

FILED IN CLERK'S OFFICE
U.S.D.C. - Rome

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

OCT 19 2005

LUTHER D. THOMAS, Clerk

By:

J. Jenkins
Deputy Clerk

Common Cause/Georgia,
League of Women Voters of
Georgia, Inc.,
The Central Presbyterian
Outreach and Advocacy Center,
Inc.,
Georgia Association of Black
Elected Officials, Inc.,
The National Association for the
Advancement of Colored People (NAACP),
Inc., through its Georgia State
Conference of Branches,
Georgia Legislative Black Caucus,
Concerned Black Clergy of Metropolitan
Atlanta, Inc., and the following
qualified and registered voters under
Georgia law:
Mrs. Clara Williams,

Plaintiffs,

v.

CIVIL ACTION FILE
NO. 4:05-CV-0201-HLM

Ms. Evon Billups, Superintendent
of Elections for the Board of
Elections and Voter Registration
for Floyd County and the City
of Rome, Georgia,
Ms. Tracy Brown, Superintendent
of Elections of Bartow County,
Georgia,
Mr. Gary Petty, Ms. Michelle
Hudson, Ms. Amanda Spencer, Mr.
Ron McKelvey, and Ms. Nina
Crawford, members of the Board
of Elections and Registration of
Catoosa County, Georgia,
Judge John Payne, Superintendent
of Elections of Chattooga County,
Georgia,
Ms. Shea Hicks, Superintendent of
Elections for Gordon County,

Georgia,
Ms. Jennifer A. Johnson,
Superintendent of Elections for
Polk County, Georgia,
Mr. Sam Little, Superintendent of
Elections for Whitfield County,
Georgia, individually and in their
respective official capacities as
superintendents or members of the
elections boards in their individual
counties, and as class representatives
under Federal Rule of Civil Procedure
22(b)(1) and (b)(2) of a class
consisting of all superintendents and
members of city and county boards of
elections throughout the State of
Georgia, and
Honorable Cathy Cox, individually and
in her official capacities as
Secretary of State of Georgia and
Chair of the Georgia Elections Board,

Defendants.

ORDER

This is a civil rights case in which Plaintiffs seek preliminary and permanent injunctive relief against Defendants, including Secretary of State Cathy Cox, restraining and enjoining Defendants individually and in their official capacity from enforcing or applying the Photo ID requirement in the 2005 Amendment to O.C.G.A. § 21-2-417 on the grounds that it imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of article II, section 1, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-fourth Amendments to

the federal Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. § 1971(a)(2)(A) and (a)(2)(B)), and Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)). Plaintiffs also request recovery of their reasonable attorneys' fees and costs. The case is before the Court on Secretary of State Cox's Motion to Dismiss Individual Capacity Claims [27].

I. Background

A. Factual Background

Defendant Cathy Cox ("Secretary of State Cox") is the Secretary of State for the State of Georgia, and is Chair of the State Election Board. (Compl. ¶ 2(a)(viii).) Secretary of State Cox has been designated as the Chief Election Official for purposes of the federal Help America Vote Act of 2002, and also is the Chief Election Official for purposes of the National Voter Registration Act of 1993. (Id.) Plaintiffs have sued Secretary of State Cox in her individual and official capacities. (Id.)

In 2005, the Georgia General Assembly adopted House Bill 244, or Act 53 ("HB 244"), which amended O.C.G.A. § 21-2-417 to require that all registered voters in Georgia who vote in person in all primary, special, or general elections for state, national, and local offices held on or after July 1, 2005, present a government-issued Photo ID to election

officials as a condition of being admitted to the polls and before being issued a ballot and being allowed to vote.

On March 29, 2005, prior to the passage of HB 244, Secretary of State Cox wrote a memorandum addressed to the members of the Georgia State Senate, asking that the senators consider the "staggering opportunities for voter fraud" that HB 244 would create. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. A at 1.) On April 8, 2005, Secretary of State Cox wrote a letter to Governor Sonny Purdue expressing her reservations about HB 244's Photo ID requirement, and urging Governor Purdue to veto the bill. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. B.) Secretary of State Cox explained why she believed that the Photo ID requirements are unnecessary and created substantial obstacles to many Georgia voters. (Id. at 1-2.) Additionally, Secretary of State Cox expressed her belief that HB 244 violated article II, section 1, paragraph 2 of the Georgia Constitution because it imposed a qualification on voters that was not listed in the Georgia Constitution. (Id. at 4.) Finally, Secretary of State Cox expressed her belief that the Photo ID requirement imposed an undue burden on the fundamental right of citizens to vote. (Id. at 5.)

During the October 12, 2005, Preliminary Injunction Hearing regarding HB 244, Secretary of State Cox stated that although she disagreed with HB 244, she is bound to implement the new Photo ID requirements. (Oct. 12, 2005, Hr'g Tr.)

Secretary of State Cox explained that her office supplies materials to and trains local election officials and that those local officials, in turn train precinct poll workers and actually conduct elections in Georgia's counties. (Id.) She also stated that she is not personally involved in Georgia's elections and has no personal oversight or personal contact with local board of election officials the day of an election. (Id.) Secretary of State Cox also told the Court that she would comply with any injunction ordered by the Court regarding HB 244. (Id.)

On September 19, 2005, Plaintiffs filed this lawsuit. Plaintiffs assert that the Photo ID requirement violates the Georgia Constitution, is a poll tax that violates the Twenty-fourth Amendment and the Equal Protection Clause, unduly burdens the fundamental right to vote, violates the Civil Rights Act of 1964, and violates Section 2 of the Voting Rights Act.

On October 18, 2005, the Court issued an Order granting Plaintiffs' Motion for Preliminary Injunction on the findings that Plaintiffs are substantially likely to succeed on the merits of their Fourteenth Amendment Equal Protection claim, and on their claim that the Photo ID requirement constitutes a poll tax. (Order of Oct. 18, 2005.) The Court also determined that Plaintiffs' claims under the Georgia Constitution against state officials would restrain the State

of Georgia, and therefore the State was the real party in interest. (Id.) Accordingly, the Court found that portion of Plaintiffs' suit is barred by the Eleventh Amendment.¹ The Court, however, refrained from addressing Secretary of State Cox's Motion to Dismiss Individual Capacity Claims in its October 17, 2005 Order.

B. Procedural Background

On September 19, 2005, Plaintiffs requested that the Court schedule a preliminary injunction hearing. On that same day, the Court entered an Order scheduling a preliminary injunction hearing for October 12, 2005. (Order of Sept. 19, 2005.)

On October 6, 2005, Plaintiffs filed a formal Motion for Preliminary Injunction. On October 7, 2005, Secretary of State Cox filed a Motion to Dismiss Individual Capacity Claims. On October 11, 2005, Plaintiffs filed a response to Secretary of State Cox's Motion.

On October 12, 2005, the Court held a hearing with respect to Plaintiffs' Motion for Preliminary Injunction. During the October 12, 2005, hearing, the parties presented evidence and arguments in support of their respective

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The Court refrained from dismissing Plaintiffs claims under the Georgia Constitution in its October 18, 2005, Order granting Plaintiffs' request for a preliminary injunction because that issue was not before the Court at that time.

positions.

The Court concludes that Secretary of State Cox's Motion to Dismiss Individual Capacity Claims now is ripe for resolution by the Court.

II. Standard Governing a Motion to Dismiss

The standard for a court to dismiss a claim is whether "it appears beyond doubt that the plaintiff can prove no set of facts to support his claim." GSW, Inc. v. Long County, 999 F.2d 1508, 1510 (11th Cir. 1993) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). When considering a motion to dismiss, the Court "must accept the allegations in the complaint as true, construing them in the light most favorable to the plaintiffs." White v. Lemacks, 183 F.3d 1253, 1255 (11th Cir. 1999). However, "[a]s a general rule, conclusory allegations and unwarranted deductions of fact are not admitted as true in a motion to dismiss." South Fla. Water Mgmt. Dist. v. Montalvo, 84 F.3d 402, 408 n.10 (11th Cir. 1996).

III. Discussion

Secretary of State Cox argues that to the extent Plaintiffs' Complaint asserts claims for relief against her in her individual capacity,² the Complaint should be dismissed

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Secretary of State Cox notes that her Motion to Dismiss

pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

According to Secretary of State Cox, Plaintiffs cannot seek to impose personal liability on her because the requested injunctive relief relates only to her official duties and responsibilities as Secretary of State. Secretary of State Cox argues that prospective injunctive relief against her in her personal capacity will not protect Plaintiffs' alleged constitutional rights. Secretary of State Cox asserts that without her "official" status, she is powerless to act with respect to voting and elections in Georgia.

Furthermore, Secretary of State Cox contends that any potential injunctive relief against her in her individual capacity would be pointless because future Secretaries of State in Georgia would not be bound by such an injunction. Secretary of State Cox also argues that because she cannot grant the primary relief sought by Plaintiffs in her individual capacity, Plaintiffs' ancillary claims for attorneys' fees and costs against her must also be dismissed.

Plaintiffs argue that because Secretary of State is charged with enforcing HB 244, which Plaintiff's contend is unconstitutional, when she does so, Secretary of State Cox will be a state official attempting to enforce a state law

Individual Capacity Claims does not extend to Plaintiffs' claims for injunctive relief against Secretary of State Cox in her official capacity.

that is unconstitutional, and therefore will be committing “‘an illegal act’ outside the state’s authority.” According to Plaintiffs, Secretary of State Cox will be stripped of her official character and then will be subject in her person to the consequences of her individual conduct. Furthermore, Plaintiffs argue that the procedural rules would automatically bring Secretary of State Cox’s successors before the Court in their individual and official capacities.

The Eleventh Amendment to the Constitution provides that “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” U.S. Const. amend. XI. The Supreme Court has made clear that this language also bars suits against a state by its own citizens. DeKalb County Sch. Dist. v. Schrenko, 109 F.3d 680, 687 (1997) (citing Hans v. Louisiana, 134 U.S. 1 (1890)). “In short, the Eleventh Amendment constitutes an ‘absolute bar’ to a state’s being sued by its own citizens, among others.” Id. (citing Monaco v. Mississippi, 292 U.S. 313, 329 (1934)).

In the seminal Ex parte Young case, the Supreme Court recognized an exception to state sovereign immunity under the Eleventh Amendment for certain suits seeking declaratory and injunctive relief against state officers in their individual

capacities. 209 U.S. 123 (1908), see also Idaho v. Coeur d'Alene Tribe, 521 U.S. 261, 269 (1997) (holding that suit against state officers acting in individual capacities does not violate state's Eleventh Amendment immunity in certain circumstances where claimant is seeking only declaratory and injunctive relief). As interpreted by later Supreme Court cases, the Young doctrine provides that a suit for prospective relief that challenges a state official's conduct as being contrary to the supreme authority of the United States is not a suit against the State and therefore is not barred by the Eleventh Amendment. Pennhurst State Sch. & Hosp. v. Haldeman, 465 U.S. 89, 102 (1984) (citing Young, 209 U.S. at 160).

The Supreme Court explained in Young that when a state official attempts to enforce a state law that is "a violation of the Federal Constitution, the officer, in proceeding under such enactment, comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct." Young, 209 U.S. at 159-60.

Here, Plaintiffs' suit for prospective relief to enjoin any action by Secretary of State Cox in her official and individual capacities as being contrary to the supreme authority of the United States is not a suit against the State of Georgia and therefore is not barred by the Eleventh

Amendment. Accepting the allegations in the Complaint as true,³ that HB 244 violates Plaintiffs' rights under the Fourteen and Twenty-fourth Amendments to the federal Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. § 1971(a)(2)(A) and (a)(2)(B)), and Section 2 of the Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)), it does not appear beyond doubt that Plaintiffs can prove no set of facts to support their claim.

Secretary of State Cox is Georgia's chief election official for purposes of the federal Help America Vote Act of 2002 and, under Secretary of State Cox's leadership, her office provides training and materials to assist local election officials in their implementation of voting and election laws, including Georgia's HB 244. While the Court recognizes that Secretary of State Cox personally disagrees with HB 244 and voiced her disapproval of the Photo ID requirement to the State Senate and Governor Purdue, the Court recognizes that Secretary of State Cox testified before the Court that, in the absence of a court-issued injunction, she is bound to implement HB 244.

Taking Plaintiffs' allegations as true, any actions by

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The Court notes that it may not entertain Plaintiffs' claims under the Georgia Constitution because a suit for relief against state officials on the basis of state law, where the state is found to be the real party in interest, intrudes on state sovereignty in violation of the Eleventh Amendment and is therefore barred. Pennhurst, 465 U.S. at 101.

Secretary of State Cox to implement HB 244 would be an attempt to enforce a state law in violation of the federal Constitution. Based on the unique fiction articulated in Young, such actions by Secretary of State Cox would strip her of her official character and subject her to the consequences of her individual conduct. In this regard, Plaintiffs have stated claims upon which declaratory and injunctive relief can be granted against Secretary of State Cox in her official and individual capacities.

Secretary of State Cox argues that Plaintiffs have failed to state a claim against her personally and in her individual capacity because outside her "official" status, she is powerless to act with respect to voting and elections in Georgia. Defendants, however, are describing the very fiction of Young--that when a state official attempts to enforce, or in this case states that she is bound to enforce, a law contrary to the supreme authority of the federal Constitution, that state agent is stripped of her official or representative character and is acting as an individual outside the state's authority.

Secretary of State Cox cites cases where courts have dismissed claims for reinstatement to former employment brought against state agents in their personal capacities because those persons are "powerless" to grant the requested relief. But here, Plaintiffs are not asking that their

constitutional rights be reinstated, or that Secretary of State Cox return property taken from them. Rather, Plaintiffs are asking that Secretary of State Cox be enjoined from implementing HB 244 and, taking Plaintiffs' allegations as true, consequently be prevented from violating their constitutional rights. Taking Plaintiffs' Complaint as true, any implementation of HB 244 by Secretary of State Cox would be unconstitutional, thus under Young she would be stripped of her official capacity and would be acting to implement the Photo ID requirement in her individual capacity. Under those circumstances, Secretary of State Cox would have the power to refuse to implement HB 244, and therefore would have the power to grant the prospective relief requested by Plaintiffs.

Furthermore, even if injunctive relief against Secretary of State Cox in her personal capacity may not bind any successor Secretary of State, Plaintiffs are requesting declaratory and injunctive relief against Secretary of State Cox in her official and her personal capacity. Under Federal Rule of Civil Procedure 25(d)(1), "when a public officer is a party to an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party." Fed. R. Civ. P. 25(d)(1); see also Fed. R. App. P. 43(c)(1) (applying similar rule to appeals). Therefore, Secretary of State Cox's successors would be bound

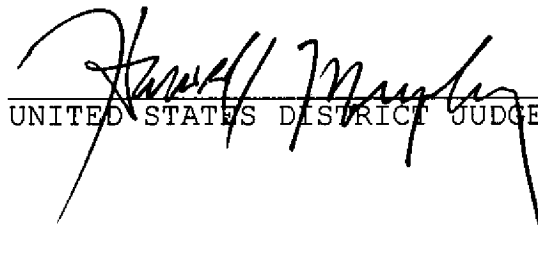
by the comprehensive injunctive relief requested by Plaintiffs, and such relief would not be "pointless."

In sum, Plaintiffs have stated a claim for declaratory and injunctive relief against a state officer in her official and individual capacities upon which relief can be granted and it does not appear beyond a doubt that Plaintiffs can prove no set of facts to support those claim. The Court therefore denies Secretary of State Cox's Motion to Dismiss Individual Capacity Claims.

III. Conclusion

ACCORDINGLY, the Court **DENIES** Secretary of State Cox's Motion to Dismiss Individual Capacity Claims [27].

IT IS SO ORDERED, this the 19th day of October, 2005.


UNITED STATES DISTRICT JUDGE