

No Remedy for the Malfunction of a Voter-Registration Website Because the State Provided a Small Remedy

Namphy v. DeSantis
(*Mark E. Walker, N.D. Fla. 4:20-cv-485*)

A voter-registration website malfunctioned on the last day of registration. A district judge determined that the secretary of state's remedy of extending the registration deadline by a few hours was inadequate, but not so inadequate as to require the court's intervention.

Subject: Registration procedures. *Topics:* Registration procedures; Covid-19.

According to a federal complaint filed in the Northern District of Florida on October 6, 2020, "On October 5, 2020, the last day to register to vote in the upcoming Presidential Election, Florida's online voter registration ('OVR') system crashed, going offline for several hours. This followed several days during which the system crashed intermittently."¹ The plaintiffs were four organizations and a person who was unable to register on October 5; the defendants were Florida's governor and its secretary of state.² With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction extending the voter-registration deadline to midnight on the second day after the requested injunction.³ On the case's second day, the individual plaintiff filed a voluntary dismissal.⁴

On the day that the case was filed, Judge Mark E. Walker set it for a telephonic scheduling conference at 8:30 on the following morning.⁵ The case arose at a time of social distancing made necessary by a global Covid-19 infectious pandemic.⁶ Contact information for the conference appeared in the public docket sheet.⁷ On the evening before the conference, he denied immediate relief, noting that Florida had voluntarily extended the registration deadline to 7:00 p.m. on October 6 and deciding that no relief was necessary before the defendants could be heard.⁸ At the scheduling conference, he set the case for a

1. Complaint at 1, *Namphy v. DeSantis*, No. 4:20-cv-485 (N.D. Fla. Oct. 6, 2020), D.E. 1; *see Namphy v. DeSantis*, 493 F. Supp. 3d 1130, 1136 (N.D. Fla. 2020); *see also* Jeffrey Schweers, *Voter Registration Extended a Day; "Unprecedented" Overload Crashed Site; Lawsuit Filed*, Tallahassee Democrat, Oct. 7, 2020, at A2.

2. Complaint, *supra* note 1; *see Namphy*, 493 F. Supp. 3d at 1136.

3. Motion, *Namphy*, No. 4:20-cv-485 (N.D. Fla. Oct. 6, 2020), D.E. 3; *see Namphy*, 493 F. Supp. 3d at 1136.

4. Notice, *Namphy*, No. 4:20-cv-485 (N.D. Fla. Oct. 7, 2020), D.E. 25; *see Order, id.* (Oct. 8, 2020), D.E. 27 (noting that the case remained active as to the other plaintiffs); Amended Complaint, *id.* (Oct. 9, 2020), D.E. 37.

5. Order, *id.* (Oct. 6, 2020), D.E. 4.

6. *See Namphy*, 493 F. Supp. 3d at 1139, 1145–46.

7. Docket Sheet, *Namphy*, No. 4:20-cv-485 (N.D. Fla. Oct. 6, 2020) (D.E. 5).

8. Order, *id.* (Oct. 6, 2020), D.E. 10, 2020 WL 6597372; *see* Dara Kam, *Judge Weighs*

telephonic hearing at 8:00 a.m. on October 8,⁹ again posting contact information for the proceeding in the public docket sheet.¹⁰ He ordered the secretary to make available as witnesses the director of Florida’s division of elections and Florida’s chief computer engineer.¹¹ In the event, Judge Walker did not take testimony from live witnesses, and he struck late filings: a declaration of someone who was unable to register and a spreadsheet of registration data.¹²

Judge Walker began the October 8 hearing with an admonition: “I’ll remind the press this is in federal court, so you may not record these proceedings. The only record of these proceedings is the court reporter’s record.”¹³ Later, he dismissed the governor as a party: “[T]here’s no legal authority being pointed to that would suggest the Governor has the authority to extend the deadlines as were extended in this case.”¹⁴

On October 9, Judge Walker denied the plaintiffs an injunction.¹⁵

Notwithstanding the fact that cinemas across the country remain closed, somehow, I feel like I’ve seen this movie before. Just shy of a month from election day, with the earliest mail-in ballots beginning to be counted, Florida has done it again. In the final hours of Florida’s voter registration period, during an election year coinciding with a prolonged and incredibly damaging public health emergency, Florida’s voter registration website crashed, effectively preventing thousands of potential voters from safely registering to vote before the midnight deadline.

With the public sounding the alarm, the Secretary of State decided to implement a half measure. She hastily and briefly extended the registration period and ordered Florida’s supervisors of elections to accept applications submitted by the Secretary’s new “book closing” deadline.

The Secretary’s “cure” had at least one major flaw; namely, she did not notify the public until—at the earliest—after noon on the date of her new “book closing” deadline. This left less than seven hours for potential voters to somehow become aware of the news and ensure that they properly submitted their voter registration applications, all while also participating in their normal workday, school, family and caregiving responsibilities.

Extension of Voter Registration, Jacksonville Times-Union, Oct. 9, 2020, at B5; Jeffrey Schweers, *Judge Looks at Overload of Fla. Voter Registration Website*, Tallahassee Democrat, Oct. 8, 2020, at A8.

9. Minutes, *Namphy*, No. 4:20-cv-485 (N.D. Fla. Oct. 7, 2020), D.E. 18; see Minutes, *id.* (Oct. 8, 2020), D.E. 30.

10. Docket Sheet, *supra* note 7 (D.E. 19).

11. Order, *Namphy*, No. 4:20-cv-485 (N.D. Fla. Oct. 7, 2020), D.E. 20.

12. Order, *id.* (Oct. 8, 2020), D.E. 32; Transcript at 72, *id.* (Oct. 8, 2020, filed Oct. 8, 2020), D.E. 33; see Spreadsheet, *id.* (Oct. 8, 2020), D.E. 29; Declaration, *id.* (Oct. 8, 2020), D.E. 28.

13. Transcript, *supra* note 12, at 3.

14. *Id.* at 19.

15. *Namphy v. DeSantis*, 493 F. Supp. 3d 1130 (N.D. Fla. 2020), *amending* Opinion, *Namphy*, No. 4:20-cv-485 (N.D. Fla. Oct. 9, 2020), D.E. 35 (issued at 2:07 a.m.); see *id.* at 1137 (dismissing the governor as a defendant); see also Arian Campo-Flores, *Court Backs Florida in Registration Dispute*, Wall St. J., Oct. 10, 2020, at A6; Dara Kam, *Judge Refuses to Extend Voter Registration Deadline*, Jacksonville Times-Union, Oct. 10, 2020, at B5; Jeffrey Schweers, *Voter Registration Won’t Be Extended*, Ft. Myers News-Press, Oct. 10, 2020, at A6.

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... So, some potential voters could not take advantage of Defendant [Secretary of State] Lee's October 6th extension, not only because they lacked notice, but also because the extension was largely limited to working hours.¹⁶

But because the secretary did provide a remedy, Judge Walker determined that he should not.¹⁷ "This is an incredibly close call, but Florida's interest in preventing chaos in its already precarious—and perennially chaotic—election outweighs the substantial burden imposed on the right to vote."¹⁸

The plaintiffs dismissed their case.¹⁹

16. *Namphy*, 493 F. Supp. 3d at 1134–35, 1143.

17. *Id.* at 1143.

18. *Id.* at 1145.

19. Notice, *Namphy*, No. 4:20-cv-485 (N.D. Fla. Oct. 9, 2020), D.E. 38; see Order, *id.* (Oct. 13, 2020), D.E. 39 ("Inasmuch as the defendants have not filed an answer or motion for summary judgment, the Notice of Voluntary Dismissal is effective without an order.").