

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

### **INTRODUCTION & 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. *Exhibit A – Order State of South Carolina v. Andino, Richland County, Case #2018-CP-40-05088 (October 2, 2018)*

This Complaint and Motion For Temporary Injunction asks for the identical relief under nearly identical circumstances – due to the flooding and destruction caused by Hurricane Helene across numerous South Carolina counties, that has resulted in loss of electricity, internet access, cell service and the closure of County Offices in numerous counties, as well as an extension of all deadlines for all court filings for seven (7) days by the Supreme Court of South Carolina. *Exhibit B & C – 9/28/24 and 10/1/24 Orders of the South Carolina Supreme Court.*

This Complaint and Motion For Temporary Injunction asks this Court to extend all the voter registration deadlines for the general election 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.

Pursuant to Rule 65, SCRPC, Plaintiff moves for this Court to issue a temporary injunction directing the Defendant Executive Director to set a new voter registration deadline of 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. This new deadline is essential because of the disaster that Hurricane Helene has caused in this state with continuing harm.

### **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 GOVERNMENT 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. *Exhibit D - 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](https://www.scedm.org/closings/)

- 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.scedm.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 – 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 C – 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 10/1/24 Order.* <https://www.sccourts.org/media/courtOrders/PDFs/2024-10-01-01.pdf>

Due to the catastrophic impact of Hurricane Helene on this state which is continuing, and in order to protect, to the extent possible, the constitutional right to vote, Plaintiff believes that the Court must direct the Executive Director to extend the voter registration deadline until October 14, 2024, consistent with his general authority to ensure that voter registration complies with "applicable state or federal law." §7-3-20. That date would allow citizens whose lives have been disrupted due to the profound impact of Hurricane Helene time to register to vote in order to exercise this fundamental right while recovery efforts proceed.

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.

### **A TEMPORARY INJUNCTION SHOULD BE GRANTED**

"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). The Complaint satisfies these standards and is incorporated in this Motion by reference.

### Likelihood of Success

Plaintiff will likely succeed 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.

As stated in the Complaint: 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 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 should 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. 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 State 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 Executive Director 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 should 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 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 would be 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.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court issue an Order granting the following relief:

- A. Direct the Defendant Executive Director to set a voter registration deadline of October 14, 2024 (inclusive of that date), for all registration (in-person, mail, fax, and electronic) consistently with the above causes of action.
- B. Direct the Executive Director to take all such measures are needed to ensure that the deadline is properly implemented.
- C. For such other relief as may be deemed appropriate by this Court.

Respectfully Submitted,

Counsel For Plaintiff

**/s/ Richard A. Hricik**

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RULE 11, SCRCP CERTIFICATE:

Undersigned counsel certifies that he has consulted with Defendant's counsel and that SCEC does not oppose but does not consent to this Motion.

Counsel For Plaintiff

**/s/ Richard A. Hricik**

Richard A. Hricik, Esq. (#16871)