

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

LEAGUE OF WOMEN VOTERS OF
FLORIDA,

Plaintiff,

v.

RICHARD SCOTT, in his official
capacity as Governor of the State of
Florida, and KEN DETZNER, in his
official capacity as Secretary of State of
the State of Florida,

Defendants.

Case No. _____

COMPLAINT FOR EMERGENCY INJUNCTIVE AND
DECLARATORY RELIEF

Plaintiff, by its attorneys, the Brennan Center for Justice at New
York University School of Law, and Paul, Weiss, Rifkind, Wharton &
Garrison LLP, for its complaint against Defendants allege as follows:

Nature of the Action

1. On October 6, Governor Scott implored more than a million Florida residents in the path of Hurricane Matthew to “[e]vacuate, evacuate, evacuate.” Arek Sarkissian et al., *Hurricane Matthew: Florida Governor Says ‘Evacuate, Evacuate, Evacuate,’* USA Today (Oct. 6, 2016), <http://www.usatoday.com/story/news/nation/2016/10/06/hurricane-matthew-batters-bahamas-set-strengthen-florida-approach/91652096/>. The day before, he had ordered State offices in 26 counties closed on October 6 and 7. *Governor Scott Directs State Office Closures in 26 Counties* (Oct. 5, 2016), <http://www.flgov.com/2016/10/05/governor-scott-directs-state-office-closures-in-26-counties/>.

2. “Time is running out” to escape the deadliest hurricane in a decade, the Governor declared, as County and State elections offices, motor vehicle departments and post offices shut down from Miami to Jacksonville. Sarkissian et al., *supra*. Time also was running out for Floridians to register to vote. In total, 25 counties were issued an evacuation order (mandatory or voluntary). With October 11, 2016, then looming as the registration deadline, the means and locations for aspiring voters to register were closed, inaccessible or out of reach on what ordinarily are the busiest voter registration days of the year. Residents of Florida count on the final days of the registration period to submit their applications for the upcoming

elections, especially for presidential elections. Registrations submitted in Florida in the week leading up to book closing typically account for 13 to 20 percent of new registrations in presidential years, according to a 2008 analysis. *See* McDonald Decl. 5-6, *League of Women Voters v. Browning*, 575 F. Supp. 2d 1298 (S.D. Fl. 2008), *available at*

[http://www.brennancenter.org/sites/default/files/legacy/Democracy/Florida LOWVvBrowning%20-%202006-06-08%20Expert%20Declaration%20of%20Michael %20McDonald.pdf](http://www.brennancenter.org/sites/default/files/legacy/Democracy/Florida%20LOWVvBrowning%20-%202006-06-08%20Expert%20Declaration%20of%20Michael%20McDonald.pdf).

Consistent with that data, estimates from 2012 indicate that approximately 156,306 persons registered during the last nine days of the registration period—amounting to approximately 18 percent of new registrations that year. *See* Fla. Dep’t of St., Div. of Elections, Bookclosing Reports – Regular, http://dos.myflorida.com/media/693854/gen2012_countyparty.pdf; Fla. Dep’t of St., Div. of Elections, Voter Registration Monthly Reports, <http://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-monthly-reports/>. Based on past voter registration data, the bulk of the registrations during that period are submitted in the final days of the voter registration period.

3. This year, tens of thousands of Florida residents have been denied the opportunity to register to vote – and thus will be deprived of their right to

vote – because Hurricane Matthew and the resultant shutdown of all means of voter registration, including government offices, roads, the Internet, and the postal service. The Plaintiff League of Women Voters of Florida wrote to the Governor on October 7, 2016, requesting that, in the wake of the hurricane, and given that this Monday was Columbus Day, the registration deadline be extended at least until the end of this week. The Governor rejected that and similar requests, thereby ensuring that thousands and thousands of Florida residents would be unable to have the full opportunity to register provided them by the National Voter Registration Act (the “NVRA”).

4. On October 9, the Florida Democratic Party filed suit in this Court, seeking a temporary restraining order and a preliminary injunction. On October 10, this Court granted a temporary restraining order and extended the registration deadline one day to October 12.

5. To “*ensure that any eligible applicant is registered to vote in an election,*” the NVRA requires that the State give every eligible applicant the opportunity to obtain and submit a valid voter registration form, in person or by mail, during the period up to 30 days before the date of the election, or a shorter period provided under state law. 52 U.S.C. § 20507(a)(1). That is

the law for residents who register by submitting their applications to the State motor vehicle authority. That is the law for residents who register by submitting their applications to State or County voter registration agencies. And that is the law for residents who register by mailing their applications: they must be postmarked no later than 30 days before Election Day.

6. By denying that prescribed time and opportunity to Florida's eligible applicants, Governor Scott has violated the NVRA and thwarted Congress's purpose in passing the NVRA: to "increase the number of eligible citizens who register to vote" and "enhance[] the participation of eligible citizens as voters." 52 U.S.C. § 20501. Post offices closed and postal service was suspended last week, and mail operations were not approaching normal service statewide until October 11. With a total of 43 counties closing state and county offices on October 7, motor vehicle and elections offices were shuttered. *See Gov. Scott Issues Updates on Hurricane Matthew Preparedness and Response Efforts as Storm Impacts Florida* (Oct. 6, 2016), <http://www.flgov.com/2016/10/06/gov-scott-issues-updates-on-hurricane-matthew-preparedness-and-response-efforts-as-storm-impacts-florida/>. With all mechanisms for voter registration effectively suspended

for days, aspiring voters who planned to register in person for much of last week were blocked.

7. Extending the voter registration deadline to make up for the days lost to Hurricane Matthew—including the critical last weekend—is the only way for the State of Florida to comply with the NVRA and protect the right to vote for thousands of eligible applicants. It also is the only way for the State to avoid violating the First Amendment and the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.

Jurisdiction and Venue

8. Plaintiff brings this action under 52 U.S.C. §§ 20501-20511, and under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation under color of state law of rights secured by the United States Constitution.

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because the matters in controversy arise under the Constitution and laws of the United States, because Plaintiff brings this action to redress the deprivation, under color of state law, of rights, privileges, and immunities secured by the Constitution of the United States and federal law, and because Plaintiff brings this action to secure

equitable relief under federal law providing for the protection of voting rights.

10. This Court has personal jurisdiction over Defendants, who are sued in their official capacity.

11. Venue is proper in this district, pursuant to 28 U.S.C. § 1391(b), on the grounds that Defendants reside in this district and a substantial part of the events or omissions giving rise to the claims alleged herein occurred, and will continue to occur, in this district.

12. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 64 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.

Parties

13. Plaintiff LEAGUE OF WOMEN VOTERS OF FLORIDA (“LWVF” or the “League”) is the Florida affiliate of the League of Women Voters of the United States. LWVF is a nonpartisan, non-for-profit corporation organized under the laws of Florida, and a tax-exempt entity pursuant to sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. Its mission

is to promote civic engagement by encouraging the informed and active participation of citizens in government, including by registering citizens to vote and influencing public policy through education and advocacy. LWVF has approximately 4,000 current dues-paying members in Florida and a list of more than 20,000 members, supporters, and volunteers, who receive regular communications from the League.

14. The National League has conducted voter registration nationwide since 1920 and LWVF has conducted voter registration in Florida since before 1939. LWVF conducts voter registration drives in a variety of settings through the auspices of its 31 local Leagues of Women Voters (“Local Leagues”), which are located in cities and counties throughout Florida, including Tallahassee and the counties impacted by Hurricane Matthew. Local Leagues and individual League members also engage in voter registration activities on their own initiative, without assistance from LWVF, collecting and submitting forms on their own. At least three Local Leagues register newly-naturalized citizens at citizenship ceremonies.

15. About 15 Local Leagues were forced to suspend their voter registration activities on October 6 and 7, because of danger or destruction caused by Hurricane Matthew. Some Local Leagues also had to suspend

their registration activities on Saturday. And, as of the close of business on Monday, October 11, at least four Local Leagues were still unable to resume their registration activities because of unsafe travel conditions or the inaccessibility of internet service.

16. Defendants' refusal to extend the voter registration deadline in the face of a natural disaster makes it impossible or unduly difficult for many Floridians to register to vote by the October 11, 2016, deadline, directly harming LWVF and its members. It also prevents LWVF from carrying out its core activity of registering Florida citizens to vote during the busiest registration days of the year.

17. Defendant RICHARD SCOTT is sued in his official capacity as Governor of the State of Florida. Defendant Scott is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law. As Governor of Florida, Defendant Scott is the state's chief executive officer and is responsible for the administration of all state laws, including those pertaining to voter registration.

18. Defendant KEN DETZNER is sued in his official capacity as Secretary of State for the State of Florida. Defendant Detzner is a person within the meaning of 42 U.S.C. § 1983 and acts under color of state law.

Pursuant to Florida Statute § 97.012, the Secretary of State is the chief election officer of the State and is responsible for the administration of state laws on voting, including those pertaining to voter registration. His responsibilities include “[o]btain[ing] and maintain[ing] uniformity in the interpretation and implementation of the election laws” and “[p]rovid[ing] uniform standards for the proper and equitable implementation of the registration laws.” Fla. Stat. § 97.012. As such, Secretary Detzner, among other things, must coordinate the State’s responsibilities under the NVRA and ensure that all voter registration applications and forms prescribed or approved by the Florida Division of Elections are in compliance with the NVRA. *Id.*

STATEMENT OF FACTS AND LAW

19. The NVRA, 52 U.S.C. § 20507(a)(1), requires states to ensure “that any eligible applicant is registered to vote” if they submit their registration form as close to Election Day as the state will provide—and that in any event the state cannot require voters to register more than 30 days prior to an election. Florida law requires eligible United States citizens who seek to vote in the November 8, 2016 presidential election to register to vote by October 11, 2016, which is 29 days before Election Day. *See* Fla. Stat. §§

97.053, 97.055, 97.0555; *see also* Fla. Dep't of St., Div. of Elections, 2016 Florida Voter Registration and Voting Guide, *available at* <http://dos.myflorida.com/media/693760/voter-registration-guide.pdf> (last visited Oct. 10, 2016).

20. To register, voters must complete a paper Florida Voter Registration Application or the national mail-in voter registration form (which may be obtained online) and deliver it, either in person or by mail, to the office of the County Supervisor of Elections, the Florida Division of Elections, any Department of Motor Vehicles, any office that issues Florida ID cards, any military recruitment office, any public library, any office that primarily serves persons with disabilities, and/or a third-party voter registration agency by October 11, 2016. *See* Fla. Stat. § 97.053.

21. There is no other way in which Florida residents may register to vote. Unlike many other states, Florida does not permit residents to register to vote online at this time. *See id.*

22. Florida residents are barred from exercising their right to vote if they do not meet the registration deadline, as Florida does not permit eligible voters to register to vote on Election Day.

23. A significant number of Florida residents register to vote in the week leading up to the registration deadline. Registrations submitted in Florida in the week leading up to book-closing typically account for 13 to 20 percent of new registrations in presidential election years, according to a 2008 analysis.

See McDonald Decl. 5-6, League of Women Voters v. Browning, 575 F.

Supp. 2d 1298 (S.D. Fl. 2008), *available at*

[http://www.brennancenter.org/sites/default/files/legacy/Democracy/Florida LOWVvBrowning%20-%202006-06-](http://www.brennancenter.org/sites/default/files/legacy/Democracy/Florida%20LOWVvBrowning%20-%202006-06-08%20Expert%20Declaration%20of%20Michael%20McDonald.pdf)

[08%20Expert%20Declaration%20of%20Michael %20McDonald.pdf](http://www.brennancenter.org/sites/default/files/legacy/Democracy/Florida LOWVvBrowning%20-%202006-06-08%20Expert%20Declaration%20of%20Michael%20McDonald.pdf).

Consistent with that data, estimates from 2012 indicate that approximately 156,306 persons registered during the last nine days of the registration

period—amounting to approximately 18 percent of new registrations that

year. *See Fla. Dep’t of St., Div. of Elections, Bookclosing Reports –*

Regular, http://dos.myflorida.com/media/693854/gen2012_countyparty.pdf;

Fla. Dep’t of St., Div. of Elections, Voter Registration Monthly Reports,

[http://dos.myflorida.com/elections/data-statistics/voter-registration-](http://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-monthly-reports/)

[statistics/voter-registration-monthly-reports/](http://dos.myflorida.com/elections/data-statistics/voter-registration-statistics/voter-registration-monthly-reports/). Based on annual trends, the

bulk of the registrations come during the last days of registration.

24. On October 6, 2016, six days before the state’s voter registration

deadline, Hurricane Matthew hit Florida with 130-mile-per-hour winds.

Broad swaths of the state suffered significant and devastating impacts.

President Barack Obama declared a state of emergency in more than two dozen Florida counties and Defendant Scott ordered 1.5 million Florida residents to evacuate their counties of residence and relocate inland.

25. By the next day, over one million Florida residents were without power, over 500,000 were in evacuation zones, and thousands were in shelters. Roads and bridges were destroyed, flooded, or otherwise impassable. Under Governor Scott's orders, state and county offices—including motor vehicle offices and other government agencies that are required by law to offer voter registration services—were closed in 43 of Florida's 67 counties. All Board of County Commissioners offices were closed for the remainder of that week. The United States Postal Service suspended operations in most (if not all) areas affected by Hurricane Matthew. Arek Sarkissian et al., *Hurricane Matthew: Florida Governor Says 'Evacuate, Evacuate, Evacuate,'* USA Today (Oct. 6, 2016), <http://www.usatoday.com/story/news/nation/2016/10/06/hurricane-matthew-batters-bahamas-set-strengthen-florida-approach/91652096/>; J.J. Gallagher et al., *Matthew Batters Florida; 4 Dead, Over 1 Million Lose Power*, ABC News (Oct. 8, 2016), <http://6abc.com/weather/matthew-batters-florida;-4-dead-over-1-million-lose-power-/1543621/>; *Postal Service Prepping for*

Hurricane Matthew, WHJG (Oct. 6, 2016),

[http://www.wjhg.com/content/news/Postal-service-prepping-for-Hurricane-](http://www.wjhg.com/content/news/Postal-service-prepping-for-Hurricane-Matthew-396212161.html)

[Matthew-396212161.html](http://www.wjhg.com/content/news/Postal-service-prepping-for-Hurricane-Matthew-396212161.html); *Closings, Cancellations Due to Hurricane*

Matthew, WTSP (Oct. 6, 2016),

[http://www.wtsp.com/news/local/florida/closings-due-to-hurricane-](http://www.wtsp.com/news/local/florida/closings-due-to-hurricane-matthew/329299515)

[matthew/329299515](http://www.wtsp.com/news/local/florida/closings-due-to-hurricane-matthew/329299515); *Gov. Scott Issues Updates on Hurricane Matthew*

Preparedness and Response Efforts as Storm Impacts Florida, Rick Scott

(Oct. 6, 2016), <http://www.flgov.com/2016/10/06/gov-scott-issues-updates-on-hurricane-matthew-preparedness-and-response-efforts-as-storm-impacts-florida/>.

26. Hurricane Matthew and its aftermath effectively prevented Florida residents from registering to vote up to 30 days before the election, during what is typically the busiest registration season every four years. Governor Scott ordered Florida residents to evacuate from their counties of residence and to remain indoors and off the roads. These orders, while certainly necessary for public safety, effectively prevented Florida residents from registering to vote in person. And, even if individuals violated these orders, it was highly improbable that any office permitted to accept voter registrations would even have been open. And, due to widespread and still-ongoing power outages, prospective voters may not have been able to even

access, download, and print the registration forms to be mailed. On Monday morning, Columbus Day, over 175,000 Floridians were still left without power. Most outages were in Volusia and Flagler counties. Stephanie Allen, *Thousands Still Without Power, Cleaning up After Hurricane Matthew*, Orlando Sentinel (Oct. 10, 2016), <http://www.orlandosentinel.com/weather/hurricane/os-hurricane-matthew-monday-20161010-story.html>.

27. For all practical purposes, voter registration was unavailable in numerous counties affected by Hurricane Matthew between Thursday, October 6, and the morning of Tuesday, October 11, and in a number of those counties, access to voter registration was still significantly reduced even on October 11.

28. Certain populations were especially affected. As just one example, Florida residents in certain counties who were scheduled to be naturalized on October 7, had their swearing-in ceremonies postponed because of the hurricane. These individuals, who would have had time to register as first-time voters upon naturalization, are now precluded from being able to access the franchise. They include, for example, Lilly Paez, a 28-year-old Coral Gables resident. *See* Paez Decl. 1. Ms. Paez initiated the naturalization

process with the specific hopes of being eligible to vote in the 2016 presidential election and was scheduled to become a citizen on October 8. *See id.* at 2. Her naturalization ceremony was cancelled without notice and is now scheduled to take place on October 15—too late for her to register and vote in this election even under the scheduled as adjusted by this Court’s October 10 order. *See id.* at 5. Ms. Paez is not the only aspiring voter affected in this way. The League is aware of at least four naturalization ceremonies scheduled for October 7 and 8 that were postponed because of Hurricane Matthew. Goodman Decl. at ¶ 20. In two of these locations, the ceremonies have been rescheduled for dates later than October 12, but before October 18. *Id.* Each naturalization ceremony could result in hundreds of new citizens being sworn in and potentially hundreds of new voters then registered. *Id.* The State’s refusal to extend the deadline has real consequences for these hundreds of people who could have registered to vote before the deadline but because of Hurricane Matthew, cannot.

29. LWVF had planned at least two voter registration drives for the ceremonies originally scheduled for October 8, and would have had the opportunity to register 200-300 new American citizens, had those ceremonies not been postponed because of Hurricane Matthew.

30. Minority voters were especially affected by the hurricane-related disruptions. Among numerous others, the Governor ordered state and county offices closed in nine of the state's ten largest counties, a number of which also have sizeable minority populations. These include: Miami-Dade (66.8% Hispanic or Latino, 18.7% African American), Broward (28% Hispanic or Latino, 29.2% African American), and Orange (29.8% Hispanic or Latino, 22.3% African American) counties. United States Census QuickFacts (2015 estimates), <http://www.census.gov/quickfacts/> (last visited Oct. 11, 2016). That group of the largest counties also includes jurisdictions with close divides in the number of active voters registered with one of the two major political parties, including Pinellas (225,290 Republicans and 224,655 Democrats), Polk (142,363 Republicans and 145,210 Democrats), and Duval (215,023 Republicans and 230,520 Democrats). Florida Department of State, Division of Elections, 2016 Primary Election: Active Registered Voters by Party as of August 1, 2016 (Sept. 16, 2016), http://dos.myflorida.com/media/696932/2016primary_party.pdf.

31. Hurricane Matthew forced approximately 15 of LWVF's 31 chapters to cancel voter registration drives on or after October 6. The League had to cancel drives in Broward, Miami-Dade, Orange, and Palm Beach Counties—four of the five most populous counties in the state. Many local

leagues had to cancel drives through Saturday, October 8, and at least four leagues—Brevard, Flagler, Jacksonville/First Coast, and Volusia—still have not been able to resume voter registration activities; as of the end of the day on Monday, October 10, many areas in which these Local Leagues operate were still without power, internet access, postal service and were still inundated with floodwaters.

32. When registration efforts did resume, the impact of lost time was felt immediately. For example, when the Orange County League was finally able to resume voter registration for a few hours on Saturday, October 8, they encountered long lines of people wishing to register. These included young women, minorities, and other communities the League seeks to register. Although the League was able to register many voters in this short time window, the volume of registration underscored the lost opportunities on Thursday, Friday, and the remainder of Saturday—not to mention other areas of the state in which registration activities *still* have not resumed.

33. On October 7, 2016, Plaintiff asked Governor Scott to extend the voter registration deadline to Friday, October 14, 2016. In that letter, Plaintiff noted the devastating impact of Hurricane Matthew on all voters,

and that Governor Nikki Haley of neighboring South Carolina had extended that state's registration deadline as a result of the storm.

34. Despite repeatedly acknowledging the unprecedented and severe impact of the storm, Governor Scott nonetheless refused to extend the voter registration deadline. See Reena Flores, *Rick Scott Won't Extend Florida Voter Registration Because of Hurricane*, CBS News (Oct. 7, 2016), <http://www.cbsnews.com/news/rick-scott-wont-extend-florida-voter-registration-because-of-hurricane/>. Governor Scott suggested that the additional time was not necessary because “[e]verybody’s had a lot of time to register.” *Id.* Defendant Scott simply stated “this is politics.” *Id.*

35. Defendants’ refusal to extend the voter registration deadline will disenfranchise a significant number of eligible Florida voters. Those eligible voters who cannot register in time, cannot vote in the November 8, 2016 presidential election.

36. Florida stands alone in its refusal to protect its voters. Other states affected by natural disasters, including Hurricane Matthew, have worked to expand and protect the franchise.

CLAIMS FOR RELIEF

First Cause of Action

COUNT I:

Violation of Section 8 of the National Voter Registration Act

37. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

38. Section 8 of the NVRA requires states to process any voter registration form received or postmarked no later than 30 days of an election. 52 U.S.C. § 20507(a)(1).

39. Under 52 U.S.C. § 20507(a)(1), each State is required to:

(1) ensure that any eligible applicant is registered to vote in an election –

A. in the case of registration with a motor vehicle . . . if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

B. in the case of registration by mail . . . if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

C. in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election[.]

52 U.S.C. § 20507(a)(1) (emphasis added).

40. These provisions are intended to ensure that eligible United States citizens have sufficient time to register to vote and thus, are not forced to register to vote more than thirty days in advance of a federal election.

41. These provisions must be interpreted in the context of the primary purpose of the statute as a whole. Congress’s purpose in passing the NVRA was to “increase the number of eligible citizens who register to vote in elections” and “enhance[] the participation of eligible citizens as voters,”

52 U.S.C. § 20501, and to protect the active role that community-based voter registration groups play in the registration process. *See Id.*

42. Stated in other words, the NVRA was intended to “ensure that no American is denied the ability to participate in Federal elections because of real or artificial barriers . . . [and] to make voter registration an inclusive, rather than an exclusive opportunity in the United States.” 139 Cong. Rec. H495-04 (1993) (statement of Rep. Martin Frost).

43. The NVRA was partially enacted in response to low voter turn-out. Former Florida Governor Bob Graham, during his tenure in the U.S. Senate, explained that “too many eligible voters became interested in the 1992 election only to find they were too late – they had missed the registration deadline. It is time for reform.” 139 Cong. Rec. S2988-01 (1993) (statement of Sen. Bob Graham).

44. Similarly, House members recognized that “[t]he unfinished business of registration reform is to reduce these obstacles to voting to the absolute minimum while maintaining the integrity of the electoral process.” H.R. Rep. No. 103-9, at 3 (1993).

45. Toward that end, the NVRA “provides that the registration cutoff may be no more than 30 days before election or such lesser period as State may provide.” H.R. Rep. No. 103-66, at 20 (1993) (Conf. Rep.).

46. The NVRA also focused on increasing voting access to traditionally disenfranchised communities. It did so by increasing the places open for in-person voter registration. For example, the conference report expressed concern that, unless the bill provided that unemployment offices and other agencies could provide voter registration, “it will exclude a segment of its population from those for whom registration will be convenient and readily available – the poor and persons with disabilities It is important that no State be permitted to so restrict its agency registration program.” H.R. Rep. No. 103-66 (1993) (Conf. Rep.).

47. Increasing voting access for minority communities was also a primary purpose of the 1993 Act. Former New Mexico Governor Bill Richardson, during his tenure in the U.S. House of Representatives, stated on the House floor, “minorities are among those most unlikely to register to vote. Perhaps the most important impact of this legislation will be increased registration among these groups.” 139 Cong. Rec. H2257-02 (1993) (statement of Rep. Bill Richardson).

48. Hurricane Matthew effectively foreclosed the ability to register to vote for at least four days, including a full weekend. The next available day, October 10, was a federal holiday, and thus not a viable option for most voters to register. Therefore, in total, eligible Florida residents were precluded from registering to vote for five full days within the period that the NVRA requires states to provide for voter registration in advance of a federal election. The state's refusal to extend the voter registration deadline in the face of this natural disaster is the type of artificial barrier that the NVRA was designed to protect against.

49. Hurricane Matthew effectively prevented a substantial number of Florida residents from registering to vote by the October 11, 2016, deadline, and even the Court-extended deadline of October 12. Unless Plaintiff is granted the relief requested, there is a strong possibility that the right to vote will be denied to significant numbers of eligible Florida residents.

COUNT II:
Undue Burden on the Right to Vote in Violation of the First
Amendment and the Equal Protection Clause of the Fourteenth
Amendment

50. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

51. Under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, a court considering a challenge to a state election law “must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

52. In Florida, elections supervisors usually see a surge in voter registration shortly before the registration deadline, especially the weekend before. Because of Hurricane Matthew, many Floridians who would have registered to vote prior to the October 11 registration deadline, or even a deadline of October 12, have been displaced or otherwise prevented from registering, and thus cannot register to vote without even more time.

Moreover, many offices at which voters could register in person and United States Postal Offices where voters could submit registration applications have been closed, preventing Floridians in areas impacted by Hurricane Matthew from timely submitting registration materials.

53. The burdens imposed by the October 11 voter registration deadline are especially severe for certain voter populations, including minority voters and poor voters. An October 12 deadline will still leave many without the opportunity to register.

54. The State has not provided any colorable justification for its refusal to accommodate voters grappling with the consequences of Hurricane Matthew.

55. That it is possible for Florida to extend the registration deadline cannot be disputed. Other states register voters closer to the election, and others have made accommodations in the face of natural disasters to afford voters a viable opportunity to participate.

56. The burdens imposed by the October 11 voter registration deadline, individually and collectively, outweigh any conceivable benefits of enforcing that deadline.

COUNT III:

Disparate Treatment in Violation of the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983

57. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

58. The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution guarantees qualified voters a substantive right to participate equally with other qualified voters in the electoral process. Equal protection applies to the manner of the exercise of the franchise. *See Bush v. Gore*, 531 U.S. 98, 104 (2000). Thus, a state may not arbitrarily impose disparate treatment on similarly situated voters.

59. As set forth above, the effect of the State's refusal to extend the voter registration deadline is to treat similarly situated Floridians differently.

60. Specifically, Floridians in inland areas not affected by Hurricane Matthew may not face impediments in meeting the original October 11 deadline. In contrast, many Floridians in storm-affected areas are either displaced or otherwise prevented from registering to vote as a result of Hurricane Matthew.

61. There is no rational basis for favoring voters in inland areas over voters in storm-affected areas with respect to the right to cast a ballot in the upcoming general election. This disparate treatment of Florida residents based solely upon the area in which they live is unfair and arbitrary, and the State has not and cannot set forth any valid justification for its disparate treatment of members of the electorate.

62. Based on the foregoing, Defendants, acting under color of state law, have deprived and will continue to deprive Plaintiff and Florida voters of equal protection under the law secured to them by the Fourteenth Amendment to the United States Constitution and protected by 42 U.S.C. § 1983.

**COUNT IV:
Violation of Section 2 of the Voting Rights Act**

63. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

64. Section 2 of the Voting Rights Act of 1965 provides in relevant part that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State . . . in a manner which

results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]” 52 U.S.C. § 10301(a).

65. Minority voters in Florida, including African Americans and Latinos, have suffered from, and continue to suffer from, discrimination on the basis of race, including discrimination touching on the rights to register, to vote, or to otherwise participate in the democratic process.

66. The areas affected by Hurricane Matthew include substantial populations of minority voters, including African Americans and Latinos. Minorities in storm-affected areas are disproportionately likely to register to vote in the days immediately preceding the registration deadline. The effective elimination of the final days preceding the registration deadline will have a disparate impact on minority voters.

67. The State’s refusal to extend the voter registration deadline and/or the deadline for local election officials to submit early voting plans notwithstanding the effects of Hurricane Matthew has abridged and/or denied, and will continue to abridge and/or deny, the voting rights of minority voters in Florida on account of race.

68. As a result, the challenged voter registration deadline will impose a disproportionate burden on the voting rights of minority voters in the storm-

affected areas. That disproportionate burden will be caused by and is linked to the social and historical conditions that have produced discrimination against minorities, and the State's insistence that it will not modestly extend the voter registration deadline has, at best, a tenuous connection to any legitimate government policy underlying the registration deadline.

69. The voter registration deadline challenged under Section 2 has had and, if not declared illegal and enjoined, will continue to have a disparate adverse impact on minority voters in Florida, including African Americans and/or Latinos.

70. Under the totality of the circumstances, the voter registration deadline has resulted and will result in less opportunity for minorities than for other members of the electorate in Florida to participate in the political process and to elect candidates of their choice, and therefore violates Section 2 of the Voting Rights Act.

DECLARATORY AND INJUNCTIVE RELIEF

28 U.S.C. §§ 2201 and 2202, Fed. R. Civ. P. 57 and 65

71. Plaintiff realleges and incorporates by reference all prior paragraphs of this Complaint as though fully set forth herein.

72. This case presents an actual controversy because Defendants' present and ongoing refusal to allow eligible Florida voters an opportunity to register to vote in the general election subjects Plaintiff and its members and constituents to serious and immediate harms, warranting the issuance of a declaratory judgment.

73. Plaintiff seeks preliminary and/or permanent injunctive relief to protect its statutory and constitutional rights and avoid the injuries described above. A favorable decision extending voter registration deadline beyond October 12 would redress and prevent the irreparable injuries to Plaintiff and its members and constituents identified herein, for which Plaintiff has no adequate remedy at law or in equity.

74. Defendants will incur little to no burden if the relief sought here is granted. Any minor administrative burden imposed on Defendants pales in comparison to the fundamental constitutional injury of denial of the right to vote that Plaintiff and its members and constituents will suffer in the absence of the relief requested.

75. The public interest weighs strongly in favor of extending the voter registration deadline to permit every lawful, eligible citizen who wishes to

vote to vote in the upcoming general election. The balance of hardships thus tips strongly in favor of Plaintiff.

76. Concurrently with this Complaint, Plaintiff has filed an emergency motion for a preliminary injunction in accord with Local Rule 7.1(L).

WHEREFORE, Plaintiff respectfully requests this Court enter judgment:

- (i) Ordering Defendants to extend Florida's voter registration deadline to account for the lost days and weekend of voter registration up to and including October 18, 2016.
- (ii) Preliminarily and permanently enjoining Defendants from enforcing the current voter registration deadline.
- (iii) Awarding Plaintiff its costs, expenses, and reasonable attorneys' fees pursuant to, inter alia, 42 U.S.C. § 1988 and other applicable laws;
- (iv) Granting such other relief as the Court deems just and proper.

Dated: October 11, 2016

/s/ Farrah R. Berse

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CERTIFICATE OF
SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following parties via electronic mail;

- David Fugett, Counsel for The Secretary of State,
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- William Spicola, General Counsel for Governor, Rick Scott,
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/s/ Farrah R. Berse

Farrah R. Berse