

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

KELVIN LEON JONES, et al.,

Plaintiffs,

v.

RON DESANTIS, in his official
capacity as Governor of the State
of Florida, et al.,

Defendants.

Consolidated Case No. 4:19-cv-300-
RH/MJF

**EMERGENCY MOTION FOR AN AMENDMENT TO AND
CLARIFICATION OF ORDER
GRANTING A PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 59(e) and Local Rule 7.1(L), *Gruver* Plaintiffs¹ in the consolidated case file this Emergency Motion to amend the Court’s Order granting a preliminary injunction issued on October 18, 2019 (the “Order”) to include (a) additional individual Plaintiffs, who were added through *Gruver* Plaintiffs’ First Amended Complaint, ECF 4-19-cv-00302 No. 26, filed on October 29, 2019, and (b) a member of

¹ *Gruver* Plaintiffs include Jeff Gruver, Emory Marquis “Marq” Mitchell, Betty Riddle, Kristopher Wrench, Keith Ivey, Karen Leicht, Raquel Wright, Steven Phalen, Clifford Tyson, Jermaine Miller, Curtis Bryant, Jr., Jesse D. Hamilton, LaToya Moreland, Florida State Conference of the NAACP, Orange County Branch of the NAACP, and League of Women Voters of Florida.

organizational Plaintiff the Florida State Conference of the NAACP (“Florida NAACP”)—therefore, paving the way for these individuals to vote in upcoming 2019, 2020, and other future elections. Plaintiffs also file this motion to clarify the record related to individual Plaintiff Raquel Wright, who seeks to vote in 2020 and beyond rather than in the 2019 elections.

As of filing, Plaintiffs have been informed that Defendant Supervisor of Elections for Orange County does not oppose the motion, and Defendant Supervisor of Elections for Indian River and Defendant Governor and Secretary of State oppose Plaintiffs’ motion.² Plaintiffs have not received a response from Defendant Supervisor of Elections for Manatee County. Plaintiffs request that the Court enter an expedited briefing schedule, with any opposition from Defendants to be due by midnight on November 1, 2019, and any reply by Plaintiffs due by noon on November 3, 2019.

² Counsel for Defendant Supervisor of Elections for Orange County asked that *Gruver* Plaintiffs note that municipal elections are subject to a separate residency requirement and are overseen by a canvassing board independent of the Orange County Supervisor. Counsel for Defendant Supervisor of Elections for Indian River County indicated that he “ha[s] no faith in the sworn statement signed by Mr. Hamilton and provided by Mr. Hamilton’s counsel” in light of the good faith error in Ms. Wright’s original declaration, relied on by this Court in its preliminary injunction order, which has been corrected and is discussed herein. Counsel for the Governor and Secretary of State “object to the introduction of new material into the record and an extension of the preliminary injunction order” as “[t]he preliminary injunction proceeding has ended and the record for that preliminary injunction proceeding is now closed.”

Specifically, Plaintiffs request that the preliminary injunction, which precludes Defendants Secretary of State and certain Supervisors of Elections from restricting Plaintiffs' ability to vote *solely* based on their inability to pay outstanding legal financial obligations ("LFOs") related to their felony convictions, be extended to cover individual Plaintiffs Jesse D. Hamilton, LaToya Moreland, and Curtis D. Bryant, Jr., and a member of the Florida NAACP, Anthrone J. Oats. Notably, Mr. Bryant, who has registered to vote, seeks to participate in the upcoming City of Orlando election on November 5, 2019 where early voting has already started. In addition, Mr. Oats, who also is registered to vote, seeks to participate in a November 19, 2019 runoff election in the City of Ocala.

Without an immediate ruling on this motion, however, these four potential voters—three recently added individual Plaintiffs and one organizational Plaintiff member—will irreparably lose their right to vote in upcoming elections due solely to their inability to pay LFOs.

BACKGROUND

In the Order, the Court ruled, among other things, that "the State of Florida cannot deny an individual plaintiff the right to vote just because the plaintiff lacks the financial resources to pay whatever financial obligations Amendment 4 and SB7066 require the plaintiff to pay." *Jones v. DeSantis*,

No. 4:19-cv-300, 2019 WL 5295192 at *19 (N.D. Fla. Oct. 18, 2019). The Court explained that “an otherwise-qualified felon who establishes genuine inability to pay . . . cannot be prevented from casting a ballot and having it counted.” *Id.* Since individual Plaintiffs in the consolidated action demonstrated, through declarations and/or live testimony, that they were unable to pay LFOs arising from their convictions, the Court held that they cannot be prevented from “casting a ballot.” *Id.* at 19–21. As a result, the Court granted Plaintiffs’ request for a preliminary injunction, requiring that certain “defendant Supervisor of Elections of the county where an individual plaintiff is domiciled must not take any action that both (a) prevents the plaintiff from applying or registering to vote and (b) is based only on failure to pay a financial obligation that the plaintiff asserts the plaintiff is genuinely unable to pay.” *Id.* at *20.

The Court also stated that abstention was improper because, among other reasons, any delay “would decrease the chance this case can be properly resolved both in this court and on appeal in time for eligible voters—and only eligible voters—to be able to vote.” *Id.* at *4. The Court further cited Ms. Wright’s original declaration to demonstrate that “[a]t least one named plaintiff wishes to vote in a local election on November 5.” *Id.* at *4 n.2. The Court explained that if “an eligible citizen misses an opportunity to vote, the

opportunity is gone forever” and that “when a state wrongly prevents an eligible citizen from voting, the harm to the citizen is irreparable.” *Id.* at *19.

MEMORANDUM

Under Federal Rule 59(e), a court may “alter or amend” a previously issued judgement. The decision to alter or amend judgment is committed to the sound discretion of the district judge. *Am. Home Assurance. Co. v. Glenn Estess & Assoc., Inc.*, 763 F.2d 1237, 1238-39 (11th Cir. 1985). This Court has previously granted motions to clarify the scope of a preliminary injunction. *See, e.g., Brenner v. Scott*, No. 4:14-cv-107, 2015 WL 44260 (N.D. Fla. Jan. 1, 2015) (Hinkle, J.); *Washington v. DeBeaugrine*, No. 4:09-cv-189, 2009 WL 10710852 (N.D. Fla. Oct. 15, 2009) (Hinkle, J.).

Plaintiffs request that this Court amend its Order to clarify that: (i) the preliminary injunction covers Mr. Hamilton, Ms. Moreland, Mr. Bryant, and Mr. Oats; and (ii) while Ms. Wright is not able to vote in the upcoming November 2019 election, Mr. Bryant and Mr. Oats are able to vote in November 2019.

The attached declarations, submitted by Mr. Hamilton and Ms. Moreland, as well as first supplemental declarations by Mr. Bryant and Mr. Oats, in support of Plaintiffs’ motion for preliminary injunction, demonstrate

that each of these individuals are returning citizens who are unable to pay LFOs arising from their convictions.

Mr. Hamilton declared that he owes at least \$130,000 in LFOs, which have been converted to a civil lien. Exhibit A, Hamilton Decl., at ¶ 4. Despite working full-time as a machinist, Mr. Hamilton has stated that he will not be able to pay off his LFOs “in [his] life time” due to his existing monthly obligations, which include child support, car payments, car insurance, rent, water and electricity. *Id.* at ¶¶ 2, 5–6. Mr. Hamilton registered to vote in Indian River County after Amendment 4 went into effect but stated that he is concerned that due to SB7066, he cannot participate in upcoming elections, beginning with the March 2020 election. *Id.* at ¶¶ 7, 9.

Ms. Moreland declared that she owes approximately \$645 in court costs related to her felony conviction. Exhibit B, Moreland Decl., at ¶ 6. Ms. Moreland relies on disability benefits and financial support from her family. *Id.* at ¶ 2. After her monthly financial obligations, which include rent, car insurance, car payment, food, and support for her children, she cannot afford to pay her LFOs. *Id.* at ¶ 8. Following the passage of Amendment 4, Ms. Moreland registered to vote in Manatee County, but based on information and belief, she is concerned—after receiving a letter from Defendant Manatee County Supervisor of Elections—that she has been purged from the voter rolls

because of SB7066. *Id.* at ¶¶ 13–14. As a result, Ms. Moreland is “unsure” whether she can vote on election day. *Id.* at ¶ 14.

Mr. Bryant declared that, to the best of his knowledge, he owes approximately \$10,000 in LFOs. Exhibit C, Bryant Suppl. Decl., at ¶ 7. Although Mr. Bryant works full-time, he lives “paycheck to paycheck.” *Id.* at ¶ 6. He spends his income on necessities, including rent, supporting his children, food, car insurance, and gas. *Id.* He also makes monthly payments towards his outstanding LFOs to a debt collection agency. *Id.* at ¶¶ 8–9. After these expenses he has “little-to-nothing leftover” and cannot pay off his LFOs. *Id.* at ¶ 10. Mr. Bryant registered to vote on September 24, 2019 in Orange County and seeks to vote in the upcoming election for the City of Orlando on November 5, 2019, as well as the runoff election on December 3, 2019, if necessary. *Id.* at ¶12. Mr. Bryant would vote in those elections but for SB7066’s LFO requirement. *Id.* at ¶ 13.

Mr. Oats has declared that, to the best of his knowledge, he owes over \$3,000 in LFOs. Exhibit D, Oats Suppl. Decl., at ¶ 6. Mr. Oats is a small business owner and, relying on financial aid, seeking a degree in Business Administration. *Id.* at ¶ 3. After paying child support, rent, food and gas, he cannot afford to pay his LFOs. *Id.* at ¶¶ 3, 7. After Amendment 4 took effect, Mr. Oats registered to vote in Marion County. *Id.* at ¶ 8. He did not participate

in the City of Ocala elections on September 17, 2019 because of SB7066's LFO requirement. *Id.* at ¶ 10. Mr. Oats seeks to vote in the City of Ocala run-off election on November 19, 2019. *Id.* at ¶¶ 10–11.

In sum, Mr. Hamilton, Ms. Moreland, Mr. Bryant, and Mr. Oats have demonstrated through their declarations that they each are unable to pay their LFOs and that absent their lack of financial resources, they would vote in upcoming Florida elections. Accordingly, the preliminary injunction should be extended to include these returning citizens. Three of the four Supervisors of Elections for the counties in which these individuals seek to vote—Indian River, Manatee, and Orange Counties—are Defendants in this consolidated action and, two such counties (Indian River and Manatee Counties), already are subject to this Court's preliminary injunction.³

Additionally, Plaintiffs wish to clarify that while Ms. Wright is not able to vote in the 2019 elections, both Mr. Bryant and Mr. Oats are able to vote in November 2019. Although this Court cited the imminence of Ms. Wright's ability to participate in an upcoming November election in the Order, Ms.

³ As identified *infra*, Mr. Oats, a member of organizational plaintiff Florida NAACP, lives in Marion County; the Supervisor of Elections for that county is not individually named as a defendant in this action. Mr. Bryant lives in Orange County and the Orange County NAACP is an organizational Plaintiff. Although the Supervisor of Elections for Orange County is individually named as a defendant in this action, and the Court's Order applies to "[t]he defendant Supervisor of Elections of the county where an individual plaintiff is domiciled," the Supervisor of Elections for Orange County is not specifically named in the Order.

Wright's supplemental declaration and testimony during the preliminary injunction hearing stated that the next election that she can vote in is 2020. *Compare* Wright Decl., ECF No. 98-10 at ¶ 23 *with* Wright Supp. Decl., ECF No. 152-8 at ¶¶ 22–23; October 7, 2019 Hr'g Tr. 152:24–153:1. This is harmless, however, as Mr. Bryant stated in his sworn declaration, accepted into the record by this Court at the preliminary injunction hearing (October 7, 2019 Hr'g Tr. 5:5–7), that he would vote in Orange County on November 5, 2019 but for SB7066's LFO requirement. Bryant Decl., ECF No. 152-22 at ¶¶ 12–13.⁴ In addition, as discussed above, Mr. Oats seeks to vote in the run-off election for the City of Ocala on November 19, 2019 and would vote in that election but for SB7066's LFO requirement. Oats Supp. Decl. at ¶¶ 10–11.

Given the time-sensitive nature of this request—election day is in 5 days for Mr. Bryant and 19 days for Mr. Oats—Plaintiffs respectfully ask this Court to amend the Order to expand the preliminary injunction to protect Mr. Hamilton, Ms. Moreland, Mr. Oats, and Mr. Bryant's ability to vote in

⁴ To the extent that the Court believes that the record is closed with respect to new information, Mr. Bryant's declaration was before the Court at the preliminary injunction hearing and thus he should not be precluded from voting by this Tuesday, November 5 and any elections thereafter.

upcoming elections. Without extending such relief, these individuals will lose their ability to vote—a harm that, as the Court recognized, is “irreparable.”

CONFERENCE WITH COUNSEL

Pursuant to Rule 7.1(B) we have attempted to confer with Defendants’ counsel regarding this motion. We received responses from Defendant Supervisors of Elections for Orange County and Indian River Counties, and the Governor and Secretary of State. As we stated above, Counsel for Defendant Supervisor of Elections for Orange County did not oppose the motion and noted that municipal elections are subject to a separate residency requirement and are overseen by a canvassing board independent of the Orange County Supervisor, while Counsel for Indian River and the Governor and Secretary of State opposed the motion. We did not receive a response from Defendant Supervisor of Elections for Manatee County.

Date: 10/31/2019

Respectfully submitted,

/s/ David Giller

Pietro Signoracci*
David Giller*
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000
Psignoracci@paulweiss.com
Dgiller@paulweiss.com

Leah C. Aden*
John S. Cusick*
NAACP Legal Defense and
Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006
(212) 965-2200
laden@naacpldf.org
jcusick@naacpldf.org

Jennifer A. Holmes*
NAACP Legal Defense and
Educational Fund, Inc.
700 14th Street, Suite 600
Washington D.C., 20005 (202)
682-1500 jholmes@naacpldf.org

Wendy Weiser
Myrna Pérez
Sean Morales-Doyle*
Eliza Sweren-Becker*
Brennan Center for Justice at NYU
School of Law
120 Broadway, Suite 1750
New York, NY 10271
(646) 292-8310
wendy.weiser@nyu.edu
myrna.perez@nyu.edu
sean.morales-doyle@nyu.edu

Jimmy Midyette
Fla. Bar No. 0495859
American Civil Liberties Union
Foundation of Florida
118 W. Adams Street, Suite 510
Jacksonville, FL 32202
904-353-8097
jmidyette@aclufl.org

Julie A. Ebenstein
Fla. Bar No. 91033
R. Orion Danjuma*
Jonathan S. Topaz*
Dale E. Ho**
American Civil Liberties Union
Foundation, Inc.
125 Broad Street, 18th Floor
New York, NY 10004
(212) 284-7332
jebenstein@aclu.org
odanjuma@aclu.org
jtopaz@aclu.org
dho@aclu.org

Daniel Tilley
Fla. Bar No. 102882
Anton Marino **
American Civil Liberties Union of
Florida
4343 West Flagler St., Suite 400
Miami, FL 33134
(786) 363-2714
dtalley@aclufl.org
amarino@aclufl.org

Counsel for Gruver Plaintiffs

* Admitted *Pro Hac Vice*
** *Pro Hac Vice* applications forthcoming

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

The undersigned certifies that the foregoing complies with the size, font, and formatting requirements of local rule 5.1(c), and that the foregoing complies with the word limit in local rule 7.1(f); this motion and memorandum of law contains 2,240 words, excluding the case style, signature block, and certificates.

CERTIFICATE OF SERVICE

I hereby certify that on 10/31/2019, I served a true and correct copy of the foregoing document via electronic notice by the CM/ECF system on all counsel or parties of record.

/s/ David Giller

David Giller

Counsel for Gruver Plaintiffs