

**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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