

## No Ordered Modification of Absentee-Ballot Procedures on the Night Before an Election

*Williams v. DeSantis*

*(Robert L. Hinkle, N.D. Fla. 1:20-cv-67)*

During the global infectious Covid-19 pandemic, a federal judge declined to modify absentee-ballot provisions in a presidential primary election in response to a complaint filed on the night before election day.

*Subject:* Absentee and early voting. *Topics:* Absentee ballots; Covid-19; laches; intervention; case assignment; primary election.

A district court denied immediate relief to plaintiffs who sought modification of absentee-voting procedures on the night before election day. Continued litigation over procedures for future elections also did not result in court-ordered relief.

### *First Case*

At 9:29 p.m. on the night before Florida’s March 17, 2020, presidential primary election, three organizations and five voters—including two students who had moved away from their polling places because of the closing of their schools in light of the global infectious Covid-19 pandemic—filed a federal complaint in the Northern District of Florida against Florida election officials seeking “the extension of vote-by-mail options and other accommodations at polling places” because of the pandemic.<sup>1</sup> At 11:16 p.m., the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>2</sup>

Judge Robert L. Hinkle denied the plaintiffs immediate relief on March 17.<sup>3</sup>

At this hour, with voting in progress, a temporary restraining order would be adverse to the public interest. At least until the polls close, and under all the circumstances, it will be in the public interest to allow the Governor, Secretary of State and Supervisors of Elections to perform their respective roles.<sup>4</sup>

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1. Complaint at 2, *Williams v. DeSantis*, No. 1:20-cv-67 (N.D. Fla. Mar. 16, 2020), D.E. 1; First Temporary-Restraining-Order Denial at 1, *id.* (Mar. 17, 2020), D.E. 12 [hereinafter *Williams* First Temporary-Restraining-Order Denial], 2020 WL 6589657.

One of the plaintiffs voluntarily dismissed her claims on the next day. Voluntary Dismissal, *id.* (Mar. 17, 2020), D.E. 17; Second Temporary-Restraining-Order Denial, *id.* (Mar. 18, 2020), D.E. 18, 2020 WL 6589658.

2. Motion, *id.* (Mar. 16, 2020), D.E. 4; *Williams* First Temporary-Restraining-Order Denial, *supra* note 1, at 1.

3. *Williams* First Temporary-Restraining-Order Denial, *supra* note 1.

Tim Reagan interviewed Judge Hinkle for this report by telephone on August 17, 2020.

4. *Williams* First Temporary-Restraining-Order Denial, *supra* note 1, at 3.

The plaintiffs filed a second motion for a temporary restraining order that day.<sup>5</sup> Judge Hinkle denied it on the next day.<sup>6</sup> Amended complaints filed on April 20 and May 8 by an adjusted group of four organizations and six voters sought relief for future elections.<sup>7</sup>

### *Second Case*

Meanwhile, on May 4, seven voters and three organizations filed a separate federal complaint in the Northern District seeking judicial review of procedures for an August 18 primary election for offices other than President and for the November 3 general election.<sup>8</sup> With their complaint, the plaintiffs filed a notice that their case was similar to the March 16 case,<sup>9</sup> and the court assigned the second case to Judge Hinkle,<sup>10</sup> who consolidated the cases for case-management purposes and set a combined preliminary-injunction hearing and trial to begin on July 20.<sup>11</sup> He allowed intervention by Republican Party organizations<sup>12</sup> and by five blind voters and another organization.<sup>13</sup>

As the litigation progressed, Judge Hinkle made a ruling on postage: “Requiring a voter to pay for postage to mail a registration form or ballot to a Supervisor of Elections is not unconstitutional or otherwise unlawful. Nor is it unconstitutional or otherwise unlawful for some counties to pay for postage while others do not.”<sup>14</sup>

On August 5, the litigation came to a settled conclusion.<sup>15</sup> The parties did not file a detailed settlement agreement or present one to Judge Hinkle.<sup>16</sup> Florida agreed to accommodate some of the plaintiffs’ requests.<sup>17</sup>

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5. Motion, *Williams*, No. 1:20-cv-67 (N.D. Fla. Mar. 17, 2020), D.E. 16.

6. Second Temporary Restraining Order Denial, *id.* (Mar. 18, 2020), D.E. 18.

7. Second Amended Complaint, *Dream Defenders v. DeSantis*, No. 1:20-cv-67 (N.D. Fla. May 8, 2020), D.E. 47; First Amended Complaint, *id.* (Apr. 20, 2020), D.E. 35; *see* Third Amended Complaint, *Nielsen v. DeSantis*, No. 4:20-cv-236 (N.D. Fla. June 25, 2020), D.E. 341-1.

8. Complaint, *Nielsen*, No. 4:20-cv-236 (N.D. Fla. May 4, 2020), D.E. 1; *see* Second Amended Complaint, *id.* (June 21, 2020, deemed filed June 24, 2020), D.E. 292-1; Amended Complaint, *id.* (May 20, 2020), D.E. 37; *see also* Jim Saunders, *Lawsuit Challenges Mail-In Ballot Rules Amid Pandemic*, *Daytona Beach News-J.*, May 9, 2020, at D2.

9. Notice, *Nielsen*, No. 4:20-cv-236 (N.D. Fla. May 4, 2020), D.E. 2.

10. Order, *id.* (May 5, 2020), D.E. 6.

11. Consolidation Order, *id.* (May 26, 2020), D.E. 67; *see* State Defendants’ Motion to Consolidate, *id.* (May 19, 2020), D.E. 32.

12. Intervention Order, *id.* (May 28, 2020), D.E. 101; *see* Intervention Motion, *id.* (May 21, 2020), D.E. 53.

13. Intervention Order, *id.* (June 10, 2020), D.E. 216; *see* Intervention Motion, *Dream Defenders v. DeSantis*, No. 1:20-cv-67 (N.D. Fla. June 2, 2020), D.E. 121.

14. *Nielsen v. DeSantis*, 469 F. Supp. 3d 1261, 1268 (N.D. Fla. 2020).

15. Dismissal, *Nielsen*, No. 4:20-cv-236 (N.D. Fla. Aug. 5, 2020), D.E. 620.

16. Docket Sheet, *id.* (May 4, 2020); Interview with Hon. Robert L. Hinkle, Aug. 17, 2020.

17. *See* Dara Kam, *State, Liberal Groups Declare Victory in Settlement*, *S. Fla. Sun-Sentinel*, July 22, 2020, at B3.

The Administrative Office of the United States Courts provided the court with a videoconference platform for conferences and hearings, and Judge Hinkle observed that the platform worked very well.<sup>18</sup>

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18. Interview with Hon. Robert L. Hinkle, Aug. 17, 2020.