UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

KELVIN LEON JONES, et al.,

Plaintiffs,

CONSOLIDATED
CASE NO.: 4:19-cv-300-RH-MJF

v.

RON DeSANTIS, in his official capacity as Governor, et al.,

Defendants.
_____/

JEFF GRUVER, et al.,

Plaintiffs,

CASE NO.: 4:19-cv-302-RH-MJF

v.

KIM A. BARTON, in her official capacity as Supervisor of Elections for Alachua County, et al.,

Defendants.
_____/

ROSEMARY OSBORNE McCOY, et al.,

Plaintiffs,

CASE NO.: 4:19-cv-304-RH-CAS

v.

RONALD DION DeSANTIS, in his official capacity as Governor of Florida, et al.,

Defendants.
_____/

DEFENDANT, DUVAL COUNTY SUPERVISOR OF ELECTIONS MIKE HOGAN'S, RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION OR, IN THE ALERNATIVE, FOR FURTHER RELIEF (DOC. 108)

Defendant, Mike Hogan, in his official capacity as Supervisor of Elections for Duval County ("SOE Hogan"), respectfully responds to Plaintiffs' Motion for Preliminary Injunction or, in the Alternative, for Further Relief (Doc. 108), and accompanying Memorandum of Law (Doc. 98-1). For the foregoing reasons, there is no reason or basis for preliminary injunctive relief against SOE Hogan. He need not be enjoined from doing anything in relation to the facial challenges to the State law in this case.[1]

The Plaintiffs filed their motion on August 15, 2019, after filing an 88-page memorandum of law on August 2, 2019. Throughout the long narrative story and labyrinth of claims made by Plaintiffs, it becomes clear that they are making facial challenges to Florida Senate Bill 7066, which they claim unconstitutionally denies them the right to vote as individuals with past felony convictions who have now had their voting rights restored, based solely on their ability to pay outstanding court fines, fees or restitution. SOE Hogan expresses no position on whether the Plaintiffs have a "substantial likelihood of success" on these facial constitutional claims, whether they will be somehow "irreparably harmed" without a statewide injunction against enforcement of the new law, or whether they will ultimately be entitled to a declaration that the new law is unconstitutional. Notably, these constitutional issues are already squarely before the Court in the Governor and Secretary of State's Motion to Dismiss (Doc. 97).

What is clear, however, is that there is no need for preliminary injunctive relief against SOE Hogan. Just like the complaints, the Plaintiffs are really seeking no relief against SOE

[1] SOE Hogan is named in only two of the five consolidated cases as captioned above, *Gruver* and *McCoy*.

Hogan. There is good reason injunctive relief is not needed at this time: there are no elections in Duval County until the Presidential Preference Primary Election on March 17, 2020. The three Duval County Plaintiffs involved in these cases do not need to protect their voting privileges. SOE Hogan conducts elections in Duval County and relies on the State to compile and maintain voter rolls of eligible voters. He does not enforce the new law and, as alleged in the complaints, the Duval County voters in these cases are registered and have voted in past elections. There are no allegations that SOE Hogan has ever removed a voter from the rolls due to the new law.

The motion seeks to enjoin the Defendants from enforcing the new law, but it also highlights that the State enacted the law requiring payment of financial obligations. (Doc. 108, ¶ 2) Plaintiffs seek a declaration that the law is unconstitutional on its face. SOE Hogan does not "enforce" any obligations imposed by the new law and takes no position as to whether or not it is constitutional.

In the lengthy memorandum, just as in the complaints, there is very little mention of the supervisors. The claims are against the State to stop the enforcement of the new law. Plaintiffs state that nearly all of them have already registered and voted in local elections, and there are no allegations that SOE Hogan has denied registration or removed anyone from voting rolls, because he has not. Motion, pg. 15. All that the voters must do when they register to vote is check a box affirming, among other things, that their rights are restored. As Plaintiffs admit, SOE Hogan is *required* to accept completed registration applications. Motion, pg. 21. He simply does not determine whether fees or costs have been paid and, instead, relies solely on information provided to him by the State. In fact, Plaintiffs state that "Defendants did not send denial of voter registration or removal notices," and they went on to vote in local elections. Motion, pg. 23.

The State is the party Plaintiffs actually seek to enjoin, to prevent enforcement of the new law. On page 27 of their motion, they acknowledge this by stating: "SB7066 then tasks the Department of State with using data from various governmental organizations to make the initial determination about whether a person who registers to vote is eligible pursuant to Amendment 4." The Secretary of State accordingly makes this decision and SOE Hogan accepts it. In fact, the motion states that one supervisor testified that she is *unable* to assist voters in determining whether court fees and restitution have been paid. Motion, pg. 39. SOE Hogan simply does not research or determine this issue and an injunction is not warranted as it would have no effect on his office.

Plaintiffs have never alleged that the supervisors are charged with initially determining eligibility, only that they must verify that individuals have been determined eligible to vote. There is no allegation that the supervisors must somehow enforce the new law requiring payment of court fees, costs and restitution. SOE Hogan does not enforce the new law and there is no basis to enjoin him from doing anything. Plaintiffs' claims only concern the facial constitutional validity of the new law.

While Plaintiffs sparingly refer to the supervisors in their lengthy complaints and the motion, none of the claims are actually against SOE Hogan and the requests for relief have nothing to do with him. Whether or not the new law is constitutionally valid, SOE Hogan will follow the law in running elections and will of course be bound by an injunction or declaration from the Court. Moreover, there are 67 supervisors of elections in the State of Florida, but only ten are named in this consolidated action, making an injunction against these few supervisors unnecessary and ineffective. In fact, an injunction may create a due process or equal protection issue for voters residing in the 57 other counties not named in this lawsuit. This Court has

already determined that by enjoining the Florida Secretary of State, as the chief election officer for the entire state, all supervisors of elections in the state are correspondingly bound by that action. *See Madera v. Lee*, 18-cv-152-MW/GRJ (Doc. 131). As such, the granting of an injunction against the named Supervisors of Elections in this action is not necessary.

Under Chapter 97, Florida Statutes, Florida supervisors of elections are *required* to accept voter registration applications once they are verified as complete. If the new law is not part of the application process, it will automatically not be part of any action taken by SOE Hogan. Voter registration officials enter applications into the system and then immediately forward them to local supervisors of elections, who then simply inform the applicants of the status of application. SOE Hogan has nothing to do with whether the new law is constitutionally valid on its face.

As stated above, Chapter 97 names the Secretary of State as the chief election officer of the State, and the Secretary must "maintain uniformity in the interpretation and implementation of election laws," and "provide uniform standards for the proper and equitable implementation of the registration laws." Fla. Stat. §§ 97.012(1)-(2). Once the complete application boxes are checked, including one stating that a person convicted of a felony has had his rights restored, the application is deemed complete, the supervisor of elections forwards the completed application to the Secretary of State. If the voter is determined by the Secretary to be eligible, the person is added to the voter rolls. Fla. Stat. §§ 97.052(s), 97.053(2).

In other words, supervisors initially make sure the applications are complete. It is the State that must determine a person to be eligible before he or she is fully registered, part of which includes the Secretary verifying that court fees and costs have been paid in any individual case. If the person is added to the State's list, that person is on Duval County's rolls and can

vote. That is exactly what occurred here – the Plaintiffs voted in past elections, and they have suffered no injury because they are still on the voter rolls.

Without the proper legal authority to do so, a public official cannot be directed to perform a ministerial act. *See State v. Stone*, 265 So. 2d 56, 57-58 (Fla. Ct. App. 1972) (reasoning that "the Secretary of State is without authority to pass judgment on questions [regarding] the filing instruments concerning the qualifications of candidates"); *Miami-Dade County Bd. of Com'rs v. An Accountable Miami-Dade*, 208 So. 3d 724, 730-31 (Fla. Ct. App. 2016) (stating that public official must be clothed with the authority to discharge his duty, and county could not be compelled through mandamus to place petition on general election ballot). SOE Hogan had no role in the enactment of SB 7066. Per section 98.015, Florida Statutes, SOE Hogan is responsible for *inter alia* updating voter registration information, entering new voter registrations into the statewide voter registration system, and acting as the official custodian of documents received by the Supervisor related to the registration of electors and changes in voter registration status of electors in Duval County. *See* § 98.015, Fla. Stat. SOE Hogan, therefore, is merely in a neutral and ministerial position. *Diaz v. Lopez*, 167 So. 3d 455, 458 n.7 (Fla. 3d DCA 2015). An injunction against him is inappropriate.

In the requests for relief in their two complaints against SOE Hogan, the Plaintiffs also request a declaration that the new statute, Sections 98.0751(1)-(2)(a), Florida Statutes, is unconstitutional, and they seek to enjoin the State from enforcing the new law. They do not ask for relief against SOE Hogan because he does not enforce the law. In order to obtain such relief, Plaintiffs need to show that they will suffer irreparable harm, that they have a substantial likelihood of success on the merits against SOE Hogan, that they have a clear legal right to the relief requested and no adequate remedy at law, and that an injunction would serve the public

interest. *See Wexler v. LePore*, 878 So. 2d 1276, 1281 (Fla. Ct. App. 2004). Plaintiffs do not have a clear legal right to make claims against ten of the sixty-seven individual supervisors based on the facial constitutionality of the new law, and importantly, they cannot establish irreparable harm because there is no election in Duval County until March 2020 and no indication that any Plaintiff will be unable to vote in that far-off election. Their only relief is against the State, which is the only party who can completely provide the requested relief.

The Hillsborough County Supervisor of Elections argues in its Response in Opposition to Plaintiffs' Motion (Doc. 125) that because neither the provisions of Sections 98.0751(1)-(2)(a), Florida Statues, nor the provisions of Sections 97.052(2)(t)-(u), Florida Statutes, invoke the authority of the supervisors, Plaintiffs lack standing to seek injunctive relief against any of the supervisors. SOE Hogan agrees with and adopts this same argument. SOE Hogan does not have the legal authority to provide any of the requested relief to Plaintiffs, and thus they cannot establish the existence of "a causal connection between the injury and the conduct complained of such that the [Plaintiffs'] injury is fairly traceable to [SOE Hogan's] actions." *Tobin for Governor v. Illinois State Bd. of Elections*, 268 F.3d 517, 527-28 (7th Cir. 2001), *citing Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).[2]

CONCLUSION

There is no need or basis for injunctive relief against SOE Hogan and such relief would have no effect on his operations. This Court should deny Plaintiffs' Motion for Preliminary Injunction as to SOE Hogan.

[2] The Hillsborough SOE accurately lays out the State's responsibility in determining under what circumstances felons may vote, showing the step-by-step process and the supervisors' "final determination" only *after* the State has determined eligibility. (Doc. 125 at 6-8) By laying out this process, controlled by the State in accordance with federal law, the Hillsborough SOE demonstrates that the Plaintiffs are not challenging any actions of the supervisors. This is absolutely correct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 6, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will electronically serve all counsel for the Plaintiffs who have appeared in this case.

OFFICE OF GENERAL COUNSEL

/s/ Craig D. Feiser
Craig D. Feiser