

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	
)	Case # 2024-CP-40-05967
South Carolina Democratic Party,)	
)	
Plaintiff,)	ORDER
v.)	
)	
Howard Knapp, in his official capacity as)	
Executive Director of the South Carolina)	
State Election Commission,)	
)	
Defendant)	
_____)	

This matter has come before this Court pursuant to Rule 65, SCRCP, by the Plaintiff for a Motion for Temporary Injunction directing the South Carolina State Election Commission's Executive Director ("SEC") to set and extend the voter registration deadline to October 14, 2024 (inclusive of that date), for all forms of voter registration and to take all such measures are needed to ensure that the deadline is properly implemented.

According to the Plaintiff's Motion, the new deadline is essential to protect the right to vote because of the disaster that Hurricane Helene has caused in this state with continuing harm. Defendant Howard Knapp, in his official capacity as Executive Director of the SEC, filed a response to the Motion, taking no position on the merits of the Motion but providing the Court with information as to how the SEC could proceed, if one or more of the voter registration deadlines were to be extended.

After careful review of the Motion and the Complaint herein, with attached supporting documents, and the SEC's response to the Motion, the Court has determined that a Temporary Injunction must be issued.

BACKGROUND

On October 2, 2018, in response to Hurricane Florence, this Court issued an Order pursuant to a nearly identical Complaint & Motion for Temporary Injunction, extending the then voter registration deadline for 10 days due to the effects of Hurricane Florence. *See Exhibit A to Complaint – Order State of South Carolina v. Andino, Richland County, Case #2018-CP-40-05088 (October 2, 2018).*

CURRENT VOTER REGISTRATION DEADLINES

For the 2024 General Election, the deadlines to register to vote are as follows:

- a. in person: Friday, October 4;
- b. online or by fax or email: Sunday, October 6; and
- c. by mail: Monday, October 7 (must be postmarked by this date). Per S.C. Code Ann. § 7-5-150 ("The registration books shall be closed thirty days before each election.")

HURRICANE HELENE IMPACT ON STATE OPERATIONS

Hurricane Helene has had a profound impact on this state that has continuing effects today. As a result of this natural disaster, lives have been lost, families displaced, and massive amounts of property destroyed.

- A. On September 25, 2024, the Governor of South Carolina issued Executive Order 2024-24 declaring a State of Emergency in preparation for the potential effects of Hurricane Helene. *See Exhibit D to Complaint – Executive Order.*

- B. On September 26 and 27, Hurricane Helene caused extensive flooding and wind damage across much of South Carolina. Numerous county courthouses and other state and local offices were closed on Friday, September 27, 2024, and it is expected that many South Carolina counties may remain closed for several more days. Many thousands of South Carolinians remain without power. See <https://www.wyff4.com/article/south-carolina-power-outage-updates-duke/62445192>
- C. Schools and County Offices were and are closed in some counties and as of this writing Spartanburg, Laurens, and Edgefield state offices remain closed through this Friday, October 5, 2024. <https://www.scemd.org/closings/>
- D. On September 28, 2024, Governor Henry McMaster sent a detailed expedited request for the federal government to declare portions of South Carolina disaster areas giving great detail as to the extensive damage caused by Hurricane Helene:

Residents and local governments in half of the State are experiencing severe conditions including power and communications outages, impeded transportation access because of downed trees and power lines, and damage to structures and infrastructure. Power outage numbers are a record high for the State, and power restoration is expected to last into next week. One of the State's main river systems is expected to crest at a record high in Greenville County.

See Exhibit E to Complaint – 9/28/24 Letter to President Biden Requesting Expedited Disaster Aid

- E. On September 30, 2024, the South Carolina Supreme Court issued an Order pursuant to Rule 611 of the South Carolina Appellate Court Rules, (SCACR) declaring filing "holidays" for Friday September 27; Monday September 30;

and Tuesday, October 1, 2024 because of issues caused by Hurricane Helene. *Exhibit B to Complaint – 9/20/24 Order.*

<https://www.sccourts.org/media/courtOrders/PDFs/2024-09-30-01.pdf>

- F. On October 1, 2024, based on the continued difficulties in restoring power and other services to large portions of the population in South Carolina, the South Carolina Supreme Court issued an order finding “we find these problems continue to adversely affect the ability of many lawyers and litigants to comply with filing and service deadlines in various courts. Accordingly, we declare Wednesday October 2 through Friday October 4, 2024 to be statewide filing “holidays” for the purpose of computing time under Rule 263 of the South Carolina Appellate Court Rules; Rule 6 of the South Carolina Rules of Civil Procedure; Rule 35 of the South Carolina Rules of Criminal Procedure; and Rule 3 of the South Carolina Rules of Magistrates Court. *Exhibit C to Complaint - 10/1/24 Order.* <https://www.sccourts.org/media/courtOrders/PDFs/2024-10-01-01.pdf>

Although not every county in the State has been affected in the same way, all counties have been impacted, as recognized by the above orders and declarations that affect all or significant parts of the State. The Constitution recognizes that standards for voting must be uniform statewide. Ops. Atty. Gen. (March 12, 2014 – 2014 WL 1398593). Therefore, the new deadline must apply statewide.

**THE MOTION SATISFIES THE GROUNDS FOR GRANTING
A TEMPORARY INJUNCTION**

“For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted: (2) it will likely succeed on

the merits of the litigation; and (3) there is an inadequate remedy at law.” *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). Plaintiff’s Complaint satisfies these standards and is incorporated into the Motion by reference, and in turn, incorporated into this Order by reference.

Likelihood of Success

As previously noted, this Court, in 2018, in response to Hurricane Florence, issued a nearly identical Order extending the then voter registration deadline an additional ten (10) days. See *Exhibit A to Complaint – Order State of South Carolina v. Andino, Richland County, Case #2018-CP-40-05088 (October 2, 2018)*.

Plaintiff will likely succeed on the merits because extending the registration time is necessary to preserve the right to vote. The Complaint asserts two causes of action: one to extend registration to protect the right to vote and the other for equitable tolling to protect that right.

The right to vote is fundamental. To protect this right to the extent possible in the wake of a major hurricane causing unparalleled flooding, the Executive Director must be directed to set a voter registration date of October 14, 2024 (inclusive of that date), for all forms of registration, consistent with her general authority to ensure that voter registration complies with “applicable state or federal law.” §7-3-20. See *Ops. Atty. Gen.*, March 8, 2016 - 2016 WL 963705, at *3 (right to vote is a fundamental right and interpretation by a court of the Voter ID Act will certainly be well cognizant of the fundamental nature of the right to vote); *South Carolina v. United States*, 898 F. Supp. 2d 30, 35–36 (D.D.C. 2012) (“The Attorney General of South Carolina and Ms. Andino have emphasized that a driving

principle both at the polling place and in South Carolina state law more generally is erring in favor of the voter.”); see also, *Ops. Atty. Gen.* (October 3, 1989 -1989 WL 406196)(interpreting §41–35–110 of the Code and the authority of the Employment Security Commission to make a certain finding to the limited and exigent circumstances occasioned by the devastation of Hurricane Hugo).

As to the second cause of action, to preserve the constitutionally protected right to vote in light of the natural catastrophe caused by Hurricane Helene, the Court may suspend by equitable tolling the running of the current registration deadline to allow voter registration to proceed up to and including October 14, 2024, for all forms of registration, as was previously done in 2018.

A Court such as this Court possesses the inherent powers to do justice in the wake of an act of God. See *Carlisle v. U.S.*, 517 U.S. 416, 436 (1996). The Legislature did not intend voters to be barred from exercising their constitutional right to vote because a natural disaster has struck the State.

As stated in *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009):

Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Rodriguez v. Superior Court*, 176 Cal.App.4th 1461, 98 Cal.Rptr.3d 728 (2009). “Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period ‘to ensure fundamental practicality and fairness.’ ” *Id.* at 736 (citation omitted).

See also, *Carlisle v. United States*, *supra* (“In the rare situations Justice STEVENS envisions—delay of a meritorious motion due to an Act of God, see post, at 1480, or cases comparable to those in which we would read and grant an out-of-time rehearing petition, see post, at 1478—these modes of relief should provide an adequate

corrective.”); *Windland v. Dretke*, No. 3-05-CV-2438-K, 2006 WL 1391435, at *2 (N.D. Tex. May 18, 2006), rev'd sub nom. *Windland v. Quarterman*, 578 F.3d 314 (5th Cir. 2009).

In addition to the above authority, decisions under similar circumstances from courts in Florida and Georgia show that the Plaintiff is likely to succeed on the merits. *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1257 (N.D. Fla. October 10, 2016) granted a temporary restraining order extending the voter registration deadline for one day due to the effects of Hurricane Matthew followed by another order granting a preliminary injunction extending the deadline by a total of seven days. (*Fla. Democratic Party v. Scott*, No. 4:16CV626-MW/CAS, 2016 WL 6080225, at *1 (N.D. Fla. Oct. 12, 2016)). As stated in the October 10 Order: “Of course, the State of Florida has the ability to set its own deadlines and has an interest in maintaining those deadlines. But it would be nonsensical to prioritize those deadlines over the right to vote, especially given the circumstances here. Other states ravished by Hurricane Matthew extended their registration deadline to protect voters.” *See also, Georgia Coal. for the Peoples' Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1344–46 (S.D. Ga. 2016) (granting preliminary injunction extending registration deadline for seven days for Chatham County where registration offices had been closed).

As set forth above, this Court’s directing an extension is consistent with the general authority of the SEC to ensure that voter registration complies with “applicable state or federal law” (§7-3-20) and with the authority of this Court to suspend by equitable tolling the running of the current registration deadline.

The deadline must be extended statewide to preserve uniformity of voting

requirements and because all parts of the State have been affected to some degree by Hurricane Helene. The Constitution recognizes that standards for voting must be uniform statewide. *Ops. Atty. Gen.* (March 12, 2014 – 2014 WL 1398593). Therefore, Plaintiff is likely to succeed on the merits.

Irreparable Harm

The irreparable harm would come if the registration is not extended and citizens are unable to register to vote because their lives are still disrupted by the effects of the Hurricane. Those effects are profound, catastrophic in some parts of the State, and well documented in the Executive and Judicial Orders and other documents referenced above.

No Adequate Remedy

No adequate remedy exists. The registration deadlines are about to expire. No express mechanism exists for extension of the deadlines.

CONCLUSION

The granting of a temporary injunction is consistent with the preservation of the right to vote, the Executive Director's general authority to ensure that voter registration complies with "applicable state or federal law" (§7-3-20) and the authority of this Court to suspend by equitable tolling the running of the current registration deadline as was previously ordered by this Court in 2018 in response to Hurricane Florence.

For the foregoing reasons, IT IS ORDERED THAT the date for a citizen to register to vote, by any authorized method, is extended to and inclusive of October 14, 2024. The SEC is directed to set a new voter registration deadline of October 14, 2024, inclusive of that date, for all forms of voter registration and to undertake all measures within his

authority to ensure that the new voter registration deadline is implemented and to make reasonable efforts to inform the general public of this new deadline. In the face of the emergencies created by the effects of Helene, the SEC is further enjoined from enforcing the voter registration deadlines contained in S.C. Code Ann. §§ 7-5-150, 7-5-155 and 7-5-185.

AND IT IS SO ORDERED.

[electronic signature to follow]

Hon. Daniel Coble
Chief Administrative Judge
Fifth Judicial Circuit - Richland County

October 4, 2024
Columbia, South Carolina



Richland Common Pleas

Case Caption: South Carolina Democratic Party vs Howard Knapp

Case Number: 2024CP4005967

Type: Order/Other

So Ordered

s/ Daniel Coble, 2774