

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-CIV-KING

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

Plaintiffs,

v.

KURT S. BROWNING, 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.

**SECRETARY OF STATE'S MEMORANDUM OF LAW IN
RESPONSE TO MOTION FOR JUDGMENT ON THE PLEADINGS**

Kurt S. Browning, in his official capacity as Secretary of State of the State of Florida (the "Secretary") submits this memorandum of law in response to Supervisor Sola's Motion for Judgment on the Pleadings (the "Motion for Judgment") (Doc. 213), which was joined by Supervisors Holland (Doc. 217), Cowles (Doc. 218), Anderson (Doc. 220), and Snipes (Doc. 223).

The Motion for Judgment asserts that the Supervisors of Elections are not proper defendants in this action because the only remaining claim challenges the constitutionality of a

state statute—a statute over which the Supervisors allegedly have no control. Motion for Judgment at 1. Specifically, the Supervisors argue that they “cannot be held responsible for the Florida law.” *Id.* They rely on this Court’s conclusion that “[u]nder state and federal law, Defendant Supervisors have no discretion [with respect to the challenged law] and cannot be held liable.” (Doc. 201 at 15.) Notwithstanding issues of liability for damages, however, it is clear that local officials are appropriate defendants when they are the enforcers of a law challenged as unconstitutional. The Plaintiffs have alleged that certain provisions in Florida’s Election Code are unconstitutional, and they have asked this Court to enjoin enforcement of those provisions.

Generally, an official charged with enforcing a state law is a proper defendant to an action challenging its constitutionality. *See American Civil Liberties Union v. The Florida Bar*, 999 F.2d 1486, 1490 (11th Cir. 1993). The Eleventh Circuit has routinely considered such challenges filed against local officials. *See, e.g., Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007) (constitutional challenge of state law regulating adult devices; seeking injunction against local officials); *Wexler v. Anderson*, 452 F.3d 1226, 1233 (11th Cir. 2006) (constitutional challenge of state election rules and statutes; seeking injunction against county Supervisor of Elections), *cert. denied*, 127 S. Ct. 934 (2007); *Picou v. Gillum*, 874 F.2d 1519 (11th Cir. 1989) (constitutional challenge of state helmet law; seeking injunction against local sheriff and state attorney).

The Florida Election Code clearly specifies the Supervisors’ duties relating to voter registration. It is the exclusive duty of the Supervisors to ensure that any eligible applicant for voter registration is registered to vote and that each application for voter registration is processed in accordance with law. *See Fla. Stat. § 98.045.* It is the exclusive duty of the Supervisors to

notify each applicant of the disposition of the applicant's voter registration application and whether the application has been approved, is incomplete, has been denied, or is a duplicate of a current registration. *See id.* § 97.073. It is the exclusive duty of the Supervisors to notify applicants if they have failed to provide any of the required information on the voter registration application within five business days after the information is available in the voter registration system so that applicants have the opportunity to complete the application forms to vote in the next election, up until the book closing for that next election. *See id.* § 97.052(6). It is the primary duty of the Supervisors to enter new voter registrations into the statewide voter registration system. *See id.* § 98.015. Moreover, Supervisors are constrained by the requirement to enter all voter registration applications received into the statewide voter registration system no later than 15 days after receipt. *See id.* § 97.053(7).

Therefore, the Supervisors' participation is essential to addressing the Plaintiffs' challenge to the 29-day registration deadline imposed by Section 97.055, Florida Statutes. Neither this statute nor any other provides a grace period for incomplete or incorrect applications. *Id.* The Plaintiffs allege that the registration cutoff is unnecessary, (*see, e.g.*, doc. 170 at ¶ 82), and they presumably hope to prove that the Supervisors could reasonably administer elections without the registration deadline (or with some shorter period, or with some sort of grace period). Given the statutory duties of the Supervisors, they are the appropriate parties to demonstrate the basis for the challenged law.

Accordingly, the Secretary respectfully suggests that the Motion for Judgment on the Pleadings should be denied.

Respectfully submitted, this 18th day of April, 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been served electronically through the Court's CM/ECF system or by United States mail this 18th day of April, 2007, to the following:

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