

Purging Noncitizen Voter Registrations

United States v. Florida

(Robert L. Hinkle, N.D. Fla. 4:12-cv-285)

The Justice Department brought a civil action in the Northern District of Florida against the State of Florida on June 12, 2012, charging the state with violating the National Voter Registration Act by undertaking a systematic purge of its voter registrations within 90 days of a federal election, Florida's August 14 primary.¹ The suit followed Florida's refusal to comply with a May 31 letter request by the Department that Florida halt the purge.² Three days after it filed its complaint, the Department moved for a temporary restraining order.³ The court originally assigned the case to Judge William Stafford, but he recused himself, so the court reassigned the case to Judge Robert L. Hinkle.⁴

On May 10, the *Miami Herald* reported that a study found nearly 2,700 noncitizens in Florida who were registered to vote.⁵ The method of identifying noncitizens included matching voter registrations to driver's license data, but driver's license data are not always updated to show naturalization.⁶

On June 8, two voters and Mi Familia Vota Education Fund filed a federal complaint in the Middle District of Florida claiming that the registration purge violated the Voting Rights Act because it had not received section 5 preclearance.⁷

1. [Complaint](#), *United States v. Florida*, No. 4:12-cv-285 (N.D. Fla. June 12, 2012), D.E. 2; [United States v. Florida](#), 870 F. Supp. 2d 1346, 1347, 1349 (N.D. Fla. 2012); see 42 U.S.C. § 1973gg-6(c)(2)(A) (2011); see also Robbie Brown, *Florida's Approach to Purging Voter Rolls of Noncitizens Prompts Federal Lawsuit*, N.Y. Times, June 13, 2012, at A17; Marc Caputo, *Move to Purge Rolls Started with a Chat*, Miami Herald, June 13, 2012, at 1A.

2. See Lizette Alvarez, *Florida Defends Search for Ineligible Voters*, N.Y. Times, June 7, 2012, at A17; Lizette Alvarez, *Search for Illegal Voters May Violate Federal Safeguards, U.S. Tells Florida*, N.Y. Times, June 2, 2012, at A13; Marc Caputo, *Florida Ordered to Halt Purge of Voters*, Miami Herald, June 2, 2012, at 1A; Marc Caputo & Steve Bousquet, *Scott: Feds Are Breaking Law on Voter Purge*, Miami Herald, June 7, 2012, at 6B.

3. [Temporary Restraining Order Motion](#), *United States v. Florida*, No. 4:12-cv-285 (N.D. Fla. June 15, 2012), D.E. 7; [United States v. Florida](#), 870 F. Supp. 2d at 1347.

4. [Recusal Order](#), *United States v. Florida*, No. 4:12-cv-285 (N.D. Fla. June 13, 2012), D.E. 6; [Docket Sheet](#), *id.* (June 12, 2012) [hereinafter *United States v. Florida* Docket Sheet].

Tim Reagan interviewed Judge Hinkle for this report by telephone on October 10, 2012.

5. Marc Caputo & Steve Bousquet, *State Finds Nearly 2,700 Noncitizens on Voting Rolls*, Miami Herald, May 10, 2012, at 1A.

6. *United States v. Florida*, 870 F. Supp. 2d at 1347–48; see Amy Sherman, *Democrats Rip Effort to Purge Voter Rolls*, Miami Herald, May 30, 2012, at 1A.

7. [Complaint](#), *Mi Familia Vota Educ. Fund v. Detzner*, No. 8:12-cv-1294 (M.D. Fla. June 8, 2012), D.E. 1; [Mi Familia Vota Educ. Fund v. Detzner](#), ___ F. Supp. 2d ___, ___, 2012 WL 4086509 (M.D. Fla. 2012) (p.3 of [opinion](#) filed at M.D. Fla. No. 8:12-cv-1294, D.E. 32); see 42 U.S.C. § 1973c (2011) (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge court); Amended Complaint, *Mi Familia Vota Educ. Fund*, No. 8:12-cv-1294 (M.D. Fla. July 27, 2012), D.E. 20; see also Robbie Brown, *Florida Halts Its Search for Violations of*

On June 11, Florida filed a civil action in the U.S. District Court for the District of Columbia against the Department of Homeland Security, seeking a court order that the Department provide Florida with citizenship records.⁸

On June 19, two voters and five organizations filed a civil action in the Southern District of Florida alleging that not only was the purge improperly close to an election but it violated both the Voting Rights Act and the National Voter Registration Act as discriminatory against black and Hispanic voters.⁹

In the Justice Department's case, Judge Hinkle set a telephone conference for the afternoon of June 18.¹⁰ After the conference,¹¹ Judge Hinkle ordered argument on the temporary restraining order motion for the morning of June 27.¹²

On June 20, four voters moved to intervene in defense of the purge.¹³ Neither party opposed the motion; Judge Hinkle allowed the voters to participate in oral argument during time yielded by Florida.¹⁴ On June 26, Judicial Watch and True the Vote also moved to intervene in defense of Florida.¹⁵ On November 6, Judge Hinkle denied the intervention motions because the would-be intervenors' interests related to the litigation were the same as all registered voters and therefore adequately represented by the state defendants.¹⁶

At the June 27 hearing,¹⁷ Judge Hinkle denied the Justice Department immediate relief on a finding that Florida had abandoned the purge.¹⁸ Judge Hinkle issued a written opinion on the following day.¹⁹ So that the parties have a prompt outcome, including allowance for a prompt appeal, Judge Hinkle often rules from the bench with written orders to follow.²⁰

Voter Law, N.Y. Times, June 9, 2012, at A13; Brown, *supra* note 1; Marc Caputo, *ACLU Sues Florida Over Purge of Noncitizen Voters*, Miami Herald, June 9, 2012, at 1B.

"Five Florida counties—Hillsborough, Monroe, Collier, Hendry, and Hardee—are covered jurisdictions under Section 5 of the Voting Rights Act." *Mi Familia Vota Educ. Fund*, ___ F. Supp. 2d at ___, 2012 WL 4086509 (p.5 of [opinion](#) filed at M.D. Fla. No. 8:12-cv-1294, D.E. 32).

8. [Complaint](#), Fla. Dep't of State v. U.S. Dep't of Homeland Sec., No. 1:12-cv-960 (D.D.C. June 11, 2012), D.E. 1; *see* Brown, *supra* note 1; Marc Caputo, *Florida, Feds in Brawl Over Purge*, Miami Herald, June 12, 2012, at 1A.

9. [Complaint](#), Arcia v. Detzner, No. 1:12-cv-22282 (S.D. Fla. June 19, 2012), D.E. 1; *see Amended Complaint*, *id.* (Sept. 12, 2012), D.E. 57.

10. [Order](#), United States v. Florida, No. 4:12-cv-285 (N.D. Fla. June 18, 2012), D.E. 8.

11. [Minutes](#), *id.* (June 18, 2012), D.E. 17.

12. [Order](#), *id.* (June 18, 2012), D.E. 13.

13. [Intervention Motion](#), *id.* (June 20, 2012), D.E. 18.

14. [Order](#), *id.* (June 21, 2012), D.E. 22; [Order](#), *id.* (Nov. 6, 2012), D.E. 49 [hereinafter *United States v. Florida* Nov. 6, 2012, Order].

15. [Intervention Motion](#), *id.* (June 26, 2012), D.E. 28.

16. [United States v. Florida Nov. 6, 2012, Order](#).

17. [Minutes](#), *United States v. Florida*, No. 4:12-cv-285 (N.D. Fla. June 27, 2012), D.E. 35.

18. [United States v. Florida](#), 870 F. Supp. 2d 1346, 1347, 1350–51 (N.D. Fla. 2012); [Transcript](#) at 54–66, *United States v. Florida*, No. 4:12-cv-285 (N.D. Fla. June 27, 2012, filed June 27, 2012), D.E. 33 [hereinafter *United States v. Florida* Transcript]; *see* Lizette Alvarez, *Judge Sides with Florida on Purging Voter Rolls*, N.Y. Times, June 28, 2012, at A14; Steve Bousquet, *Judge Halts Federal Attempt to Block Purge*, Miami Herald, June 28, 2012, at 1A.

19. [United States v. Florida](#), 870 F. Supp. 2d 1346 (also ruling that the 90-day proscription on registration purges does not apply to purges of noncitizens).

20. Interview with Hon. Robert L. Hinkle, Oct. 10, 2012.

The federal government agreed to provide Florida with access to federal citizenship records,²¹ so Florida dismissed its action before the district court in the District of Columbia on August 31, 2012.²² On September 17, a three-judge court denied Florida's motion to dismiss the *Mia Familia Vota* section 5 action.²³

Using federal citizenship information, Florida resumed its noncitizen voter registration purge on September 26, identifying 198 potentially ineligible voters, of which 36 may have voted illegally.²⁴

On October 4, Judge William J. Zloch determined in the Southern District action, as Judge Hinkle did in the Northern District,²⁵ that the 90-day proscription on registration purges does not apply to purges of noncitizens.²⁶ At the plaintiffs' request, and after a hearing, Judge Zloch entered a final judgment on October 29 in favor of the secretary of state from which the plaintiffs could appeal.²⁷ An appeal is pending.²⁸

The parties stipulated to a dismissal in the action before Judge Hinkle on January 10, 2013.²⁹

21. See *United States v. Florida Transcript*, *supra* note 18, at 14–28 (discussion of the Department of Homeland Security's citizenship data at the Northern District of Florida hearing); see also Steve Bousquet, *A GOP Win in Voter-List Fight*, *Miami Herald*, July 15, 2012, at 1B.

22. *Voluntary Dismissal*, Fla. Dep't of State v. U.S. Dep't of Homeland Sec., No. 1:12-cv-960 (D.D.C. Aug. 31, 2012), D.E. 12.

23. *Mi Familia Vota Educ. Fund v. Detzner*, ___ F. Supp. 2d ___, 2012 WL 4086509 (M.D. Fla. 2012) (opinion by Circuit Judge Charles R. Wilson and District Judges James D. Whittemore and James S. Moody).

24. See Marc Caputo, Patricia Mazzi & Anna Edgerton, *Voter Purge Begins Anew*, *Miami Herald*, Sept. 27, 2012, at 1A.

25. *United States v. Florida*, 870 F. Supp. 2d 1346, 1348–50 (N.D. Fla. 2012); see Patricia Mazzei, *Timing at Center of Voter-Purge Lawsuit*, *Miami Herald*, Oct. 2, 2012, at 3B.

26. *Opinion*, *Arcia v. Detzner*, No. 1:12-cv-22282 (S.D. Fla. Oct. 4, 2012), D.E. 111; see Patricia Mazzei, *Judge Rules Voter Purge Can Proceed*, *Miami Herald*, Oct. 5, 2012, at 1B.

An appeal was dismissed voluntarily. Order, *Arcia v. Detzner*, No. 12-15220 (11th Cir. Dec. 3, 2012).

27. *Opinion*, *Arcia*, No. 1:12-cv-22282 (S.D. Fla. Oct. 29, 2012), D.E. 124; see *Notice of Appeal*, *id.* (Nov. 1, 2012), D.E. 126; *Transcript* at 3–4, *id.* (Oct. 22, 2012, filed Oct. 29, 2012), D.E. 123.

28. Docket Sheet, *Arcia v. Detzner*, No. 12-15738 (11th Cir. Nov. 7, 2012) (noting that the appellant brief was filed on Dec. 17, 2012).

29. *Stipulation*, *United States v. Florida*, No. 4:12-cv-285 (N.D. Fla. Jan. 10, 2013), D.E. 54.