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' REPLY IN SUPPORT OF MOTION TO MODIFY PRE-TRIAL SCHEDULING ORDER

Defendant's Response to Plaintiffs' Expedited Motion to Modify Pre-Trial Scheduling Order fails to grapple with Plaintiffs' arguments as to why Plaintiffs' Motion should be granted.[1]

Because the final date this Court set for filing Amendments to the Complaint is August 22, 2012,

[1] Defendant instead chooses to spend much of his Response arguing that Plaintiffs erroneously described the claims at issue in *United States v. Florida*, No. 4:12-cv-00285-RH-CAS (N.D. Fla. 2012). This point is irrelevant and only partly correct. It is true that it is *Mi Familia Vota Education Fund v. Detzner*, No. 8:12-cv-01294-JDW-MAP (M.D. Fla. 2012), a case pending in the Middle District of Florida, that asserts a § 5 claim under the Voting Rights Act. But *United States v. Florida*, the Northern District case, is itself simpler than the case here, as that case includes only claims under § 8 of the NVRA and does not involve a discrimination claim under § 2 of the Voting Rights Act as the present case does.

and because Plaintiffs quickly need discovery in order to litigate fact-based claims prior to the general election, it is critical that this Court grant Plaintiffs' Motion quickly.

In his Response to Plaintiffs' Motion, Defendant agrees that the date for mediation and the date for final trial should be moved. *See* D. Br. at 2. But he disagrees with Plaintiffs' proposal to extend the deadline for filing Amendments to the Complaint, stating that Plaintiffs have already issued discovery requests related to the SAVE database. *See id.* at 3. That argument is not responsive to either reason Plaintiffs provided for extending the amendment date. First, it would be preferable for amendment to occur after Defendant has articulated the State's precise plans for use of the SAVE database, which would enable the Amended Complaint to be more fully fleshed out. *See* Pl. Br. at 7-10. Second, under the current scheduling order, Plaintiffs cannot wait a full 20 days after sending their supplemental August 3 notice letter before filing an Amended Complaint. *Id.* If the Court opts not to modify its Order to grant Plaintiffs an extension of time to file an Amended Complaint, in light of Defendant's declaration that such an extension is "unnecessary," D. Br. at 3, the Court should include in its order a statement clarifying that Defendant has received sufficient notice of Plaintiffs' NVRA claims and has therefore waived any argument that Plaintiffs did not provide 20 days notice within which to cure his violations. In the alternative, the Court should find that Defendant's proclamation that it is "unnecessary" for Plaintiffs to wait a full 20 days from the date – August 3 – of their most recent notice letter is dispositive evidence that to require Plaintiffs to wait the full 20 days would be futile, as Defendant's statement evidences his intent to continue purging the voter registration rolls notwithstanding any violation of the NVRA.

Defendant's argument against Plaintiffs' request for expedited discovery is equally unsupported. Defendant states that one of Plaintiffs' claims is a legal claim for which little

discovery is needed. *See* D. Br. at 3. That is a non sequitur. Defendant ignores Plaintiffs' need for discovery with respect to their other claims, which are fact based.[2] Defendant further contends that, because he will respond to Plaintiffs' First Requests for Production by the September 15 close of discovery, there is no need for expedited discovery. But as Plaintiffs explained in their Motion, this timing means that Plaintiffs will not receive Defendant's discovery responses before expert reports are due, before depositions must be taken, or in time to conduct any follow-up discovery. Pl. Br. at 3-4.

In light of the quickly approaching November election, Plaintiffs fully support the need for expedited proceedings in this case, as this Court's August 13 Orders contemplate. Expedited discovery procedures are, however, necessary to Plaintiffs' ability to timely and adequately support their claims with facts and information presently possessed only by Defendant.

As a further example, under Defendant's proposal to set a briefing schedule in which motions for preliminary injunction are due on September 14, Plaintiffs would not have discovery before their preliminary injunction brief must be filed. This fact demonstrates not only the practical impossibility of maintaining a 30-day discovery response time in this case, but also of the September 14 briefing deadline Defendant proposes. Even with an expedited discovery schedule, it would be very difficult for Plaintiffs to obtain documents, take any depositions, and perform the expert analysis required to prove discrimination in time to be ready for a hearing or trial immediately after the October 5 Pre-Trial Conference set by this Court, much less by September 14. And Defendant certainly does not need two weeks to prepare his response, as he

[2] Defendant is also wrong that it would have made sense for Plaintiffs to ask for an injunction on their 90-day claim earlier. Given the ongoing developments in Defendant's plan to purge the voter rolls, Plaintiffs believe any injunction should encompass Defendants' use of the SAVE database; therefore, Plaintiffs wanted to confirm that the State intended to proceed with its plan to use the SAVE database within 90 days of a federal election before asking for a preliminary injunction against use of that database within the 90-day period.

proposes. Defendant is fully capable of working on his brief concurrently with Plaintiffs. Finally, Defendant's proposed briefing schedule improperly omits any time for Plaintiffs to file a reply in support of their motion.

Finally, Defendant requests a limit on Plaintiffs' substantive discovery that, as Plaintiffs have already explained, would prevent Plaintiffs from having any discovery on their claims regarding actions Defendant already has undertaken or on Defendant's plan for future use of the SAVE database. *See* Pl. Br. at 4-5 n.3. Yet again, Defendant simply ignores Plaintiffs' argument on this point. Moreover, Defendant's proposed limitation on discovery is inconsistent with his own suggestion that he will respond by September 15 to the discovery Plaintiffs have sought regarding the use of the SAVE database.[3] *See* Def. Br. at 2.

CONCLUSION

For all the reasons articulated in their Expedited Motion to Modify Pre-Trial Scheduling Order, and herein, Plaintiffs respectfully urge that this Court expeditiously modify its August 13 Order for Pre-Trial Conference based on the parameters requested by Plaintiffs.

Dated: August 20, 2012

Respectfully submitted,

By: /s/ John De Leon

John De Leon, Esq.
Florida Bar No. 650390
LAW OFFICES OF CHAVEZ & DE LEON
5975 Sunset Drive, Suite 605
South Miami, FL 33143
(305) 740-5347
(305) 740-5348 (fax)
jdeleon@chavez-deleon.com

[3] Incidentally, Federal Rule of Civil Procedure 34(b)(2)(A) requires that Defendant respond to Plaintiffs' First Requests for Production, which were served on August 15, 2012, no later than September 14, 2012.

Of Counsel:
Catherine M. Flanagan, Esq.
Michelle Kanter Cohen, Esq.
PROJECT VOTE
1350 I St., N.W., Suite 1250
Washington, DC 20005
(202) 546-4173
(202) 629-3754 (fax)
cflanagan@projectvote.org
mkantercohen@projectvote.org

Ben Hovland, Esq.
FAIR ELECTIONS LEGAL NETWORK
1825 K Street NW, Suite 450
Washington, D.C. 20006
(202) 248-5346
(202) 331-1663 (fax)
bhovland@fairelectionsnetwork.com

Juan Cartagena, Esq.
Jose Perez, Esq.
Diana Sen, Esq.
LATINOJUSTICE PRLDEF
99 Hudson Street, 14th Floor
New York, NY 10013-2815
(212) 219-3360
(212) 431-4276 (fax)
jcartagena@latinojustice.org
jperez@latinojustice.org
dsen@latinojustice.org

Lorelie S. Masters, Esq.
Marc A. Goldman, Esq.
JENNER & BLOCK, LLP
1099 New York Ave., N.W.
Suite 900
Washington, DC 20001-4412
(202) 639-6000
(202) 639-6066 (fax)
lmasters@jenner.com
mgoldman@jenner.com

J. Gerald Hebert, Esq.
191 Somervelle Street, #415
Alexandria, VA 22304
(703) 628-4673
(703) 567-5876 (fax)
hebert@voterlaw.com

Katherine Roberson-Young, Esq.
Florida Bar No. 038169
3000 Biscayne Blvd., Suite 212
Miami, Florida 33137
(305) 571-4082
(305) 571-1396 (fax)
katherine.roberson-young@seiu.org

Penda Hair, Esq.
Katherine Culliton-Gonzalez, Esq.
Uzoma Nkownta, Esq.
ADVANCEMENT PROJECT
1220 L Street, N.W., Suite 850
Washington, D.C. 20005
(202) 728-9557
(202) 728-9558 (fax)
pendahair@advancementproject.org
kcullitongonzalez@advancementproject.org
unkownta@advancementproject.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on August 20, 2012, a true and correct copy of the foregoing was served on all counsel of record via CM/ECF.

Dated: August 20, 2012

By: /s/ John De Leon
John De Leon