IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

KARLA VANESSA ARCIA, an individual, MELANDE ANTOINE, an individual, VEYEYO, 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 119SEIU UNITED HEALTHCARE WORKERS EAST, a Labor Union, **Plaintiffs,** **v.** **KEN DETZNER, in his official capacity as Florida Secretary of State,** **Defendant.**	**CASE NO. 1:12-cv-22282-WJZ**

RESPONSE TO PLAINTIFFS' EXPEDITED MOTION TO MODIFY PRE-TRIAL SCHEDULING ORDER AND MEMORANDUM IN SUPPORT

Defendant, Florida Secretary of State Kenneth W. Detzner ("Secretary"), hereby responds to Plaintiffs' Expedited Motion to Modify Pre-Trial Scheduling Order (ECF No. 39) and Memorandum in Support (ECF No. 39-1) as follows.

At the outset, the Secretary corrects Plaintiffs' misstatement regarding the action pending in the Northern District of Florida, *United States v. Florida*, No. 4:12-cv-00285-RH-CAS. *See* (ECF No. 39-1, at 6-7). Plaintiffs allege that the action in the Northern District is "on a much simpler claim under § 5 of the Voting Rights Act in which…the preliminary injunction hearing is not set." (ECF No. 39-1, at 6-7). This is incorrect. The United States brought the same claims under Section 8 of the NVRA that Plaintiffs have brought here. *See United States v. Florida*,

No. 4:12-cv-00285-RH-CAS, (ECF No. 2). Moreover, the District Court for the Northern District of Florida treated the motion for temporary restraining order it denied at the hearing on June 27, 2012, as a motion for preliminary injunction because "the nomenclature makes no difference." *United States v. Florida*, No. 4:12-cv-00285-RH-CAS, (ECF No. 34, at 1) (June 28, 2012) (opinion on order denying motion for temporary restraining order) ("confirm[ing] the ruling announced at greater length on the record…").

The Secretary does not oppose Plaintiffs' request to amend the Court's Order (ECF No. 36) to "[e]xtend the close of mediation from August 6, 2012, until September 7, 2012." (ECF No. 39, at 2).

The Secretary does not oppose Plaintiffs' request to amend the Court's Order (ECF No. 36) to "set a final trial date several months after the November 6, 2012 general election," as he agrees that the need for a final trial might not arise. (ECF No. 39, at 2-3).

The Secretary does not oppose Plaintiffs' request to amend the Court's Order (ECF No. 36) to "[r]e-designat[e] the date currently set for trial[1] as the date for a potential preliminary injunction hearing," (ECF No. 39, at 2-3), on the condition that the following briefing schedule is set:

a. By no later than September 14, 2012, Plaintiffs file a motion for preliminary injunction;

b. By no later than October 5, 2012, Defendant files his response to Plaintiffs' motion for preliminary injunction; and

c. A hearing on Plaintiffs' motion for preliminary injunction will be set as soon thereafter as the Court finds convenient.

[1] No trial date has been set. The Court has only indicated that the parties "be ready for trial at any time after the pre-trial conference" currently set for October 5, 2012. (ECF No. 36). The Secretary interprets Plaintiffs' request as a request to set a hearing on their potential preliminary injunction motion as soon after October 5 as the Court finds convenient.

Further, because Plaintiffs request to convert the final trial into a hearing on a preliminary injunction motion they have yet to file, the Secretary renews his request that "discovery be limited to the Plaintiffs' entitlement, if any, to retrospective relief regarding any registered voters who were wrongfully removed from the voter registration rolls based on the Secretary's provision of MDAVE data to the county Supervisors of Elections in April 2012." (ECF No. 35, at 4-5).

The Secretary opposes Plaintiffs' request to amend the Court's Order (ECF No. 36) to permit expedited discovery and a later date by which to amend the Complaint. (ECF No. 39, at 2). Plaintiffs' request is unnecessary and should not be granted for additional reasons. Plaintiffs acknowledge that their claim under Section 8 of the NVRA regarding the 90-day "quiet period" requires little, if any, discovery and can be resolved quickly, but Plaintiffs have yet to move that claim forward. *Cf. United States v. Florida*, No. 4:12-cv-00285-RH-CAS, (ECF Nos. 2, 7) (moving for relief on the same Section 8 claim within three days of filing the complaint). Moreover, on August 15, 2012, Plaintiffs have sought the production of documents encompassing both the claims in their current complaint as well as the claims concerning the Department of State's access to the SAVE database that Plaintiffs state they intend to include in an as-yet-unfiled Amended Complaint. *See* (ECF No. 40) (Notice of Service of Plaintiffs' First Requests for Production); (ECF No. 39-1, at 9) (alleging that "Plaintiffs intend to amend their Complaint to set forth claims expressly encompassing Defendant's use of the SAVE database"). Under the normal, 30-day response time set by the Federal Rules, Plaintiffs will receive the requested, non-privileged documents (subject to objections) by September 15, 2012, the date currently set for the close of discovery. *See* (ECF No. 36). There is thus no need to amend the Court's Order to permit expedited discovery or a later date by which to amend the Complaint.

Plaintiffs' motion to amend the Court's Order (ECF No. 36) as to expedited discovery and amendment of the Complaint should therefore be denied.

Respectfully submitted,

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Counsel for Kenneth W. Detzner
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing will be sent electronically to all counsel of record via the Clerk's CM/ECF system this 17th day of August, 2012.

/s/ Ashley E. Davis
Attorney