

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

DEMOCRATIC PARTY OF NORTH  
CAROLINA,

Plaintiff,

v.

KIM STRACH, in her official capacity as the  
Executive Director of the North Carolina State  
Board of Elections,

Defendants.

Case No.

DECLARATION OF MARC E. ELIAS

I, Marc E. Elias, do hereby state as follows:

1. I represent Plaintiff Democratic Party of North Carolina in this matter.
2. I have personal knowledge regarding the facts stated in this declaration, and I am competent to testify to the matters stated in this declaration.
3. In 2012, North Carolina's voter registration deadline was October 12.

According to data in the state voter file collected and maintained in the ordinary course of business by the North Carolina Board of Elections:

- Eleven percent of all new voters in 2012 were registered in the final week before the registration deadline;
- In 2012, there were almost twice as many registration applications submitted in the week before the voter registration deadline (71,852) as there were in the previous week that year (37,460).
- During the last week of voter registration in 2012, 29.7% of registrations submitted came from African Americans, constituting a 32% increase in the last week relative to the composition of the electorate.

4. Attached as Exhibit A is a true and correct copy of an Order Granting Temporary Restraining Order, issued by the Northern District of Florida in *Florida Democratic Party v. Scott et al.*, No. 4:16cv626-MW/CAS, on October 10, 2016.

5. Attached as Exhibit B is a true and correct copy of an Order Granting Preliminary Injunction, issued by the Northern District of Florida in *Florida Democratic Party v. Scott et al.*, No. 4:16cv626-MW/CAS, on October 12, 2016.

6. Attached as Exhibit C is a true and correct copy of Numbered Memo 2016-19, issued by Defendant Kim Strach to County Boards of Election on October 12, 2016.

7. Attached as Exhibit D is a true and correct copy a letter sent by Plaintiff to the North Carolina State Board of Elections and addressed to Executive Director Kim Strach.

8. Attached as Exhibit E is a true and correct copy of a letter sent by the North Carolina Conference of Branches of the NAACP to the North Carolina State Board of Elections and Executive Director Kim Strach.

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Dated this 14th day of October, 2016, in Washington, D.C.



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Marc E. Elias

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

**FLORIDA DEMOCRATIC PARTY,**

*Plaintiff,*

v.

**Case No. 4:16cv626-MW/CAS**

**RICHARD SCOTT, IN HIS OFFICIAL  
CAPACITY AS GOVERNOR OF THE  
STATE OF FLORIDA, AND KEN DETZNER,  
IN HIS OFFICIAL CAPACITY AS SECRETARY  
OF STATE OF THE STATE OF FLORIDA,**

*Defendant.*

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**ORDER GRANTING TEMPORARY RESTRAINING ORDER**

“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). That right is no less sacrosanct for aspiring eligible voters than it is for current eligible voters.

This case involves the upcoming election. Florida’s voter registration deadline for the 2016 election cycle is currently set for Tuesday, October 11, 2016. For aspiring eligible voters, failing to register by that date effectively forecloses the right to vote in

the 2016 election. Just five days before that deadline, however, Hurricane Matthew bore down and unleashed its wrath on the State of Florida. Life-threatening winds and rain forced many Floridians to evacuate or, at a minimum, hunker down in shelters or their homes. Like Hurricane Matthew, the voter registration deadline also approached and bore down on the State of Florida. Citing the impending Hurricane, many urged the Governor of Florida, Defendant Rick Scott, to extend the deadline. But Defendant Scott demurred, asserting instead that Floridian's had other avenues to ensure that their right to vote was protected.

Plaintiff brought this case, arguing that Defendants refusal to extend the registration deadline will unconstitutionally burden the rights of Florida voters. Specifically, Plaintiff seeks an injunction (and, in the interim, a temporary restraining order, ECF No. 4), enjoining Defendants from enforcing the October 11 voter registration deadline. ECF No. 3, at 21.

## I

Before this Court reaches the merits, a few housekeeping matters must be addressed.

The first is standing, "as it is a threshold matter required for a claim to be considered by the federal courts." *Via Mat Int'l*

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*S. Am. Ltd. v. United States*, 446 F.3d 1258, 1262 (11th Cir. 2006). Associations or organizations, in certain scenarios, have standing to assert claims based on injuries to itself or its members if that organization or its members are affected in a tangible way. See *United Food and Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544 (1996). More specifically, organizations can “enforce the rights of its members ‘when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’” *Arcia v. Fl. Sec’y of State*, 772 F.3d 1335, 1342 (11th Cir. 2014) (quoting *Friends of the Earth, Inc. v. Laidlaw Emt’l Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000)).

As one of my colleagues held in another election case, political parties have standing to assert, at least, the rights of its members who will vote in an upcoming election. *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1078–79 (N.D. Fla. 2004) (Hinkle, J.). That was so even though the political party could not identify *specific* voters that would be affected; it is sufficient that some in-

evitably would. Here too, Plaintiff need not identify *specific* aspiring eligible voters who intend to register as Democrats and who will be barred from voting; it is sufficient that some inevitably will. Plaintiff thus has standing.

Second, this Court must address whether Defendant Scott and Defendant Detzner are the proper parties to be sued in this case. It is well-established that while a state may not be sued unless it waives its sovereign immunity or that immunity is abrogated by Congress, *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62 (2000), that a suit alleging a constitutional violation against a state official in his official capacity for prospective injunctive relief is not a suit against the state and, therefore, does not violate the Eleventh Amendment, *Ex Parte Young*, 209 U.S. 123, 161 (1908). That is because “[a] state official is subject to suit in his official capacity when his office imbues him with the responsibility to enforce the law or laws at issue in the suit.” *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011).

Here, Plaintiff seeks prospective injunctive relief against the Governor and the Secretary of State in their official capacity. This Court will address Defendant Detzner first. Florida law establishes that, as Secretary of State, Defendant Detzner is the

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“chief election officer” for the State of Florida. § 97.012, Fla. Stat. (2016). Thus, Defendant Detzner is vested with the power to issue orders directing compliance with the election code or prohibiting violations thereof. And because “[h]is power by virtue of his office sufficiently connect[s] him with the duty of enforc[ing]” the election laws, *Ex Parte Young*, 209 U.S. at 161, he is a proper party here. *Cf Grizzle*, 634 F.3d at 319 (holding that Georgia Secretary of State was proper party in voting case).

But that does not apply equally to Defendant Scott. Plaintiff implies that Defendant Scott, as Governor, had the authority to extend the voter registration deadline. ECF No. 5, at 3. But it appears that Defendant Scott lacked the authority to extend the deadline. Florida law cloaks the Governor with general emergency management powers. § 252.36, Fla. Stat. (2016). But courts cannot use tunnel vision when construing statutes; rather, statutes must be considered as a whole. *John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 94 (1993). And in the event of an emergency or disaster, the Governor is authorized “to suspend or delay any election.” § 101.733, Fla. Stat. (2016). That does not imply the Governor is authorized to extend the voter registration. In fact, it implies the opposite. *See O’Melveny*



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& *Myers v. F.D.I.C.*, 512 U.S. 79, 86 (1994) (referencing the canon “*Inclusio unius, exclusion alterius*”). Furthermore, specific statutes prevail over general ones. *D. Ginsberg & Sons v. Popkin*, 285 U.S. 204, 208 (1932). Thus, because Defendant Scott’s office did not “connect[] him with the duty of enforc[ing]” a voter registration extension, *Ex Parte Young*, 209 U.S. at 161, he does not appear to be a proper party here.

## II

Under Civil Rule of Procedure 65(1)(1)(A), a court may issue a temporary restraining order only if “specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will result to the movant before the adverse party can be heard in opposition.” This Court must scrupulously honor Rule 65 requirements and thus it would be improper to issue a temporary restraining order absent compliance. Temporary restraining orders “have the effect of merely preserving the status quo rather than granting most or all of the substantive relief requested” by a plaintiff in a complaint. *Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982).

For a plaintiff to be entitled to a temporary restraining order, it must show “(1) a substantial likelihood of success on the

merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the [defendants]; and (4) that entry of the relief would serve the public interest.” *Schiavo ex rel.*

*Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005).

While all of these elements must be established, none is controlling; this Court must instead consider these elements and the strength of the showing made as to each of them *together*, and a strong showing of (for instance) likelihood of success on the merits may compensate for a relatively weak showing of public interest. *See Fla. Med. Ass’n, Inc. v. U.S. Dep’t of Health, Educ., & Welfare*, 601 F.2d 199, 203 n.2 (5th Cir. 1979).<sup>1</sup>

The right to vote is a “precious” and “fundamental” right.

*Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966).

Voting is, indisputably, a right “of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)). State and local

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<sup>1</sup> Decisions of the Fifth Circuit prior to October 1, 1981 are binding within the Eleventh Circuit. *Bonner v. City of Pritchard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

laws that unconstitutionally burden that right are impermissible. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 42, 41 (2008).

But that does not mean the right to vote is absolute. Rather, states retain the power to regulate their own elections. *Burdick*, 504 U.S. at 433 (citations omitted). Election laws almost always burden the right to vote. *See id.* (“Election laws will invariably impose some burden upon individual voters.”). Some of these regulations must be substantial to ensure that order rather than chaos accompanies our democratic process. *Id.*

Not every voting regulation, however, is subject to strict scrutiny. Rather, courts considering a challenge to state election laws “must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Id.* at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). “This standard is sufficiently flexible to accommodate the complexities of state election regulations while also

protecting the fundamental importance of the right to vote.”

*Obama for Am. v. Husted*, 697 F.3d 423, 429 (6th Cir. 2012).

When voting rights are subjected to “severe” restrictions, the regulation at issue “must be ‘narrowly drawn to advance a compelling importance.’” *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). If the right to vote is not burdened at all, then rational basis review applies. *Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580, 592 (6th Cir. 2012). But in the majority of cases where voting rights are subject to less-severe burdens, the State’s interests often—but not always—are sufficient to justify the restrictions. *Anderson*, 460 U.S. at 788. In those cases, “[h]owever slight the burden may appear, . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1352 (11th Cir. 2009) (quotation omitted).

Our starting point is to look at whether and to what extent Florida’s statutory framework burdens the right to vote. Under Florida’s statutory framework, there is no provision that extends the voter registration deadline in the event of an emergency such as provided for a suspension or delay of the election date. Literally, in excess of a hundred thousand aspiring eligible Florida

voters were likely to have registered to vote in the final week of voter registration. ECF No. 5, at 2. Hurricane Matthew not only forced many of those voters to evacuate the state, but also foreclosed the only methods of registering to vote: in person or by mail.<sup>2</sup> Because those aspiring eligible voters could not register, they could not vote in the upcoming election. As a result, Florida's statutory framework completely disenfranchises thousands of voters, and amounts to a severe burden on the right to vote.

It has been suggested that the right to vote is not severely burdened because other opportunities to vote are available. For example, voters instead could vote early, by mail, or on Election Day. ECF No. 5, at 7. But that argument is a nonsequitur. Those options are available only if the voter has *already* registered. It does absolutely nothing for those aspiring eligible voters who have yet to register. And because Florida's statutory framework would categorically deny the right to vote to those individuals, it is a severe burden that is subject to strict scrutiny. *See Burdick*, 504 U.S. 434. Even assuming that the State of Florida could point

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<sup>2</sup> To ensure the safety of its workers, Governor Scott directed the state offices in more than thirty of Florida's sixty-seven counties to close. The U.S. Postal Service also suspended operations in the affected areas. ECF No. 5, at 6.

to a valid compelling interest (and this Court doubts that it can), it is nonsensical to argue that it is narrowly tailored to that interest. Florida's statutory framework fails strict scrutiny and is therefore unconstitutional.

Even assuming that Florida's statutory framework was subject to a more flexible *Anderson-Burdick* test, it still would be unconstitutional. In no way could Defendants argue that there is some sort of limitation that requires them to burden the constitutional rights of aspiring eligible voters. Many other states, for example, either extended their voting registration deadlines in the wake of Hurricane Matthew or already allow voter registration on Election Day. *See infra* pp. 13–14. There is no reason Florida could not do the same. In so ruling, this Court is not suggesting that Florida has to allow voter registration up to Election Day. Rather, it simply holds that the burden on the State of Florida in extending voter registration is, at best *de minimis*. And, because Florida cannot put forth a “legitimate state interest[] sufficiently

weighty to justify the” burden, *Billups*, 554 F.3d at 1352 (quotation omitted), Florida’s statutory framework is also unconstitutional under the *Anderson–Burdick* test.

Finally, Florida’s statutory framework is unconstitutional even if rational basis review applied (which it does not). 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. § 101.733, Fla. Stat.

Because Florida’s statutory framework is unconstitutional under any test that could apply, Plaintiff is likely to prevail on the merits.

As explained above, in addition to the likelihood of success on the merits, three other factors influence the propriety of a temporary restraining order: whether “irreparable injury will be suffered if the relief is not granted,” whether “the threatened injury outweighs the harm the relief would inflict on the” defendants, and “whether entry of the relief would serve the public interest.” *Schiavo*, 403 F.3d at 1225–26.

It is unquestionable that Plaintiff and its members would suffer irreparable injury if a temporary restraining order is not

granted. *See, e.g., Obama for Am.*, 697 F.3d at 436. This is not a case where failing to grant the requested relief would be a mere inconvenience to Plaintiff and its members. Instead, if aspiring eligible Florida voters are barred from registering to vote then those voters are stripped of one of our most precious freedoms. This isn't golf: there are no mulligans. Once the voter registration deadline passes, "there can be no do-over and no redress." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

Likewise, the balance of hardships favors Plaintiff. This case pits the fundamental right to vote against administrative convenience. 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, e.g., The Latest: Hurricane Conditions Expected in Next Few Hours*, ABC News (Oct 6, 2016, 4:15 p.m.), <http://abcnews.go.com/US/wireStory/latest-floridas-airports-hurricane-delays-42610982>. In fact, fifteen other states, including, for example, Iowa, even allow registration on



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Election Day. *See, e.g.*, Iowa Code § 48A.7A (2016) (“A person who is eligible to register to vote and to vote may register on election day by appearing in person at the polling place for the precinct in which the individual resides and completing a voter registration application, making written oath, and providing proof of identity and residence.”). It is incomprehensible that Florida could not follow suit.

Finally, the injunction is undoubtedly in the public interest. The Constitution guarantees the right of voters “to cast their ballots and have them counted.” *United States v. Classic*, 313 U.S. 299, 315 (1941). Cementing unconstitutional obstacles to “that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). These voters have already had their lives (and, quite possibly, their homes) turned upside down by Hurricane Matthew. They deserve a break, especially one that is mandated by the United States Constitution. Ensuring that they can exercise their constitutional right to vote thus promotes the public interest.

One final note. Hurricane Matthew’s effects are not circumscribed to one region of the state. It affected jobs, families, and

more across the state. It would be grossly inappropriate, for example, to hold that aspiring eligible voters in Jacksonville could register later than those in Pensacola. Therefore, this Order holds that Florida's current statutory framework is unconstitutional. That unconstitutionality is not limited to those in the areas most affected by Hurricane Matthew. It extends to the entire State of Florida.

### III

It has been suggested that the issue of extending the voter registration deadline is about politics. Poppycock. This case is about the right of aspiring eligible voters to register and to have their votes counted. Nothing could be more fundamental to our democracy.

Accordingly,

#### **IT IS ORDERED:**

1. Plaintiff's Motion for a Temporary Restraining Order, ECF No. 4, is **GRANTED**. Defendant Detzner is directed to copy the supervisors of elections with this order and direct the supervisors of elections to extend the new voter registration deadline to Wednesday, October

12, 2016, at 5:00 p.m., and accept registrations up to that date and time.

2. Plaintiff must serve this Order on Defendants Scott and Detzner by 11:00 a.m., October 11, 2016.
3. The Clerk shall issue a notice of hearing. The matter is set for Wednesday, October 12, 2016, at 10:00 a.m., at which time a hearing shall be held in Tallahassee as to whether Plaintiff's request for a preliminary injunction should be granted. Plaintiff must likewise serve the notice on Defendants Scott and Detzner by 11:00 a.m., October 11, 2016.

**SO ORDERED on October 10, 2016.**

**s/Mark E. Walker**  
**United States District Judge**

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

**FLORIDA DEMOCRATIC PARTY,**

*Plaintiff,*

**v.**

**Case No. 4:16cv626-MW/CAS**

**RICHARD SCOTT, IN HIS OFFICIAL  
CAPACITY AS GOVERNOR OF THE  
STATE OF FLORIDA, AND KEN DETZNER,  
IN HIS OFFICIAL CAPACITY AS SECRETARY  
OF STATE OF THE STATE OF FLORIDA,**

*Defendant.*

\_\_\_\_\_ /

**ORDER GRANTING PRELIMINARY INJUNCTION**

In light of Hurricane Matthew, this Court granted a Temporary Restraining Order that extended Florida's voter registration deadline from October 11, 2016, to October 12, 2016, at 5:00 p.m. ECF No. 15. To afford Defendants an opportunity to be heard on the matter, this Court held a hearing the morning of October 12, 2016. Defendants took no position. In any event, this Court held the hearing, in part to consider evidence to determine

how long the voter registration and early voting plan submission deadlines should be extended to. This Order follows.<sup>1</sup>

Nothing has changed since Monday, when this Court issued the Temporary Restraining Order. ECF No. 15. This Court incorporates by reference the findings included in that order. And for those same reasons, a preliminary injunction extending the voter registration deadline is appropriate. The only remaining issue before this Court is how far that deadline should be extended. After considering the evidence,<sup>2</sup> this Court orders that the deadline is extended to Tuesday, October 18, 2016, at 5:00 p.m., to afford a full opportunity to register for those who may have been affected by Hurricane Matthew's destruction. This Court also orders that the deadline to submit or amend early voter plans is extended to

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<sup>1</sup> This Court recognizes the importance of issuing a timely ruling. Therefore, this Order is truncated to ensure swift notice to the public and those affected by the ruling.

<sup>2</sup> For example, this Court heard testimony from the Leon County Supervisor of Elections, Ion Sancho, that storms of this magnitude impose "tremendous strain" on elections offices. Evidence was also submitted that some soon-to-be citizens who planned to register in advance of the deadline had their naturalization ceremonies delayed due to Hurricane Matthew. Absent this Order, through no fault of their own, they would not have had the opportunity to vote in the 2016 election.

Monday, October 17, 2016, at 5:00 p.m.

No right is more precious than having a voice in our democracy. Hopefully it is not lost on anyone that the right to have a voice is why this great country exists in the first place.

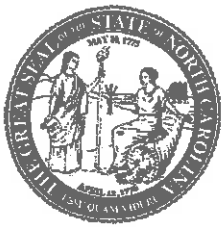
Accordingly,

**IT IS ORDERED:**

Plaintiff's Motion for a Preliminary Injunction, ECF No. 3, is **GRANTED**. Defendant Detzner is directed to copy the supervisors of elections with this order and to direct the supervisors of elections to extend the deadline for counties to submit or amend their early voting plans to Monday, October 17, 2016, at 5:00 p.m., and to extend the new voter registration deadline to Tuesday, October 18, 2016, at 5:00 p.m., accepting registrations up to that date and time.

**SO ORDERED on October 12, 2016.**

**s/Mark E. Walker**  
**United States District Judge**



# NORTH CAROLINA

## State Board of Elections

Mailing Address:  
P.O. Box 27255  
Raleigh, NC 27611-7255

Phone: (919) 733-7173  
Fax: (919) 715-0135

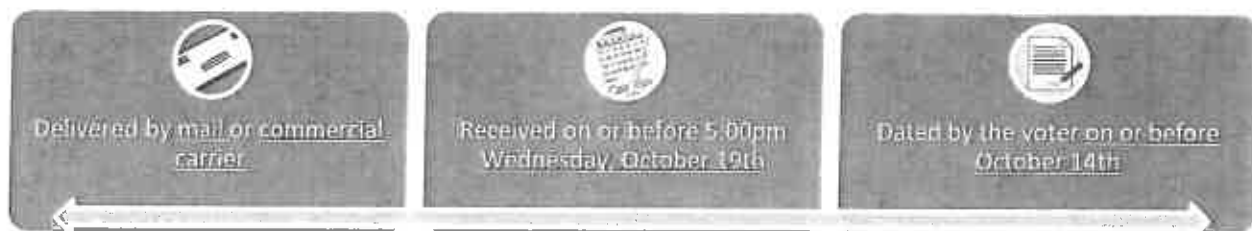
**KIM WESTBROOK STRACH**  
Executive Director

### NUMBERED MEMO 2016-19

**TO:** County Boards of Elections  
**FROM:** Kim Strach, Executive Director  
**RE:** Hurricane Matthew Response  
**DATE:** October 12, 2016

The State Board of Elections Office has monitored closely the aftermath of Hurricane Matthew, communicating closely with emergency response authorities, county directors, agencies covered under the National Voter Registration Act (NVRA), and the U.S. Postal Service (USPS). We understand that all affected offices are working to ensure that elections operations continue without interruption, especially as the voter registration deadline approaches (October 14). You should process as timely any voter registration form that is hand-delivered to your office by close of business (which can be no earlier than 5pm) on Friday, October 14. If voter registration forms are hand-delivered to NVRA agencies or public libraries, the receipt date is when the agency or library received the form.

With respect to applications you receive by mail, the U.S. Postal Service has informed our agency that certain of their offices are temporarily closed, resulting in interrupted pick-up and delivery in those areas. Among other temporary changes, USPS has rerouted certain mail for processing, which may result in a delay in postmarking. In response to known delays with the mail, county boards are hereby instructed to accept and process for the 2016 general election all voter registration forms that are:



Under these criteria, forms must be accepted, regardless of the postmark. As you know, all applications received by mail that bear a postmark of October 14 must be accepted and processed, regardless of the receipt date. G.S. § 163-82.6(c). Because certain voters may have difficulty accessing county elections offices, directors should contact the NVRA partners within their respective counties to ensure that all applications dropped off at those offices are promptly delivered and processed.

Certain counties are still assessing the full impact Hurricane Matthew may have on early voting sites and Election Day precincts. County boards should stay in contact with this office regarding any changes arising out of this emergency, and are instructed to provide such notice to voters, political parties, and the media as is practicable. We are proud of your vigilance in the face of this challenge.

EXHIBIT     C



— NORTH CAROLINA DEMOCRATIC PARTY —

October 13, 2016

North Carolina State Board of Elections  
411 N. Harrington Street  
Raleigh, NC 27603  
**VIA EMAIL & HAND DELIVERY**

Dear Ms. Strach:

We write to you on behalf of the Democratic Party of North Carolina to ask you to continue exercising your emergency powers and fully extend North Carolina's voter registration deadline to Wednesday, October 19 in the wake of the damage caused by Hurricane Matthew. Thousands of our state's citizens have been impacted by the devastating and ongoing damage inflicted by Hurricane Matthew, only days before the state's regular voter registration deadline of Friday, October 14. No one eligible to vote should be disenfranchised by this terrible storm.

Governor McCrory has declared a state of emergency in all 100 counties in North Carolina, and many counties have been declared federal disaster areas. Large swaths of eastern North Carolina are flooded, residents are experiencing major outages, including internet outages, and evacuations continue to take place. Many North Carolina residents have been displaced or are living in temporary shelters, and it is unclear how long impacted areas will remain affected.

There can be no reasonable expectation that residents impacted by Hurricane Matthew will be able to register to vote before October 14. Numerous Boards of Elections, Divisions of Motor Vehicles, and other public offices where voter registration forms can be obtained or returned are closed across the state. Post offices are closed, making mail delivery scant to non-existent in some areas. With internet outages impacting thousands of residents, many residents are unable even to download voter registration forms.

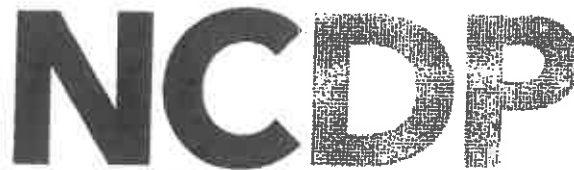
Under N.C. Gen. Stat. § 163-27.1, you "may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by ... [a] natural disaster [or] ... [e]xtremely inclement weather." Presumably under this authority, yesterday the State Board issued Numbered Memo 2016-19, guidance that may impact a small number individuals seeking

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220 Hillsborough Street | Raleigh, NC 27603 | (919) 821-2777 office | (919) 821-4778 Fax [www.ncdp.org](http://www.ncdp.org)

EXHIBIT   D





— NORTH CAROLINA DEMOCRATIC PARTY —

to register to vote. That guidance directs county Board of Elections to accept mailed voter registration forms that are signed and dated by the existing registration deadline of October 14, so long as they are received by October 19 at 5 p.m. The guidance provides virtually no relief

for those who have been displaced or otherwise unable to obtain a voter registration form since Matthew hit on Saturday. Contrast this extremely limited relief with yesterday's announcement by the North Carolina Department of Revenue that any penalties due to missed deadlines for filing income tax return extensions (due October 17) and monthly sales tax filings and payments (due October 20) will be waived for residents of counties eligible for individual assistance from the Federal Emergency Management Agency (FEMA).

Tens of thousands of would-be voters will be impacted by the Board's decision not to follow Florida, Georgia, and South Carolina in extending the voter registration deadline. North Carolinians register to vote in heavy numbers in the few days before the registration deadline. According to the registration date listed in the state voter file, there were almost twice as many forms submitted in the week before the voter registration deadline in 2012 (71,852) as there were in the previous week that year (37,460).

There is also evidence that African American residents will be disproportionately unable to register to vote if the State Board does not extend the deadline. During the last week of voter registration in 2012, 29.7% of registrations submitted came from African Americans, constituting a 32% increase in the last week relative to the composition of the electorate. Currently, 22.5% of registered voters are African American.

The availability of same-day registration during One-Stop Early Vote does not obviate the need to extend the regular voter registration deadline. Although the ability to register during One-Stop is a welcome convenience that many North Carolinians have come to expect, it is unlikely to be sufficient to assist potential voters impacted by the storm. Displaced residents may not have the ability to obtain the proof of residence required of registrants during the One-Stop period because their homes are underwater or they had to evacuate quickly. Those displaced to different counties will likely be unable to visit a One-Stop location in their county of residence. Significant transportation challenges exist due to the storm that may complicate or prevent travel to One-Stop sites. Voters that would have been able to take advantage of Election Day voting or absentee voting may be unable to register at all—either before Oct. 14 or during One Stop Early Voting—because of the impacts of the storm.

South Carolina, Georgia, and now Florida have extended their voter registration deadlines to make sure those impacted by Hurricane Matthew have a full opportunity to exercise their

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— NORTH CAROLINA DEMOCRATIC PARTY —

constitutional rights. A federal court found Florida's initial refusal to extend the deadline "wholly irrational ... when the state already allows the governor to suspend or move the election date due to an unforeseen emergency." The North Carolina State Board of Elections should take heed of these examples and do everything in its power to ensure that all North Carolinians are able to employ their fundamental right to vote.

We specifically ask that the State Board vote to extend the voter registration deadline to October 19 at today's previously scheduled 3:30 p.m. meeting.

Sincerely,

A handwritten signature in black ink that reads 'Patsy Keever'. The signature is written in a cursive, flowing style.

Patsy Keever  
Chair

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**NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE  
NORTH CAROLINA STATE CONFERENCE**

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Rev. Dr. William J. Barber, II  
President

October 13, 2016

North Carolina State Board of Elections  
A. Grant Whitney, Jr., Chairman  
Rhonda K. Amoroso, Secretary  
Joshua D. Malcolm  
James Baker  
Maja Kricker  
Kim Strach, Executive Director  
P.O. Box 27255  
Raleigh, N.C. 27611-7255

*Re: Emergency Action Needed in Light of Hurricane Matthew to Ensure Unfettered  
Access to the Ballot in Hurricane-Impacted Counties*

Dear Members of the State Board of Elections and Director Strach:

The NC NAACP State Conference writes in light of the ongoing suffering by residents in the following 33 counties still facing emergency needs from Hurricane Matthew including temporary and long-term relocations, evacuations, curfews, unnavigable roads and infrastructure damage, including loss of access to mail, electricity, and regular shelter, and severe losses in days of work and schooling:

Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Edgecombe, Greene, Hoke, Hyde, Johnston, Lenoir, Moore, Nash, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Tyrrell, Washington, Wayne, and Wilson.

As the State Board knows, these counties, primarily clustered in the Eastern and Coastal part of the state, hold a disproportionate number of African American voters. The impact of Hurricane Matthew fell hardest also on those counties that already are home to some of our state's most impoverished, and some of the highest numbers of those living below the poverty line. The impact of this storm and dangerous floodings continue to be felt today in the last week in North Carolina available for voter registration prior to the early voting period.

Yesterday, October 12, Director Strach issued "Numbered Memo 2016-19", recognizing some of the incredible challenges faced in these counties and information the board has received from

EXHIBIT   E

