UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

CONGRESSWOMAN CORRINE BROWN, et al.,	)
Plaintiffs,	)
	) **CASE NO. 3:12-cv-00852-UATC-MCR**
v.	)
	) **JUDGE TIMOTHY J. CORRIGAN**
KEN DETZNER, in his official capacity as Florida Secretary of State, et al.	)
	) **MAGISTRATE JUDGE MONTE C. RICHARDSON**
Defendants.	)

COUNTY PARTIES' MOTION FOR LEAVE TO INTERVENE AS PARTY DEFENDANTS

Putative Intervenors the Republican Party of Broward County, Republican Party of Clay County, and the Republican Party of Sarasota County Executive Committee ("Intervenors"), by counsel and pursuant to Fed. R. Civ. P. 24(a) and Local Rule 3.01(a), respectfully move this Court for entry of an order granting leave to intervene in this action, and to file an Answer and Affirmative Defenses substantially in the form submitted with this Motion as Exhibit A.[1] Congresswoman Corrine Brown, the Southern Christian Leadership Conference, and the Duval County Democratic Executive Committee, along with other individual Plaintiffs, seek injunctive relief against the

[1] Intervenors also respectfully request permission to participate in the telephone status conference on Tuesday, September 11, 2012, at 2:00 p.m., as scheduled by this Court on September 6, 2012 (D.E. #22). Intervenors further intend to file a proposed Opposition to Plaintiffs' Motion for Preliminary Injunction by the deadline set forth in this Court's Order (D.E. #22), so as not to disrupt the briefing schedule previously established in this case.

Florida Secretary of State, Ken Detzner, and the Supervisor of Elections for Duval County, Florida, Jerry Holland. Intervenors must intervene in this action to protect their interests in promoting Republican candidates in the state of Florida, ensuring that Florida's voters are informed, and ensuring that elections are open and fair, and to protect the interests of the candidates and voters whom Intervenors exist to promote. As set forth more fully in the accompanying Memorandum of Law, the existing Defendants may not adequately represent these interests.

Alternatively, Intervenors move this Court for permission to intervene pursuant to Fed. R. Civ. P. 24(b), because they intend to present legal defenses to the relief Plaintiffs currently seek. The grounds for this Motion are more fully set forth in the accompanying Memorandum of Law, which is incorporated herein by this reference.

MEMORANDUM OF LAW

Only weeks before the Presidential Election, Plaintiffs seek an injunction essentially rewriting state voting laws that were enacted well over one year ago and that have been implemented without incident in intervening elections. Granting this relief will prejudice those like the putative intervenors who organized their efforts and recruited volunteers in reliance on this existing law. Putative Intervenors the Republican Party of Broward County, the Republican Party of Clay County, and the Republican Party of Sarasota County Executive Committee ("Intervenors"), move to intervene as of right pursuant to Fed. R. Civ. P. 24(a) because they have vital interests in the statute and the Election that is the subject of this action that may not be adequately represented by the existing Defendants. In the alternative, Intervenors seek the Court's permission to

intervene under Rule 24(b) because they intend to present legal defenses to the relief Plaintiffs seek. For the reasons explained in this Memorandum, the Court should grant the Intervenor-Defendants' Motion to Intervene.

THE UNDERLYING LITIGATION

Plaintiffs, Congresswoman Corrine Brown, the Southern Christian Leadership Conference, Jacksonville, Florida Chapter, the Duval County Democratic Executive Committee, and several individuals allegedly registered to vote in Florida (together, "Plaintiffs"), filed this lawsuit against Florida Secretary of State Ken Detzner and Supervisor of Elections for Duval County, Florida, Jerry Holland (together, "Defendants"). According to Plaintiffs, Defendants' enforcement of Fla. Stat. § 101.657(1)(d) (2011), which sets forth the dates and times of early voting in the November 6, 2012 general election ("Election"), violates the Fourteenth and Fifteenth Amendments of the United States Constitution, Section 2 of the Voting Rights Act of 1965 ("VRA"), and Articles I and VI of the Florida Constitution. Compl., D.E. #1, ¶¶ 31–66. Specifically, Plaintiffs argue that the 2011 amendments to § 101.657(d), which moved the start of early voting from the 15th day before the Election to the 10th day before the Election, and the last day for early voting from the 2nd day before the Election to the 3rd day before the Election, will result in a disparate impact on African-American voters in Florida. Compl., D.E. #1, ¶¶ 17–30.[2] Plaintiffs request that this Court declare

[2] The full text of § 101.657(1)(d) provides as follows:

> (d) Early voting shall begin on the 10th day before an election that contains state or federal races and end on the 3rd day before the election, and shall be provided for no less than 6 hours and no more than 12 hours

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that § 101.657(1)(d), as amended, is unconstitutional and violates the VRA, and that this Court enter an injunction requiring the Florida Secretary of State and the Supervisor of Elections, Duval County, Florida, to refrain from implementing or enforcing the amended statute.

Intervenors are three county Republican parties in the state of Florida whose interests will be affected by the relief requested by Plaintiffs. Intervenors exist, among other things, to help elect qualified Republican candidates to public office; to promote an informed electorate through political education; to increase Republican voter registration; and to seek qualified Republicans to become candidates for local, county, state and federal offices. *See* Decl. of Leslie Dougher (Chairman, Republican Party of Clay County), attached hereto as Exhibit B; Decl. of Richard DeNapoli (Chairman, Republican Party of Broward County), attached hereto as Exhibit C; Decl. of Joe Gruters (Chairman, Republican Party of Sarasota County), attached hereto as Exhibit D. The relief that Plaintiffs seek—invalidation of § 101.657(1)(d), as amended, and reversion back to the 2005 version of the statute which allowed for four additional days of early voting—would result in a substantial harm to these interests. Specifically, after having organized their efforts in reliance on a shorter early voting period, Intervenors would be forced to expend significant human, financial, and administrative resources to ensure that

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> per day at each site during the applicable period. The supervisor of elections may provide early voting for elections that are not held in conjunction with a state or federal election. However, the supervisor has the discretion to determine the hours of operation of early voting sites in those elections.
>
> Fla. Stat. § 101.657 (2011).

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candidates and voters are properly informed, educated, and prepared for the additional early voting period. They also would be prejudiced in their ability to conduct adequate voter education and get out the vote drives as well as provide a sufficient number of poll watchers for a previously unanticipated additional four voting days during the early voting period. Given that Florida's early voting period is now mere weeks away, this substantial burden would be compounded by exigency associated with making such preparations at this very late stage in the process. *See* Decl. of Leslie Dougher; Decl. of Richard DeNapoli; Decl. of Joe Gruters. Intervenors thus have a direct and concrete interest in ensuring that Plaintiffs are not successful in invalidating § 101.657(1)(d) as it currently exists.

ARGUMENT

I. INTERVENORS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT PURSUANT TO RULE 24(a)(2)

Federal Rule of Civil Procedure 24(a) provides, "[o]n timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." Fed. R. Civ. P. 24(a)(2). To intervene as of right under Rule 24(a)(2), a party must establish that "(1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit." *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989) (citing *Athens Lumber*

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Co. v. FEC, 690 F.2d 1364, 1366 (11th Cir. 1982)). Intervenors meet each of these four criteria.

A. The Application for Intervention is Timely

Intervenors' Motion to Intervene is timely because it is being filed a mere six weeks after the underlying action was commenced and three weeks after Plaintiffs filed their Motion for Preliminary Injunction seeking to enjoin the Florida Secretary of State and Supervisor of Elections for Duval County from enforcing § 101.657(1)(d). *See e.g.*, *Ga. v. United States Army Corps of Eng'rs*, 302 F.3d 1242, 1259–60 (11th Cir. 2002) (concluding that delay of six months between the time when party knew of its interest in the case and the time the party moved to intervene did not constitute untimeliness, even where discovery was largely complete and the parties had agreed upon a briefing schedule); *Chiles*, 865 F.2d at 1213 (concluding that motion to intervene was timely since it was filed "only seven months after [plaintiff] filed his original complaint, three months after the government filed its motion to dismiss, and before any discovery had begun"); *Nat'l Parks Conservation Ass'n v. United States DOI*, 2012 U.S. Dist. LEXIS 57707, at *6–*7 (M.D. Fla. Apr. 24, 2012) (concluding that motion to intervene filed within seven months of the original complaint's filing was timely, "especially since discovery ha[d] not begun"). Because Intervenors move to intervene inside the period for filing a responsive pleading and a response to Plaintiffs' Motion for Preliminary Injunction, *see* Order Setting Briefing and Hearing Schedule, D.E. #13, there is no risk that allowing intervention will upset the briefing or hearing schedule previously set by the Court. *See Naples 9*, 2011 U.S. Dist. LEXIS 53120, at *4. Intervention thus will neither delay these

proceedings nor prejudice the rights of any of the existing parties. *See* Fed. R. Civ. P. 24(b)(3); *see Naples 9, LLC v. Everbank*, 2011 U.S. Dist. LEXIS 53120, at *3–*4 (M.D. Fla. May 18, 2011) (concluding that allowing intervention where intervenor intended to follow the same schedule as the current parties in the case would not prejudice plaintiffs).[3] Permitting Intervenors to intervene at this very early stage—prior to any discovery, motion practice (other than the motion for injunctive relief), hearings, or filing of an answer by the Supervisor of Elections—also will not result in delay or prejudice the rights of any of the original parties. Indeed, Intervenors do not seek to introduce new issues or claims into the suit. *Cf. Tyson Food, Inc. v. Fox*, 519 F.3d 1298, 1304–05 (11th Cir. 2008) (affirming denial of intervention where proposed intervenors sought to add 161 parties to the litigation).

B. Intervenors Have a Legally Protectable Interest in the Challenged Statute

To intervene as of right in the Eleventh Circuit, an intervenor's interest in the subject matter of the litigation must be "direct, substantial, and legally protectable." *Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005) (citation omitted). An economic interest is insufficient for intervention unless the interest "derives from a legally protectable right." *Id.*; *see also United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 710 (11th Cir. 1991). Intervenors "must show that the present

[3] *See also N.A.A.C.P. v. New York*, 413 U.S. 345, 366 (1973) ("Timeliness is to be determined from all the circumstances."); *Meek v. Metro. Dade Cnty.*, 985 F.2d 1471, 1478 (11th Cir. 1993), *overruled in part on other grounds by Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1335–36 (11th Cir. 2007) ("'[A]bsolute measures of timelines' . . . are not to be relied upon: 'the mere fact that judgment already has been entered should not by itself require an application for intervention to be denied'") (quoting *Stallworth v. Monsanto Co.*, 558 F.2d 257, 266 (5th Cir. 1977)).

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proceedings threaten some substantive legal protection . . . to support intervention by right." *S. Fla. Water Mgmt. Dist.*, 922 F.2d at 710.

In the Eleventh Circuit, a movant who shows independent standing is deemed to have a sufficiently substantial interest to intervene. *See Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1330 (11th Cir. 2007); *Meek v. Metro. Dade Cnty., Florida*, 985 F.2d 1471, 1481 (11th Cir. 1993). However, even if a movant cannot making that showing, the movant may still be entitled to "piggyback" upon the standing of original parties to satisfy the standing requirement. *Dillard*, 495 F.3d at 1330. In order to assert "piggyback" standing, the movant must simply establish "the existence of a justiciable case or controversy at the point at which intervention is sought." *Id.*

In this case, Intervenors can establish independent standing, both on the basis of organizational standing and associational standing. *See Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009) ("[A]n organization has standing to sue on its own behalf if the defendant's illegal acts impairs its ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts.") (quoting *Fla. State Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008)).

1. Intervenors have organizational standing to intervene

Intervenors exist to promote Republican candidates through open and fair elections and to ensure that Republican voters are informed and educated about their right to vote and, in fact, exercise that right at the polls. *See* Decl. of Leslie Dougher (Exhibit B); Decl. of Richard DeNapoli (Exhibit C); Decl. of Joe Gruters (Exhibit D). The record reflects that reverting back to the 2005 version of § 101.657(1)(d), which provides an

additional four days of early voting, would require Intervenors to expend additional (and limited) personnel, time and resources engaging in efforts both to ensure that voters are fully informed about the change in the early voting period and to ensure that voters who wish to vote during that period are, in fact, able to do so. These additional efforts would include such tasks as (1) hiring additional staff to field questions regarding the new dates and times for early voting; (2) hiring additional staff to prepare new educational materials for voters; (3) recruiting additional volunteers to help with added Get Out the Vote efforts such as phone banks to notify voters about the revised early voting schedule; and (4) paying for additional advertisements or public announcements to ensure that voters are fully informed about the change in the early voting schedule. Intervenors also would be required to expend additional resources, both human and financial, to ensure there is adequate field staff for the additional early voting days. This would include recruiting additional poll workers to ensure uniform application of voting laws and enlisting additional personnel and transportation to ensure that voters who seek to vote during the expanded early voting time period are able to get to the polls. Courts in this circuit have repeatedly held that effects such as these on the operations of organizations constitute a "concrete injury" sufficient to confer standing. *See, e.g.*, *Billups*, 554 F.3d at 1350 (noting that the fact that the NAACP "would divert resources from its regular activities to educate and assist voters in complying with the statute that requires photo identification" was sufficient to confer organizational standing); *see also Browning*, 522 F.3d at 1165 ("The fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury."); *Meek*, 985 F.2d at 1480

(holding that intervenors, as voters subject to the challenged election scheme, not only satisfied the requirements for intervention but also independently satisfied the requirements for Article III standing); *Am. Fed'n v. Scott*, 2012 U.S. Dist. LEXIS 67227, at *8–*13 (S.D. Fla. Apr. 26, 2012).

2. Intervenors have associational standing to intervene

In addition to organizational standing, Intervenors also have associational standing to intervene in this action. An association has standing to bring suit on behalf of its members when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); *Fla. Wildlife Fed'n., Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F.3d 1296, 1302 n.4 (11th Cir. 2011). As described above, Intervenor county Republican parties represent the interests of Republican candidates and voters in the state of Florida. If Plaintiffs are successful in invalidating § 101.657(1)(d), the candidates whose interests Intervenors represent will be forced to expend significant additional resources, both financial and human, contacting voters in advance of the expanded early voting period and ensuring that voters actually get out to the polls during the additional early voting days. Plaintiffs' actions to invalidate § 101.657(1)(d) could thus threaten not only those candidates' campaign funds, but also—to the extent they are unable to adjust for this additional early voting period added so late in the process—their election prospects. Federal courts have held that such injuries are sufficient to give a candidate standing to

protest actions causing this type of harm. *See, e.g.*, *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006) (finding Texas Democratic Party had both direct and associational standing to challenge Republican Party's declaration that its incumbent candidate was ineligible based upon residency); *Smith v. Boyle*, 959 F. Supp. 982, 986 (C.D. Ill. 1997) (finding Illinois Republican Party had associational standing to sue State Board of Elections and Secretary of State since the Party's purpose "is to elect their candidates to office" and therefore "the interest which it seeks to protect is germane to the organization's purpose").

3. Even absent independent standing, Intervenors have "piggyback" standing to intervene

Intervenors can establish independent standing in the underlying action. However, even if the Court were to conclude that they do not, Intervenors still should not be denied the right to intervene because they lack standing. Indeed, as noted above, it is well established in the Eleventh Circuit that an intervenor need not demonstrate "independent standing" to join a pending case if the intervenor can "'piggyback' upon the standing of [the] original parties." *Dillard*, 495 F.3d at 1330; *see also Trobvich v. United Mine Workers*, 404 U.S. 528 (1972) (allowing plaintiff-intervenor to remain in case even though he could not independently satisfy standing requirement); *Chiles*, 865 F.2d at 1213 ("[A] party seeking to intervene need not demonstrate that he has standing in addition to meeting the requirements of Rule 24 as long as there exists a justiciable case or controversy between the parties already in the lawsuit."). The Eleventh Circuit, like many other Courts of Appeals, has reasoned that once the original parties establish their basis for standing, a court's jurisdiction vests, and so long as a case or controversy

remains, the proper addition of Rule 24 intervenors does not implicate Article III. *See Dillard*, 495 F.3d at 1330 (noting the "lessened justiciability concerns in the context of an ongoing Article III case or controversy" allowing intervenors to "piggyback" upon the standing of original parties); *Chiles*, 865 F.2d at 1213 (holding independent standing not required to intervene in a pending suit); *see also Ruiz v. Estelle*, 161 F.3d 814, 830–33 (5th Cir. 1998) (allowing intervention by legislators despite lack of standing in light of "subsisting and continuing Article III case or controversy"); *Assoc. Builders & Contractors v. Perry*, 16 F.3d 688, 690 (6th Cir. 1994) (recognizing that intervenors "need not have the same standing necessary to initiate a lawsuit in order to intervene" as other parties); *Canadian Wheat Bd. v. United States*, 637 F. Supp. 2d 1329, 1340–42 (allowing intervention despite lack of independent standing since the Article III jurisdictional requirement had already been met and continued to exist).

Here, there is an ongoing case or controversy between Plaintiffs and the existing Defendants in the underlying action, and each has standing to assert the claims and defenses they have asserted in their initial pleadings. *See Dillard*, 495 F.3d at 1330; *see also United States v. DeKalb Cnty.*, 2011 U.S. Dist. LEXIS 154837, at *16–*17 (N.D. Ga. Oct. 11, 2011). Moreover, Intervenors do not seek to raise new issues nor do they seek new forms of relief not already requested by the Defendants on whose side they seek to intervene. *See infra* p. 18. The presence of additional parties in the underlying litigation, even if they alone could not independently satisfy Article III requirements, will not disturb jurisdiction that has already been established; the Article III requirements satisfied by the original parties will remain intact. *See Ruiz*, 161 F.3d at 832–33 & n.27.

Thus, even if this Court were to conclude that Intervenors lack independent standing to intervene in the underlying action (they do not), the Court still should conclude that Intervenors have standing by virtue of their ability to "piggyback" off the standing of the original parties.

C. Plaintiffs' Lawsuit will Impair or Impede Intervenors' Ability to Protect Their Interest

To satisfy this third element of the Rule 24(a) test for intervention as a matter of right, Intervenors must show that the suit "may as a practical matter impair or impede [their] ability to protect [their] interest." Fed. R. Civ. P. 24(a)(2). As explained above, Intervenors' interests in promoting Republican candidates, ensuring that Florida's electorate is informed, and ensuring open and fair elections would be directly and adversely affected by a ruling that § 101.657(1)(d) is unenforceable in the November 6, 2012 general election. Indeed, if Intervenors are not able to protect their rights and the rights of their members in this litigation, they will lose the opportunity to do so before the November 6, 2012 general election, as time does not permit Intervenors to bring a separate action and wait for a court to grant relief to protect their rights in the short six weeks before early voting for the general election begins.

D. Intervenors' Interests Are Not Adequately Represented by the Florida Secretary of State or Supervisor of Elections for Duval County

Both the United States Supreme Court and the Eleventh Circuit have repeatedly held that in order to satisfy this requirement, an intervenor need only show that the existing representation of its interests "may be" inadequate, and "the burden of making that showing should be treated as minimal." *Trobvich*, 404 U.S. at 538 n.10; *see also*

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Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist., 983 F.2d 211, 216 (11th Cir. 1993). Moreover, "[a]ny doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action." *Fed. Sav. & Loan Ins. Corp.*, 983 F.2d at 216. Courts in this Circuit have also repeatedly held that the standard for inadequate representation is not heightened when government defendants are involved, particularly in light of the competing interests that governmental entities are required to balance. *See, e.g.*, *Meek*, 985 F.2d at 1478 (concluding that private intervenor's interest was not represented by governmental party); *City of Dania Beach v. U.S. Army Corps of Eng'rs*, 2012 U.S. Dist. LEXIS 81625, at *4–*6 (S.D. Fla. June 13, 2012) (rejecting defendant governmental entity's contention that there was "'a presumption of adequate representation by the [Army] Corps' merely because the Corps and Broward County may have some common objectives") (citation omitted).

In *Meek*, the Eleventh Circuit was faced with facts considerably similar to those presented in this case. Specifically, the court analyzed whether four intervenors—two individual voters and two private organizations—satisfied the requirements to intervene as defendants in an action challenging the at-large voting system used by Dade County, Florida. *Meek*, 985 F.2d at 1474–76. The plaintiffs alleged that the voting system diluted black and Hispanic voting power in violation of Section 2 of the Voting Rights Act of 1965. *Id.* at 1474. In analyzing whether the district court erred in concluding that the Dade County defendants were adequate representatives of the intervenors because they had "identical interests," the Eleventh Circuit stated as follows:

> The intervenors sought to advance their own interests in achieving the greatest possible participation in the political process. Dade County, on the other hand, was required to balance ***a range of interests likely to diverge from those of the intervenors.*** For example, the County Commissioners had to consider the ***overall fairness of the election system*** to be employed in the future, the ***expense of litigation to defend the existing system*** . . . the ***social and political divisiveness*** of the election issue . . . . [and] ***their own desires to remain politically popular*** and effective leaders. These divergent interests created a risk that Dade County might not adequately represent the applicants.

Id. at 1478 (emphasis added); *see also Trbovich*, 404 U.S. at 539 (noting that even though defendant Secretary of Labor was "performing his duties . . . as well as can be expected," intervenor's interest may not be adequately represented given the Secretary's "'vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member'") (citation omitted). Like the defendant Dade County in *Meek*, the Defendant Secretary of State and Supervisor of Elections in this case represent the public interest of Florida residents at large, not just the interests of the Florida voters or candidates whom Intervenors seek to promote and who may be affected by Plaintiffs' actions. Both the Secretary of State and the Supervisor of Elections, by virtue of their positions as public elected officials, are "required to balance a range of interests likely to diverge from those of the intervenors." *Meek*, 985 F.2d at 1478. Both also undoubtedly are faced with unavoidable political pressures, including from taxpayers who seek to minimize government litigation costs, as well as self-imposed pressures to "remain politically popular." *Id.* In light of these numerous competing interests faced by Defendants, Intervenors more than satisfy the "minimal" burden of showing that the existing Defendants may not adequately represent their interests. *See Trobvich*, 404 U.S. at 538 n.10; *see also Chiles*, 865 F.2d at 1214–15

(concluding that there was a possibility of inadequate representation despite the fact that intervenors and Dade County shared similar interests since Dade County "may decide not to emphasize the plight of [intervenors]" and "[a]fter all . . . is mainly concerned with the expenditures that have to be made"); *Coastal Conservation Ass'n v. Locke*, 2010 U.S. Dist. LEXIS 34152, at *5 (M.D. Fla. Apr. 6, 2010) (finding that intervenors had "presented sufficient evidence that the governmental defendants may not pursue the same objectives as the intervenors, and that the government's general interest in getting a difficult situation resolve properly may not result in adequate representation to their specific interests").

II. ALTERNATIVELY, THE COURT SHOULD PERMIT INTERVENORS TO PERMISSIVELY INTERVENE PURSUANT TO RULE 24(b)(2).

Federal Rule of Civil Procedure 24(b) provides as follows: "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "[I]t is wholly discretionary with the court whether to allow intervention under Rule 24(b)." *Worlds v. Dep't of Health & Rehab. Servs.*, 929 F.2d 591, 595 (11th Cir. 1991). A party seeking permissive intervention pursuant to Rule 24(b)(2) must prove the following: "(1) his application to intervene is timely; and (2) his claim or defense and the main action have a question of law or fact in common." *Chiles*, 865 F.2d at 1213. A court must also consider whether intervention will unduly prejudice or delay the adjudication of the rights of the original parties. *ManaSota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1323 (11th Cir. 1990). A court has broad discretion to grant permissive intervention. *Chiles*, 865 F.2d at 1213. Here, the Court should permit Intervenors to permissively intervene because they

timely filed their Motion to Intervene, intervention will not unduly delay these proceedings, and their defenses have a question of law or fact in common with the main action.

A. Intervenors' Motion to Intervene Was Timely and Intervention will Not Unduly Delay the Proceedings

For the reasons set forth above, Intervenors' Motion to Intervene is timely and will not unduly delay the proceedings or prejudice the existing parties to the underlying action. *See supra* p. 6–7. Intervenors do not seek to introduce new issues or claims into the suit that would caution against permissive intervention, *see, e.g.*, *Tyson Food*, 519 F.3d at 1304–05 (affirming denial of intervention where proposed intervenors sought to add 161 parties to the litigation), nor do they seek to extend the briefing or hearing schedule previously set by the Court.

B. Intervenors' Reason for Intervention Shares a Common Question of Law or Fact with the Underlying Action

The underlying facts of this case center on the Florida Legislature's decision in 2011 to amend Fla. Stat. § 101.657(1)(d) to potentially reduce the amount of time allowed for early voting in Florida. As noted above, Intervenors seek to intervene to protect their interests and the interests of their members related to Plaintiffs' attempts to declare that statute invalid and enjoin its enforcement, thereby reverting back to the 2005 version of the statute, which required a lengthier early voting period. Intervenors' reasons for intervention are based on the same set of facts as the underlying action, and, as demonstrated in their Opposition to Plaintiffs' Motion for Preliminary Injunction attached hereto as Exhibit B, Intervenors do not seek to inject novel legal claims into this

case that have not already been presented to the Court in Plaintiffs' Complaint and Motion for Preliminary Injunction. In addition, Intervenors' defenses against invalidating the statute or enjoining its enforcement are presumably similar to the defenses that will be advanced by the Secretary of State and the Supervisor of Elections. *See, e.g.*, *Nat'l Parks Conservation Ass'n*, 2012 U.S. Dist. LEXIS 57707, at *6–*7.

CERTIFICATION PURSUANT TO RULE 3.01(g)

The undersigned counsel certifies that she has conferred with counsel for Defendant Ken Detzner, who indicated that Defendant Detzner would not object to the relief sought in this Motion; that she has attempted to confer with counsel for Defendant Jerry Holland and that said counsel has been unavailable, but that the undersigned counsel will continue to attempt to confer with counsel for Defendant Holland immediately after filing this Motion and will supplement this Motion promptly in accordance with Local Rule 3.01(g); and that she has conferred with counsel for Plaintiffs, who indicated that Plaintiffs would object to the relief sought.

CONCLUSION

For the reasons stated above, Intervenors respectfully request that this Court allow them to intervene, either as of right or permissively.

Dated: September 10, 2012

Respectfully submitted,

s/ Raquel A. Rodriguez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 10, 2012, a true and correct copy of the foregoing was filed with the Clerk of Court via the CM/ECF system, causing a Notice of Electronic Filing to be sent to all counsel of record.

s/ Raquel A. Rodriguez
Raquel A. Rodriguez