

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

EMMA YAIZA DIAZ et al.,

Plaintiffs,

v.

KURT S. BROWNING, Secretary of
State of Florida, et al.,

Defendants.

**DEFENDANT LESTER SOLA'S REPLY IN SUPPORT
OF HIS MOTION FOR JUDGMENT ON THE PLEADINGS**

In their attempt to explain why Supervisor Sola is a proper Defendant in this case, Plaintiffs make a remarkable concession: “Supervisors of Elections, as the chief election officials at the county level, are indispensable parties to this litigation.” Pls.’ Resp. at 1. If Plaintiffs are right, then judgment must be entered for Defendants under Rule 19 of the Federal Rules of Civil Procedure, because Plaintiffs have failed to join the vast majority of Florida’s supervisors of elections. If Plaintiffs are wrong, then the five supervisors who are named as Defendants in this action are not required at all, because the Secretary of State—who has been sued in his official capacity—is responsible for defending the constitutionality of the statute at issue and for making sure any ruling by this Court would be enforced equally statewide. Either way—whether Plaintiffs are right or wrong in their Response—judgment must be entered in favor of Supervisor Sola.

I. Plaintiffs' Position Violates Rule 19 and the Constitution

Plaintiffs' Response lays a trap for this Court, asking it to trade one alleged Constitutional violation (the failure to permit a "grace period") for one that is certain ("the unequal application of law" that would result from five supervisors of elections providing a "grace period" while the other 62 do not). See Friedman v. Snipes, 345 F. Supp. 2d 1356, 1381 (S.D. Fla. 2004) (Gold, J.). In Friedman, Judge Gold identified the problem that occurs when a plaintiff seeks injunctive relief from only a fraction of the State's supervisors of elections. As the court recognized, seeking relief from only a few of the parties responsible for enforcing a statute that has statewide application "would result in a denial of the equal protection of the laws to all" persons living in other parts of the State. Id.

Plaintiffs contend that "Supervisors of Elections, as the chief election officials at the county level, are indispensable parties to this litigation." Pls.' Resp. at 1. If Plaintiffs are correct, both Rule 19 of the Federal Rules of Civil Procedure and the Equal Protection Clause of the Constitution require that judgment be entered for Supervisor Sola. Rule 19 requires plaintiffs to join any defendant if that party's absence would preclude "complete relief." Fed. R. Civ. P. 19(a). Each of the Union Plaintiffs in this case has members "throughout the State of Florida" who claim to be affected by the 29-day deadline for registering to vote. See D.E. 170 ¶¶ 30, 34, 38, 40 (emphasis added). Failure to join the other supervisors of elections precludes the Union Plaintiffs from obtaining "complete relief." Thus, "Plaintiffs' failure to join the . . . other county Supervisors of Elections as party-Defendants amounts to a failure to join indispensable parties under [Rule] 19." Friedman, 345 F. Supp. 2d at 1381.

Moreover, Plaintiffs' request for injunctive relief against only a few named supervisors of elections would lead to inconsistent treatment of untimely voter registration applications across

Florida, in plain violation of those voters' Fourteenth Amendment rights. Id. at 1381-1382 (holding that the omission of the other supervisors of elections "ensures that any Order issued by this Court would have unequal application across Florida" and would result in "unequal treatment against which the Constitution was designed to protect"). Should Plaintiffs prevail on the merits against the named supervisors of elections, voters in Manatee County, for example, would be subject to the 29-day book closing date while voters in Miami-Dade County would not—a result inconsistent with the Equal Protection Clause.

II. The Secretary of State is the Proper Defendant

Although Plaintiffs' attempt to proceed against some, but not all, of the supervisors is barred by Rule 19 and the Constitution, Plaintiffs could still proceed against the Secretary of State, who is the proper Defendant in this case for purposes of injunctive relief. In the Third Amended Complaint, Plaintiffs seek to have a state statute declared unconstitutional. See D.E. 170 at 40. The only party with an interest in defending a state statute is the State of Florida. Plaintiffs' suit against the Secretary in his official capacity is tantamount to a suit against the State of Florida. See Kentucky v. Graham, 473 U.S. 159, 166 (1985) ("As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity."); Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 n. 55 (1978) (recognizing that "official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent").

Plaintiffs argue that the supervisors of elections are the proper parties because of their "critical role in administering and enforcing of Florida's voter registration laws," Pls.' Resp. at 2. Although it may be true that the supervisors enforce the State's registration cutoff, they do not,

as this Court has already recognized, have any discretion on this point. See D.E. 201 at 15. Even more, the Florida Statutes give the Secretary of State the authority to ensure that the various supervisors of elections apply the law in a uniform manner. See generally § 97.012 (1) & (14), Fla. Stat. In short, the only current Defendant who could lawfully give Plaintiffs the relief they seek is the State of Florida, which is represented in this case by its officer, the Secretary of State.

Accordingly, the Court should enter judgment for Supervisor Sola.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2007 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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