

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 04-22572-CIV-KING/O'SULLIVAN

EMMA YAIZA DIAZ et al.,

Plaintiffs,



v.

SUE M. COBB, Secretary of State
of Florida, et al.,

Defendants.

**REPLY MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS
THE THIRD AMENDED COMPLAINT BY DEFENDANT LESTER SOLA**

Plaintiffs' Consolidated Opposition ignores the legitimate government interests in establishing a book closing deadline and ensuring the eligibility of voters and instead erroneously asserts that any requirement regarding voter registration, no matter how inconsequential, must be given the same consideration as those that actually infringe on a citizen's right to vote. In her Reply in Support of her Motion to Dismiss, Defendant Sue Cobb, Secretary of State of Florida ("Secretary Cobb"), demonstrates that as a matter of law, the allegations in the Third Amended Complaint can not rise to the level of a Constitutional violation. Accordingly, Defendant Lester Sola adopts the arguments raised by Secretary Cobb in her Reply as if fully made herein. Even if the Third Amended Complaint properly alleged a Constitutional violation, the injunctive relief requested by Plaintiff Emma Diaz must be dismissed as moot.

Plaintiffs do not contest that, after two years of waiting, Emma Diaz ("Diaz") has finally filled out a complete voter registration and is now a registered voter. Rather, Plaintiffs, citing ACLU v. The Fla. Bar, 999 F.2d 1486, 1496 (11th Cir. 1993), argue that Diaz's claims are not moot because they are "capable of repetition yet evading review." See Consolidated Opposition at 18 n.6. Plaintiffs' reliance on ACLU is misplaced. Under ACLU, to demonstrate whether a case is capable of repetition yet evading review a plaintiff must show that: (1) "there is a reasonable expectation that the same controversy will recur involving the same parties;" and (2) the "challenged action was in its duration too short to be fully litigated prior to its cessation or

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expiration.” ACLU, 999 F.2d at 1496 (citing News-Journal Corp. v. Foxman, 939 F.2d 1499 (11th Cir. 1991)).

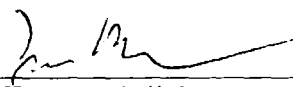
Plaintiffs’ Consolidated Opposition does not, and can not, show that Diaz is reasonably likely to encounter the same problem with her voter registration. Diaz is now a registered voter. See D.E. 175 (Defendant Lester Sola’s Suggestion of Mootness). In the event that she ever needs to change her registration in Miami-Dade County, there is no reasonable chance that Diaz will make the same mistake twice and erroneously fail to affirm that she is not mentally incapacitated. As such, the claims for injunctive relief against Defendant Sola must be dismissed. Wooden v. Bd. of Regents of Univ. of Ga., 247 F.3d 1262, 1285 (11th Cir. 2001) (“[T]he fact that others may be exposed to that process in the future is not sufficient for [the plaintiff] to obtain prospective relief that will not benefit him in conjunction with his individual claim.”).

CONCLUSION

The Third Amended Complaint should be dismissed with prejudice.

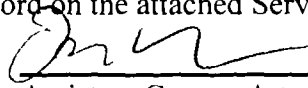
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by mail on September 19, 2006 on all counsel or parties of record on the attached Service List.


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