

Extending Voter-Registration Deadlines Because of a Hurricane

Florida Democratic Party v. Scott (4:16-cv-626) and League of Women Voters of Florida v. Scott (4:16-cv-633) (Mark E. Walker, N.D. Fla.) and Georgia Coalition for the Peoples' Agenda v. Deal (4:16-cv-269) and Bethea v. Deal (2:16-cv-140) (William T. Moore, Jr., S.D. Ga.)

District judges in Florida and Georgia extended voter registration by one week in advance of the 2016 general election because of evacuations and government office closings resulting from Hurricane Matthew. In Florida, the judge extended the deadline statewide; in Georgia, the judge extended the deadline only for one county, because only offices in that county did not open again after the hurricane until after the original deadline.

Subject: Registration procedures. *Topics:* Registration procedures; intervention; case assignment; recusal.

In October 2016, federal judges in Florida and Georgia extended voter-registration deadlines by one week because of Hurricane Matthew. A North Carolina state judge also extended voter-registration in some counties.¹

Florida

“Nearly eight million Floridians, not counting tourists, sat in [Hurricane] Matthew’s potential path under hurricane or tropical storm warnings. A half-million were urged to evacuate their homes.”² So the *Miami Herald* reported on October 6, 2016.³ Two days later, the *Herald* reported, “More than a million statewide lost power.”⁴

On Sunday, October 9, the Florida Democratic Party filed a federal complaint in the Northern District of Florida against Florida’s governor and Florida’s secretary of state, seeking an extension of at least a week from the October

1. Court Extends Voter Registration in 37 Counties, www.ncsbe.gov/Elections/Hurricane-Matthew/Press-Release-10-14-2016, archived at web.archive.org/web/20161202232048/www.ncsbe.gov/Elections/Hurricane-Matthew/Press-Release-10-14-2016; see Lynn Bonner, *NC Voter Registration Deadline Extended in 36 Counties*, Raleigh News & Observer, Oct. 14, 2016.

2. Jacqueline Charles, Mimi Whitefield & Jenny Staletovich, *Bracing for Matthew*, Miami Herald, Oct. 6, 2016, at 1A.

3. *Id.*

4. Glenn Garvin, *More Than a Million Statewide Lost Power*, Miami Herald, Oct. 8, 2016, at 4A; see also Jenny Staletovich, Mary Ellen Klas, Nancy San Martin & Jay Weaver, *Storm Surge Becomes Biggest Threat*, Miami Herald, Oct. 8, 2016, at 1A (“Hurricane Matthew saved its worst Florida lashing for last as its eyewall skirted the state’s northeastern coastline on Friday, whipping up pounding waves and surging tides that washed over beachfront communities.”).

11 deadline for voter registration in light of the hurricane.⁵ With its complaint, the party filed a motion for a temporary restraining order.⁶

The court assigned the case to Judge Mark E. Walker, who learned he had it on Columbus Day, the day after the case was filed, when Judge Walker performed his customary morning docket check.⁷ He had intended to go into the office on the federal holiday anyway, but because of the filing he asked a law clerk to join him.⁸

Judge Walker included a temporary restraining order in a sixteen-page opinion issued on October 10 and posted to the docket from home by Judge Walker's courtroom deputy.⁹ Judge Walker found that the secretary of state was a proper defendant as Florida's chief election officer, but the governor was not, because although Florida law gave the governor the power to reschedule an election in case of emergency, it did not give him the power to extend the deadline for voter registration.¹⁰ Judge Walker extended the deadline for registration until 5:00 p.m. on October 12 and scheduled a preliminary-injunction hearing for 10:00 a.m. on October 12.¹¹ He concluded, "Quite simply, it is wholly irrational in this instance for Florida to refuse to extend the voter registration deadline when the state already allows the Governor to suspend or move the election date due to an unforeseen emergency."¹²

Judge Walker granted intervention motions on October 11 to (1) Mi Familia Vota Education Fund and the New Florida Majority¹³ and (2) a prospective citizen whose citizenship ceremony was postponed to October 15 because of the hurricane.¹⁴ Judge Walker was able to grant intervention motions

5. Complaint, *Fla. Democratic Party v. Scott*, No. 4:16-cv-626 (N.D. Fla. Oct. 9, 2016), D.E. 3; see Transcript at 7, *id.* (Oct. 12, 2016, filed Oct. 16, 2016), D.E. 31 [hereinafter *Fla. Democratic Party* Transcript]; see also Steve Bousquet, *Democrats Sue Scott Over Voter Registration Deadline*, Miami Herald, Oct. 10, 2016, at 6A; Patricia Mazzei & Kristen M. Clark, *Florida Says No to Clinton Request for More Days to Register to Vote*, Miami Herald, Oct. 7, 2016, at 5A.

6. Temporary-Restraining-Order Motion, *Fla. Democratic Party*, No. 4:16-cv-626 (N.D. Fla. Oct. 9, 2016), D.E. 4.

7. Interview with Hon. Mark E. Walker, Oct. 31, 2016.

Tim Reagan interviewed Judge Walker for this report by telephone.

8. *Id.*

9. *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250 (N.D. Fla. 2016); see Steve Bousquet, *Judge Extends Voter Registration Deadline, Rebukes State for "Irrational" Decision*, Miami Herald, Oct. 11, 2016, at 2A.

10. *Fla. Democratic Party*, 215 F. Supp. 3d at 1254–55; see Steve Bousquet, *Reversing Scott, Federal Judge Could Reshape Florida Election*, Miami Herald, Oct. 12, 2016, at 8A; see also Steve Bousquet, *Judge Extends Florida's Voter Sign-Up Deadline*, Miami Herald, Oct. 13, 2016, at 1A [hereinafter *Judge Extends Deadline*] ("Had [the governor] extended the deadline, the judge said in court [at the preliminary-injunction hearing], the action likely would have been challenged.").

11. *Fla. Democratic Party*, 215 F. Supp. 3d at 1259.

12. *Id.* at 1257.

13. Order, *Fla. Democratic Party v. Scott*, No. 4:16-cv-626 (N.D. Fla. Oct. 11, 2016), D.E. 20; see Intervention Motion, *id.* (Oct. 11, 2016), D.E. 18.

14. Order, *id.* (Oct. 11, 2016), D.E. 25; see Intervention Motion, *id.* (Oct. 11, 2016), D.E. 22.

quickly because his law clerk checked the docket for filings frequently during the emergency litigation.¹⁵

On October 12, Judge Walker consolidated the case with an October 11 action by the League of Women Voters to extend voter registration until October 18.¹⁶ The court originally assigned the case to Judge Robert L. Hinkle, who ordered it reassigned to Judge Walker as related to the Democratic Party's action.¹⁷

At the October 12 hearing, "Defendants took no position."¹⁸ Some parties appeared by telephone, and members of the news media were permitted to listen but not record the proceeding.¹⁹

A fan of Federal Rule of Evidence 614's provision for a judge calling and examining a witness, Judge Walker wanted testimony from a county supervisor of elections, and he had the clerk's office arrange for the local supervisor to appear.²⁰ The witness waived service of a subpoena.²¹

Leon County's supervisor of elections testified "that storms of this magnitude impose 'tremendous strain' on elections offices."²² With a three-page opinion, Judge Walker extended the voter-registration deadline to October 18.²³ On October 13, he ordered the parties to notify the court by October 14 "if they wish to seek further action in this case."²⁴

15. Interview with Hon. Mark E. Walker, Oct. 31, 2016.

16. Order, *League of Women Voters of Florida v. Scott*, No. 4:16-cv-633 (N.D. Fla. Oct. 12, 2016), D.E. 15; see Preliminary-Injunction Motion, *id.* (Oct. 11, 2016), D.E. 4; Complaint, *id.* (Oct. 11, 2016), D.E. 1.

It was unclear why the League filed a separate action instead of intervening in the pending case. Interview with Hon. Mark E. Walker, Oct. 31, 2016.

17. Order, *League of Women Voters of Florida*, No. 4:16-cv-633 (N.D. Fla. Oct. 11, 2016), D.E. 14; see Notice of a Prior or Similar Case, *id.* (Oct. 11, 2016), D.E. 3.

18. Opinion, *Fla. Democratic Party*, No. 4:16-cv-626 (N.D. Fla. Oct. 12, 2016), D.E. 29 [hereinafter *Fla. Democratic Party Preliminary-Injunction Opinion*]; *Fla. Democratic Party Transcript*, *supra* note 5, at 8.

19. *Fla. Democratic Party Transcript*, *supra* note 5, at 1–4.

20. Interview with Hon. Mark E. Walker, Oct. 31, 2016; see *Fla. Democratic Party Transcript*, *supra* note 5, at 22–25; Minutes, *Fla. Democratic Party*, No. 4:16-cv-626 (N.D. Fla. Oct. 12, 2016), D.E. 28.

21. Interview with Hon. Mark E. Walker, Oct. 31, 2016.

22. *Fla. Democratic Party Preliminary-Injunction Opinion*, *supra* note 18, at 2 n.2; *Fla. Democratic Party Transcript*, *supra* note 5, at 24.

23. *Fla. Democratic Party Preliminary-Injunction Opinion*, *supra* note 18, at 3 ("Hopefully it is not lost on anyone that the right to have a voice is why this great country exists in the first place."); see Steve Bousquet, *Judge Extends Deadline*, *supra* note 10; Jonathan Drew, *Judge Orders Storm-Ravaged Counties to Extend Voter Registration Deadlines*, *Miami Herald*, Oct. 15, 2016, at 18A; William Wan, *Matthew Victims' New Challenge: Getting to Vote*, *Wash. Post*, Oct. 13, 2016, at A2; Michael Wines, *Florida Voter Registration Extended After Storm*, *N.Y. Times*, Oct. 13, 2016, at A12.

24. Order, *League of Women Voters of Florida v. Scott*, No. 4:16-cv-633 (N.D. Fla. Oct. 13, 2016), D.E. 18; Order, *Fla. Democratic Party*, No. 4:16-cv-626 (N.D. Fla. Oct. 13, 2016), D.E. 30.

On October 18, the Democratic Party filed a motion to enforce the injunction, claiming that “[w]ithin days, Plaintiff began receiving reports that Florida state and local election officials have indicated that they are unlikely to complete the verification process for all voter registration applications before early voting begins in many counties on October 24.”²⁵ The party sought a complete list of all registered voters, with weekly updates for registrations verified after October 23.²⁶ The secretary argued that the “baseless” motion “should be rejected out of hand.”²⁷

Judge Walker granted motions by the Republican Party²⁸ and Florida’s senate²⁹ to intervene in opposition to the Democratic Party’s motion, and Judge Walker granted a motion to appear as an amicus curiae filed by the state’s Association of Supervisors of Elections, which sought participation so that any remedy imposed by the court would be informed by the association’s expertise.³⁰

At an October 20 hearing, Judge Walker received testimony from the supervisor of elections for Hillsborough County, the county that includes Tampa.³¹ Judge Walker wanted testimony from a witness with experience in one of Florida’s four largest counties.³²

Judge Walker denied the enforcement motion.³³ Realizing the importance of monitoring orders as well as issuing them,³⁴ however, Judge Walker “asked [the defendant] to keep a running tally on the Florida Department of State website tabulating the number of pending voter-registration applications and the number of processed voter-registration applications.”³⁵ Noting a slowdown in application processing and concluding that “almost 25,000 voters may or may not have their vote counted in the 2016 General Election,” Judge Walker ordered Florida’s secretary of state to present a witness on October 28

25. Enforcement Motion, *Fla. Democratic Party*, No. 4:16-cv-626 (N.D. Fla. Oct. 18, 2016), D.E. 32 [hereinafter *Fla. Democratic Party Enforcement Motion*]; see Steve Bousquet, *Hurricane Matthew Ripple Effect: Big Changes to the Florida Voter Rolls*, Miami Herald, Oct. 20, 2016, at 1A.

26. *Fla. Democratic Party Enforcement Motion*, *supra* note 25, at 2–3.

27. Motion Opposition, *Fla. Democratic Party*, No. 4:16-cv-626 (N.D. Fla. Oct. 19, 2016), D.E. 44.

28. Order, *id.* (Oct. 19, 2016), D.E. 49; see Intervention Motion, *id.* (Oct. 19, 2016), D.E. 47.

29. Order, *id.* (Oct. 20, 2016), D.E. 51; see Intervention Motion, *id.* (Oct. 19, 2016), D.E. 50.

30. Order, *id.* (Oct. 19, 2016), D.E. 45; see Amicus Curiae Motion, *id.* (Oct. 19, 2016), D.E. 38.

31. Minutes, *id.* (Oct. 20, 2016), D.E. 52.

32. Interview with Hon. Mark E. Walker, Oct. 31, 2016 (noting also that comments to news media following the earlier hearing by Leon County’s supervisor of elections made him less desirable as a witness).

33. Order, *Fla. Democratic Party*, No. 4:16-cv-626 (N.D. Fla. Oct. 20, 2016), D.E. 54; see Steve Bousquet, *Judge Rejects Democrats’ Request to Speed Fla. Voter Verification*, Miami Herald, Oct. 21, 2016, at 3A.

34. Interview with Hon. Mark E. Walker, Oct. 31, 2016.

35. Order at 2, *Fla. Democratic Party*, No. 4:16-cv-626 (N.D. Fla. Oct. 27, 2016), D.E. 57.

to testify at a telephonic hearing about Florida's ability to process voter-registration applications.³⁶

Georgia

Georgia's voter-registration deadline was October 11 also.³⁷ Late at night on October 12, three organizations promoting voter registration filed a federal complaint against Georgia's governor and Georgia's secretary of state in the Southern District of Georgia's Savannah courthouse, seeking an extension of the voter-registration deadline for residents of Chatham County, Georgia's seaside county on the South Carolina border that includes Savannah.³⁸ In their complaint, the plaintiffs observed, "Chatham County government offices, which opened today, were last open on Wednesday, October 5."³⁹ With their complaint, the plaintiffs filed an emergency motion for a preliminary injunction.⁴⁰

On Thursday, October 13, Judge William T. Moore, Jr., the only district judge sitting in Savannah, set the case for hearing at 10:00 a.m. on the following day and ordered the clerk of court to serve defendants with copies of the case's electronically filed papers.⁴¹ Judge Moore would have held the hearing on Thursday afternoon, but lawyers for both sides were in Atlanta, and the lawyers requested a Friday morning proceeding.⁴²

Following the October 14 hearing, Judge Moore extended the voter-registration deadline in the county by one week.⁴³

While this Court harbors significant reservations concerning the ultimate merits of Plaintiffs' claims, the Court concludes that Plaintiffs have established a sufficient likelihood of success to warrant injunctive relief. An individual's ability to participate in local and national elections is arguably the most cherished right enshrined in our constitution. Indeed, our founding fathers felt so strongly about their right to participate in the electoral process that when deprived of it they took up arms against their sovereign, risking life and home for over eight years, to obtain that right.

36. *Id.* at 2–4; *Fla. Democratic Party* Transcript, *id.* (Oct. 28, 2016, filed Oct. 31, 2016), D.E. 60 (noting that Judge Walker was presiding from another city because he was conducting a trial there); see Steve Bousquet, *Judge Fears 25,000 Voters Won't Be Eligible for Election*, Miami Herald, Oct. 28, 2016, at 5A.

37. 2016 Elections and Voter Registration Calendar, sos.ga.gov/index.php/elections/2016_election_dates, archived at web.archive.org/web/20161225210158/sos.ga.gov/index.php/elections/2016_election_dates.

38. Complaint, *Ga. Coal. for the People's Agenda, Inc. v. Deal*, No. 4:16-cv-269 (S.D. Ga. Oct. 12, 2016), D.E. 1 [hereinafter *Ga. Coal. for the People's Agenda, Inc. Complaint*]; see Kristina Torres, *Registration Deadline Hearing Set*, Atlanta J.-Const., Oct. 14, 2016, at 1B.

39. *Ga. Coal. for the People's Agenda, Inc. Complaint*, *supra* note 38, at 2.

40. Preliminary-Injunction Motion, *Ga. Coal. for the People's Agenda, Inc.*, No. 4:16-cv-269 (S.D. Ga. Oct. 12, 2016), D.E. 2.

41. Order, *id.* (Oct. 13, 2016), D.E. 6; see Minutes, *id.* (Oct. 14, 2016), D.E. 12; see also Torres, *supra* note 38.

Tim Reagan interviewed Judge Moore for this report by telephone on October 31, 2016.

42. Interview with Hon. William T. Moore, Jr., Oct. 31, 2016.

43. *Ga. Coal. for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344 (S.D. Ga. 2016); see Drew, *supra* note 23; Aaron Gould Sheinin, *County Told to Reopen Voter Signup*, Atlanta J.-Const., Oct. 15, 2016, at 1A.

In the final analysis, Defendants may not be under any obligation to provide Chatham County residents with an extension. Only time will tell. What is clear to the Court, however, is that granting the extension would have been the right thing to do.⁴⁴

On October 17, an organization and a prospective voter filed a federal complaint in the Southern District of Georgia’s Brunswick courthouse against the governor and the secretary of state seeking a reopening of voter registration statewide.⁴⁵ With their complaint, the plaintiffs filed a motion for a temporary restraining order.⁴⁶

Judge Lisa Godbey Wood, the only district judge sitting in Brunswick—the county seat of the coastal Glynn County—was in Athens for the week teaching a seminar at the University of Georgia.⁴⁷ She asked Judge Moore if he would take the case.⁴⁸ On October 18, Judge Moore set the case for hearing on the following day.⁴⁹ The parties agreed to a Savannah hearing.⁵⁰

Following an October 19 hearing, Judge Moore denied relief in the second case, observing, “While all other counties were able to open their [Board of Elections] offices prior to the registration deadline, the Chatham County [Board of Elections] office did not reopen until October 12, [the day after the original registration deadline].”⁵¹ Judge Moore accepted a voluntary dismissal of the second case on November 1⁵² and a stipulated dismissal of the first case on March 15, 2017.⁵³

Discussion in both cases highlighted hurricane difficulties in Georgia’s six coastal counties, but the evidence supported relief only for Chatham County in the first case and for no additional counties in the second case.⁵⁴ Litigation in both cases was stronger on argument than on evidence.⁵⁵

44. *Ga. Coal. for the Peoples’ Agenda, Inc.*, 214 F. Supp. 3d at 1345.

45. Complaint, *Bethea v. Deal*, No. 2:16-cv-140 (S.D. Ga. Oct. 17, 2016), D.E. 1; *see* Amended Complaint, *id.* (Oct. 18, 2016), D.E. 10.

46. Temporary-Restraining-Order Motion, *id.* (Oct. 17, 2016), D.E. 2.

47. Interview with Hon. William T. Moore, Jr., Oct. 31, 2016.

48. *Id.*; *see* Recusal Order, *Bethea*, No. 2:16-cv-140 (S.D. Ga. Oct. 18, 2016), D.E. 8.

49. Order, *Bethea*, No. 2:16-cv-140 (S.D. Ga. Oct. 18, 2016), D.E. 9.

50. Interview with Hon. William T. Moore, Jr., Oct. 31, 2016.

51. Opinion at 2, *Bethea*, No. 2:16-cv-140 (S.D. Ga. Oct. 19, 2016), D.E. 16 [hereinafter *Bethea* Opinion], 2016 WL 6123241; Minutes, *id.* (Oct. 19, 2016), D.E. 13.

52. Order, *id.* (Nov. 1, 2106), D.E. 18; *see* Voluntary Dismissal, *id.* (Oct. 24, 2016), D.E. 17.

53. Order, *Ga. Coal. for the People’s Agenda, Inc. v. Deal*, No. 4:16-cv-269 (S.D. Ga. Mar. 15, 2017), D.E. 31; *see* Stipulated Dismissal, *id.* (Mar. 10, 2017), D.E. 30.

54. Interview with Hon. William T. Moore, Jr., Oct. 31, 2016; *see Bethea* Opinion, *supra* note 51, at 3.

55. Interview with Hon. William T. Moore, Jr., Oct. 31, 2016.