UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:26-cv-22257-JB/Torres

UNIDOSUS, et al.,

Plaintiffs,

and

BLACK VOTERS MATTER FUND, et al.,

Consolidated Plaintiffs,

v.

CORD BYRD, in his official capacity as Florida Secretary of State, et al.,

Defendants.
_____/

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DEFENDANT SECRETARY BYRD'S REPLY IN SUPPORT OF MOTION TO DISMISS BVM PLAINTIFFS' COMPLAINT

The parties disagree about HB 991's effect. Secretary Byrd maintains that its citizenship-verification provisions don't impose an across-the-board documentary-proof-of-citizenship requirement: no voter-registration application must include such proof, and the provisions serve only to remove ineligible voters. When a voter's citizenship is questioned, Florida law provides an extensive, individualized process. Although this case is at the motion-to-dismiss stage, the Court need not accept Plaintiffs' legal interpretation of HB 991. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This reply follows up on two issues unique to BVM Plaintiffs: pre-suit notice and procedural due process.

Pre-Suit Notice

Plaintiffs say their NVRA letter gave notice of the Section 8(a)(3)-(4) claim. It didn't. Count III alleges that "Section 8(a)(3) provides that a registrant may not be removed from the

official list of eligible voters except at the registrant's request, by reason of criminal conviction or mental incapacity as provided by state law, or as provided by Section 8(a)(4). Section 8(a)(4) separately addresses death and change of residence." 1:26-cv-26047, Doc.1 at ¶ 130. "By implementing and enforcing H.B. 991's removal scheme, including Defendant Byrd's identification and referral of registered voters for potential removal and the Supervisor Defendants' eligibility determinations and removal of registered voters on grounds and through presumptions not authorized by Section 8(a)(3)-(4)," Plaintiffs allege, "Defendant Byrd and the Supervisor Defendants violate Section 8(a)(3)-(4) of the NVRA." 1:26-cv-26047, Doc.1 at ¶ 132. But their letter said only that Section 8 prohibits removing voters based on unreliable information. *See* Doc.146-2 at 4-5. It therefore failed to provide the required "violation specific" notice. *Bellitto v. Snipes*, 268 F. Supp. 3d 1328, 1334 (S.D. Fla. 2017). "[N]otice as to one potential NVRA violation is not the equivalent of notice as to all potential NVRA violations." *Id.*

Plaintiffs don't claim they gave notice of Count V, their Section 8(c)(2)(A) claim. Instead, relying on *Association of Community Organizations for Reform Now v. Miller*, 129 F.3d 833 (6th Cir. 1997), they argue that notice wasn't required. That nonbinding decision is inapplicable, and other courts have rejected its reasoning. *Miller* involved a Michigan executive order refusing to implement the NVRA until the state received federal funding. *Id.* at 835, 838; *see also True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 716 (S.D. Miss. 2014) ("In *Miller*, the defendants asserted that the NVRA violated the 10th Amendment of the U.S. Constitution and refused to enforce the statute at all."). Florida, by contrast, seeks to comply with the NVRA. *See Cromwell v. Kobach*, 199 F. Supp. 3d 1292, 1312 (D. Kan. 2016) ("[T]here is no indication that Kansas 'made clear its refusal to comply with the Act,' as the court found in *Miller*. Indeed, Defendant contends that the regulation does not run afoul of the NVRA."). And "*Miller*'s exception to the NVRA's notice

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requirement is wholly devoid of textual support in the statute." *Scott v. Schedler*, 771 F.3d 831, 836 (5th Cir. 2014). Its approach to the notice requirement suffers from a "complete lack of statutory authority." *Id.* Accordingly, *Miller* "has been criticized," and "recent decisions to consider the issue have determined that the notice requirement is mandatory and distinguish the facts from *Miller*." *Cromwell*, 199 F. Supp. 3d at 1311 (citing *Scott*, 771 F.3d at 835; *True the Vote*, 43 F. Supp. 3d at 715; *Am. Civ. Rts. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 794-95 (W.D. Tex. 2015); *Broyles v. Texas*, 618 F. Supp. 2d 661, 692 (S.D. Tex. 2009)).

Plaintiffs' other cases merely follow *Miller* and are unpersuasive. One even recognized that Southern District of Florida precedent differs. *See Rosebud Sioux Tribe v. Barnett*, 603 F. Supp. 3d 783, 791 (D.S.D. 2022) ("In *Bellitto v. Snipes*, 221 F. Supp. 3d 1354 (S.D. Fla. 2016), the court determined that an individual who was not identified in the notice letter by name or by membership lacked standing and was dismissed from the lawsuit.").

Plaintiffs also invoke NVRA Section 11(b)(3), which provides that "[i]f the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice" before suing. 52 U.S.C. § 20510(b)(3). But the challenged provisions don't take effect until January 1, 2027. HB 991 § 34. No alleged violation has "occurred within 30 days" of the upcoming elections because the provisions haven't yet been implemented. And when Plaintiffs filed their complaint on September 1, 2026, the November 2026 elections were more than thirty days away. Plaintiffs also shouldn't benefit from delaying notice when HB 991 became law on April 1, 2026. Ch. 2026-26 at 36, Laws of Fla.

This Court's rule is clear: a plaintiff that "did not file notice" "has no basis for relief." *Bellitto*, 221 F. Supp. 3d at 1363. Plaintiffs respond that dismissing them "would not bring a resolution to this issue" because another plaintiff group asserts a similar claim. Doc.156 at 11 n.1. But

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Bellitto dismissed one plaintiff while allowing the same claim to proceed through another. *See* 221 F. Supp. 3d at 1363. The Court should therefore dismiss the Section 8(a)(3)-(4) claim entirely and the Section 8(c)(2)(A) claim as to BVM Plaintiffs for failing to provide notice.

Procedural Due Process

Plaintiffs' procedural due process argument also has problems. Plaintiffs ask the Court to consider only the steps in the process involving Supervisors of Elections and baselessly suggest that Supervisors aren't fair decisionmakers. Much of their claim focuses on the timing of HB 991's citizenship-verification process. The Fourteenth Amendment requires procedures "appropriate to the nature of the case" and notice and an opportunity for a hearing "at a meaningful time and in a meaningful manner." *Catron v. City of St. Petersburg*, 658 F.3d 1260, 1266 (11th Cir. 2011) (first quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); and then quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). But the baseline remains that "the notice and hearing may be postponed until after the deprivation has occurred." *Id.* The "ordinary principle" is that "something less than an evidentiary hearing is sufficient prior to adverse administrative action." *Mathews*, 424 U.S. at 343. And "[t]he nature and form of such prior hearings" are "legitimately open to many potential variations." *Fuentes v. Shevin*, 407 U.S. 67, 96 (1972).

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Plaintiffs' cases requiring a pre-deprivation hearing involved materially different facts. *See Zinermon v. Burch*, 494 U.S. 113, 131 (1990) ("Burch's confinement at [Florida State Hospital] for five months without a hearing or any other procedure to determine either that he validly had consented to admission, or that he met the statutory standard for involuntary placement, clearly infringes on this liberty interest."); *Fuentes*, 407 U.S. at 80 (property interest case where "neither the Florida nor the Pennsylvania statute provide[d] for notice or an opportunity to be heard before the seizure" of property using replevin); *United States v. James Daniel Good Real Prop.*, 510 U.S.

43, 46 (1993) (property interest case addressing whether due process "prohibits the Government in a civil forfeiture case from seizing real property without first affording the owner notice and an opportunity to be heard"). Their voting-rights case is also distinguishable. *Compare* Doc.146 at 17-18 (describing HB 991's procedures for voters flagged as potential non-citizens), *with Self Advoc. Sols. N.D. v. Jaeger*, 464 F. Supp. 3d 1039, 1052 (D.N.D. 2020) ("Voters are simply never notified or afforded any opportunity to respond if election officials reject their ballots for a signature discrepancy.").

Plaintiffs' pre-deprivation-versus-post-deprivation argument also overlooks a key point: a voter flagged as a potential non-citizen may provide proof of citizenship *at any time* and then vote. HB 991 § 8, codified at Fla. Stat. § 98.075(6)(a).

Conclusion

For these reasons and those in Doc.146, the Court should grant the motion to dismiss BVM Plaintiffs' complaint.

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Respectfully submitted,

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LOCAL RULE 7.1(c)(2) CERTIFICATION

In compliance with Southern District of Florida Local Rule 7.1(c)(2), the undersigned certifies that the foregoing does not exceed ten pages.

/s/ Mohammad O. Jazil
Mohammad O. Jazil

CERTIFICATE OF SERVICE

I certify that on October 23, 2026, I electronically filed the foregoing with the Clerk of Court using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Mohammad O. Jazil
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