

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

MARTA VALENTINA RIVERA
MADERA, on behalf of herself and all
others similarly situated; FAITH IN
FLORIDA, HISPANIC FEDERATION,
MI FAMILIA VOTA EDUCATION
FUND, UNIDOSUS, and VAMOS4PR,

PLAINTIFFS,

v.

KEN DETZNER, in his official
capacity as Secretary of State for the
State of Florida; and KIM A. BARTON,
in her official capacity as Alachua
County Supervisor of Elections, on
behalf of herself and similarly-situated
County Supervisors of Elections,

DEFENDANTS.

Case No. 1:18-cv-00152

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

RELIEF REQUESTED BY SEPTEMBER 14, 2018

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Marta Valentina Rivera Madera, on behalf of a class of similarly-situated individuals, and Plaintiffs Faith in Florida, Hispanic Federation, Mi Familia Vota Education Fund, UnidosUS, and Vamos4PR move for a preliminary injunction requiring Defendant Secretary of State Ken Detzner and a defendant class of County Supervisors of

Elections represented by Defendant Alachua County Supervisor of Elections Kim A. Barton to comply with Section 4(e) of the federal Voting Rights Act, 52 U.S.C. §10303(e), by making Spanish-language ballots and other election materials and Spanish-bilingual election officials available in the following 32 counties for Florida's November 6, 2018 general election: Alachua County; Bay County; Brevard County; Charlotte County; Citrus County; Clay County; Columbia County; Duval County; Escambia County; Flagler County; Hernando County; Highlands County; Indian River County; Jackson County; Lake County; Leon County; Levy County; Manatee County; Marion County; Martin County; Monroe County; Okaloosa County; Okeechobee County; Pasco County; Putnam County; St. Johns County; St. Lucie County; Santa Rosa County; Sarasota County; Sumter County; Taylor County; and Wakulla County (collectively, the "Counties").

Plaintiffs' requested relief is set forth in full in the proposed order accompanying this motion. In summary, Plaintiffs seek an order preliminarily enjoining Defendants to issue directives and take all other measures necessary to ensure that all election materials in the Counties—including but not limited to paper ballots, voting machine ballots, sample ballots, absentee ballots, voting guides, voting instructions, polling place signage, election-related websites, and registration materials—are provided in Spanish as well as English and to hire bilingual workers to provide assistance with absentee voting, at early voting sites,

and polling places for the November 6, 2018 election and assistance with voter registration before the election. To enable effective relief before the November election, Plaintiffs respectfully request that the Court consider and resolve this motion by September 14, 2018.

Plaintiffs' motion is based on this motion, the attached memorandum, the accompanying proposed order, and the accompanying declarations of Marta Valentina Rivera Madera, Wes Lathrop, Jose Calderon, Nancy Batista, Clarissa Martinez De Castro, Armando Santiago Pintado, Dr. Daniel A. Smith, Stuart Naifeh, Ahren Lahvis, and Peter Mason.

**MEMORANDUM IN SUPPORT OF
MOTION FOR A PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. INTRODUCTION 1

II. BACKGROUND 3

 A. Voting Rights Act Section 4(e) 3

 B. Florida’s Puerto Rican Population 4

 C. Defendants’ English-Only Elections 6

 D. Plaintiffs 9

 E. Defendant Election Officials 10

 F. Imminent Election Deadlines 12

III. ARGUMENT 13

 A. Plaintiffs Are Entitled to Immediate Injunctive Relief 13

 1. Plaintiffs are likely to succeed on the merits 13

 a. Courts are unanimous that English-only elections
 violate VRA Section 4(e) 13

 b. Defendants’ English-only elections violate Section
 4(e) 16

 c. Defendants are the proper entities to enjoin 19

 d. Defendants cannot raise any viable defenses 21

 2. Plaintiffs will suffer irreparable harm without immediate
 injunctive relief, relief is in the public interest, and the balance
 of hardships favors Plaintiffs 26

 a. Plaintiffs face imminent irreparable harm 26

 b. Injunctive relief is in the public interest 28

- c. The balance of hardships favors Plaintiffs29
 - 3. Injunctive relief should ensure that Plaintiffs and class members can exercise their right to vote effectively on November 6, 2018.....30
- IV. REQUEST FOR ORAL ARGUMENT34
- V. CONCLUSION.....34

TABLE OF AUTHORITIES

Cases

<i>Action NC v. Strach</i> , 216 F.Supp.3d 597 (M.D.N.C. 2016)	27
<i>Anderson v. Mills</i> , 664 F.2d 600 (6th Cir. 1981)	21, 22
<i>Arroyo v. Tucker</i> , 372 F.Supp. 764 (E.D. Pa. 1974)	<i>passim</i>
<i>AT&T Broadband v. Tech Commc’ns, Inc.</i> , 381 F.3d 1309 (11th Cir. 2004)	32
<i>Bush v. Gore</i> , 531 U.S. 98 (2000).....	26
<i>Campaign for Family Farms v. Glickman</i> , 200 F.3d 1180 (8th Cir. 2000)	22
<i>Fla. Democratic Party v. Detzner</i> , 2016 WL 6090943 (N.D. Fla. Oct. 16, 2016).....	11, 20, 29
<i>Fla. Democratic Party v. Scott</i> , 215 F.Supp.3d 1250 (N.D. Fla. 2016)	20
<i>Fla. State Conference of N.A.A.C.P. v. Browning</i> , 522 F.3d 1153 (11th Cir. 2008)	26
<i>Grizzle v. Kemp</i> , 634 F.3d 1314 (11th Cir. 2011)	20
<i>Katzenbach v. Morgan</i> , 384 U.S. 641, 652 (1966).....	2, 3, 23
<i>Ketchum v. Byrne</i> , 740 F.2d 1398 (7th Cir. 1984)	32
<i>League of Women Voters of Fla., v. Detzner</i> , 2018 WL 3545079 (N.D. Fla. July 24, 2018).....	27, 28
<i>League of Women Voters of N. Carolina v. North Carolina</i> , 769 F.3d 224 (4th Cir. 2014)	27, 28
<i>Louisiana v. United States</i> , 380 U.S. 145 (1965).....	32

<i>McIntyre v. Ohio Elections Comm’n</i> , 514 U.S. 334 (1995).....	22
<i>Obama for Am. v. Husted</i> , 697 F.3d 423 (6th Cir. 2012)	27, 28
<i>Puerto Rican Org. for Political Action v. Kusper</i> , 350 F.Supp. 606 (N.D. Ill. 1972).....	14, 16, 18
<i>Puerto Rican Org. for Political Action v. Kusper</i> , 490 F.2d 575 (7th Cir. 1973)	4, 14, 15, 16
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	28
<i>Socialist Workers Party v. Hechler</i> , 890 F.2d 1303 (4th Cir. 1989)	21, 22
<i>Swann v. Charlotte-Mecklenburg Bd. of Ed.</i> , 402 U.S. 1 (1971).....	31
<i>Taylor v. Louisiana</i> , 419 U.S. 522 (1975).....	29
<i>Torres v. Sachs</i> , 381 F.Supp. 309 (S.D.N.Y. 1974)	<i>passim</i>
<i>United States v. Berks Cty. (“Berks I”)</i> , 250 F.Supp. 2d 525 (E.D. Pa. 2003).....	15
<i>United States v. Berks Cty. (“Berks II”)</i> , 277 F.Supp.2d 570 (E.D. Pa. 2003).....	<i>passim</i>
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	26
<i>Winter v. Natural Res. Def. Council</i> , 555 U.S. 7 (2008).....	13
<u>Statutes</u>	
8 U.S.C. §1402.....	17
42 U.S.C. §1973b(e)	3
52 U.S.C. §10303(e)	<i>passim</i>
52 U.S.C. §10501(a)	4
52 U.S.C. §10503(b)(2)(A).....	4, 5, 23
52 U.S.C. §10503(b)(3)(B)	5

52 U.S.C. §10508.....21
 Fla. Stat. §15.13 10, 19
 Fla. Stat. §97.012 10, 19
 Fla. Stat. §97.012(1).....10
 Fla. Stat. §97.012(14)..... 11, 19
 Fla. Stat. §97.012(16).....11
 Fla. Stat. §97.04117
 Fla. Stat. §98.01511
 Fla. Stat. §100.03112
 Fla. Stat. §100.06112
 Fla. Stat. §101.20 8, 11, 20
 Fla. Stat. §101.04122
 Fla. Stat. §101.05121
 Fla. Stat. §101.657 13, 33
 Fla. Stat. §101.2515 8, 10, 29
 Fla. Stat. §102.112 12, 32

Rules and Regulations

28 C.F.R. §55.198
 81 Fed. Reg. 87532 (2016)4, 8
 Fla. Admin. Code R. 1S-2.032(3)..... 8, 11, 20
 Fla. Admin. Code R. 1S-2.032(3)(b) 10, 20
 Fla. Admin. Code R. 1S-2.033..... 11, 20
 P.R. Regs. DE REG. 8115, Art. III, §B5, 17
 Fed. R. Civ. P. 23(b)(2).....9
 Local Rule 7.1(C).....37
 Local Rule 7.1(F)36
 Local Rule 7.1(K)33

Legislative Materials

111 Cong. Rec. 11160 (1965).....23

H.R. Rep. 102-655 (1992).....5
S. Rep. 94-295 (1975).....23
Pub. L. 89-110, §4(e) (Aug. 6, 1965)22
Pub. L. 94-73, Title III, §301 (Aug. 6, 1975)23
Constitutional Provisions
Fla. Const. Art. VI, § 1.....22

I. INTRODUCTION

Unless this Court issues immediate preliminary injunctive relief, Plaintiff Marta Valentina Rivera Madera and thousands of similarly-situated American citizens in the proposed plaintiff class—including those who recently arrived in Florida after Hurricane Maria devastated Puerto Rico in September 2017—will be denied their fundamental right to vote in Florida’s upcoming November 6, 2018 general election. Section 4(e) of the Voting Rights Act (“VRA”) protects the voting rights of persons educated in Puerto Rican schools who are unable to vote effectively in English. 52 U.S.C. §10303(e). Plaintiff Rivera and the plaintiff class of similarly-situated individuals she seeks to represent are Spanish-speaking American citizens who attended school in Puerto Rico and are eligible to vote in Florida. Yet without this Court’s intervention, they will be unable to vote effectively in the upcoming election due to the failure to ensure the provision of Spanish-language election materials and assistance in 32 Florida counties by Defendant Secretary of State Ken Detzner (“Secretary”) and the defendant class of County Supervisors of Elections represented by Defendant Alachua County Supervisor of Elections Kim A. Barton.¹

¹ The 32 counties at issue are: Alachua; Bay; Brevard; Charlotte; Citrus; Clay; Columbia; Duval; Escambia; Flagler; Hernando; Highlands; Indian River; Jackson; Lake; Leon; Levy; Manatee; Marion; Martin; Monroe; Okaloosa; Okeechobee; Pasco; Putnam; St. Johns; St. Lucie; Santa Rosa; Sarasota; Sumter; Taylor; and Wakulla Counties (collectively, the “Counties”).

Plaintiff Rivera, and Plaintiffs Faith in Florida, Hispanic Federation, Mi Familia Vota Education Fund, UnidosUS, and Vamos4PR (collectively, “Organizational Plaintiffs”), meet all four prongs of the standard for preliminary injunctive relief. First, Plaintiffs and the prospective plaintiff class are likely to succeed on the merits of their claim. Section 4(e) requires that Spanish-speaking Puerto Ricans be provided election materials and assistance in the language they can read or understand. *See* 52 U.S.C. §10303(e). The Counties at issue in this case are home to a class of thousands of Spanish-speaking Puerto Ricans—including those who recently arrived after Hurricane Maria—who are eligible to vote but are unable to vote effectively in English. But despite repeated requests to many of the Counties to provide Spanish-language election materials and assistance to protect the rights of these Floridians, the Counties continue to conduct English-only elections that effectively deprive those citizens of their right to vote. That is a plain violation of Section 4(e).

In addition, the equitable factors all strongly favor Plaintiffs and the prospective class. It is beyond dispute that voting is a fundamental Constitutional right, such that depriving Plaintiff Rivera and other plaintiff class members of that right causes irreparable injury. Because the right to vote is the cornerstone of our democracy, it is in the public interest to ensure that Plaintiff Rivera and other affected class members can exercise that right. Finally, the balance of harms

favours Plaintiffs and the plaintiff class, because any administrative costs Defendants may incur to provide Spanish-language materials and assistance pale in comparison to Plaintiff Rivera's and her thousands of fellow class members' interests in participating in the political process.

For all of these reasons, Plaintiffs and the prospective class they seek to represent are entitled to injunctive relief requiring Defendants to provide Spanish-language election materials and assistance in these Counties for the November 6, 2018 election. Given the imminence of the election, Plaintiffs respectfully request that the Court hear and decide their request for relief as soon as possible, and at the latest by September 14, 2018, so that Defendants can implement the relief before the upcoming election.

II. BACKGROUND

A. Voting Rights Act Section 4(e)

Section 4(e) of the VRA provides, in relevant part, that no one who completed sixth grade in an "American-flag school" "in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language." 52 U.S.C. §10303(e) (formerly 42 U.S.C. §1973b(e)). Congress enacted Section 4(e) to protect the rights of Spanish-speaking Puerto Ricans to vote stateside. *Katzenbach v. Morgan*, 384

U.S. 641, 644-65 & n.3, 652 (1966); *Arroyo v. Tucker*, 372 F.Supp. 764, 766 (E.D. Pa. 1974). When Congress later amended the VRA to prohibit literacy tests, *see* 52 U.S.C. §10501(a), “the sixth grade education requirement in Section 4(e) was eliminated.” *Arroyo*, 372 F.Supp. at 767. As a result, Section 4(e) “prohibit[s] the states from conditioning the right to vote of persons who attended *any number of years* of school in Puerto Rico on their ability to read or understand the English language.” *Puerto Rican Org. for Political Action v. Kusper*, 490 F.2d 575, 579 (7th Cir. 1973) (“*Kusper II*”) (emphasis added). Under Section 4(e), “a Spanish-speaking Puerto Rican is entitled to [election] assistance in the language he can read or understand.” *Id.* at 580.²

B. Florida’s Puerto Rican Population

The Counties at issue in this action have substantial Spanish-speaking Puerto Rican populations, which have only increased since Hurricane Maria in September 2017. Declaration of Dr. Daniel A. Smith (“Smith Decl.”) ¶¶9, 22-23. The proposed plaintiff class includes more than 30,000 members. According to the

² Another provision of the VRA, Section 203, requires States to provide election materials in certain languages besides English in jurisdictions in which (a) more than five percent or 10,000 voting age citizens speak that language and are limited-English proficient, and (b) that group’s illiteracy rate is higher than the national rate. 52 U.S.C. §10503(b)(2)(A). That provision, and the jurisdictions in Florida that are required to provide Spanish-language assistance under it, are not at issue in this case. *See* Voting Rights Amendment of 2006, Determinations under Section 203, 81 Fed. Reg. 87532 (2016) (Section 203 applies only to the State of Florida and 13 of Florida’s counties).

U.S. Census Bureau, as of 2015, an estimated 143,559 adults of Puerto Rican heritage lived in these Counties. *Id.* ¶13, Tbl. 1. Many of those citizens are limited English-proficient: An estimated 97,355 of them speak Spanish at home, and, of those, an estimated 30,302 speak English less than “very well.” *Id.*³

Those statistics do not account for the more than 160,000 people from Puerto Rico who have recently arrived in Florida due to the devastating effects of Hurricane Maria in September 2017. *Id.* ¶¶22-23. Given that Spanish is the primary language on the island, most of the recent arrivals are limited-English proficient. *Id.* ¶23. Therefore, the Census Bureau’s 2015 statistics undercount the number of adults of Puerto Rican heritage currently living in the Counties who speak limited English. *Id.* ¶22. Many of these individuals have attended at least some school in Puerto Rico in which the primary language of instruction was not English, because “[t]he primary language of classroom instruction in Puerto Rico is Spanish.” *United States v. Berks Cty.*, 277 F.Supp.2d 570, 574 (E.D. Pa. 2003) (“*Berks II*”); see P.R. Regs. DE REG. 8115, Art. III, §B;⁴ *cf.* Smith Decl. ¶15.

³ The Census Bureau tracks whether residents who speak a language other than English at home speak English “very well,” “well,” “not well,” or “not at all.” Smith Decl. ¶11 n.4; H.R. Rep. 102-655 (1992) at 8. It considers any proficiency below “very well” to be “limited-English proficient.” 52 U.S.C. §10503(b)(3)(B); Smith Decl. ¶11 n.4; H.R. Rep. 102-655, at 8. The Census Bureau is statutorily charged with determining when a population meets Section 203’s limited-English proficiency trigger. 52 U.S.C. §10503(b)(2)(A).

⁴ The cited regulation of the Department of Education of Puerto Rico is in Spanish. Translated to English, the regulation provides: “Every student in the schools of the

In addition, records from Florida’s Division of Elections show that, as of November 2017, there were at least 36,500 registered voters in the Counties who were born in Puerto Rico. Smith Decl. ¶18, Tbl. 2. The number of first-generation Puerto Ricans living in the Counties is even higher than that, given the recent influx due to Hurricane Maria, as well as the fact that many voters choose not to report their place of birth when registering to vote. *Id.* ¶¶18, 22-23. And given the obstacles that Spanish-speaking residents in the Counties face when registering to vote, *see infra* §III.C, there are many other eligible United States citizens born or educated in Puerto Rico who have yet to register to vote in the Counties. Smith Decl. ¶21.

C. Defendants’ English-Only Elections

The Counties provide little to no Spanish-language election materials or assistance. *See* Declaration of Ahren Lahvis (“Lahvis Decl.”) ¶¶5, 8-13, 15-30; Declaration of Peter Mason (“Mason Decl.”) ¶¶5, 8-16, 18. None of the Counties will provide official Spanish-language ballots for the November 2018 election. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. None of the Counties

Public Education System has the right to: ... B. Receive an education taught in our vernacular language, Spanish. English will be taught as a second language, with the exception of Specialized Language Schools.”

have provided Spanish-language ballots for recent past elections.⁵ Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. None of the Counties provide information on their websites about bilingual election personnel, and twenty-nine Counties do not provide information about the option to bring someone to assist in voting if a voter is unable to read English. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. At least twenty-eight Counties will not provide Spanish-language sample ballots for the November 2018 election, and twenty-seven do not provide Spanish-language voter guides. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. The Counties will not provide sufficient trained, bilingual poll workers for the November 2018 election, and have not done so in the past. *See* Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. Many of the Counties also fail to provide Spanish-language absentee ballots and information, provisional ballots and information, and/or translations of important election information on their websites, including election dates and times and polling locations. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. As a result, the 32 Counties run English-only elections.⁶

⁵ Although Monroe County was at one point required by another provision of the VRA to provide Spanish-language ballots, it no longer does so. Mason Decl. ¶9.

⁶ The State of Florida's obligations under Section 203 of the VRA do not change the fact that the Counties run English-only elections. Under Section 203, the State must only provide Spanish translations of the materials that it otherwise generally makes available in English. *See* 28 C.F.R. §55.19; Voting Rights Act Amendments of 2006, 81 Fed. Reg. 87532, 87532-33 (state's requirements under

After it became apparent that many of the Puerto Ricans who arrived in Florida following Hurricane Maria would remain in Florida, Plaintiffs Mi Familia Vota Education Fund, UnidosUS, and Vamos4PR, and a coalition of other groups, engaged in a multi-month effort to urge members of the defendant class of supervisors of elections to comply with Section 4(e) of the Voting Rights Act by providing Spanish-language ballots, voter registration and other election materials, and assistance to their Puerto Rican residents. Declaration of Stuart Naifeh (“Naifeh Decl.”) ¶¶3-10. On April 3, 2018, the coalition sent letters to 13 of the Counties with the largest Puerto Rican populations demanding that they provide Spanish-language materials and assistance under Section 4(e) for the upcoming primary and general elections. *See* Naifeh Decl. ¶5, Exs. A-M. The coalition sought to engage the supervisors and the Secretary of State’s office through an annual conference of supervisors of elections in May 2018, but the coalition’s efforts were rebuffed. *Id.* ¶7. The coalition then sent follow-up letters to those counties in June 2018. *Id.* ¶8. Despite these efforts, none of those 13 Counties

Section 203 do not extend to political subdivisions such as counties, unless counties are covered individually by Section 203). Accordingly, the State of Florida provides, for example, a statewide Spanish-language voter guide and translations of statewide initiatives for constitutional amendments. *See* Fla. Stat. §101.2515. But it is the counties—not the State—that prepare and distribute the county-specific ballots and the machines used to vote on election day. *See* Fla. Stat. §§101.20, 101.21; Fla. Admin. Code R. 1S-2.032(3).

committed to providing official, Spanish-language ballots or sufficient Spanish-language election materials or assistance. *Id.* ¶10.⁷

D. Plaintiffs

Plaintiff Rivera is an individual residing in Alachua County who attended a Spanish-language school in Puerto Rico and is eligible to vote in Florida.

Declaration of Marta Valentina Rivera Madera (“Rivera Decl.”) ¶¶1-2. She moved to Florida after Hurricane Maria severely damaged her home. *Id.* ¶3. Her primary language is Spanish, and she finds it difficult to read, understand, or vote in English. *Id.* ¶¶4-5. She wants and intends to vote in Florida’s November 6, 2018 general election, but will be unable to do so effectively absent Spanish-language voting materials and assistance. *Id.* ¶¶ 5, 8. Plaintiffs seek certification of a plaintiff class of all similarly-situated affected individuals in the Counties under Federal Rule of Civil Procedure 23(b)(2). *See* Mot. for Plf. Class Cert. (filed concurrently).

Plaintiffs Faith in Florida, Hispanic Federation, Mi Familia Vota Education Fund, UnidosUS, and Vamos4PR are nonprofit organizations or projects dedicated to protecting and enabling Hispanic and Puerto Rican citizens’ right to vote in

⁷ Although a few counties have stated they intend to make available some Spanish-language materials or assistance for the upcoming election, *see* Naifeh Decl. Exs. NN, OO, they have not yet provided sufficient materials or assistance to enable Spanish-language voters to vote effectively. Lahvis Decl. ¶¶24, 28.

Florida. *See* Declarations of Wes Lathrop (“Lathrop Decl.”) ¶¶3-9, Jose Calderon (“Calderon Decl.”) ¶¶3-7, Nancy Batista (“Batista Decl.”) ¶¶4-9, Clarissa Martinez De Castro (“De Castro Decl.”) ¶¶3-9, and Armando Santiago Pintado (“Pintado Decl.”) ¶¶2-6. Due to Defendants’ noncompliance with VRA Section 4(e), they have diverted substantial resources to register, assist, and inform Spanish-speaking Puerto Rican voters about the upcoming elections, at the expense of their other projects. Lathrop Decl. ¶¶10-15; Calderon Decl. ¶¶8-9, Batista Decl. ¶¶10, 14; De Castro Decl. ¶¶12-13; Pintado Decl. ¶¶7-8.

In addition, Plaintiff Mi Familia Vota Education Fund is a membership organization with members who are part of the proposed plaintiff class affected by Defendants’ failure to provide Spanish-language election materials and assistance. Batista Decl. ¶¶2, 12.

E. Defendant Election Officials

“The Secretary of State is the chief election officer of the state” of Florida. Fla. Stat. §97.012. In that role, the Secretary is responsible for the “general supervision and administration of the election laws.” Fla. Stat. §15.13; *see id.* §20.10(2) (establishing Division of Elections under Secretary of State). The Secretary has general responsibility over all aspects of voting in the state, including establishing uniform ballot requirements and polling procedures, maintaining a statewide voter registration system, and ensuring compliance with the VRA. *See*

Fla. Stat. §§97.012, 101.151(9), 102.014(5). That responsibility includes the duty to issue binding rules and regulations to ensure the “proper and equitable ... implementation of” the election laws. Fla. Stat. §97.012(1). The Secretary has accordingly issued a regulation requiring that “[b]allots shall be translated into other languages that are required by law or court order.” Fla. Admin. Code R. 1S-2.032(3)(b). Upon request, the Secretary makes available translations of statewide ballot initiatives. Fla. Stat. §101.2515.

The Secretary also oversees the county supervisors of elections in the defendant class. County supervisors of elections are responsible for the day-to-day administration of elections at the county level. *See* Fla. Stat. §98.015. Their responsibilities include, among other things, printing ballots, translating ballots, preparing sample ballots and voter guides, overseeing voting registration in the county, and hiring poll workers. *See* Fla. Stat. §§98.015, 101.20, 101.21, 102.012, 102.014; Fla. Admin. Code R. 1S-2.033, 1S-2.032(3). The Secretary is responsible for issuing written directives to the county supervisors of elections regarding the performance of their election duties. Fla. Stat. §97.012(16). The Secretary has used this authority to issue directives that “order the supervisors of elections to perform specific duties” and to take specific actions, including in response to court orders. *Fla. Democratic Party v. Detzner*, No. 4:16CV607-MW/CAS, 2016 WL 6090943, at *5 (N.D. Fla. Oct. 16, 2016) (describing examples); *see, e.g., Fla. Sec.*

of State, Directive 2015-02 (Aug. 14, 2015) (directing supervisors how to act in response to consent decree). The Secretary is also expressly authorized to enforce the supervisors' performance of their election duties and compliance with the Secretary's rules in state court. Fla. Stat. §97.012(14).

Plaintiffs seek preliminary injunctive relief against the Secretary and a defendant class of the county supervisors of elections for the 32 Counties to ensure that Spanish language ballots, election and registration materials, and assistance are timely provided in the upcoming November 2018 election.

F. Imminent Election Deadlines

Florida's next general election will occur on November 6, 2018. Fla. Stat. §100.031; Fla. Dep't of State, Div. of Elections, *Election Dates and Activities Calendar* (July 2018).⁸ Official results from the August 28 primary election will be submitted to the Department of State on September 4, 2018. Fla. Stat. §§100.061, 102.112. The first deadline for county supervisors of elections to send vote-by-mail general election ballots to potential voters is September 22, 2018, *id.* §101.62 (ballots sent to uniform and overseas voters), and the second deadline is October 2 through 7, *id.* §101.62 (ballots sent to domestic voters). The deadline for eligible voters to register to vote is October 9, 2018. *Id.* §97.055. Counties

⁸ Available at <http://dos.myflorida.com/media/698197/elections-calendar-2017-2019.pdf>.

must conduct testing on the general election ballots on their voting machines from October 12 to 26, 2018. *Id.* §101.5612. Optional early voting (as decided by supervisors of elections) begins on October 22 and mandatory early voting begins on October 27. *Id.* §101.657.

III. ARGUMENT

A. Plaintiffs Are Entitled to Immediate Injunctive Relief

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

1. Plaintiffs are likely to succeed on the merits

a. Courts are unanimous that English-only elections violate VRA Section 4(e)

“The plain language of Section 4(e) is clear and unambiguous, and has been interpreted broadly by federal courts to prohibit ... the conduct of English-only elections.” *Berks II*, 277 F.Supp.2d at 579 (collecting cases). That is because English-only elections “effectively condition[] the right to vote ... on the ability to read, write, and understand English.” *Id.*; see *Torres v. Sachs*, 381 F.Supp. 309, 312 (S.D.N.Y. 1974) (“[An] English-only election system constitutes a condition on the plaintiffs’ right to vote based on their ability to ‘read, write, understand, or

interpret any matter in the English language’ as ... proscribed by Section 4(e).”) (quoting 52 U.S.C. §10303(e)).

After all, “[t]he right to vote means the right to *effectively register the voter’s political choice*, not merely the right to move levers on a voting machine or to mark a ballot.” *Puerto Rican Org. For Political Action v. Kusper*, 350 F.Supp. 606, 610 (N.D. Ill. 1972) (“*Kusper I*”) (emphasis added), *aff’d*, *Kusper II*, 490 F.2d at 580 (“We agree ... that ‘the right to vote’ encompasses the right to an effective vote.”); *Berks II*, 277 F.Supp.2d at 579 (“The right to vote encompasses more than the right to gain physical access to a voting booth”).

In order to cast an effective vote, “[p]ersons must have the opportunity to comprehend the registration and election forms and the ballot itself.” *Berks II*, 277 F.Supp.2d at 579; *see Arroyo*, 372 F.Supp. at 767 (“[P]laintiffs cannot cast an ‘informed’ or ‘effective’ vote without ... an ability to comprehend the registration and election forms and the ballot itself.”). “If voters cannot understand English-only ballot language ... as well as printed advertisements of polling place locations and sample ballots, their right to vote effectively is diminished.” *Berks II*, 277 F.Supp.2d at 579; *see Kusper I*, 350 F.Supp. at 610 (similar). It is therefore “simply fundamental that voting instructions and ballots, in addition to any other material which forms part of the official communication to registered voters prior to an election, *must be in Spanish as well as English*, if the vote of Spanish-

speaking citizens is not to be seriously impaired.” *Torres*, 381 F.Supp. at 312 (emphasis added).

“Simple logic also requires that the assistance given to ... voters at the polls on election day by trained representatives ... be in a language they understand, in order that their vote will be more than a mere physical act void of any meaningful choice.” *Torres*, F.Supp. at 312; see *United States v. Berks Cty.*, 250 F.Supp. 2d 525, 527 (E.D. Pa. 2003) (“*Berks I*”) (“Voting officials who cannot communicate with Spanish-speaking voters cannot discharge their duties.”). The same logic also requires Spanish-language voter registration materials. See *Berks II*, 277 F.Supp.2d at 579, 583 (requiring registration forms in Spanish because otherwise “[v]oters who cannot speak or understand English may have difficulty establishing their right to vote”); *Arroyo*, 372 F.Supp. at 768 (similar).

Accordingly, jurisdictions that are home to Spanish-speaking Puerto Ricans who are eligible to vote but that fail to provide Spanish-language ballots and other election and registration materials, and bilingual poll workers, to assist those Puerto Ricans who cannot effectively vote in English are in violation of Section 4(e). See *Berks II*, 277 F.Supp.2d at 579-80 (“Defendants’ failure to provide Spanish-language oral and written assistance for [its] Puerto Rican population denies this group their right to effectively register a political choice, in violation of Section 4(e).”); *Kusper II*, 490 F.2d at 580. Courts have repeatedly and

consistently held that when, as here, an election is imminent, a preliminary injunction ordering that such materials and assistance be provided is necessary and appropriate to protect Puerto Ricans' right to vote. *See Berks I*, 250 F.Supp.2d 525 (entering preliminary injunction); *Arroyo*, 372 F.Supp. at 768 (same); *Kusper I*, 350 F.Supp. at 611 (same), *aff'd*, *Kusper II*, 490 F.2d 575.

b. Defendants' English-only elections violate Section 4(e)

Here, there are substantial Puerto Rican populations in the Counties that are entitled to Section 4(e)'s protections. A conservative estimate is that over 30,300 residents of Puerto-Rican heritage and limited-English proficiency live in the Counties. Smith Decl. ¶13, Tbl. 1.⁹ Similarly, over 36,500 residents who were born in Puerto Rico are registered to vote in the Counties. *Id.* ¶18, Tbl. 2. Due to the recent influx of evacuees from Hurricane Maria, and the difficulty of registering to vote without proficiency in English, both of those statistics undercount the total numbers of Puerto Ricans in the counties that need Spanish-language assistance in order to vote. *Id.* ¶9, 18, 22. Even based on the available conservative statistics, most of the Counties are home to between a few hundred

⁹ VRA Section 4(e) does not include a limited-English proficiency requirement. *See* 52 U.S.C. §10303(e). Plaintiffs use the Census Bureau's data regarding English proficiency as defined under VRA Section 203 as evidence of the number of Spanish-language schooled Puerto Ricans in the Counties who need Spanish-language materials to vote effectively.

and a few thousand Puerto Ricans who need Spanish-language assistance to vote.

See id. Tbl. 1, Tbl. 2.¹⁰

Because those residents were born in Puerto Rico, have limited-English proficiency, and/or only recently arrived in Florida from Puerto Rico, it is clear that many of them attended some school in Puerto Rico before migrating stateside. “The primary language of classroom instruction in Puerto Rico is Spanish.” *Berks II*, 277 F.Supp.2d at 574 (citing Puerto Rico Department of Education regulation); *see* P.R. Regs. DE REG. 8115, Art. III, §B. Therefore, the overwhelming majority of those residents who attended Puerto Rican schools will have done so in Spanish.

In *Berks II*, the court concluded that Section 4(e)’s protections applied based on evidence showing, among other things, (1) the approximate number of first-generation Puerto Ricans at issue, (2) the number of the county’s *overall* Hispanic population that did not speak English “very well,” and (3) that Spanish was the primary language of instruction in Puerto Rico public schools. *See* 277 F.Supp. 2d at 574, 579-80. Plaintiffs’ evidence is considerably more detailed and specific, and therefore provides even greater support for the conclusion that Section 4(e)’s protections apply to the Counties.

¹⁰ Because they are U.S. citizens, *see* 8 U.S.C. §1402, Florida residents, and 18 years of age or older, these residents are eligible to vote in Florida. *See* Fla. Stat. §97.041. Only those who have been adjudicated mentally incapacitated with respect to voting or convicted of a felony and not had their right to vote restored would be ineligible. *Id.*

Yet these Counties hold English-only elections. None of the Counties will provide official, Spanish-bilingual ballots for the November 2018 election, and they have not provided them for recent previous elections. Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18. In general, the Counties do not and will not make available sufficient Spanish-language sample ballots, voter guides, or other election materials. *See* Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18.¹¹ Nor are those county-specific materials available from the State. *See supra* n.6. Furthermore, many of the Counties do not and will not provide sufficient, trained bilingual poll workers for the November election.¹² *See* Lahvis Decl. ¶¶5, 8-13, 15-30; Mason Decl. ¶¶5, 8-16, 18.¹³

¹¹ Although some counties provide limited Spanish-language materials (such as a “Google translate” button on a webpage or a State-translated registration application), those materials are insufficient to comply with their Section 4(e) obligations. *See, e.g., Berks I*, 250 F.Supp.2d at 530 (granting injunctive relief even though defendants provided bilingual registration form and voting machine instructions, because the rest of the election materials were in English).

¹² The fact that some counties may incidentally hire bilingual poll workers at a few precincts, *see, e.g., Lahvis Decl. ¶¶8-9*, does not satisfy their Section 4(e) obligations to provide bilingual poll workers in sufficient numbers and at sufficient polling locations to ensure the county’s Spanish-speaking Puerto Rican citizens can vote effectively.

¹³ Although a few counties have stated nonbinding intentions to provide additional Spanish-language materials or assistance for the upcoming election, *see, e.g., Naifeh Decl. Exs. NN, OO*, they have not yet provided sufficient materials or assistance to enable Spanish-language voters to vote effectively. Lahvis Decl. ¶¶24, 28. Those additional materials or assistance they have stated they intend to provide would still be insufficient for class members to vote effectively, but even if they were sufficient, Plaintiffs are entitled to relief establishing those counties’

It is well-established that Spanish-language ballots and sample ballots, voting guides and instructions, and bilingual poll workers are necessary to ensure a Spanish-speaking citizen can vote effectively. *See Arroyo*, 372 F.Supp. at 767-68 (requiring county violating Section 4(e) to provide Spanish ballots, sample ballots, instructions, and bilingual poll workers, in addition to “all written materials which are directly connected with the registration of and election by voters”); *Berks II*, 277 F.Supp.2d at 585; *Torres*, 381 F.Supp. at 313. The Counties’ failure to provide those materials in Spanish effectively conditions the right to vote of Plaintiff Rivera and the proposed class of thousands of similarly-situated Puerto Ricans on an ability to read and understand English—and, because they cannot fully read and understand English, effectively deprives them of their right to vote. *See Berks II*, 277 F.Supp.2d at 579; *Arroyo*, 372 F.Supp. at 767. That is as clear a violation of Section 4(e) as there can be.

c. Defendants are the proper entities to enjoin

An injunction against Defendants will provide the relief Plaintiffs seek. The Secretary is the “chief election officer of the state,” Fla. Stat. §97.012, charged with supervising and administering the election laws, *id.* §15.13, and has the power

legal obligation to provide such materials and assistance. *See Kusper I*, 350 F.Supp. at 611 (enjoining defendants who announced they would voluntarily begin providing Spanish-language materials because without an injunction “they would be free to decide at any time before or during the election not to carry out all or any part of the [announced] program”).

to issue binding directives to lower election officials and enforce their compliance with the election laws and the Secretary's regulations, *id.* §97.012(14), (16), including the Secretary's rule that ballots must be translated into all languages required by law, Fla. Admin. Code R. 1S-2.032(3)(b). Courts in this district have confirmed that the Secretary is the proper defendant for suits for injunctive relief to require Florida counties to comply with federal voting requirements. *See Fla. Democratic Party*, 2016 WL 6090943, at *5 (holding the Secretary had power to direct county supervisors of elections to comply with election laws and issuing preliminary injunction ordering Secretary to direct supervisors to comply with Equal Protection Clause when canvassing mail-in ballots); *Fla. Democratic Party v. Scott*, 215 F.Supp.3d 1250, 1255 (N.D. Fla. 2016) (holding that Secretary was proper defendant to election law action seeking statewide injunctive relief); *cf. Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011) (Georgia Secretary of State was proper defendant based on power to ensure that local entities comply with election laws).

Injunctive relief is also appropriate against Defendant Alachua County Supervisor of Elections Kim A. Barton and the defendant class of Supervisors of Elections that she represents, because they prepare the ballots and other voting materials that must be translated into Spanish, and hire the poll workers who must

provide Spanish language assistance. Fla. Stat. §§101.20, 101.21, 102.012, 102.014; Fla. Admin. Code R. 1S-2.033, 1S-2.032(3).

d. Defendants cannot raise any viable defenses

None of the Defendants' likely counterarguments have merit. First, Defendants cannot rely on other laws permitting voters to bring someone to assist them in voting, *see, e.g.*, Fla. Stat. §101.051 (providing for assistance for blind, disabled, or illiterate persons); 52 U.S.C. §10508 (same), to contend that they are indirectly complying with Section 4(e). The Counties do not make available information in Spanish about the option of bringing an assistant to the polls, with the inevitable result being that plaintiff class members likely never are made aware of this option. Lahvis Decl. ¶5; Mason Decl. ¶5; *see* Rivera Decl. ¶9. Moreover, many plaintiff class members do not have access to someone they trust who can translate for them on election day and will be available to do so, and many do not want to give up their right to vote in private. *See* Rivera Decl. ¶ 9. For these individuals, their right to vote is still impermissibly conditioned on their ability to read and understand English. Accordingly, courts remedying violations of Section 4(e) have required both the option to bring an assistant *and* the provision of Spanish-language ballots and other election materials. *See, e.g., Berks II*, 277 F.Supp.2d at 583-84.

In addition, *requiring* a person to bring an assistant in order to exercise the right to vote violates that person's right to a secret ballot. *See Anderson v. Mills*, 664 F.2d 600, 608-09 (6th Cir. 1981) (requiring persons to disclose their votes is unconstitutional, including under First Amendment and Equal Protection Clause); *Socialist Workers Party v. Hechler*, 890 F.2d 1303, 1309 (4th Cir. 1989) (same); Rivera Decl. ¶9. That right “has been recognized as one of the fundamental civil liberties of our democracy.” *Anderson*, 664 F.2d at 608; *see Campaign for Family Farms v. Glickman*, 200 F.3d 1180, 1187-88 (8th Cir. 2000) (“As the Supreme Court has recognized, the secret ballot is of paramount importance to our system of voting.”).¹⁴ The Supreme Court has described the secret ballot as “the hard-won right to vote one's conscience without fear of retaliation,” because it is necessary to prevent potential voter intimidation and the chilling of protected political activity. *Campaign for Family Farms*, 200 F.3d at 1187-88 (quoting *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 343 (1995)); *Hechler*, 890 F.2d at 1309. Requiring Spanish-speaking Puerto Ricans to rely on an assistant and thus surrender the privacy of their vote, navigate the dangers of potential voter intimidation, and give up their constitutional right to keep their vote secret strips them of an “effective” vote in violation of Section 4(e).

¹⁴ The right to a secret ballot is also enshrined in Florida's constitution. Fla. Const. Art. VI, §1 (“All elections by the people shall be by direct and secret vote.”); *see* Fla. Stat. §101.041 (similar).

Second, Defendants cannot claim that VRA Section 203 absolves them of responsibility to provide Spanish-language materials under Section 4(e). Section 4(e) was enacted as part of the original Voting Rights Act in 1965, Pub. L. 89-110, §4(e) (Aug. 6, 1965), with the express purpose of protecting the voting rights of Puerto Ricans, who are in the unique situation of being United States citizens schooled in Spanish in American schools. *See Berks II*, 277 F.Supp.2d at 579 (“The purpose of Section 4(e) ... was to bring the citizens of ‘Puerto Rican origin into a status of equality with his fellow citizens.’”) (quoting 111 Cong. Rec. 11160 (1965)) (brackets omitted); *see Arroyo*, 372 F.Supp. at 766 n.2. Section 203, which Congress added to the VRA ten years later, Pub. L. 94-73, Title III, §301 (Aug. 6, 1975), expanded similar protections to citizens who speak other languages besides Spanish, as well as to Spanish-speaking citizens who did not attend American-flag schools. *See* 52 U.S.C. §10503(b)(2)(A). When Congress added Section 203, it recognized that courts had held that Section 4(e) prohibits English-only elections and intended that adding Section 203 would extend Section 4(e)’s required remedy guaranteeing bilingual elections to other large language-minority groups. *See* S. Rep. 94-295 (1975) at 1, 32-33, 36 (“[I]n mandating bilingual elections, [Section 203] affords a remedy implicit in the provisions sustained in [*Katzenback v. Morgan*, and required by later court decisions[*Torres v. Sachs*, ... and *Arroyo v. Tucker*”).

When Congress expanded the bilingual requirements in Section 4(e) to other populations by adding Section 203, it imposed threshold population requirements before those protections are triggered for populations other than those protected by Section 4(e). *See* 52 U.S.C. §10503(b)(2)(A) (requiring states to provide election materials in certain languages besides English in jurisdictions in which (a) more than five percent or 10,000 voting age citizens speak that language and are limited-English proficient, and (b) that group’s illiteracy rate is higher than the national rate). None of the Counties at issue here is covered by Section 203. *See supra* n.2.¹⁵

By contrast, the plain language of Section 4(e) ensures its protections apply to limited-English proficiency Puerto Ricans regardless of whether the overall Spanish-speaking population in a jurisdiction reaches the level to trigger Section 203. *See* 52 U.S.C. §10303(e); *Berks I*, 250 F.Supp.2d at 537-38 (rejecting defendant’s attempt to inject a population threshold into Section 4(e) because “the Court is guided by the plain language of Section 4(e). The Court finds the statutory language to be clear, and therefore the words must be interpreted in accordance with their ordinary meaning.”) (citation omitted); *see Arroyo*, 372

¹⁵ While the State of Florida is covered by Section 203, that means only that the State must make available in Spanish the materials that the *State* produces (like information about statewide ballot propositions), not the materials produced at the county level, including county-specific voter guides and the actual ballots on which voters mark their votes, among other materials. *See supra* n.6.

F.Supp. at 768 (ordering injunction requiring Spanish-language materials regardless of population); *Torres*, F.Supp. at 313 (same).¹⁶ Section 203 is therefore not redundant of Section 4(e), and the fact that the Counties are not covered by Section 203 is no defense to Plaintiffs' claim.

Defendants may raise the red herring argument that Section 4(e) should not be interpreted to require Spanish-language voting materials in every county with even a single voter of Puerto Rican descent. It would, however, be patently improper for the Court to disregard the plain language of the statute and impose a population requirement. *CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1222 (11th Cir. 2001) (statutory interpretation begins and ends with clear statutory language). Moreover, such concerns are inapplicable here. Plaintiffs bring their claims on behalf of a class of more than 30,000 affected individuals. Smith Decl. ¶¶13, 18. Plaintiffs do not assert claims against any individual counties that lack affected individuals, but rather tailor their claims to encompass jurisdictions that census data show include appreciable numbers of Puerto Rican-educated, limited-English proficient voters.¹⁷ Conservative estimates based on data from the U.S.

¹⁶ Although *Berks* required relief only in jurisdictions that exceeded a certain population of Hispanic citizens, that is because the plaintiff expressly limited its request for relief to that threshold. *See Berks I*, 250 F.Supp.2d at 537.

¹⁷ For that reason, Plaintiffs have omitted from the defendant class the 20 Florida counties for which the Census Bureau does not make data available reflecting the

Census Bureau and Florida Division of Elections reflect that Brevard, Duval, Lake, Marion, and St. Lucie Counties each are home to more than 2,000 adult Puerto Ricans with limited-English proficiency and more than 2,000 registered voters born in Puerto Rico. Smith Decl. ¶19, Tbl. 1, Tbl. 2. The vast majority of the Counties have hundreds of adult Puerto Ricans with limited-English proficiency. *Id.* Tbl. 1. This number is by no means “frivolous or de minimus.” *Berks I*, 250 F.Supp.2d at 537-58. Florida is very familiar with close elections decided by a very small number of votes. *See, e.g., Bush v. Gore*, 531 U.S. 98, 101-03 (2000). There is simply no need for the Court to reach the question of whether there might be a “de minimus” defense to a Section 4(e) claim in a county in which only a handful of Spanish speaking Puerto Rican residents reside (which Plaintiffs dispute). *See Berks I*, 250 F.Supp.2d at 537-58.

2. Plaintiffs will suffer irreparable harm without immediate injunctive relief, relief is in the public interest, and the balance of hardships favors Plaintiffs

The remaining equitable considerations—irreparable harm, the public interest, and the balance of hardships—all clearly favor injunctive relief.

a. Plaintiffs face imminent irreparable harm

“No right is more precious in a free country than that of having a voice in

number of residents who are of Puerto Rican heritage and have limited English proficiency. *See* Smith Decl. ¶10.

the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1189 (11th Cir. 2008) (the right to vote is “precious ... [and] fundamental—its fundamental nature stemming from the equal dignity owed to each voter, which is at the heart of our democracy”) (internal quotations, citations omitted). It is therefore well-established that “[a] restriction on the fundamental right to vote ... constitutes irreparable injury.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247-48 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.”).

Without injunctive relief, Plaintiff Rivera and the thousands of class members she seeks to represent will be effectively disenfranchised for the upcoming November election. *See supra* §III.A.1.b. Plaintiff Rivera and class members therefore clearly face imminent irreparable injury. *See Berks II*, 277 F.Supp.2d at 578-79 (holding that violations of Section 4(e) caused irreparable injury).

The Organizational Plaintiffs’ diversion of resources during the run-up to the November 2018 election to support class members entitled to Spanish-language

materials and assistance is also an irreparable injury. *See League of Women Voters of Fla., v. Detzner*, No. 4:18-CV-251-MW/CAS, 2018 WL 3545079, at *14 (N.D. Fla. July 24, 2018); *Action NC v. Strach*, 216 F.Supp.3d 597, 642-43 (M.D.N.C. 2016) (even if organizations are later reimbursed for expenditures, they cannot regain the opportunity to use their resources for other efforts prior to the election).

b. Injunctive relief is in the public interest

“By definition, the public interest favors permitting as many qualified voters to vote as possible.” *League of Women Voters of N. Carolina*, 769 F.3d at 247 (quotation, ellipsis, brackets omitted). This is because the “right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964); *see Husted*, 697 F.3d at 436 (“[T]he public has a strong interest in exercising the fundamental political right to vote. That interest is best served by favoring enfranchisement and ensuring that qualified voters’ exercise of their right to vote is successful.”) (quotation marks omitted). Injunctive relief requiring Defendants to “conduct elections in compliance with the Voting Rights Act so that all citizens may participate equally in the electoral process” undoubtedly serves the public interest. *Berks II*, 277 F.Supp.2d at 582; *see League of Women Voters of Fla.*, 2018 WL 3545079, at *14.

c. The balance of hardships favors Plaintiffs

Finally, the balance of hardships tips decidedly in Plaintiffs' favor.

Plaintiffs recognize that the timeframe for Defendants' compliance is short, but the necessary relief is both feasible and proper. Shortly after the Counties' Puerto Rican population surged following Hurricane Maria, Plaintiffs sought compliance with the VRA without the need for litigation. Naifeh Decl. ¶¶3-10. Plaintiffs promptly filed this suit when it became apparent that these efforts would be unsuccessful, but while there remains sufficient time before the November election to translate ballots and other election materials and hire bilingual poll workers. *See Berks I*, 250 F.Supp.2d at 541 (injunctive relief two months before the election gave the defendants "ample time" to prepare Spanish-language materials). Two other Florida counties that, like the 32 Counties, are not subject to Section 203 but have substantial Puerto Rican populations—namely, Collier County and Volusia County—already provide Spanish-language election materials and assistance, showing that it is not unduly burdensome to do so. *See* Lahvis Decl. ¶14; Mason Decl. ¶17.

Moreover, significant assistance in creating bilingual materials is already available. For example, the State already makes available translations of statewide ballot initiatives, *see* Fla. Stat. §101.2515, and the U.S. Election Assistance

Commission provides translations of common election phrases and questions.¹⁸

Other counties that already conduct bilingual elections can offer assistance directly or through the Florida State Association of Supervisors of Elections. The Counties are already must prepare English-only ballots and hire poll-workers to provide assistance in English at polling places and early voting sites. The additional effort it would take to produce voting materials in bilingual format and to hire bilingual poll-workers simply does not outweigh the important fundamental right to vote.

Berks II, 277 F.Supp.2d at 582; *Detzner*, 2016 WL 6090943, at *7 (citing *Taylor v. Louisiana*, 419 U.S. 522, 535 (1975)).

Because Plaintiffs meet all four prongs of the standard, preliminary injunctive relief is appropriate. *See, e.g., Berks I*, 250 F.Supp.2d at 542-43 (ordering preliminary injunctive relief for violations of Section 4(e)).

3. Injunctive relief should ensure that Plaintiffs and class members can exercise their right to vote effectively on November 6, 2018

Plaintiffs' requested relief is set forth in full in the proposed order accompanying this motion. Courts have ordered similar relief in multiple consent decrees under Section 4(e). *See* Naifeh Decl. ¶¶1112, Exs. QQ-SS. At a minimum, to enable plaintiff class members to register by October 9 and vote effectively in the November 6, 2018 election, the Court should require Defendant

¹⁸ The U.S. Election Commission's English-to-Spanish glossary is available at <https://www.eac.gov/election-officials/glossaries-of-election-terminology/>.

Secretary of State to direct and instruct, and take all necessary measures to ensure that, the Supervisors of Elections of the Counties take the following measures, among others, and should order the same Supervisors of Elections to take the following measures, among others:

1. Provide, in English and Spanish, the official paper and voting machine ballots; sample ballots; absentee and early voting applications and ballots; provisional ballots; voter registration applications; voting instructions; any voter information guides or pamphlets; notification of elections and polling place changes; and polling place signage.

2. Utilize a certified translator to prepare translated materials.

3. Ensure English-language election information and services on the County's website are available in equivalent form in Spanish.

4. Provide information in Spanish on the County's website and at polling places that any voter who requires assistance to vote in English may bring a helper to assist them in reading the ballot.

5. Hire and provide bilingual personnel and poll workers who are fluent in English and Spanish and can provide effective translation assistance to Spanish-speaking voters (a) seeking to register to vote in the Counties prior to the registration deadline of October 9, 2018, (b) seeking to vote by mail, and (c) seeking to vote at the polls on election day and during early voting.

6. Post signs at each polling place in English and Spanish explaining how voters can obtain Spanish-language assistance.

7. Train all poll officials and other election personnel regarding the requirements of Section 4(e), including the legal obligation and means to make effective Spanish-language assistance and materials available to voters.

8. Train all bilingual poll officials on relevant election-related materials, including but not limited to the materials described *supra* in paragraph 1.

Providing Spanish-language assistance to answer real-time questions by new voters and voters seeking to register for the first time is especially necessary and appropriate, given the Counties' longstanding and ongoing failure to provide sufficient Spanish voting materials or assistance. *See Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad"); *AT&T Broadband v. Tech Commc 'ns, Inc.*, 381 F.3d 1309, 1316 (11th Cir. 2004) ("all the inherent equitable powers of the District Court are available for the proper and complete exercise of ... jurisdiction [over statutory violations]").¹⁹

¹⁹ *See also Ketchum v. Byrne*, 740 F.2d 1398, 1412 (7th Cir. 1984) (under the VRA, "[t]he court should exercise its traditional equitable powers to fashion the relief so that it ... fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice") (quotation omitted); *Louisiana v. United States*, 380 U.S. 145, 154 (1965) (for violations of voting rights, "the

To enable Plaintiffs and similarly-situated individuals to vote in the upcoming November 6, 2018 general election, injunctive relief must issue in time for the Defendants to prepare the Spanish-language materials discussed above. It appears that the counties will finalize the general election ballots between September 4 and September 22, 2018, and the deadline to register to vote is October 9. *See* Fla. Stat. §102.112 (official primary election results submitted on September 4), §101.62 (deadline for sending mail-in ballots to overseas and uniformed voters is September 22), *id.* §97.055 (registration deadline). Therefore, Plaintiffs respectfully request that the Court hear and decide this motion for injunctive relief by no later than September 14, 2018.

Since the bulk of printing paper ballots and the preparing of voting machines need not occur until later in October, *see* Fla. Stat. §101.657 (optional early voting begins October 22, mandatory early voting begins October 27); *id.* §101.5612 (logic testing of ballots on voting machines may not start more than 10 days before early voting), resolving this motion and issuing any injunctive relief by mid-September would give Defendants time to prepare Spanish-language materials. *See Berks I*, 250 F.Supp.2d at 541.

court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future”).

IV. REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(K), Plaintiffs respectfully request oral argument on this motion. This motion raises important questions of law and is extremely time-sensitive given the impending November 6, 2018 election. Plaintiffs therefore believe the Court's decision-making process would be significantly aided by oral argument. Plaintiffs estimate two hours will be necessary for argument regarding this motion and Plaintiffs' concurrently filed motions for certification of plaintiff and defendant classes.

V. CONCLUSION

For the foregoing reasons, the Court should grant the requested preliminary injunction.

Dated: August 16, 2018

Respectfully submitted,

By: /s/ Kira Romero-Craft
Kira Romero-Craft

KIRA ROMERO-CRAFT
(FL SBN 49927)
LatinoJustice PRLDEF
523 West Colonial Drive
Orlando, FL 32804
(321) 418-6354
kromero@latinojustice.org

ESPERANZA SEGARRA
(FL SBN 527211)
JACKSON CHIN
(*pro hac vice forthcoming*)
LatinoJustice PRLDEF

STEPHEN P. BERZON
(*pro hac vice forthcoming*)
STACEY M. LEYTON
(*pro hac vice forthcoming*)
MATTHEW J. MURRAY
(*pro hac vice forthcoming*)
CORINNE F. JOHNSON
(*pro hac vice forthcoming*)
MEGAN C. WACHSPRESS
(*pro hac vice forthcoming*)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108

99 Hudson Street, 14th Floor
New York, NY 10013
(212) 219-3360
esegarra@latinojustice.org
jchin@latinojustice.org

Attorneys for Plaintiffs

CHIRAAG BAINS*
(*pro hac vice forthcoming*)
Demos
740 6th Street NW, 2nd Floor
Washington, DC 20001
cbains@demos.org

* Not admitted in the District
of Columbia; practice limited
pursuant to D.C. App. R. 49(c)(3).

STUART NAIFEH
(*pro hac vice forthcoming*)
Demos
80 Broad St, 4th Floor
New York, NY 10004
(212) 485-6055
snaifeh@demos.org

Attorneys for Plaintiffs

(415) 421-7151
sberzon@altber.com
sleyton@altber.com
mmurray@altber.com
cjohnson@altber.com
mwachspress@altber.com

Attorneys for Plaintiffs

KATHERINE ROBERSON-YOUNG
(FL SBN 38169)
Service Employees International Union
11687 NE 18th Dr.
North Miami, FL 33181-3278
(954) 804-2710
katherine.roberson-young@seiu.org

NICOLE G. BERNER
(*pro hac vice forthcoming*)
Service Employees International Union
1800 Massachusetts Ave, NW
Washington, D.C. 20036
(202) 730-7383
nicole.berner@seiu.org

*Attorneys for Plaintiffs Mi Familia Vota
Education Fund and Vamos4PR*

CERTIFICATE OF WORD COUNT

Pursuant to Northern District of Florida Local Rule 7.1(F), I certify that, according to the word count of the word processing system used to prepare this document, the foregoing motion contains 369 words and the foregoing memorandum contains 7980 words.

/s/ Kira Romero-Craft
Kira Romero-Craft

CERTIFICATE OF ATTORNEY CONFERENCE

Pursuant to Northern District of Florida Local Rule 7.1(C), I certify that, prior to filing this motion, counsel for Plaintiffs conferred with counsel for Defendants in a good faith attempt to resolve the matters raised herein, both in writing and by telephone. Plaintiffs' counsel explained that a coalition of organizations previously sent letters to Defendant Alachua County Supervisor of Elections Kim Barton, other county Supervisors of Elections, and copied to Defendant Secretary of State Ken Detzner, demanding the provision of Spanish-language ballots, election materials, and voting assistance for the upcoming 2018 election. Plaintiffs' counsel further summarized the relief that plaintiffs seek in this motion, the need to file this motion promptly given the upcoming November election, and Plaintiffs' intention to file this motion immediately upon filing the complaint. Counsel for Defendant Secretary Detzner indicated that Defendant Detzner would not take a position on this motion without seeing a copy of the motion. Counsel for Defendant Supervisor Barton indicated that Defendant Barton would not take a position on this motion without seeing a draft or copy of the complaint or motion.

/s/ Kira Romero-Craft
Kira Romero-Craft