

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MARINA ESPÍRITU, et als,

Plaintiffs,

v.

COMISIÓN ESTATAL DE ELECCIONES
and JESSIKA PADILLA RIVERA, in her
official capacity as Alternate President of the
Comisión Estatal de Elecciones, et als,

Defendants.

CIVIL NO. 24-CV-01446 (MAJ)

TEMPORARAY RESTRAINING
ORDER REQUESTED

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR A TEMPORARY RESTRAINING ORDER
AND DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

Puerto Rico's current voter-registration policies, implemented under the Código Electoral de 2020 (the 2020 Election Code) Law No. 58-2020, 16 L.P.R.A. sec. 450, et seq, will disenfranchise thousands of eligible voters by leaving them out of the official lists of the *Comisión Estatal de Elecciones* (the Commission) in the run-up and on Election Day, in violation of Art. 5.11(2)(a) of the Code and the fundamental right to vote protected by the United States Constitution.

Art. 5.11(2)(b) of the Election Code restricts potential voters from registering any later than 30 days prior to Election Day, which is November 5, 2024. By law, that makes October 6, 2024 the registration deadline. This deadline was even published by the Commission itself before it changed course by *ultra vires* Resolution on April 2023.

“Artículo 5.11.- Fechas Límites para Transacciones Electorales.- ... (2) Ciclo Electoral Cuatrienal de la Elección General 2024: (a) A partir de este ciclo, no se autorizará la inscripción, la reactivación, la transferencia y tampoco la reubicación de ningún Elector para la Elección General de 2024 y las sucesivas, a partir de los treinta (30) días previos a esta. (b) Se garantiza el derecho absoluto del elector a votar en el Precinto y la Unidad Electoral de su inscripción cuando el cambio de domicilio a otro Precinto o Unidad Electoral ocurra dentro de los treinta (30) días anteriores a la Votación.” (Emphasis added)

16 L.P.R.A. § 4571(2)

Puerto Rico adopted an electronic registration system in July 2022, but it did so with significant delay and lackluster implementation. The campaign to promote the system began in August 2024. The platform has rejected applications and refused documents, leaving more than 81,000 applicants still waiting for confirmation from the electronic system that they have been successfully registered. The situation is worsened by electric power outbreaks at the *Juntas de Inscripción Permanentes* (JIPs)—where voters may register in person—and delays that marred voter registrations at the University of Puerto Rico.

These restrictions are burdensome under any circumstances and have dramatically left eligible voters with no recourse to register in the lead-up to the 2024 general election. Even during the coronavirus (“COVID-19”) pandemic, Puerto Rico’s registered voters were higher than the registration numbers as of Saturday, September 21, 2024, last day of registration established by the CEE.

The above-mentioned situation has been made more onerous because recent changes in law have closed more than 80% of the JIPs, putting all the hopes on the availability of the strained electronic registration system (ERE). After the 2020 Electoral Code Provisions, JIPs were starkly cut by 89% to 12 from the previous 110. Moreover, the CEE has explained that it lacks employees to properly implement the challenges of the 2020 legislation and make deadlines in the electoral calendar.

It is the duty of the Government of Puerto Rico to provide all resources to the CEE in order to comply with its constitutional obligations and hold the elections on November 5, 2024 without unduly burdening citizens' right to vote.

The backlog of registrations for this year is also the result of the lack of action by the CEE when it took the decision to withdraw from the last three (3) years calendars the visit to high schools to promote registration among young voters. This is reflected in an end of mission report issued by the Interamerican Union of Electoral Organizations (Union Interamericana de Organismos Electorales, "UNIORE") regarding primary elections of 2024. One of the UNIORE report's observations was precisely the absence of young voters in the process.¹

According to the CEE Calendar used as evidence during an administrative review proceeding before Puerto Rico's Superior Court, Case No. SJ2024CV08617, the day set by the CEE to have the final list of registered voters is October 11, 2024. This shows the unreasonable character of the measures taken by the CEE while limiting the registration date to 45 days rather than 30 days prior to the elections day, established by law.

In sum, without any protective measures, Plaintiffs and many in their same position will be forced to accept disenfranchisement. The Government of Puerto Rico has the obligation to allocate the necessary budget and personnel to the CEE to guarantee the right to vote.

Plaintiffs' constitutional right to vote cannot be conditioned on the lack of organization or budget of the CEE to administer the election process.

¹ Gloria Ruiz Kuilan, *Desde violación al voto secreto hasta escasez de funcionarios de colegio: grupo de observadores internacionales confirma fallas durante las primarias*, El Nuevo Día (Sept. 5, 2024), at <https://search.app/Vmkkdb84SCDLomBLA>.

Plaintiffs therefore seek a temporary restraining order, preliminary and permanent injunctions, and a declaratory judgment permitting potential voters (defined, as the Legislative Assembly has) to benefit from Art. 5.11(2)(b) and allow the citizenship to register no later than October 6, 2024; 30 days before the November 5, 2024 general election.

Plaintiffs therefore request that the Court grant a preliminary injunction directing Defendants to adopt policies permitting registration for the general elections of 2024 until October 6, 30 days prior to the voting day. Plaintiffs respectfully request that the Court enjoin enforcement of that deadline for a period of fourteen (10) more days or until October 6, 2024, under Fed. R. Civ. P. 65(b)(2).

Consequently, Plaintiffs seek a temporary restraining order, preliminary and permanent injunctions, and a declaratory judgment permitting potential voters (defined, as the Legislative Assembly has) to benefit from Art. 5.11(2)(b) and allow the citizenship to register during the next 10 days or no later than **October 6, 2024**; 30 days before the November 5, 2024 general election.

I. FACTUAL BACKGROUND

Going into this year's general election, Puerto Rico faces the lowest first-time voter registration figures in its electoral history. The vast majority of first-time registrations correspond to young voters.

In the run-up to the 2020 elections 121,358 new voters registered. However, the CEE registered only 58,943 new voters as of September 3, 2024² As of September 21, 2024 at 10:00 am, only 69,992 first time voters were able to register showing a 43% decrease in new registrations.

² <https://periodismoinvestigativo.com/2024/09/voter-registration-puerto-rico-elections-youth/>

Likewise, there has been a substantial reduction in voter reactivations in comparison with last election cycle. In 2020, the CEE approved 78,085 reactivations, while that number reaches only 63,187 as of today, 14,898 less than the prior cycle. See CEE OSIPE Certification attached as *Exhibit 5*.

This reduction in young voter registration responds not only to the wording of the 2020 Electoral Code³ (the 2020 Code), but also its implementation by the current administration of the Commission (CEE).⁴

A. FACTS RELATED TO THE WORDING OF THE 2020 CODE

On June 20th 2020, less than 6 months of the election and in spite of wide spread objection, the Government of Puerto Rico approved a new code with substantial changes to the electoral system.

The afore-mentioned 2020 Code included several amendments that severely limited the participation of first-time voters in future elections while increasing the burden on voters who had not voted in previous elections to reactivate their electoral status. This last category includes senior citizens looking for reactivation and/or change of address.

Among others, some obstacles confronted during the registration process are the following:

- a. Eliminated the CEE obligation to send personnel to high schools and colleges to register first time voters during the 4 years prior to the election. This mechanism had been in place since 1983 and was supported by all parties.
- b. Reduced the number of physical offices where public could physically attend to register from 110 to 12.⁵
- c. Eliminated the CEE institutional balance between the governing and opposition parties concentrating most financial resources, employee appointments and decision making power in the President of the CEE.

³ Law 58 of June 20th 2020, as amended.

⁴ <https://www.elnuevodia.com/opinion/punto-de-vista/la-supresion-del-voto-joven/>

⁵<https://www.ayudalegalpuertorico.org/2024/03/20/las-elecciones-y-la-improvisacion-con-las-juntas-de-inscripcion-permanente/>

B. FACTS RELATED TO THE IMPLEMENTATION OF THE CODE

The decisions and implementation of the 2020 Code policies have resulted in the severe reduction of voters registration for the upcoming 2024 election, when compared to prior election cycle.

Negligence in the implementation of the code has also made it unduly burdensome to make simple changes in electoral status such as reactivations, information correction, and address updates.

The following circumstances attributable to the CEE and/or the Government of Puerto Rico have been key in obstructing new voter registration and electoral status updates:

- a. Faulty and delayed implementation of the Electronic Voting Register (eRE)
- b. Delayed and insufficient education on voter registration and the requirements
- c. Lack of personnel and resources at Permanent and Temporary Registration Boards (JIP and JIT), as well as to in person registration events.
- d. Constant black outs in the CEE headquarters and the registration board locations.

The reduction of the term established by law to register in violation of Article 5.11(2)(a)(b) of the 2020 Code.

All of these incidents have been documented extensively on a daily basis by media, but of particular impact to young voters has been the delay and failure of the implementation of eRE, affecting not only people present in Puerto Rico but also other voters traveling in the United States or other countries.

C. FACTS RELATED TO THE REDUCTION OF THE DEADLINE FOR VOTERS' REGISTRY WHILE THE ELECTRONIC SYSTEM FAILS TO PROPERLY FUNCTION

The 2020 Code mandates that the voter registry closes 30 days prior to the election date. In this case it would be on October 6, 2024. The CEE announced this closing date to prospective voters through social media.

Until April of 2023, the Electoral Cycle Calendar contemplated the closing date for Registration to October 6, 2024.

It was not until April 12, 2023, that the CEE discussed in an Ordinary Meeting a proposal to change the date for the closing of the Voter Registry. The motion proposed to reduce the term to register from October 6, 2024 to September 21, 2024.

The CEE President granted the petition to change the closing date for registration from October 6 to September 21 over the objections of at least two CEE Commissioners from minority parties. This change of date controversy was included in the Certification of Disagreement of April 19, 2023 (CEE-AC-23-081).

As a consequence, the CEE issued the Resolution of May 1, 2023 (CEE-RS-23-005) modifying the Electoral Calendar and changing the closing date for Registration.

Unsatisfied with the determination to reduce the registration term, a CEE Commissioner presented a filing for Reconsideration on May 11, 2023. The Reconsideration was declined by the CEE President on May 17, 2023. (Resolution CEE-RS-23-008)

At the same time, the eRE and the State Integrated Services Center for Voters (hereinafter, CESI) were supposed to be implemented in July 2022. From the start, neither of the platforms or center were functioning at the date they were supposed to. At this present time, the CESI is still not working as the Electoral Code design and ordered.

A limited marketing campaign to promote electronic registration began in late August 2024. The same merely mentioned it and failed to mention the burdensome requisites and multiple glitches of the eRE platform which made the registration through the system virtually impossible for most users.⁶

⁶ See Id.1

In the months prior to the premature closing of the Electoral Registry, the voter registration process has been one characterized by serious difficulties for voters highlighted by long lines, lack of personnel, failures in the electronic registration system, its late implementation and limitations on access to electoral transactions.

At moment there are some 81,000 new registrations, reactivations or update transactions carried out in the Electronic Voter Registry (eRE) pending review and approval.

With the negative impact by the closing of the Registry, the malfunction of the eRE System and the upcoming difficulties that affects the citizens in their electoral transactions, a Request for the Extension of Terms was filed and supported by three Electoral Commissioners. On September 15, 2024, a communication was sent to Jessika Padilla Ruiz, Alternate President, requesting for the extension of the electoral registration period, according to the Law.

The petitions of extensions for the electoral registration period were attended in the Extraordinary Meeting of the Commission on September 16, 2024. During the discussion, there were controversies. As a consequence, the Alternate President, Jessika Padilla Ruiz, didn't accept the request and issued the Certification of Disagreement (CEE-AC-24-103). Once the disagreement was expressed, the President issued the Resolution holding September 21, 2024 as the closing date of the Electoral Registry, which is hereby constitutionally challenged.

In the Resolution, the President of the CEE alleges as the rationale that “[e]stablishing the closing of the electoral registry within thirty (30) days prior to the event places the preparation of the entire event at high risk electoral scaffolding necessary to hold the General Elections on time on November 5, 2024.”

Dissatisfied, on September 18, 2024, an Appeal for Electoral Judicial Review and a Declaratory Judgment was filed in the Superior Court of Puerto Rico, Case No. SJ2024CV08617.

The Electoral Commissioners of opposing three political parties joined in support of the appeal.

More importantly, during the September 18, 2024 hearing, the CEE made the following admissions in open court: According to the CEE Calendar used as evidence during an argumentative hearing before the Puerto Rico's Superior Court, the day set by the CEE to have the final list of registered voters was October 11, 2024. In addition, the CEE alleged that the Calendar has an error margin of 1 to 3 days. The CEE also mentioned that from the registration deadline they calculated that in 9 days, their personnel could have the lists of registered voters with their Id pictures ready. If this Court grants an extension of time for registration, according to the Code, until October 6, 2024, it means that the list of registered voters will be ready on October 15, 2024. If we add the three days of margin of error to the Date previously chosen by the CEE itself (Oct. 11) we conclude that for October 14, 2024 the CEE can complete all the lists of the registered voters. This only departs from the calculation date (Oct. 15) for one day. This shows the unreasonable character of the measures taken by the CEE while limiting the registration date to 45 days rather than the 30 days established by law.

In September 21, 2024, last day of registration, from 2,594 petitions, 1,033 were rejected by the eRE system. Approximately 1 of 2 transactions were rejected by the eRE system.

Voting Policies in Puerto Rico: Voting in Puerto Rico is governed by the Código Electoral de Puerto Rico ("Election Code"), which is passed by the Legislative Assembly and signed into law by the governor. The Election Code is a comprehensive set of rules that aims to facilitate voters' access to the polls, guarantee Puerto Ricans' right to vote and modernize the voting process. Pursuant to the Election Code, the Commission oversees the organization and oversight of elections in Puerto Rico and is tasked with issuing the rules for each election. Prior to June 20, 2020, when the Governor signed into law Election Code 2020, the Election Code had not been updated since 2011.

Art. 3.1 of the Electoral Code states the mission of the CEE: “Garantizar que los servicios, procesos y eventos electorales se planifiquen, organicen y realicen con pureza, transparencia, seguridad, certeza, rapidez, accesibilidad y facilidad para que los electores de manera costo-eficiente, libre de fraude y coacción; y sin inclinación a ningún grupo o sector ni tendencia ideológica o partidista.”⁷

Pursuant to Art. 5.11(2)(a)(b):

(a) A partir de este ciclo, no se autorizará la inscripción, la reactivación, la transferencia y tampoco la reubicación de ningún Elector para la Elección General de 2024 y las sucesivas, a partir de los treinta (30) días previos a esta.
(b) Se garantiza el derecho absoluto del elector a votar en el Precinto y la Unidad Electoral de su inscripción cuando el cambio de domicilio a otro Precinto o Unidad Electoral ocurra dentro de los treinta (30) días anteriores a la Votación.” (Emphasis added)⁸

⁷ (1) Mission.- To ensure purity, transparency, security, certainty, swiftness, accessibility, and ease for the voters in a cost-efficient manner, free of fraud and coercion in the planning, organization and holding of election services, processes, and events and without bias towards any group or sector, or ideological or party trend. (See official translation, Ex. 6)

⁸ (2) Four-year Election Cycle of the 2024 General Election.-

(a) As of this cycle, no registration, reactivation, transfer, or relocation of a voter for the 2024 General Election, or successive elections, shall be authorized within thirty (30) days before such election.

(b) The absolute right of a voter to vote in the precinct and electoral unit where he is registered is hereby guaranteed if he changes his domicile to another precinct or electoral unit within thirty (30) days before the voting event. (See official translation, Ex. 6)

Puerto Rico’s Voting Policies, as adopted by the President of the CEE, undermine the Right to Vote. *See Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1257 (N.D. Fla. 2016) (holding that, because a hurricane “foreclosed the only methods of registering to vote” in the final week of registration, the statutory deadline “severe[ly] burden[ed] on the right to vote”); *Ga. Coal. for the Peoples’ Agenda, Inc. v. Deal*, 214 F. Supp. 3d 1344, 1345-46 (S.D. Ga. 2016) (similar); Order, *New Va. Majority Educ. Fund v. Va. Dep’t of Elections*, No. 16-cv-01319, Dkt. No. 10 (E.D. Va. Oct. 20, 2016) (extending registration deadline after the state’s website crashed).

II. DEFENDANTS’ INTERESTS DO NOT JUSTIFY THE ALTERATION OF THE REGISTRATION DEADLINE

Defendants do not have a compelling interest in maintaining the existing registration restrictions during these elections. As such, these restrictions are unnecessarily burdensome for Puerto Rico’s voters. The Government has less restrictive measures to remedy this constitutional dilemma.

Defendants cannot have an interest in maintaining these voting restrictions for the general election. In *Belia Ocasio v. CEE, et als.*, No. 3:20-cv-01432 (PAD) this court issued a preliminary injunction under analogous circumstances only three days of the closing date to request voting by mail.

In *Belia Ocasio, supra*, this Court issued an Order on September 11, 2020 to allow senior citizens of 60 years old or more to vote by mail. (something not contemplated in the Code) The deadline to request vote by mail was September 14, 2020. And the Court not only extended for 10 days (until September 24) the deadline to request vote by mail but also instructed the CEE of its obligation to initiate an educational campaign in this regard.

None of the anticipated administrative burdens above mentioned justify the deprivation of Puerto Rico's voters constitutional right to vote in the general election. *See Dunn v. Blumstein*, 405 US 330 (Strict Scrutiny: In enacting durational voting requirements, petitioner failed to use the least drastic means to achieve its purpose. Outcome: Affirmed.) In *Dunn, supra*, petitioners held that durational residence requirements for state voters imposed to Tennessee voters were unconstitutional, because they impermissibly interfered with the fundamental right to vote and penalized some residents because of recent interstate movement. The Court held that petitioners failed to show a substantial and compelling state interest in imposing durational residence requirements that impinged upon the unconditional fundamental personal rights to vote and to travel. In this case, the CEE has failed likewise to show a substantial and compelling state interest for reducing the statutory term for voter registry which is 30 days prior to election date. This neuralgic fact distinguishes our petition from *Marston v. Levis*, 410 US 679, where the Court upheld the constitutionality of Arizona's 50-day voter registration requirement. Unlike our case, the term questioned in Arizona was the statutory term. The CEE on the contrary, seeks to, without a compelling interest, violate the statutory term in our electoral code to unreasonably make it shorter. In *Marston*, the Court found that the requirements were tied to the closing of the state's registration process at 50 days prior to elections, reflecting a legislative judgment that 50 days were necessary to achieve the state's legitimate goals. The Court accepted that judgment in light of the realities of Arizona's registration and voting procedures, which depended heavily on voluntary local registrars. In Puerto Rico, the legislative judgment considered a 30-year term prior to the election date as adequate to achieve said goals. Moreover, our registration procedures differ from Arizona, as they do not depend on voluntary registrars. The CEE has a budget and employees to execute their statutory mandate to facilitate the voting process. A similar reasoning occurred in *Burns v. Fortson*, 410 US 686, where the Court upheld another 50-day period, not without first

warning that it approached the outer constitutional limits. It also didn't apply for those persons who sought to register to vote for President or Vice President

Unfortunately, the Commission has failed to take *any* action to ensure that Puerto Rico's voters can register and exercise their constitutional right to vote according to the Election Code of 2020. The administration of the CEE has been negligent in the implementation of the 2020 Election Code due to lack of organization and resources, that the Commonwealth has the constitutional duty to provide.

III. INJURIES AND IRREPARABLE HARM TO PLAINTIFFS

MARINA ESPIRITU is a 70 year old U.S. citizen, resident of San Juan, Puerto Rico who last voted in 2012. She tried to reactivate her credentials to vote in the 2024 elections using the eRE system. She received the help of a young person to help her in the process because she does not have a computer and does not know how to read or write. The system established that there was no voter registration with the information that she provided, despite having an electoral card. She was told that the only remedy was to go to a JIP. However, Ms. Espiritu is limited in her mobility, uses a cane, does not have a car, and cannot wait long hours standing or sitting to register in a JIP. Due to the CEE's lack of organization, the reduction of the JIPs, errors in the electronic system designed for the electronic registration of voters (eRE) and the arbitrary reduction of the deadline for voters registration, she was unable to reactivate her registration before the current deadline. *Exhibit 1*

FRANCISCO CONCEPCION MARQUEZ is a 54 year old U.S. citizen. In September 17, 2024, he requested a change of address to transfer to Toa Baja where he currently lives through the eRE system. However, he still appears in eRE as an inactive voter. Due to the lack of organization of the CEE, the reduction of the JIPs, errors in the electronic system designed for the electronic registration of voters (eRE) and the arbitrary reduction of the deadline for voters registration he was unable to properly change his address before the CEE-imposed deadline.

Exhibit 2

DANTE VELEZ IRIARTE, of voting age, born on July 11, 2005, and resident of San Juan, tried to register to vote online through the eRE system on September 7, 2024. He submitted all the documents and complied with everything the system requested. The platform indicated that his petition was pending. On September 18, 2024, Dante's registration was rejected. Two reasons were given for this rejection: (a) the photograph provided was rejected, (b) the documentation provided as proof of residence was rejected as incomplete. On September 20, 2024, Dante tried to re-enter to his eRE account to make the corrections as required. He was able to enter the account but was unable to make any changes. The system did not allow him to make any corrections or upload any documents. Frustrated, he decided to create a new account and initiate a new registration. He created a new account with his student email from Universidad de Puerto Rico. He entered his personal information again and provided all the required documents. That same day, Dante received an email that indicated that his application for registration was received and that it is now pending approval. On September 22, 2024, Dante entered to his account on eRE one more time, and it has a notification indicating that the application is pending and that he cannot make additional changes until the case is resolved. Exhibit 3

IRIS DELIA TORRES LOPEZ, of legal age, born on February 3, 1987 resident of San Juan, during the past weeks tried to reactivate in the CEE. Since she did not have her electoral number, Iris saw on the eRE system page that she could call to request information. Iris called the contact number many times. On some occasions it rang, and they did not answer, on other occasions the call did not come out and on others the call was dropped. Iris called several times. On Friday, September 13, 2024, Ms. Torres López decided to leave her job and visit Plaza Las Américas because she found out that there was a temporary Registration Board. But when she arrived it was very full, and she had to leave to pick up her daughter after school. Iris had already given up, but fortunately she saw a post on social media from a candidate who said that one could go to any JIP. Despite her work schedule and the fact that she is a single mother, she planned to go after work to the Cataño Registration Board on September 21. However, a friend told her that she could contact the commissioners at the State Elections Commission (CEE), and they could help her. Ms. Torres López was able to talk to one of them and get her election number. With this information she decided to use the eRE system to reactivate herself as a voter and change her address.

The process Ms. Torres López was forced to follow to ensure her registration was very difficult and has not yet resulted in her successful registration. First, it didn't allow her to enter her correct address, since the system suggested addresses and doesn't allow you to enter anything else. So she had to choose the most similar one to be able to follow the process. When Iris finally finished that part, she uploaded identification documents, her passport and bill with address. However, it took the system more than two hours to upload the documents. Even then, the system only notified her approval was "pending." So Iris is faced with the uncertainty of whether her entire registration will be approved and will be able to exercise her right to vote on November 5.

Exhibit 4

All Plaintiffs and thousands of people in similar circumstances are very wary of the risk of been left out of the official list in the CEE as registered voters qualified to vote in the upcoming general elections on November 5, 2024.

The administration of the electoral process pursuant to the dispositions of the Election Code of 2020, and the lack of implementation of the Election Law provisions, specifically the elimination of more than 80% of the JIPs (from 110 were reduced to 12) and the late implementation of an electronic registration system (eRE), that has failed the citizenship, threaten to provoke a massive disenfranchisement in the upcoming general elections, something this Court could easily remedy by the application of the literal meaning of the Election Code, protecting the fundamental right to vote of the People of Puerto Rico, and to due process of law under the 1st Amendment and 14th Amendment to the United States Constitution. The violation of the right to vote itself, as an important component of the Right to Speech, is an irreparable harm in itself.

IV. ARGUMENT

A. Legal Standards

1. *Preliminary Injunction*

A preliminary injunction is appropriate where a court finds (1) a substantial likelihood of success on the merits; (2) a significant risk of irreparable harm in the absence of the injunction; (3) that the balance of hardships weighs in the movants' favor; and (4) that granting the injunction will not harm the public interest. *I.P. Lund Trading AS v. Kohler Co.*, 163 F.3d 27, 33 (1st Cir. 1998). Plaintiffs need not establish a certainty of success, but they must show a "strong likelihood that [they] will ultimately prevail." *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (quoting *Respect Me. PAC v. McKee*, 622 F.3d 13, 15 (1st Cir. 2010)). "Significantly, the abovementioned quadripartite standard is the same test that is to be used in determining whether to grant a temporary restraining order." *Largess v. Supreme Jud. Ct. for State of Massachusetts*, 317 F. Supp. 2d 77, 81 (D. Mass.), *aff'd*, 373 F.3d 219 (1st Cir. 2004). Here,

Plaintiffs meet all four prongs of this test.

2. *The Anderson-Burdick Framework*

As an initial matter, “it is clear that the voting rights of Puerto Rico citizens are constitutionally protected to the same extent as those of all other citizens of the United States.” *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 8 (1982). Where a law places a burden on the voting rights of citizens, courts must balance the character and magnitude of the burden against the relevant government interest served by the law. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). The First Circuit describes the application of the *Anderson-Burdick* framework as follows:

The U.S. Supreme Court has developed a flexible “sliding scale” approach for assessing the constitutionality of such restrictions. Under this approach, when the burden imposed by a ballot access regulation is heavy, the provision must be narrowly tailored to promote a compelling state interest. Reasonable, nondiscriminatory restrictions, however, need be justified only by legitimate regulatory interests.

Barr v. Galvin, 626 F.3d 99, 109 (1st Cir. 2010).

Courts assess the applicable level of scrutiny under *Anderson-Burdick* based upon both the reach of the burden and the severity of the burden on those it impacts. *See Werme v. Merrill*, 84 F.3d 479, 483–84 (1st Cir. 1996); *Barr*, 626 F.3d at 109; *Ayers-Schaffner v. DiStefano*, 860 F. Supp. 918, 920 (D.R.I. 1994); *see also One Wis. Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 930 (W.D. Wis. 2016), order enforced, 351 F. Supp. 3d 1160 (W.D. Wis. 2019) (“the court must focus on the burdens that the challenged provisions place on eligible voters who cannot comply. . . .”). The fact that a majority of voters “are able to comply . . . does not mean that the burdens that these laws impose are constitutionally insignificant.” *One Wis.*, 198 F. Supp. 3d at 930. Because the “right to vote is personal,” an *Anderson-Burdick* claim “is not defeated by the fact that 99% of other people can” easily exercise the franchise despite the challenged provision. *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016).

As the First Circuit very recently explained, the *Anderson-Burdick* balancing test requires the court to measure “the ‘character and magnitude of the asserted injury to’ the voters’ rights against the ‘precise interests put forward by the State as justifications for the burden imposed.’” *Common Cause R.I. v. Gorbea*, --- F.3d ---, No. 20-1753, 2020 WL 4579367, at *1 (1st Cir. Aug. 7, 2020) (quoting *Anderson*, 460 U.S. at 789). “[H]owever slight that burden may appear,” the reviewing court must find that it is “justified by relevant and legitimate state interests ‘sufficiently weighty to justify the limitation.’” *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 191 (2008) (quoting *Norman v. Reed*, 502 U.S. 279, 288–89 (1992)); *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1221 n.6 (4th Cir. 1995) (“We believe that a regulation which imposes only moderate burdens could well fail the *Anderson* balancing test when the interests that it serves are minor, notwithstanding that the regulation is rational.”). Unlike traditional rational basis review, the court must consider “the extent to which [the state’s] interests make it necessary to burden the plaintiff’s rights.” *Price v. N.Y. State Bd. of Elections*, 540 F.3d 101, 108–09 (2d Cir. 2008) (internal citations and quotation marks omitted) (emphasis added).

The Commission’s failure to implement, and meaningfully and timely inform citizens of, legally authorized measures designed to ensure their registration in a certain date and with the technological means comprehended in the Election Code, is impermissible under the *Anderson-Burdick* framework both because the burden placed on Plaintiffs is severe, and because Puerto Rico’s interests in maintaining such restrictions to registration are *ultra vires* and minimal at best. The Government has least restrictive means to comply with its Constitutional obligations allocating funds and personnel to facilitate the Commission (CEE) to extend the registration date to October 6, 2024.

B. The First and Fourteenth Amendment Require that the CEE comply with the Law and extend the Registration Date according to the 2020 Election Code

1. *Plaintiffs are likely to prevail on the merits of their constitutional claims.*

Plaintiffs are highly likely to succeed on the merits of their claims because, given the current disorganization of the CEE and lack of implementation of the new policies adopted by the 2020 Election Code, are depriving Plaintiffs of their ability to vote. Because the burden placed on Plaintiffs, and other citizens, is severe, the Court should apply heightened, if not strict, scrutiny. *See Fusaro v. Cogan*, 930 F.3d 241, 257 (4th Cir. 2019) (noting that a “‘severe’ restriction of [First and Fourteenth Amendment] rights triggers strict scrutiny”). Even assuming that the Court finds that *Anderson-Burdick*’s “balancing” approach requires something less than strict scrutiny, however, Puerto Rico’s failure or refusal to implement expanded exceptions to its voting limitations on registration date is not justified by a compelling or legitimate state interest and should therefore be found unconstitutionally burdensome in light of the non-compliance with other alternatives for registration and the elimination of all wide approach the CEE had under previous Election Codes to promote the participation of the youth in the general elections.

The Commission’s failure to meaningfully and timely implement the dispositions of the electronic registry for our citizens significantly burdens their fundamental right to vote, creating an enormous obstacle to the registration process. Without these measures, herein requested, thousands of Puerto Ricans and voters qualified to vote in Puerto Rico will stay excluded from the official voters’ list of the CEE.

The breadth of the impact of the Commission’s failure to implement the law, the Code’s established deadline on October 6, and the mechanisms to facilitate registration is extensive. If we compare the number of new voters registered by September 21, 2024 (69,992 voters) versus the number of newly registered voters in 2020 (121,358 voters) the math speaks by itself notwithstanding the Pandemic. (See Exhibit 5 to the Complaint).

Courts have found that laws burdening far fewer (and a lower percentage of) voters violate *Anderson-Burdick*. “[E]ven one disenfranchised voter . . . is too many.” *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 244 (4th Cir. 2014) (finding minority voters were entitled

to a preliminary injunction on a bill eliminating same-day registration); *see also Ne. Ohio Coal. For Homeless v. Husted*, 696 F.3d 580 (6th Cir. 2012) (affirming order enjoining state from rejecting ballots cast in the wrong precinct due to poll worker error, where rejected ballots constituted less than .248% of votes cast); *Saucedo v. Gardner*, 335 F. Supp. 3d 202 (D.N.H. 2018) (enjoining state from enforcing law rejecting ballots due to signature mismatch, despite state's rejection of only .35% of all absentee ballots submitted).

42 U.S.C. § provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. . . .

Defendants' actions described herein were taken under color of the laws of Puerto Rico.

The First and Fourteenth Amendments of the U.S. Constitution protect the right to vote as a fundamental right. The First Amendment's guarantees of freedom of speech and association protect the right to vote and to participate in the political process. The right to vote is a fundamental constitutional right also protected by both the due process and equal protection clauses of the Fourteenth Amendment. *See, e.g., Bush v. Gore*, 531 U.S. 98, 104-05 (2000); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1996); *Anderson v. Celebrezze*, 460 U.S. 780, 786-87 (1983).

The "voting rights of Puerto Rico citizens are constitutionally protected to the same extent as those of all other citizens of the United States." *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 8 (1982).

The constitutional right to vote “is of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). When analyzing the constitutionality of a restriction on voting, the Court must “weigh the ‘character and magnitude of the asserted injury to’ the voters’ rights against the ‘precise interests put forward by the State as justifications for the burden imposed.’” *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020) (quoting *Celebrezze*, 460 U.S. at 789).

In light of the text of the Electoral Code, Art. 5.11(2)(a)(b), Puerto Rico’s voting policies and restrictions, as applied to the November 2024 general election, constitute a severe burden on the right to vote. These requirements will likely prevent thousands of voters from casting ballots during the general election because of the negligent administration of the CEE and its failure to efficiently implement the Election Code of 2020 jeopardizing the rights of thousands of voters.

Even conservatively estimating that the same number of Puerto Ricans will seek to vote in 2024 as in 2020 (with a pandemic), this would mean that an average of over 1,250 individuals would have to visit each location.⁹ During the 2020 general elections participated inly the 56% of qualified voters registered. One of the lowest rate of participation ever. These numbers dramatize how many potential voters have been excluded from the registration process this year for the general elections due to an ultra vires resolution adopted by the President of the CEE.

.Given that the burden placed upon Puerto Rico’s voters—risking them to disenfranchisement—is the most severe imaginable, heightened scrutiny applies, and Defendants’ actions, including refusal to act and extend the registration date, must be narrowly tailored to promote a compelling interest. *Barr*, 626 F.3d at 109.

⁹ Puerto Rico historically had significantly higher voter turnout than what was seen in the 2016-2020 general elections. From 1956 through 2012, Puerto Rico consistently had voter turnout rates of 78% or more; 2016’s 56% was the lowest participation rate since 1904. *Informe Estadístico*, available for the Court. Should 80% of all eligible Puerto Ricans seek to vote in this year’s general election, more than 2 million individuals would need access to the polls or alternate methods of voting after they register.

(a) Puerto Rico Does Not Have a Compelling Interest in Shortening the Registration Date

It is clear that, under the *Anderson-Burdick* balancing framework, Plaintiffs are entitled to relief. Puerto Rico does not have a compelling interest in refraining from allowing potential voters to complete registration before 30 days prior to the election date. In fact, the Legislative Assembly, after acknowledging the additional measures for registration, which failed (eRE System) set up the registration day deadline for October 6, 2024. Moreover, there is evidence that the CEE during the last 3 years were not visiting high schools in order to promote the registration and participation of the youth in the general elections of 2024. The Commission likewise cannot plausibly claim an interest in preventing fraud—as the Supreme Court of Puerto Rico noted in connection with the primaries of 2020, fraud allegations “must be pleaded with acts, through clear, robust and convincing evidence, and not through inference or deductions.” *Pedro Pierluisi-Urrutia y Otros v. Comisión Estatal de Elecciones*, 2020 PRSC 82, at 25 n.16 (P.R. Aug. 12, 2020). There is no such evidence to support any concerns regarding fraud here, and indeed, it has been admitted in recent argumentative hearings that the error margin for this election circle calendar is of at least 3 days. According to the Commission’s calendar the registration date can be reinstated to October 6 without compromising election integrity. Finally, the Commission cannot convincingly argue that it has any compelling interest in maintaining the existing registration deadline of September 21, 2024. The current application form already indicates that some other categories of individuals may register to vote beyond September 21, 2024.

Refusal to extend the voter registration deadline in Puerto Rico imposes a severe burden on the fundamental right to vote by depriving citizens of that right altogether.

The decision not to extend the deadline is not narrowly drawn to advance any state interest sufficiently compelling to justify the imposition of such severe burdens.

Defendants have no justification for the burden imposed by their decision not to extend the deadline to October 6, 2024—which is the deadline that is actually prescribed by law. No justification makes it necessary to burden Plaintiffs’ rights.

The burdens imposed on Defendants by their refusal to extend the voter registration deadline are not severe. Defendants’ failure to take action under these circumstances fail even rational basis review.

Defendants’ refusal to extend the voter registration deadline additionally violates the Equal Protection Clause because it irrationally and arbitrarily discriminates between Puerto Ricans based on the date within the lawful registration period on which they attempted to register to vote.

Defendants’ refusal to extend the voter registration period violates the Due Process Clause because it is fundamentally unfair to announce that prospective Puerto Rico voters could register to vote online through October 6, and then deny those same prospective Puerto Rico voters the ability to register to vote through October 6.

Finally, even if the Commission were to have some compelling interest—which it does not—its actions must be narrowly tailored to meet it, and the failure to take necessary action to meaningfully grant the registration of as many voters as they could reach, cannot possibly meet that standard. It is not enough that a state’s chosen course of action may be reasonable or constitutional under ordinary circumstances. The Government has the duty to provide personnel and resources to allow the CEE to comply with its constitutional obligations.

It cannot be reasonable for the Commission to turn a blind eye to the massive disenfranchisement that its actions are provoking in our jurisdiction. It will be the lowest percentage of participation ever in the history of Puerto Rico’s electoral process, creating a problem of legitimacy of our government.

C. Plaintiffs Will Suffer Irreparable Harm Absent Injunctive Relief

Puerto Rico's imposed deadline for voters' registration will prevent and affects Plaintiffs—and thousands of other voter citizens—from voting in the November elections. That will inevitably disenfranchise voters, like Plaintiffs, who have confronted serious obstacles to register or to update their information using the RE system. This is putting in jeopardy their right to exercise their fundamental right to vote. *Elrod v. Burns*, 427 U.S. 347, 373 (June 28, 1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *see also Asociación de Educación Privada de P.R. v. García Padilla*, 490 F.3d 1, 21 (1st Cir. 2007) (applying *Elrod* to irreparable harm component of permanent injunction analysis).

Indeed, courts routinely deem restrictions on fundamental voting rights irreparable injuries. *Jones v. Governor of Fla.*, 950 F.3d 795, 828 (11th Cir. 2020) (“The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm.”); *League of Women Voters of N.C.*, 769 F.3d at 247; *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986). This is because “once the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin this law.” *League of Women Voters of N.C.*, 769 F.3d at 247; *see also Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1258 (N.D. Fla. 2016) (noting that voting rights cases are not situations “where failing to grant the requested relief would be a mere inconvenience to Plaintiff and its members”—an election “isn't golf: there are no mulligans.”). And of course, there “can be no injury more irreparable” than “serious, lasting illness or death.” *Thakker v. Doll*, No. 1:20-CV-480, 2020 WL 1671563, at *4 (M.D. Pa. Mar. 31, 2020).

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protect the right to vote and to participate in the political process. The right to vote is a fundamental constitutional right also protected by both the due process and equal protection clauses of the Fourteenth Amendment. *See, e.g., Bush v. Gore*, 531 U.S. 98, 104-05 (2000); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1996); *Anderson v. Celebrezze*, 460 U.S. 780, 786-87 (1983).

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The constitutional right to vote “is of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). When analyzing the constitutionality of a restriction on voting, the Court must “weigh the ‘character and magnitude of the asserted injury to’ the voters’ rights against the ‘precise interests put forward by the State as justifications for the burden imposed.’” *Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020) (quoting *Celebrezze*, 460 U.S. at 789).

In light of the text of the Electoral Code, Art. 5.11(2)(a)(b), Puerto Rico’s voting policies and restrictions, as applied to the November 2024 general election, constitute a severe burden on the right to vote. These requirements will likely prevent thousands of voters from casting ballots during the general election because of the negligent administration of the CEE and its failure to efficiently implement the Election Code of 2020 jeopardizing the rights of thousands of voters.

Refusal to extend the voter registration deadline in Puerto Rico imposes a severe burden on the fundamental right to vote by depriving citizens of that right altogether.

The decision not to extend the deadline is not narrowly drawn to advance any state interest sufficiently compelling to justify the imposition of such severe burdens.

Defendants have no justification for the burden imposed by their decision not to extend the deadline to October 6, 2024—which is the deadline that is actually prescribed by law. No justification makes it necessary to burden Plaintiffs’ rights.

The burdens imposed on Defendants by their refusal to extend the voter registration deadline are not severe. Defendants’ failure to take action under these circumstances fail even rational basis review.

Defendants’ refusal to extend the voter registration deadline additionally violates the Equal Protection Clause because it irrationally and arbitrarily discriminates between Puerto Ricans based on the date within the lawful registration period on which they attempted to register to vote.

Defendants’ refusal to extend the voter registration period violates the Due Process Clause because it is fundamentally unfair to announce that prospective Puerto Rico voters could register to vote online through October 6, and then deny those same prospective Puerto Rico voters the ability to register to vote through October 6.

Plaintiffs therefore seek a declaratory judgment that, by refusing to extend the voter registration deadline in Puerto Rico, Defendants, acting under color of law, are depriving Plaintiffs of the rights, privileges, and immunities secured to them by the First and Fourteenth Amendments to the United States Constitution and protected under 42 U.S.C. §1983.

Here, Plaintiffs are excluded from the voters official list. Absent action by the Commission to enable them to vote, with adequate time to register to do so, or intervention from the Court, Plaintiffs will be irreparably harmed by the resulting disenfranchisement.

D. The Balance Of Hardships And Public Interest Support Injunctive Relief

The balance of equities and public interest weighs heavily in favor of an injunction. As an initial matter, the administrative burden on Defendants to implement these protections for the general elections in November is slight. The Commission already permits registration for other categories of individuals eligible for absentee voting until October 2024. Thus, any administrative

hurdles associated with allowing citizens to register until October 6, 2024, will likely be minimal and can be addressed during this process. *See, e.g., People First of Ala.*, 2020 WL 3478093, at *6 (finding that proposed voting measure faced “minimal burdens because it generally requires the use of polling supplies and staff that already exist,” especially when compared to forcing citizens to “vote in-person inside a polling place in contravention of the CDC’s . . . recommendation to minimize in-person interactions”).

None of these anticipated administrative burdens justify the deprivation of citizens’ constitutional right to vote. Indeed, they are nothing more than what is already within the Commission’s mandate. The Election Code requires that the voter be provided with the “most ample accessibility, without barriers” and that the electoral procedures be “based on the amplest participation and accessibility.” *Pedro Pierluisi-Urrutia*, 2020 PRSC 82, at 17. *See also* Art. 3.1 of the 2020 Election Code. In the context of the primaries, the Supreme Court of Puerto Rico warned the Commission that “[i]t hopes that, in the name of democracy, there are no more failures, inefficiencies, errors nor procrastinations. Any other result or deviation from what has been intimated would clearly be unacceptable.” *Id.* at 28. The same applies to voters registration and accessibility to the registration process for the General Elections of 2024.

Conversely, the harm to Plaintiffs and Puerto Rico’s voters are great, irreparable, and imminent. Puerto Rico’s current voting policies have forced Plaintiffs and thousands of other citizens to disenfranchisement. Courts—including the First Circuit—have found that this consequences are grave and warrant an injunction. *See, e.g., Common Cause R.I.*, 2020 WL 4579367, at *2 (upholding District Court’s approval of consent decree enjoining enforcement of Rhode Island’s “two witness” voting requirement for mail-in voting);

The public’s significant interest in ensuring its citizens their constitutional right to vote is best served by an injunction. *See League of Women Voters of N.C.*, 769 F.3d at 247–48 (“**The public interest . . . favors permitting as many qualified voters to vote as possible.**”); *Obama*

for Am., 697 F.3d at 437 (finding that public interest “**favours permitting as many qualified voters to vote as possible**”); *Libertarian Party of N.H. v. Sununu*, No. 20-CV-688-JL, 2020 WL 4340308, at *21 (D.N.H. July 28, 2020) (“[I]t is always in the public interest to prevent violation of a party’s constitutional rights.”) (quoting *ACLU Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 649 (6th Cir. 2015)).

CONCLUSION

Defendants, acting under color of law, are depriving Plaintiffs of the rights, privileges, and immunities secured to the Plaintiffs by the First and Fourteenth Amendments to the United States Constitution and protected under 42 U.S.C. §1983.

For the foregoing reasons, Plaintiffs respectfully request that the Court grant a **temporary restraining order and preliminary injunction** ordering Defendants to implement policies allowing voters to register until October 6, 2024 for the November 2020 general election by:

1. *Extending the deadline for registration for the general elections until October 6, 2024;*
2. *Updating all public education materials, including written, online, and on-air, to reflect the above deadline extension;*
3. *Ordering the Commonwealth of Puerto Rico to allocate all necessary budget and personnel to guaranty the right to vote of the people of Puerto Rico on November 5, 2024;*
4. *Grant Plaintiffs an urgent argumentative hearing in which all the requirements could be fully discussed, and such other relief that could include an evidentiary hearing, if necessary, as the Court may deem just and proper.*

Dated: September 23, 2024

Respectfully submitted,

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***Pro Hac Vice* Application to be filed