

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION  
CASE NO. 4:18cv529-MW/CAS**

**MIKE FOX, et al.,**  
*Plaintiffs,*

**versus**

**KEN DETZNER, in his official capacity as  
Florida Secretary of State, et al.,**  
*Defendants.*

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**PLAINTIFFS' SUBMISSION IN COMPLIANCE WITH  
SUPPLEMENT TO ORDER DENYING PLAINTIFFS'  
MOTION DIRECTING PLAINTIFFS TO FILE NOTICE ON  
HOW TO PROCEED (DE26)**

Plaintiffs are in the process of filing an amended complaint in this case seeking the preservation of election ballot materials, including digital ballot images, for the statutorily required period of twenty-two (22) months following the just completed general election. The Florida election landscape has changed since the initiation of this case and entry of this Court's Order Denying Plaintiff's Request for Writ of Mandamus and Motion for Temporary Restraining Order (DE6). The completion of the general election and the mandatory statewide recounts have made the relief originally requested in the complaint just as necessary and timely as before, but the conditions and reasons supporting that relief have been augmented by circumstances revealed

during the statewide recount process.

Plaintiffs are in the process of preparing an amended complaint to be filed in short order, likely within the next several days. That amended complaint will identify the current circumstances justifying the need for judicial enforcement of the statutory election preservation mandate to preserve all election materials for twenty-two (22) months in federal elections under federal law (52 U.S.C. § 20701) and state law (Florida Statute 119; State of Florida General Records Schedule GS3 for Election Records, Page 3, #113 as authorized by Florida Statute §101.545). Plaintiffs are in the process of gathering supporting affidavits and documentation on this very issue, including public declarations demonstrating that some elections officials throughout the State of Florida have not preserved digital ballot images that are obtained automatically during the voting process. The supporting affidavits will also demonstrate the ease by which elections officials are able to preserve the digital ballot images in compliance with the law, as well as the utility of those images when auditing the vote computations and even assessing the accuracy of the recount process.

The amended complaint will identify the continuing necessity of requiring the Florida Secretary of State and Division of Elections to enforce and direct elections compliance with the federal and state ballot preservation

requirements. Without judicial assistance, unpreserved digital ballot images from the general election and recount process are in danger of being obliterated and overwritten, thereby making those materials no longer available to be preserved for the required twenty-two (22) months. The inevitable impact of the failure to preserve, as will be articulated in the amended complaint, is that digital ballot images that are needed for election audits and public access will be permanently unavailable in the Florida counties that have not preserved the images.

In summary, plaintiffs' claims remain viable and necessary. The post-election and recount landscape requires a revised complaint and request for relief from this Court. Plaintiffs intend to make that amended submission within the next several days.

Respectfully submitted on November 20, 2018.

*S/ Benedict P. Kuehne*

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**CERTIFICATE OF SERVICE**

I certify that on November 20, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the CM/ECF and transmitted in accordance with CM/ECF requirements.

S/ Benedict P. Kuehne  
**BENEDICT P. KUEHNE**