

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

RENE ROMO, an individual, et al.,

Plaintiffs,

vs.

Case No. 2012-CA-000412

KEN DETZNER, in his official capacity as
Florida Secretary of State, and PAMELA JO
BONDI, in her official capacity as Attorney
General,

Defendants.

_____ /

THE LEAGUE OF WOMEN VOTERS OF
FLORIDA, INC., ET AL.,

Plaintiffs,

vs.

Case No. 2012-CA-000490

KEN DETZNER IN HIS OFFICAL
CAPACITY AS Florida Secretary of State, et
al.,

Defendants.

_____ /

**RESPONSE OF FLORIDA STATE
ASSOCIATION OF SUPERVISORS OF ELECTIONS, INC.
TO THE COURTS ORDER OF AUGUST 1, 2014**

COMES NOW, the Florida State Association of Supervisors of Elections, Inc. (FSASE), by and through undersigned counsel, and responds to the Courts Order of August 1, 2014, and states as follows:

1. On July 10, 2014, this Court entered a Final Judgment in these cases and decided that certain districts in the congressional redistricting plan adopted by the Florida Legislature in 2012 are drawn in contravention of Article III, Section 20, of the Florida Constitution and are unconstitutional, and thus the redistricting map as drawn is unconstitutional.

2. Thereafter, the Court on August 1, 2014, entered its Order on Defendants Motion to Amend the Judgment and directed the respective parties to take certain actions. The first action was for the Florida Legislature to submit a remedial or revised map to the Court by August 15, 2014. The Legislature has adopted a new map revising the districts found to be unconstitutional, and revising other districts as necessary.

3. Florida is currently conducting the 2014 election with the Primary Election to occur on August 26, 2014. Absentee balloting has been ongoing since July 12, 2014; early voting has started for the Primary Election. The General Election is to be conducted on November 4, 2014.

4. In the Order of August 1, 2014, the Court directed the Supervisors of Elections to collaborate with the Secretary of State to present a proposed special election schedule, and comments and suggestions regarding the conduct of a special election assuming there was a revised map in place no later than August 21, 2014. In approaching this directive the FSASE has placed foremost the position that any such election must protect the voter's rights and be fair, secure, conducted properly and efficiently in conformity with all statutory requirements. The Supervisors believe it of utmost priority to ensure fair, secure, transparent and accurate elections. The position the Supervisors have outlined is one they believe necessary to resolve the issue at hand in a swift manner while also avoiding risks of compromising the election, confusing voters and violating election laws. While there are numerous technical and procedural hurdles to be met in undertaking a special election in this context, the Supervisors of Elections stand ready to meet that challenge and will work with the Court to meet its directions.

5. FSASE has collaborated with the Secretary of State and developed a proposed special election schedule and timeline. The schedule establishes the actions that must be taken pursuant to Florida and/or federal law by the Supervisors of Elections in counties where congressional district lines would be moved and counties that would be involved in a special election based on changed district lines. The schedule is attached hereto as Exhibit A.

6. Prior to any special election based on new districts being created, those affected counties must undertake redistricting. Completion of the redistricting process cannot occur until after the November 4, 2014 election is completed. The earliest these counties would be in a position to complete redistricting and mapping, then initiate the election process, begin contracting for the polling locations, establish election procedures, have equipment available to conduct the election and begin to undertake mandatory training for election workers is December 18, 2014. Based on the proposed special election schedule the Primary Election would be held seventy-seven (77) days from the start of the election process and the General Election one hundred forty-seven (147) days from the start.

7. It is not possible to conduct a special primary election between the present time and the scheduled November 4, 2014 General Election. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Military and Overseas Voter Empowerment Act and section 101.62(4), Florida Statutes, mandate vote-by-mail absentee ballot timelines to protect the enfranchisement of overseas voters and these protections would be compromised if an election was ordered before the scheduled November 4, 2014 election. Redistricting and remapping in affected counties is not possible until completion of the November election. In addition, any new lines, precincts or splits must be approved by county

governments with proper notice pursuant to sections 101.001 and 101.71, Florida Statutes, before they become effective. During this time voters records cannot be moved, which would be necessary. When lines are changed, significant reprogramming of election databases must be undertaken and the databases cannot be reprogrammed until completion of prior registration or voting activity from the currently scheduled 2014 primary and general elections. These timeframes can't be eliminated or shortened (See, sections 97.005, 99.061, 101.6952(5), Florida Statutes).

8. Furthermore, it is also not feasible or reasonable to conduct or place a special primary election on the same day as the November 4, 2014 General Election. The foregoing redistricting and mapping issues would need to be undertaken between the present time and November, which is not possible due to the aforementioned reasons of county approval and ability to reprogram elections equipment and databases. Additionally, if this suggestion were to be considered, counties would need to run two separate elections with separate equipment and separate ballots for the primary and general election. A congressional primary race cannot simply be added to the general election ballot because they are separate election types needing separate voter history credit, one would generate separate partisan/non-partisan ballots while the other is a general ballot and they might possibly be run under different (old and new) boundary lines in the elections

software (See, sections 98.0981, 101.23, Florida Statutes). The voting equipment utilized does not allow dual elections to be run at the same time on the same equipment, thus requiring substantial additional voting equipment which the counties do not possess. The voter confusion of having voters cast separate ballots on different machines would be substantial. Further, the absentee ballot process would cause voter confusion when voters have to return separate absentee ballots in separate envelopes for the Primary and General Election to ensure proper separate voting history credit. These ballots must be separate in the event there is any legal challenge to them. The Legislature has recently taken significant steps to minimize voter confusion and waiting times and this concept would only enhance those problems. Regardless, the existing time frames do not support this possible suggestion if the State is going to comply with requirements dealing with overseas voters and minimum statutory mailing times (See, 101.62(4), Florida Statutes).

9. The submitted special election schedule has been created based on current statutory time frames or dates. The activities are often interdependent and in many instances the action cannot take place until the proceeding act has successfully been completed. If there are new districts and precincts, they would need to be advertised and subsequent candidate qualifying times established. Also, candidates would presumably be allowed an opportunity to use the petition process

to qualify and these would need to be validated and certified to the Department of State. Notice of the election dates are required to be advertised. (See, 99.095, 99.097, 100.141, Florida Statutes)

10. The election schedule/timeline lays out the actions which need to be taken by the supervisor of elections to carry out this special election. Exhibit A provides a detailed description of those actions and the days on which they are required to take place. All of these actions are statutorily required and must be complied with in accord with specified dates or times.

11. An additional concern which is very relevant to moving these elections into 2015 is that it will require a review of local and municipal elections which are scheduled in the affected counties. It would be imperative to set the actual dates and allow these elections to coincide on the same dates of these elections. FSASE would request the opportunity to provide information on those specific dates if the Court determines to order these special elections.

12. Finally, FSASE requests the Court to provide guidance on how affected counties should act if the elections in these districts do not go forward on August 26, 2014. Ballots have been returned and will need to be processed to count all other races on the ballot, and tabulation will automatically calculate these congressional races, which may be an issue. Results are publicly posted at each precinct and the court may need to order whether the results should be public or

suppressed and if so, how. Additionally, the Court needs to provide direction to the counties and State concerning how the November 4, 2014 General Election ballot should be printed concerning these seats.

Respectfully submitted this _____ day of August, 2014.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing was sent by electronic mail on August _____, 2014, to the individuals identified on the Service List that follows.

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EXHIBIT A

SPECIAL ELECTION SCHEDULE/TIMELINE

- Day 0: Order given for the special election
- Day 0 – Day 24: Begin hiring process for temporary workers such as poll workers, call center operators, warehouse, technical rovers, etc. (These hires must complete drug screens, background checks, and other county requirements)
- Day 0: Import the GIS lines and data into the production database
- Day 2: Take the GIS information and move it to the tabulation system to make the GIS mapping congruent with the voter database system
- Day 2 – 9: The import of the GIS lines into the production database will prompt the system to create voter cards. Voter cards must be produced and mailed
- Day 4: Define the election in the election tabulation system
- Days 7 – 10: Advertising (assuming that days 8, 9, 10 are the days that the ad would actually appear in the publication)
- Begin poll worker training
- Day 10: Begin securing precincts contracts for polling locations
- Day 15: Candidate petitions are due to the Supervisor of Elections (1/4 of normal petitions) for all candidates who wish to qualify to be on the ballot by petition
- Day 17: Supervisors of Elections to certify candidate petitions for filed candidates to the Division of Elections (this gives 2 days of processing petitions)
- Day 20 – 21: Qualifying
- Day 24 – Day 26: Design the layout of ballots for the Primary. Review ballot proofs for the Primary election.
- Day 26: Run test ballots through tabulation system to ensure they are compatible
- Send the ballot proof to a printer for UOCAVA overseas ballots
- Day 26 – 28: Design the layout of sample ballots for the Primary. Review the sample ballot proofs
- Day 32: Mail UOCAVA overseas vote-by-mail ballots (for special Primary)

- Day 32 – 57: Begin staging and prepping elections machines
- Day 42: Send certified notice of public logic and accuracy testing to political party chairs and candidates
- Day 42: Begin mailing of domestic vote-by-mail ballots (for special Primary)
- Day 48: Book closing (special Primary)
- Begin preparing election equipment (booths, bags, accessibility ramps, etc.)
- Coordinate with a moving company the load out and return of early voting and election day election day elections day machines and equipment
- Day 50: Begin design/contracting for placing sample ballot ad in newspaper of general circulation
- Day 47: Deadline to designate early voting sites
- Day 47 – Day 55: Window for public notice of the public logic and accuracy testing of equipment in a newspaper of general circulation and on the official Supervisors of Elections website
- Day 57: Public Logic and Accuracy Testing of equipment
- Election Preparation Report due for posting on official Supervisor of Elections websites
- Day 58: Begin load out of elections equipment and machines for early voting
- Day 58 – 66: Set up early voting sites
- Day 60 – 69: Mail sample ballots
- Day 67-74: Early Voting begins (for special election Primary)
- Day 69: Begin load out of elections equipment and machines for Primary Election Day
- Day 70: Send electronic sample ballot to voters who requested electronic sample ballots or who provided email addresses
- Day 74: Begin to define the General Election in the tabulation system
- Day 77: Special Primary Election Day
- Day 77 – 80: Take down all Election Day precincts, load all elections equipment and machines, move back to warehouse location

- Day 78 – 83: Scan and inventory all elections machines and equipment
- Day 78 – 89: Search and clear every piece of equipment and machinery for possible live ballots
- Day 81: 1st unofficial results (begin possible recount procedures)
- Day 87: Overseas ballots are due back to the Supervisors of Elections for the special Primary election
- Day 89: Deadline for county certification of election results (for Primary)
- Day 89 – 96: Manual audit by the canvassing board may begin
- Day 90: Begin poll worker training
- Day 90 – 92: Design the layout of ballots for the General. Review ballot proofs for the General election
- Day 90 – 104: All elections documentation (ballot report forms, provisional documentation, spoils, etc.) is all catalogued and off-sited.
- Day 92: Run test ballots through tabulation system to ensure they are compatible (for General election)
- Day 92 – 94: Design the layout of sample ballots for the General. Review the sample ballot proofs (for General)
- Day 91: Election Canvassing Commission Certification report due (for Primary)
- Day 102: UOCAVA overseas mailing of ballots (for special General)
- Begin design/contracting for placing sample ballot ad in newspaper of general circulation
- Day 102 – 127: Begin staging and prepping elections machines
- Day 112: Send certified notice of public logic and accuracy testing to the party chairs and candidates
- Day 112 – 139: Begin domestic mailing of ballots (for special General)
- Day 118: Book closing (for special General)
- Begin preparing election equipment (booths, bags, accessibility ramps, etc.)
- Day 121: Results by precinct report due to Division of Elections (for special Primary)

Day 117:	Deadline to designate early voting sites
Day 117 – 125:	Public notice of the public logic and accuracy testing of equipment may begin in a newspaper of general circulation and on the official Supervisors of Elections website
Day 127:	Public Logic and Accuracy Testing of equipment
Day 128:	Begin load out of elections equipment and machines for early voting
Day 128 – 136:	Set up Early Voting sites
Day 130-139:	Mail sample ballots
Day 137-144:	Early Voting (for General special)
Day 139:	Begin load out of elections equipment and machines for Election Day
Day 140:	Send electronic sample ballot to voters who requested electronic sample ballots or who provided email addresses
Day 147:	General Election Day
Day 148 – 150:	Take down all Election Day precincts, load all elections equipment and machines, move back to warehouse location
Day 148 – 153:	Scan and inventory all elections machines and equipment
Day 148 – 159:	Search and clear every piece of equipment and machinery for possible live ballots
Day 150:	1 st unofficial results (begin possible recount procedures)
Day 157:	Overseas ballots due back to the Supervisors of Elections for the special General Election
Day 159:	Deadline for county certification of election results
Day 159 – 166:	Manual audit by the canvassing board may begin
Day 160 – 174:	All elections documentation (ballot report forms, provisional documentation, spoils, etc.) is all catalogued and off-sited.
Day 161:	Deadline for Canvassing Commission Certification report
Day 191:	Results by precinct report due to Division of Elections (for General election)

Note: The first day of the calendar assumes most redistricting processes have occurred prior to the “Day 0”. This includes any counties that must find and contract with a GIS contractor if there are no in-house GIS specialty staff. It also includes the actual mapping of the lines in GIS, which typically takes a few weeks to complete and “SRIMP” or importing these lines into the voter database. Should these events have to take place around December 18th, it might be difficult for counties to find mapping GIS contractors who will be available around the holidays

EXHIBIT B

COMMENTS

1. The first day of the calendar assumes most redistricting processes have occurred prior to the “Day 0”. This includes any counties that must find and contract with a GIS contractor if there are no in-house GIS specialty staff members. It also includes the actual mapping of the lines in GIS, which typically takes a few weeks to complete, and “SRIMP” or importing these lines into the voter database.
2. Should these events have to take place around December 18th, it might be difficult for counties to find mapping GIS contractors who will be available around the holidays.
3. Depending on the timing of a possible special election, Supervisors may encounter hiring/staffing complications including availability, recruitment, training, cost, tax withholdings, compliance with the Affordable Care Act impact, levels of staffing if processing election and qualifying or dual election, etc. These variables would be affected by time of year, if a temporary employee worked previous elections and thus through additional aggregate hours fell into a new employee classification, etc. (*F.S. 102.012; F.S. 102.014*)
4. The impact of needing to draw precinct lines that match congressional districts is important to keep in mind due to the reporting by congressional districts of the 2016 presidential election and may cause a more complicated redistricting process than anticipated for Supervisors *F.S. 98.0981*.
5. Polling locations may be available now, but not in special election, thus prompting precinct changes, voter cards, proper notice of precinct changes, etc. (see *F.S. 101.001; F.S. 101.71*)
6. If a special election is called, particularly if it must run concurrently with an existing election, local county governments will incur a great expense they may or may not presently have funds on hand to complete. Up-front costs for special elections are to be borne by counties’ budgets and then reimbursed by state, see *F.S. 100.102*.