); del Rosario Rodriguez Decl. ¶ 3-4 (Docket No. 65-5); Seda Decl. ¶ 4 (Docket No. 65-7). Of course, intervention would be particularly inappropriate if Proposed Intervenors seek to delay resolution of these proceedings or the current

expedited schedule this Court has set or to expand the issues in the case.. *See Mt. Hawley Ins. Co*, 425 F.3d, at 1312 (affirming denial of a nonparty's motion for permissive intervention where nonparty raised issues unrelated to core action).

If this Court has any inclination to permit intervention, it should certainly make clear that Proposed Intervenors cannot delay resolution of this case and should also make clear that Proposed Intervenors cannot make factual assertions that Plaintiffs have not been able to test through discovery.

C. Permissive Intervention is Improper for the Same Reasons Proposed Intervenors Lack a Right to Intervene

Courts deciding whether to grant permissive intervention consider many factors including those considered for intervention as of right. As discussed in Section II of this Opposition, those factors counsel against intervention here.

First, the Court should deny permissive intervention because the movant's interests are adequately represented by existing parties. *See Athens*, 690 F.2d at 1366-67; *Johnson*, 915 F. Supp. at 1535. "Where applicants' seek to achieve the same objective as an existing party, that party is presumed to adequately represent the applicants' interest." *Meek v. Metro. Dade Cnty.*, 985 F.2d 1471, 1477 (11th Cir. 1993) (per curiam), *abrogated on other grounds by Dillard*, 495 3d. at 1332-1335; *Mass. Food Ass'n*, 197 F.3d at 567.

Second, the Court should deny Proposed Intervenors' Motion because they have no protectable interest here. *See Athens*, 690 F.2d at 1367 (denying permissive intervention where claims were remote and general). Instead, their generalized grievance is insufficient to distinguish them from every other Florida voter. *See Johnson*, 915 F. Supp. at 1536.

Third, this Court should deny the motion because Proposed Intervenors could not affect the relief here. *See Williams Island Synagogue, Inc. v. City of Aventura*, 222 F.R.D. 554, 557

(S.D. Fla. 2004) (denying permissive intervention despite proposed Intervenor's stake in the outcome of the litigation, because Plaintiff sought injunctive relief of municipality's alleged violation of federal law governing only state actors).

Finally, Proposed Intervenors' motion is untimely and would unduly prejudice Plaintiffs' in this case. *See* Rule 24(b)(1). It appears likely that Proposed Intervenors' participation may impede rather than facilitate swift resolution of this case. *See League of Women Voters of Florida*, 2012 WL 3194950, at *2. In the interest of judicial economy, the Motion to Intervene should be denied.

Taken together, the relevant considerations in the context of this case, including those discussed with respect to Proposed Intervenors' motion to intervene as of right, weigh against permitting movants to intervene in this litigation.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs hereby respectfully request that the Court deny Proposed Intervenors' Motion to Intervene under both Rules 24(a) and 24(b).

Dated: September 26, 2012

Respectfully submitted,

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on September 26, 2012, a true and correct copy of the foregoing was served on all counsel of record via CM/ECF.

Dated: September 26, 2012 By: /s/ John De Leon
John De Leon

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI CIVIL DIVISION
Case No. 1:12-cv-22282-WJZ
Honorable Judge William J. Zloch

KARLA VANESSA ARCIA, an individual, MELANDE ANTOINE, an individual, VEYE YO, 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, FLORIDA NEW MAJORITY, INC., a Florida 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.

[PROPOSED] ORDER DENYING MOTION OF BIPARTISAN GROUP OF VOTERS LUIS I. GARCIA, DIANA K. WHITEHURT, HAL DAVID RUSH, AND BARBARA A. DEREUIL FOR INTERVENTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 24

THIS MATTER is before the Court upon the Motion of Bipartisan Group of Voters Luis I. Garcia, Diana K. Whitehurt, Hal David Rush, and Barbara A. Dereuil For Intervention Under Federal Rule of Civil Procedure 24. Having reviewed the Motion, the Court **ORDERS** that the Motion is **DENIED**.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this _____ day of _____, 2012.

_____
Honorable William J. Zloch, U.S.D.J.

EXHIBIT A

STIPULATION OF THE PARTIES

Plaintiffs Karla Vanessa Arcia, Melande Antoine, Veye Yo, Florida Immigrant Coalition, Inc., National Congress For Puerto Rican Rights, Florida New Majority, Inc., and 1199SEIU United Healthcare Workers East ("Plaintiffs"); and Defendant Kenneth W. Detzner, in his official capacity as Secretary of State of the State of Florida (the "Secretary"), enter into this Stipulation regarding certain claims at issue in *Arcia et al. v. Detzner*.

RECITALS

WHEREAS, Plaintiffs initiated litigation against the Secretary in the United States District Court for the Southern District of Florida in an action entitled *Arcia et al. v. Detzner*, Case No. 1:12-cv-22282-WJZ; and

WHEREAS, on August 14, 2012, the Florida Department of State entered into a Memorandum of Agreement with the United States Department of Homeland Security governing access to the Systematic Alien Verification for Entitlements (SAVE) Program for the purpose of verifying citizenship and immigration status information of non-citizen and naturalized or derived U.S. citizen registrants on Florida's voter registration rolls; and

WHEREAS, in correspondence on August 29, 2012, and September 4, 2012, Plaintiffs sought information regarding the Secretary's plans with respect to individuals whose names appeared on lists of potentially-ineligible registered voters sent to Florida Supervisors of Elections in April 2012 (the "April Lists"), before the Florida Department of State obtained access to the SAVE Program; and

WHEREAS, in correspondence dated September 6, 2012, the Secretary responded to Plaintiffs' inquiries by identifying the actions that the Secretary states he has announced will be

taken with respect to these individuals and the dates by which these actions will be concluded; and

WHEREAS, the Secretary believes that Plaintiffs' claims in this action with respect to the April Lists are now moot because the process used to identify these potentially-ineligible registered voters was voluntarily discontinued before this action was filed by Plaintiffs; and

WHEREAS, the Secretary is nonetheless willing to enter this Stipulation describing steps he states were previously announced with respect to individuals on the April Lists; and

WHEREAS, Plaintiffs disagree with the Secretary's position regarding whether their claims with respect to the April Lists are moot; and

WHEREAS, all Parties wish to resolve these matters without the time, expense, and uncertainty of litigation

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the adequacy and sufficiency of which are acknowledged by the Parties, and intending to be legally bound, the Parties hereby agree as follows:

I.

DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings set forth below:

(a) "**Effective Date**" means the date this Stipulation shall become effective which shall occur as of the date when the last signature is placed on this Stipulation by the Parties.

(b) **"SAVE"** refers to the Systematic Alien Verification for Entitlements Program administered by the United States Department of Homeland Security.

(c) "**Department**" refers to the Florida Department of State.

(d) **"Supervisor(s) of Elections"** refers to the Supervisors of Elections in the State of Florida.

(e) **"Litigation"** refers to the action entitled *Arcia v. Detzner*, Case No. 1:12-cv-22282-WJZ (S.D. Fla.).

(f) **"April Lists"** refers to lists of over 2,600 individuals identified as "potential non-U.S. citizens" that were sent to Florida's Supervisors of Elections in April 2012.

II.

UNDERTAKINGS BY DEFENDANT

With respect to individuals on the April Lists, the Department will take the following steps:

(a) The Department will advise the Supervisors of Elections that any individual on the April Lists who has been removed from the voter rolls for whom SAVE cannot verify non-citizenship, and who has not admitted to non-citizenship, should be restored to the voter rolls unless he or she was removed by a Supervisor of Elections on a basis unrelated to citizenship status (such as deceased, adjudicated mentally incompetent, or request by voter) and that this process should be concluded before October 15, 2012. Any individual who has been removed from the voter rolls may appeal the removal in accordance with Florida law.

(b) When the Department's review of the April Lists is complete, all registered voters on the April Lists who received notice indicating that they may be ineligible to vote, and who have not been removed, will be sent notice advising them that they remain registered to vote. These notices will be sent no later than October 15, 2012.

(c) The Department will reiterate to Supervisors of Elections that the presence of any individual on the prior lists of potential non-citizens should not be interpreted as a determination regarding that individual's eligibility to vote.

(d) The Department agrees that no registered voter should be required to cast a provisional ballot due solely to his or her inclusion on any prior list of potential non-citizens.

(e) The Department agrees that nothing in this Stipulation affects its obligation to respond to Plaintiffs' requests submitted under the Florida Public Records Law and will provide responsive documents to Plaintiffs on or before September 15, 2012.

III.

UNDERTAKINGS BY PLAINTIFFS

In exchange for the Undertakings above, Plaintiffs agree as follows:

(a) On the Effective Date, Plaintiffs will dismiss with prejudice all of their claims in the Litigation other than the claim under Section 8(c)(2)(A) of the National Voter Registration Act (the "90-day claim") through the filing of a Joint Stipulation of Dismissal in the form attached as Exhibit 1. This dismissal does not preclude Plaintiffs from amending the 90-day claim in their Complaint in a manner consistent with the Court's Scheduling Orders entered in the Litigation.

(b) On the Effective Date, Plaintiffs will withdraw all discovery subpoenas, document requests, and deposition notices and subpoenas issued in the Litigation.

(c) Plaintiffs agree that none of the actions taken by the Department provide a basis for any determination that Plaintiffs are entitled to attorney's fees or costs in the Litigation.

IV.

MISCELLANEOUS

(a) Any Party may seek specific performance to enforce the terms of this Stipulation.

(b) This Stipulation constitutes a single integrated written document that expresses the entire agreement and understanding between the Parties. This Stipulation may not be amended, altered or modified except by a written agreement duly executed by each Party.

(c) By entering into this Stipulation, none of Parties has waived or shall be deemed to have waived any rights, obligations, or positions it or they have asserted or may in the future assert in connection with any matter or person outside the scope of this Stipulation other than as set forth herein. No part of this Stipulation, its negotiation, or performance may be used in any manner in any action, suit or proceeding by any person as evidence of the rights, duties or obligations of any of the Parties with respect to matters or persons outside the scope of this Stipulation. All actions taken and statements made by the Parties or by their representatives, relating to this Stipulation or participation in this Stipulation, including but not limited to its development and implementation, shall be without prejudice or value as precedent, and shall not be used as a standard by which other matters may be judged. In entering this Stipulation, Plaintiffs make no admission about the accuracy or use of the SAVE database.

(d) This Stipulation shall not be deemed an admission or concession by any Party of liability, culpability, or wrongdoing. Any evidence of the terms of this Stipulation or negotiations or discussions associated with this Stipulation shall be inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the Parties, except in an action or proceeding between the Parties to enforce the terms of this Stipulation.

(e) All notices, demands, or other communication to be provided pursuant to this Stipulation (including communications to Supervisors of Elections) shall be in writing and sent to the Parties at the addresses set forth below, or to such other Person or address as any of them may designate in writing from time to time:

Plaintiffs:

Lorelie S. Masters
Marc Goldman
Jenner & Block LLP
1099 New York Avenue, NW

Washington, DC 20001

Defendant:

Daniel Nordby
Florida Department of State
R.A. Gray Building, Suite 100
500 South Bronough Street
Tallahassee, FL 32399-0250

(f) This Stipulation may be executed in multiple counterparts, all of which together shall constitute one and the same instrument. This Stipulation may be executed and delivered by facsimile, which facsimile counterparts shall be deemed to be originals. The Parties have authorized the signatories below to sign on their behalf.

[signatures on following page]

IN WITNESS WHEREOF, the Parties have duly executed this Stipulation as of the last date indicated below.

On behalf of: **Plaintiffs, Karla Vanessa Arcia, Melande Antoine, Veye Yo, Florida Immigrant Coalition, Inc., National Congress For Puerto Rican Rights, Florida New Majority, Inc., and 1199SEIU United Healthcare Workers East**

By: _____

Name: Marc Goldman

Title: Partner, Jenner & Block

Date: 9/12/12

On behalf of: **Defendant, Ken Detzner, in his Capacity as Secretary of State of the State of Florida**

By: _____

Name: Daniel Nordby

Title: General Counsel

Date: 9-12-12

EXHIBIT B

--- F.R.D. ----, 2012 WL 3194950 (N.D.Fla.)
(Cite as: 2012 WL 3194950 (N.D.Fla.))

Only the Westlaw citation is currently available.

United States District Court, N.D. Florida,
Tallahassee Division.
LEAGUE OF WOMEN VOTERS OF FLORIDA et al., Plaintiffs,
v.
Kenneth W. DETZNER, etc., et al., Defendants.

No. 4:11cv628–RH/WCS.
Aug. 6, 2012.

Abigail Emily Parent, Kendall Coffey, Coffey Burlington, Julie A. Ebenstein, Randall C. Marshall, ACLU of Florida, Miami, FL, Diana Kasdan, Farrah Robyn Berse, Paul Weiss Rifkind etc., Lee Berkley Rowland, Mimi Murray Digby Marziani, Wendy Robin Weiser, New York City, NY, Zachary Alan Dietert, Paul Weiss Rifkind etc LLP, Washington, DC, for Plaintiffs.

Ashley E. Davis, Daniel Elden Nordby, Florida Department of State, Blaine H. Winship, Office of the Attorney General, Tallahassee, FL, for Defendants.

ORDER DENYING LEAVE TO INTERVENE

ROBERT L. HINKLE, District Judge.

***1** This case presents a challenge to Florida Statutes § 97.0575, as amended in 2011, and to an implementing rule, Florida Administrative Code Rule 1S–2.042. The statute and rule regulate organizations that conduct voter-registration drives. The plaintiffs are organizations that have conducted such drives in the past and wish to continue to do so. The defendants are officials of the State of Florida in their official capacities.

The plaintiffs filed this action on December 15, 2011. They filed on December 19, 2011, a motion for a preliminary injunction barring enforcement of the statute and rule. After discovery, briefing, and a hearing, an order was entered on May 31, 2012, granting a preliminary injunction. On July 2, 2012, the defendants filed a timely notice of appeal.

Meanwhile, on June 27, 2012, more than six months after the filing of the preliminary-injunction motion, four individuals filed a motion for permissive intervention under Federal Rule of Civil Procedure 24(b). The four individuals do not conduct voter-registration drives and do not have any interest that will be affected by this litigation other than precisely the same interest as every registered voter in the state. The four individuals say that if people are improperly registered to vote, it will dilute the votes of properly registered voters, including the four individuals. That of course is true; an improper vote dilutes a proper one. But the motion to intervene is rife with hyperbole and assertions that are unsupported by the record. The motion even overstates the holding of the order granting a preliminary injunction. The motion gives little confidence that the four individuals will contribute to the effort to resolve this case accurately in accordance with the facts and law.

The motion to intervene said its primary purpose was to allow the four individuals to appeal the preliminary injunction. The motion said the defendants were unlikely to appeal. But now the defendants *have* appealed. Even so, the four individuals say—in a reply memorandum that this order grants leave to file and that has been fully considered—that the defendants will not vigorously pursue the appeal and instead are talking settlement with the plaintiffs. That may be, but there is little reason to believe the defendants will not vigorously pursue or abandon the appeal precisely as appropriate in light of their conscientious assessment of the law and the likely outcome of the litigation. 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. That the four individuals must challenge the state's willingness to aggress-

--- F.R.D. ----, 2012 WL 3194950 (N.D.Fla.)
(Cite as: 2012 WL 3194950 (N.D.Fla.))

ively litigate is perhaps all one need say about the individuals' own position.

I have considered all the circumstances and the governing law. *See, e.g., Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir.1993) ("This court will presume that a proposed intervenor's interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention." (citations omitted)); *Worlds v. Dep't of Health & Rehab. Servs.*, 929 F.2d 591, 595 (11th Cir.1991) (noting the breadth of a district court's discretion to grant or deny permissive intervention and upholding the denial of intervention based on the delay in moving to intervene); *Chiles v. Thornburgh*, 865 F.2d 1197, 1215 (11th Cir.1989) (upholding a district court's denial of permissive intervention to parties whose interests were identical to those of a governmental defendant); *see also Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1330 (11th Cir.2007) (addressing an intervenor's need for standing).

***2** I conclude, as a matter of discretion, that the four individuals should not be granted leave to intervene. Among the considerations supporting the decision are these: the four individuals have only the same interest in the issues as any other registered voter; the four individuals waited more than six months, until after entry of the preliminary injunction, to seek to intervene; intervention would interfere with the ability of the parties—the entities with the greatest stake in the litigation—to control the litigation and to have the issues resolved in the most just, speedy, and inexpensive manner possible, *see* Fed.R.Civ.P. 1; the defendants can and will adequately represent the interest of the state's voters, including the four individuals; and the tenor of the motion to intervene suggests the four individuals may impede, rather than contribute to, the reasoned determination of the action.

In reaching this decision, I have not overlooked *Meek v. Metropolitan Dade County, Florida*, 985 F.2d 1471 (11th Cir.1993), *abrogated on other grounds by Dillard*, 495 F.3d 1324. *Meek* was a challenge to at-large voting for a county commission. The Eleventh Circuit held that the district court should have allowed individuals to intervene for the purpose of appealing a judgment sustaining the challenge. The individuals' own voting rights were at stake; their claim was that the district court's decision would deny the individuals' own rights. The Eleventh Circuit said the county was not an adequate advocate for the at-large system and said the individuals should have been allowed to intervene to protect their own rights.

This case is different. The four individuals who seek to intervene have no right to prevent others from conducting voter-registration drives. The four individuals have no right to make it harder for other qualified applicants to register to vote. The four individuals have no right to require voter-registration organizations to turn in applications in person rather than by mail or to do so in the very narrow time frame—sometimes perhaps three minutes or less—required (in effect) by the challenged statute and rule. The four individuals have a right not to have their own votes diluted, but nobody proposes to allow unqualified individuals to register to vote; no ruling will be made authorizing any such thing. In short, the four individuals propose to advocate for a statute and rule they had no right to have enacted in the first place, and they seek to do so based only on what they say—without record support—will be the secondary effects of not upholding the statute and rule. This is not at all like the situation in *Meek*.

Moreover, while a county might not have a strong interest either way in whether commissioners are elected at large or in single-member districts, the same cannot be said of the state's interest in preventing the registration of unqualified voters. Just because a governmental entity is not *always* an adequate representative of a position does not mean a governmental entity is *never* an adequate representative. Here the defendants can be relied upon to adequately defend the challenged statute and

rule—at least to the point where they determine on the merits that the statute and rule are indeed invalid—and there are other grounds for denying intervention as well.

***3** It bears noting, too, that the four individuals have not acknowledged—or said they are willing to proceed in the face of—the very real possibility that if they intervene and carry this litigation forward after the defendants choose not to, and if the plaintiffs prevail as the order granting a preliminary injunction concludes they likely will, the law might allow a substantial award of attorney's fees against the four individuals. *See* 42 U.S.C. § 1988. This is not a basis for denying intervention. But if I had determined that intervention would otherwise be appropriate, before granting it I would have confirmed on the record that the four individuals understood the possible consequences. They should perhaps be careful what they wish for.

The four individuals will be welcome to file amicus briefs in this court as legal issues are presented for decision, so long as they hew faithfully to the record and make reasoned arguments under the law. But they will not be allowed to intervene.

For these reasons,

IT IS ORDERED:

The motion for leave to file a reply memorandum, ECF No. 75, is GRANTED. The motion for leave to intervene, ECF No. 63, is DENIED.

SO ORDERED.

N.D.Fla.,2012.
League of Women Voters of Florida v. Detzner
--- F.R.D. ----, 2012 WL 3194950 (N.D.Fla.)

END OF DOCUMENT

EXHIBIT C

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Viviette Applewhite; Wilola Shinholster Lee; Grover Freeland; Gloria Cuttino; Nadine Marsh; Dorothy Barksdale; Bea Bookler; Joyce Block; Henrietta Kay Dickerson; Devra Mirel ("Asher") Schor; the League of Women Voters of Pennsylvania; National Association for the Advancement of Colored People, Pennsylvania State Conference; Homeless Advocacy Project, Petitioners	:	
v.	:	No. 330 M.D. 2012
The Commonwealth of Pennsylvania; Thomas W. Corbett, in his capacity as Governor; Carole Aichele, in her capacity as Secretary of the Commonwealth, Respondents	:	

ORDER re INTERVENTION

AND NOW, this 29th day of May, 2012, upon consideration of the Verified Petition for Leave to Intervene Pursuant to Pa. R.A.P. 1531, and responses thereto, and after status conference on May 24, 2012, at which the offer of an evidentiary hearing was made, and after oral and written argument, it is **ORDERED** and **DECREED** as follows:

The Petition for Leave to Intervene is **DENIED**, because putative Intervenors failed to demonstrate that the determination of this action may affect any legally enforceable interest within the meaning of Pa. R.C.P. No. 2327(4).

Statement of Reasons

Putative Intervenors are qualified electors who intend to vote in this year's general election and a candidate for office to be filled in this year's general election. They claim standing by virtue of their status. Pet. at ¶¶14, 15. The qualified electors also assert that their fundamental right to vote may be diluted if this Court grants the relief requested by Petitioners. Pet. at ¶¶12, 13.

Putative Intervenors initially relied on out-of-state legal authority. At the status conference, however, they called the Court's attention to Pennsylvania cases. Nevertheless, despite the opportunity, they offered no proof to support their claims of "vote dilution" or potential loss of an equal opportunity to participate in the political process.

The cases upon which putative Intervenors rely are distinguishable.[1] More relevant authority persuades the Court that neither status as a voter or candidate nor possible "vote dilution" supports intervention.

Similar to the current case, in Mixon v. Commonwealth, 759 A.2d 442 (Pa. Cmwlth. 2000) (*en banc*), this Court addressed a constitutional challenge involving voter qualification. Resolving a standing issue for a voter, the Court stated the general rule that a person whose interest is common to that of the public

[1] Banfield v. Cortes, 922 A.2d 36 (Pa. Cmwlth. 2007) (*en banc*) (voters alleging they would be required to use improper voting machines had standing to initiate challenge). Moreover, cases involving challenges to nominating petitions and other pre-primary election procedures are not persuasive here. They involve expedited hearings and decisions which sometimes result in non-uniform holdings.

generally, in contradistinction to an interest that is peculiar to herself, lacks standing. Id. at 452. Moreover, the Court declined to apply the "vote dilution" basis for standing beyond its traditional application to minority voters in redistricting litigation, where the issue involved the potential loss of an equal opportunity to participate in the political process. Id at 453. Also, the Court rejected a standing argument based on the Supreme Court's decision in Bergdoll v. Kane, 557 Pa. 72, 731 A.2d 1261 (1999), which is parallel to an argument raised here. As a result, this Court determined the voter lacked standing. The same conclusion must be reached here.

In short, because any interest the putative Intervenors have in preventing fraudulent voters from casting votes in the general election is the same interest shared by all Pennsylvanians, they did not establish a legally enforceable interest within the meaning of Pa. R.C.P. No. 2327(4).

ROBERT SIMPSON, Judge

Certified from the Record
MAY 30 2012
And Order Exit