

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

EMMA YAIZA DIAZ et al.,

Plaintiffs,

v.

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

Defendants.

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**DEFENDANT LESTER SOLA'S MOTION FOR JUDGMENT ON THE  
PLEADINGS AND SUPPORTING MEMORANDUM OF LAW**

On February 27, 2007, this Court dismissed most of this case. See D.E. 201. All that remains pending against Supervisor Sola is a claim relating to a state law that establishes a registration cutoff by which persons must submit complete applications in order to vote in the next election. See id. at 21. Plaintiffs argue that this law is unconstitutional because it does not provide for a “grace period,” after the registration deadline has passed, during which applicants could complete their otherwise incomplete applications and still be allowed to vote in the next election. Supervisor Sola is entitled to a judgment on the pleadings on this claim because Plaintiffs, Supervisor Sola, and, most importantly, the Court, all agree that only the State—and not the supervisor Defendants—can be held liable for this potentially unconstitutional provision of Florida law.

“Judgment on the pleadings is appropriate where there are no material facts in dispute and the moving party is entitled to judgment as a matter of law.” Palmer & Cay, Inc. v. Marsh & McLennan Companies, Inc., 404 F.3d 1297, 1303 (11th Cir 2005); accord Ortega v. Christian, 85 F.3d 1521, 1524 (11th Cir.1996).

Here, a judgment on the pleadings is proper because the Parties, in their pleadings, agree that Supervisor Sola cannot be held responsible for the Florida law that prohibits him from accepting after the book closing deadline applications that, although submitted prior to that deadline, omitted information required by state law. Indeed, Plaintiffs specifically allege that “State law prohibits Supervisors of Elections from accepting corrections to an application with regard to the checkboxes after the close of books.” TAC ¶ 137. In his Answer, Supervisor Sola

admitted this allegation. See D.E. 205 ¶ 137. The Parties thus agree that Supervisor Sola cannot be held liable on this point.

Because the Parties agree that Supervisor Sola had no choice but to deny Plaintiffs an opportunity to complete their applications after the deadline had passed, “there are no material facts in dispute.” Palmer & Cay, Inc., 404 F.3d at 1303. Further, it is clear, based on the Parties’ shared position, that Supervisor Sola is entitled to judgment as a matter of law. Indeed, this Court has already recognized the correctness of the Parties’ position. In its Order on Defendants’ motion to dismiss, the Court held that “[u]nder state and federal law, Defendant Supervisors have no discretion and cannot be held liable.” D.E. 201 at 15 (emphasis added). As the Court put it: “state and federal law prohibit Defendant Supervisors from . . . accepting updates to an incomplete voter registration application after the 29 day deadline.” Id. Because this is a purely legal issue that requires no factual discovery to resolve, and because, as the Court has already recognized, Supervisor Sola cannot be held liable based on Plaintiffs’ allegations, the Court must enter a judgment on the pleadings for Supervisor Sola.

Recently, another division of this Court recognized that the only proper defendant in a case like this is the Secretary of State—not a small selection of county supervisors. See Friedman v. Snipes, 345 F. Supp. 2d 1356 (S.D. Fla. 2004) (Gold, J.). In Friedman, the plaintiffs sought an injunction to force two supervisors of elections “to disregard the requirements of Fla. Stat. § 101.67(2)” and to accept untimely absentee ballots. Id. at 1382. Judge Gold specifically criticized the plaintiffs for focusing their suit against two supervisors of elections, rather than the State itself:

Plaintiffs have now withdrawn their demand for preliminary injunctive relief that Defendant Secretary of State . . . take actions to force all of the other 65 Florida county Supervisors of Elections to count domestic absentee ballots received after 7 p.m. on November 2, 2004. Plaintiffs now ask this Court to grant preliminary injunctive relief only against [the supervisors from Broward and Miami-Dade counties]. . . . Plaintiffs’ decision to drop the [Secretary of State] from this request for injunctive relief now ensures that, if Plaintiffs were to succeed on their claims, the late received ballots of domestic absentee voters in every other Florida county will not be included in election totals. This in itself would result in a denial of the equal protection of the laws to all domestic absentee voters outside of Broward and Miami-Dade counties.

Id. at 1381.

As Judge Gold's decision makes clear, the proper Defendant in this case is the Secretary of State. The county supervisors of elections, including Supervisor Sola, are not responsible for this statute, are without the power to amend it, and simply cannot provide to Plaintiffs the relief they seek—a fact already recognized by this Court. See D.E. 201 at 15 (“Under state and federal law, Defendant Supervisors have no discretion and cannot be held liable.”) (emphasis added). There is simply no reason for Supervisor Sola to remain in this suit, distracted from his important responsibilities related to running elections in a County with approximately 1 million registered voters and with presidential primaries and other important contests right around the corner.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 4, 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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