

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)

TEMPORARY RESTRAINING
ORDER AND/OR PRELIMINARY
INJUNCTION REQUESTED

MOTION IN COMPLIANCE WITH ORDER TO SHOW CAUSE

TO THE HONORABLE COURT:

COME NOW the Plaintiffs through their undersigned attorneys in representation of the *American Civil Liberties Union, Puerto Rico Chapter*, and respectfully allege and pray:

1. On September 23, 2024, this Court issued an *Order to Show Cause*, DE 7.
2. In compliance thereto, Plaintiffs inform the Court that yesterday, September 23, 2024, a formal *Petition for Temporary Restraining Order and Preliminary Injunction* was filed by plaintiffs, DE 10.
3. Plaintiffs also inform the Court that they have served all defendants including the Secretary of Justice and every single electoral commissioner with a copy of the *Complaint*, DE 1; the *Order*, DE 7, the *Motion for Temporary Restraining Order, Plaintiffs Memorandum in Support etcetera*, and its exhibits, DE 10. Plaintiffs further inform that today they will serve the Defendants with the *Order to Show Cause* and this *Motion In Compliance*. The corresponding certificates of service will be submitted immediately thereafter.

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4. In addition, Plaintiffs clarify that the case that was pending before the Puerto Rico Superior Court, San Juan Part, was an administrative review of a decision taken by the President of the *Puerto Rico's State Electoral Commission* (known as CEE). The case, which was filed under *Chapter XIII of the 2020 Election Code* as an appeal from an administrative decision, was dismissed by a *Judgment* entered on September 20, 2024.

5. The plaintiff in that case, Civil No. SJ2024CV08617, was the Electoral Commissioner of the *Movimiento Victoria Ciudadana Party* (known as MVC), who decided not to appeal the *Judgment* issued by the San Juan Superior Court. Therefore, there are no pending proceedings in this above referred case.

6. The plaintiffs in the present case were not part of the above-mentioned case. This case is about civil rights violation under 42 USC §1983.

7. Finally, this cause should not be dismissed because it seeks to avert the irreparable injury that Plaintiffs will suffer by the disfranchisement that would occur by the CCE' unconstitutional actions complained from coupled with its decision to close the voter registration prematurely since the *2020 Election Code* clearly establishes that every qualified voter has the right to get registered for the General Elections of November 5, 2024, not later than October 6, 2024. 16 L.P.R.A. § 4571 (2)(b).

8. The Court can prevent the deprivation of Plaintiffs' federally protected constitutional rights through the issuance of a mandatory preliminary injunction.

9. In an oft-quoted passage, the Court of Appeals for the Fifth Circuit explained that:

The purpose of a preliminary injunction is always to prevent irreparable injury so as to preserve the court's ability to render a meaningful decision on the merits. It often happens that this purpose is furthered by preservation of the status quo, but not always. If the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury,

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either by returning to the last uncontested status quo between the parties ... [or] by the issuance of a mandatory injunction”.

Canal Auth. of State of Fla. v. Callaway, 489 F.2d 567, 576 (5th Cir. 1974).

10. Our Circuit Court has clarified that a mandatory preliminary injunction, just like a traditional, prohibitory preliminary injunction, must “be measured according to the same four-factor test, as the focus always must be on prevention of injury by a proper order, not merely on preservation of the status quo.” *Braintree Laboratories, Inc. v. Citigroup Global Markets Inc.*, 622 F.3d 36, 41 (2010) (cleaned-up).

WHEREFORE, Plaintiffs respectfully request the Court to deem the *Order to Show Cause* complied with and to, either issue the requested TRO forthwith, or schedule the preliminary injunction hearing for the most proximate available date within the Court’s calendar.

Respectfully submitted, in San Juan, Puerto Rico, this 24th day of September 2024.

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***Pro Hac Vice* Application to be filed

Motion In Compliance with Order to Show Cause

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CERTIFICATION

I hereby certify that I filed the within document via the ECF system on September 24, 2024, that it is available for viewing and downloading to all counsel of record, that a true and accurate copy of this *Motion* will be personally served upon the Defendants on that same date, and that I provided the within document by email on September 24, 2024 to:

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/s/Fermín L. Arraiza-Navas
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