

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

VOTEVETS ACTION FUND;
DEMOCRATIC NATIONAL
COMMITTEE; and DSCC a/k/a
DEMOCRATIC SENATORIAL
CAMPAIGN COMMITTEE,

Plaintiffs,

v.

CASE NO. 4:18-cv-00524-MW-CAS

KEN W. DETZNER, in his
official capacity as the Florida
Secretary of State,

Defendant.

**ATTORNEY GENERAL'S NOTICE CONCERNING STATE OF THE
RECORD AND NEED FOR EVIDENTIARY HEARING**

1. Plaintiffs filed this lawsuit on Monday, November 12, 2018. Plaintiffs' suit challenges the constitutionality of at least two Florida statutes.
2. On Tuesday, November 13, this Court held a status conference at which it ordered that (1) Plaintiffs were required to submit declarations supporting their constitutional claims by the end of that same day; (2) Defendants must submit any counter-declarations by noon the next day (Wednesday, November 14); (3) all parties must submit a notice addressing the need for an evidentiary hearing by noon on Wednesday, November 14, on the

understanding that any such hearing would take place on Friday or Saturday of that same week; (4) Defendants' response to Plaintiffs' motion for a preliminary injunction is due by 6:00 p.m. on Thursday, November 15; and (5) Defendants shall not have the opportunity to submit "[a]ny further briefing." DE30.

3. Based on a preliminary and expedited review of Plaintiffs' complaint, as well as a preliminary and expedited assessment of the two declarations Plaintiffs filed yesterday, the Attorney General believes that Plaintiffs' constitutional challenges fail as a matter of law. Accordingly, the Attorney General is of the view that this Court may *deny* Plaintiffs' emergency applications for a temporary restraining order and preliminary injunctive relief without further factual development.
4. The Attorney General does not concede that this Court may *grant* the requested emergency relief without further factual development.
5. Judging the constitutionality of a duly-enacted statute is one of the gravest and most delicate duties the federal courts are called on to perform. *See, e.g., Northwest Austin Mun. Utility Dist. No. One v. Holder*, 557 U.S. 193, 204 (2009). Accordingly, Plaintiffs should not ask this Court to strike down or enjoin the enforcement of one or more state statutes without affording Defendants a reasonable opportunity to carefully study the legal

- issues, identify areas in which further factual development could facilitate this Court's assessment of those issues, and find declarants or witnesses who are able and willing to provide pertinent information.
6. It is no answer for Plaintiffs to argue that any legal and factual disputes at issue in this case must be resolved immediately so that this Court can rule before the expiration of certain imminent statutory deadlines. The laws Plaintiffs challenge have been on the books for years, and nothing prevented Plaintiffs from bringing this challenge before voters cast their ballots on November 6.
 7. Accordingly, the Attorney General (1) objects to the short deadlines for briefing the constitutional challenges raised and developing a record germane to those claims, (2) respectfully recommends that the Court deny Plaintiffs' motion for emergency injunctive relief based on the legal arguments that Defendants will submit by 6:00 p.m. tomorrow, and (3) reserves the right to argue that further factual development would be necessary and appropriate before the Court could grant any such drastic and extraordinary relief.

Respectfully submitted,

PAMELA BONDI
Attorney General

/s/ Edward M. Wenger
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RULE 7.1(F) CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.1(F), I certify that according to the word count feature of the word-processing system used to prepare this document, the document contains 668 words.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by CM/ECF only to Counsel of Record this 14th day of November, 2018.

/s/ Edward M. Wenger
Edward M. Wenger