

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 04-22572-CIV-KING

EMMA YAIZA DIAZ; JOHN A. LANMAN;
AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS; AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO; FLORIDA
PUBLIC EMPLOYEES COUNCIL 79,
AFSCME, AFL-CIO; and SERVICE
EMPLOYEES INTERNATIONAL
UNION,

Plaintiffs,

v.

SUE M. COBB, Secretary of State of Florida;
BRENDA SNIPES, Broward County Supervisor of
Elections; JERRY HOLLAND, Duval County Supervisor
of Elections; LESTER SOLA, Miami-Dade
Supervisor of Elections; BILL COWLES, Orange County
Supervisor of Elections; and ARTHUR ANDERSON, Palm
Beach County Supervisor of Elections,

Defendants.

ORDER DENYING MOTION FOR JUDGMENT ON THE PLEADINGS

This Cause is before the Court upon Defendant Miami-Dade Supervisor

Sola's Motion for Judgment on the Pleadings (DE # 213), filed April 4, 2007.¹

On February 27, 2007, this Court filed an Order Granting in Part and Denying in Part Defendants' Motion to Dismiss (DE # 201), leaving only Plaintiff's Claim for Defendants' failure to provide a grace period after the registration cut-off pending.

In this Motion, Defendant Supervisors of Elections allege that "the County Supervisors of Elections...are not responsible for this statute, are without the power to amend it, and simply cannot provide to Plaintiffs the relief they seek."

Therefore, Defendant Supervisors contend that they are not the appropriate Defendants for this cause of action. Instead, the Defendant Supervisors allege that the Secretary of State is the only appropriate Defendant for this cause of action.

"In a suit brought to have a declaration of the unconstitutionality of a state

¹ On April 4, 2007 Defendant Miami Dade County Supervisor of Elections filed a Motion for Joinder (DE # 213). On April 9, 2007, Defendant Duval County Supervisor of Elections filed a Motion for Joinder (DE # 217). On April 10, 2007, Defendant Orange County Supervisor of Elections and Defendant Palm Beach County Supervisor of Elections filed Motions for Joinder (DE # 218, 220). On April 12, 2007, Defendant Broward County Supervisor of Elections filed a Motion for Joinder (DE # 223). Defendant Secretary of State filed a Motion in Opposition of Judgement on the Pleadings (DE # 225), on April 18, 2007. Plaintiffs filed a response in opposition to the Defendant Supervisors' Motion for Judgment on the Pleadings (DE # 226) on April 20, 2007. On April 24, 2007, Defendant Miami Dade County Supervisor of Elections and on April 26, 2007, Defendant Orange County Supervisor of Elections replied (DE # 228, 230).

statute or to enjoin the enforcement of the statute an officer of a state is an appropriate defendant if he has some connection with the enforcement of the act.” *Shell Oil Co. v. Noel*, 608 F. 2d 208 (1979) (citing *Ex parte Young*, 209 U.S. 123, 157 (1908)); *see also Socialist Workers Party v. Leahy*, 145 F.3d 1240 (“In a suit such as this one, where the plaintiff seeks a declaration of the unconstitutionality of a state statute and an injunction against its enforcement, a state officer, in order to be an appropriate defendant, must, at a minimum, have some connection with enforcement of the provision at issue.”). However, a defendant who does not have the authority to enforce the challenged statute, prevent action pursuant to the statute, or redress any injury allegedly suffered because of the invalidity of the statute, is not a proper defendant in the case. *Doe v. Stincer*, 175 F.3d 879, 889 (11th Cir. 1999).

In the above-styled action, Defendant Supervisors of Elections are appropriate defendants because they have a connection with the enforcement of the Florida Election Law in contention. Plaintiffs contest the constitutionality of Florida’s amendments to its election code which prohibit certain amendments to voter registration applications after the book closing deadline. Specifically, Florida Statute 97.055 requires that “when the registration books are closed for an election, updates to a voter’s name, address, and signature pursuant to 98.077 and 101.45 shall be the only changes permitted for purposes of the upcoming election.” Fla.

Stat. § 97.055 (2006).

The Supervisors of Elections have the authority to enforce Florida Statute § 97.055 and can prevent action pursuant to Florida Statute § 97.055. The Supervisors of Elections enforce Florida's election laws. The primary role of the Supervisors of Elections is to register eligible applicants to vote: they determine whether a voter registration application is complete; they close the registration books 29 days before an election; and they mark a late voter registration application invalid. *see Fla. Stat.* § 98.045 ("The Supervisor must ensure that any eligible applicant for voter registration is registered to vote and that each application for voter registration is processed in accordance with the law...the supervisor shall determine whether a voter registration applicant is ineligible based on...the failure to complete a voter registration application.") If Plaintiffs ultimately prevail, and the Court enjoins the enforcement of Florida Statute § 97.055, the Supervisors of Elections are the parties that will be enjoined from enforcing the statute. Thus, the Supervisors of Elections are proper Defendants in the above-styled action.

Accordingly, after a careful review of the record and the Court being otherwise fully advised, it is

ORDERED, ADJUDGED, and DECREED that Defendant Supervisor Sola's Motion for Judgment on the Pleadings (**DE # 213**) be, and the same, is hereby

DENIED.

DONE AND ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 4th day of May, 2007.



JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

Counsel for Plaintiffs:

Mary Jill Hanson, Esq.
HANSON, PERRY & JENSEN, P.A.
400 Executive Center Drive, Suite 207
West Palm Beach, Florida 33401
Phone: (561) 686-6550
Facsimile: (561)686-2802

Judith A. Browne, Esq.
Sheila Y. Thomas, Esq.
Elizabeth Westfall, Esq.
ADVANCEMENT PROJECT
1730 M Street, NW - Suite 910
Washington, D.C. 20036
Phone: (202) 728-9557
Facsimile: (202) 728-9558

Elliot Mineberg, Esq.
PEOPLE FOR THE AMERICAN
WAY FOUNDATION
2000 M Street, Suite 400
Washington, D.C. 20036
Phone: (202) 467-2392
Facsimile: (202) 293-2672

Michael Halberstam, Esq.
Facsimile: (212) 492-0111
Adam Skaggs, Esq.
Facsimile: (212) 492-0298
PAUL WEISS
1285 Avenue of the Americas
New York, NY 10019
Phone: (212) 373-3000

Judith A. Scott, Esq.
John J. Sullivan, Esq.
SEIU
1313 L Street, NW
Washington, D.C. 20005
Phone: (202) 898-3453
Facsimile: (202) 898-3323

Jonathan P. Hiatt, Esq.
AFL-CIO
815 Sixteenth Street, NW
Washington, D.C. 20006
Phone: (202) 637-5053
Facsimile: (202) 637-5323

Manny Anon, Jr., Esq.
FLORIDA PUBLIC EMPLOYEES
COUNCIL 79
3064 Highland Oaks Terrace
Tallahassee, Florida 32301
Phone: (850) 222-0842
or (305) 651-6617
Facsimile: (850) 224-6926
or (305) 651-1740

Counsel for Defendants:

Jeffrey P. Ehrlich, Esq.
Susan Torres, Esq.
Miami-Dade County Attorney's Office
111 N.W. First Street, Suite 2810
Miami, Florida 33128
Phone: (305) 375-5151
Facsimile: (305) 375-5634

Daniel S. Fridman, AUSA
99 N.E. 4th St.
Miami, Florida 33132
Phone: (305) 961-9083

Facsimile: (305) 530-7976

Juan C. Enjamio, Esq.
HUNTON & WILLIAMS LLP
1111 Brickell Avenue, Suite 2500
Miami, Florida 33131
Phone: (305) 810-2500
Facsimile: (305) 810-2460

George N. Meros, Jr.
Peter Antonacci, Esq.
GRAY ROBINSON, P.A.
Post Office Box 11189
Tallahassee, Florida 32302-1189
Phone: (850) 577-9090
Facsimile: (850) 577-3311

Richard Perez, General Counsel
Department of State
The Capitol, PL-01
Tallahassee, Florida 32301
Phone: (850)
Facsimile: (850) 245-6125

Eddie G. Labrador, Esq.
Broward County Assistant Attorney
Governmental Center
115 South Andrews Avenue, Room
423
Fort Lauderdale, Florida 33301
Phone: (954) 357-7600
Facsimile: (954) 357-7641

Burnadette Norris-Weeks, Esq.
BURNADETTE NORRIS-WEEKS,
P.A.
100 S.E. Sixth Street, Suite 6
Ft. Lauderdale, FL 33301-3422

Phone: (954) 768-9770
Facsimile: (954) 768-9790

Tracey I. Arpen, Jr., Esq.
Ernst D. Mueller, Esq.
Deputy General Counsel
Duval County
City Hall, St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Phone: (904) 630-1700
Facsimile: (904) 630-2388

Office
115 South Andrews Avenue,
Room 423
Ft. Lauderdale, FL 33301
Facsimile: (954) 357-7641

Mike Cirullo, Esq.
Orange County Attorney's Office
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308
Phone: (954) 771-4500
Facsimile: (954) 771-4923

Leon St. John, Esq.
Palm Beach County Attorney's
Office
301 N. Olive Avenue
West Palm Beach, Florida 33401
Phone: (561) 355-2520
Facsimile: (561) 355-4398

Ronald A. Labasky, Esq.
LANDERS & PARSONS, P.A.
310 West College Avenue
Tallahassee, FL 32301
Phone: (850) 681-0311
Facsimile: (850) 561-6834

Matthew Cohen, Esq.
Broward County Attorney's

