UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

KELVIN JONES,

Plaintiffs,

v.

RON DESANTIS, in his official capacity as Governor of the State of Florida, et al.,

Defendants.
_____/

CONSOLIDATED
Case No.: 4:19-cv-00300-RH-CAS
(Lead Case)

BONNIE RAYSOR, et al.,

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Secretary of State of Florida,

Defendant.
_____/

Case No.: 4:19-cv-00301-RH-CAS

JEFF GRUVER, et al.,

Plaintiffs,

v.

KIM BARTON, et al.,

Defendants.
_____/

Case No.: 4:19-cv-00302-RH-CAS

LUIS MENDEZ, Case No: 4:19-cv-00272-RH-CAS

Plaintiff,
v.

RON DESANTIS, in his official capacity as Governor of the State of Florida, et al.,

Defendants.
_____/

ROSEMARY MCCOY, et al., Case No: 4:19-cv-00304-RH-CAS

Plaintiff,
v.

RON DESANTIS, in his official capacity as Governor of the State of Florida, et al.,

Defendants.
_____/

SUPERVISORS OF ELECTIONS' CONSOLIDATED MOTION TO DISMISS PLAINTIFFS' COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

Defendants Craig Latimer as Hillsborough County Supervisor of Elections, Kim Barton as Alachua County Supervisor of Elections, Peter Antonacci as Broward County Supervisor of Elections, Mike Hogan as Duval County Supervisor of Elections, Leslie Rossway Swan as Indian River Supervisor of Elections, Mark Early, as Leon County Supervisor of Elections, Michael Bennett as Manatee Supervisor of Elections, Christina White as Miami-Dade County Supervisor of Elections, Bill Cowles as Orange County Supervisor of Elections, and Ron Turner

as Sarasota County Supervisor of Elections (collectively, the "Supervisors"), pursuant to Fed. R. Civ. P. 12(b)(6), hereby file this Motion to Dismiss and accompanying Memorandum of Law, and in support thereof state as follows:

BACKGROUND

On November 6, 2018, Florida voters amended the Florida Constitution by passing the Voting Restoration Amendment (also known as "Amendment 4"). The Amendment provided that convicted felons would have their voting rights restored upon "completion of all terms of sentence including parole or probation." Fla. Const. art. VI, 4(a). Amendment 4 did not define "completion of all terms of sentence." On June 28, 2019, Florida's Governor signed into law SB 7066. That bill defined "terms of sentence" to include all financial obligations, such as fees, fines and restitution, ordered by a court as part of a sentence. *See* Fla. Stat. § 98.0751(a)(1)-(2).[1]

Plaintiffs immediately challenged SB 7066 by filing this lawsuit under 42 U.S.C. § 1983 against the Secretary of State of the State of Florida as the "chief elections officer" of the State and ten of the sixty-seven Florida Supervisors of Elections.[2] Compl. ¶¶ 30-31. Each of the Complaint's eight counts incorporates

[1] SB 7006 has been codified as an amendment to Fla. Stat. § 98.0751.

[2] On June 30, 2019, the Court consolidated four other related cases under Case No. 4:19-cv-300-RH/MJF. See ECF No. 3. The Plaintiffs' Complaint filed in Case No. 4:19-cv-302-RH/MJF is the operative complaint for purposes of the Supervisors

every preceding allegation. None of the counts specifies against which Defendants it is asserted.

a. Count One alleges that SB 7066 violates the Equal Protection and Due Process clauses of the Fourteenth Amendment by disqualifying Plaintiffs from voting for failure to pay outstanding financial obligations resulting from Plaintiffs' convictions;

b. Count Two alleges that SB 7066 discriminates between Florida citizens with a prior felony who can pay their financial obligations resulting from their convictions and Florida citizens with a prior felony who cannot pay in violation of Equal Protection clause of the Fourteenth Amendment;

c. Count Three alleges that SB 7066 imposes an unconstitutional burden on the fundamental right to vote in violation of the Fourteenth Amendment;

d. Count Four alleges that SB 7066 violates the prohibition against poll taxes in violation of the Twenty-Fourth Amendment;

e. Count Five alleges that SB 7066 is unconstitutionally vague in violation of procedural due process;

f. Count Six alleges that SB 7066 violates the League of Women Voters of Florida's ("LWVF") First Amendment constitutional rights to speech and

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Motion to Dismiss. This Motion also applies to the Complaints where Supervisor Mike Hogan is a defendant in *McCoy*, 4:19-cv-00304 and Supervisor Latimer is a defendant in *Jones*, 4:19-cv-00300 and *Mendez*, 4:19-cv-00272.

association because the law deters LWVF from engaging in protected voter registration activity and prevents LWVF from registering returning citizens who are in fact eligible to vote because they lack certainty that registrants can affirm that they have completed all the terms of their sentences;

g. Count Seven alleges that SB 7066 is an unconstitutional ex post facto law in violation of Article I, § 10 of the U.S. Constitution because Plaintiffs were convicted of crimes prior to the passage of SB 7066; Plaintiffs' voting rights were automatically restored by Amendment 4; and Plaintiffs were registered to vote prior to the enactment of SB 7066; and

h. Count Eight alleges SB 7066 intentionally discriminates against Plaintiffs because of race in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution.

The Complaint consists entirely of facial attacks on the constitutionality of a state statute, passed by the Florida Legislature and signed by the Governor. Not once in the Complaint's 172 numbered paragraphs do Plaintiffs allege that any of the Supervisors has taken any unconstitutional action. Nor does any of the Complaint's eight counts set forth the legal basis for any claim against any Supervisor. And, nowhere in the "Request for Relief" do Plaintiffs request any relief against the Supervisors. With respect to the Supervisors, the Complaint alleges only that the

Supervisors have "front-end responsibility for registration" and that SB 7066 "does not give SOEs any additional resources for this new responsibility." Compl. ¶ 31. In fact, as it relates to the individual Plaintiffs ability to register to vote and the organizational Plaintiffs relationship with the Supervisors, the Complaint only alleges that "Florida SOEs are required to accept voter registration applications from all applicants" and if the application is complete "it should be approved." Compl. ¶ 55. Missing from the Complaint is any allegation that any of the ten Supervisors have failed to perform this function.

Plaintiffs ask only that the Court invalidate Fla. Stat. § 98.0751(a)(1)-(2), as amended by SB 7066, and enjoin the State from enforcing it. Compl., p. 69. Put simply, Plaintiffs have failed to allege that any Supervisor has committed a wrong or asked the Court to remedy any wrong that a Supervisor has committed. Accordingly, Plaintiffs have not stated a cause of action against the Supervisors, requiring dismissal under Fed. R. Civ. P. 12(b)(6). Similarly, because Plaintiffs have not alleged that the Supervisors have caused them any injury, and have not asked this Court to grant them any relief to redress that injury, Plaintiffs lack standing to maintain their claims against the Supervisors.

Additionally, or alternatively, Plaintiffs' Complaint should be dismissed under Fed. R. Civ. P. 8(a) because it is an impermissible shotgun pleading. As noted above, the Complaint contains eight counts, each of which incorporates all preceding

allegations, but none of which specifies to which, if any, of the Supervisors the count applies, or the basis on which, if any, the Supervisors could be held liable. Thus, to the extent that the Complaint can be construed to state a cause of action against any Supervisor, it must be amended so that each Supervisor is apprised of and can respond to the allegations and claims Plaintiffs are actually asserting against them.

MEMORANDUM OF LAW

I. STANDARD OF REVIEW

Fed. R. Civ. P. 12(b)(6) provides for dismissal of a complaint for "failure to state a claim upon which relief may be granted." To survive dismissal, Plaintiffs' "obligation to provide the grounds of [their] entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). Unless a Plaintiff has "nudged his claim across the line from conceivable to plausible," the complaint "must be dismissed." *Id.* "[U]nsupported conclusions of law or of mixed fact and law have long been recognized not to prevent a Rule 12(b)(6) dismissal." *Dalrymple v. Reno*, 334 F.3d 991, 996 (11th Cir. 2003) (citations omitted). Therefore, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct,

the complaint has alleged—but has not shown—that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citations and internal quotations omitted). Accordingly, a complaint may not rest on "'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* at 678 (quoting *Twombly*, 550 U.S. at 557 (alteration in original)).

II. PLAINTIFFS' COMPLAINT FAILS TO STATE A CAUSE OF ACTION AGAINST THE SUPERVISORS; AND PLAINTIFFS LACK STANDING TO ASSERT CLAIMS AGAINST THE SUPERVISORS.

A. Plaintiffs Have Failed to State a Cause of Action.

All eight counts of Plaintiffs' Complaint are facial challenges to the constitutionality of SB 7066. *See Am. Fed'n of State, Cty. & Mun. Emp. Council 79 v. Scott*, 717 F.3d 851, 863 (11th Cir. 2013) (a facial challenge, seeks to invalidate a statute or regulation itself). Plaintiffs assert these claims through 42 U.S.C. § 1983.

"[T]he touchstone of [a] § 1983 action against a government body is an allegation that official policy [or custom] is responsible for a deprivation of rights protected by the Constitution." *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 690 (1978). To maintain a § 1983 action, a plaintiff must be able to show that (1) "the local government entity . . . has the authority and responsibility over the governmental function in issue [;] and (2) must identify those officials who speak with final policymaking authority for that local governmental entity concerning the act alleged to have caused the particular violation in issue." *Grech v. Clayton Cty.*,

Ga., 335 F.3d 1326, 1330 (11th Cir. 2003); *see also Bd. of Cty. Commr's of Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 403 (1997) ("[W]e have required a plaintiff seeking to impose liability on a municipality under § 1983 to identify a municipal "policy" or "custom" that caused the plaintiff's injury"); *Hudson v. City of Riviera Beach*, 982 F. Supp. 2d 1318, 1327 (S.D. Fla. 2013) ("[A] claim against a [governmental entity] under § 1983 must be predicated upon an injury inflicted by a governmental 'policy' or 'custom' constituting official policy") (internal quotations omitted). In other words, "a local government may be held liable under § 1983 only for those acts for which it is actually responsible." *Turquitt v. Jefferson Cnty, Ala.*, 137 F.3d 1285, 1287 (11th Cir. 1998) (internal quotations omitted).

In light of these principles, Plaintiffs must demonstrate that, through deliberate conduct, each of the named Supervisors are the moving force behind the Plaintiffs' alleged injuries. *See Bd. of Cty. Commr's v. Brown*, 520 U.S. 397, 404 (1997). Such liability cannot be imposed based on *respondeat superior* or vicarious liability. *Monell*, 436 U.S. at 692.

Plaintiffs' Complaint fails to meet this standard because it does not identify how any specific conduct of any Supervisor caused Plaintiffs' alleged injuries. This is not surprising, however, because all of Plaintiffs' claims stem from the premise that SB 7066 is facially unconstitutional, and no action of any Supervisor could possibly have any bearing on that question. This Court will decide whether SB 7066

is or is not a violation of the First, Fourteenth, Fifteenth, or Twenty-Fourth Amendments, and whether it is an invalid *ex post facto* law under Article I, § 10 of the U.S. Constitution. But nothing the Supervisors did or did not do can factor into that decision (which is undoubtedly why Plaintiffs have not alleged that the Supervisors did anything at all except properly register Plaintiffs to vote).

Plaintiffs might argue in response to this Motion that the Supervisors should remain in the case because they are necessary parties. The Court should reject that argument. Fed. R. Civ. P 19(a) requires joinder of a party when (1) complete relief cannot be afforded in the absence of that party, or (2) the party has an interest in the action which disposition may in the party's absence impede its ability to protect its interest or leave it subject to multiple or inconsistent obligations. Moreover, such a claim is belied by the inclusion of only ten of the State's sixty-seven Supervisors of Elections.

The only necessary party in a case challenging a state election law is the Secretary of State (who is already a Defendant here). Chief Judge Walker recognized this just a few months ago in an order declining to certify a class of 32 Supervisor of Election defendants on the ground that the Secretary of State "has abundant power and responsibility to order the states' supervisors of elections to comply with the relief this Court might fashion in this dispute . . . ." *Madera v. Lee*, Case No. 1:18cv-152-MW/GRJ, 2019 WL 1054671, *1 (N.D. Fla. Mar. 5, 2019);

see also Democratic Exec. Comm. of Fla. v. Lee, 915 F.3d 1312, 1318 (11th Cir. 2019) (finding that Secretary of State was proper defendant because she is the state's chief election officer with the authority to relieve the burden on Plaintiffs' right to vote); *League of Women Voters of Fla., Inc. v. Detzner*, Case No. 4:18-cv-251-MW/CAS, 354 F. Supp. 3d 1280 (N.D. Fla. July 24, 2018) (Secretary of State was the proper defendant and plaintiffs' injuries could be redressed by the invalidation of defendant's opinion). In fact, the Complaint acknowledges that complete and independent relief may be obtained from the Secretary of State who is "responsible for 'enfor[cing] the performance of any duties of a county supervisor of election." Compl. at ¶ 30 (citing § 97.012, Fla. Stat. (2018)).

If this Court invalidates SB 7066, the Secretary will be bound to direct the Supervisors not to enforce it. *See* § 97.012, Fla. Stat. (Secretary of State is the "chief election officer of the state" with "responsibility to … [o]btain and maintain uniformity in the interpretation and implementation of the election laws … [and] may … adopt by rule uniform standards for the proper and equitable interpretation and implementation of the requirements of chapters 97 through 102 and 105 of the Election Code."); *Lee*, 915 F.3d at 1318. The presence of the Supervisors in this action is not necessary to ensure that result, which means that the Supervisors are not necessary parties under Fed. R. Civ. P. 19(a).

Based on the foregoing, Plaintiffs' Complaint should be dismissed as to the Supervisors for failure to state a cause of action, and there is no basis to keep the Supervisors in the case as necessary parties.

B. Plaintiffs Lack Article III Standing.

Plaintiffs must allege three things to establish standing under Article III of the U.S. Constitution: (1) they must allege that they have suffered an injury in fact – an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) they must assert a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *See Socialist Workers Party v. Leahy*, 145 F.3d 1240, 1244 (11th Cir. 1998) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). "This triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the burden of establishing its existence." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998). For purposes of surviving a motion to dismiss, Plaintiffs' Complaint must allege factual allegations of injury resulting from the Supervisors' conduct. *See Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 975 (11th Cir. 2005)

Plaintiffs' Complaint does not satisfy these requirements with respect to the Supervisors. The injury in fact alleged by Plaintiffs is that they will be prohibited from voting or have confusion about registering others to vote, but the the only "causal connection" to the injuries is the enactment of SB 7066, and the only redress Plaintiffs seek is an order invalidating SB 7066 and enjoining the Secretary from enforcing it. Whatever the merits of these claims, they do not confer standing on Plaintiffs to sue the Supervisors.

III. PLAINTIFFS' COMPLAINT IS A SHOTGUN PLEADING THAT MUST BE DISMISSED.

Shotgun pleadings violate Fed. R. Civ. P. 8(a)(2) by failing to give defendants adequate notice of the claims against them and the grounds upon which each claim rests. The Eleventh Circuit Court of Appeals has no tolerance for shotgun pleadings. *See Paylor v. Hartford Fire Ins. Co.*, 748 F.3d 1117, 1125 n.2 (11th Cir. 2014) (providing a laundry list of cases condemning shotgun pleadings). A district court has the inherent authority to control its docket and dismiss a shotgun pleading. *See Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018).

Shotgun pleadings can consist of: (1) multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint; (2) conclusory, vague, and immaterial facts that do not clearly connect to a particular cause of action; (3) failing to separate each cause of action or claim for relief into

distinct counts; or (4) asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against. *See Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). "The unifying characteristic of all types of shotgun pleadings is that they fail to . . . give defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* at 1323.

As this Court has recognized, "[a]mong the disapproved practices [relating to shotgun pleadings] is attributing to all defendants acts that were committed by fewer than all and incorporating into each count all the preceding allegations, leaving it to the court and the defendants to try to figure out which allegations really apply to which defendants and which counts." *Quality Analytical Labs., LLC v. Metcoff*, Case No. 5:18cv10-RH/GRJ, 2018 WL 7348024, *1 (N.D. Fla. July 20, 2018); *See also, Howe v. Samsung Elects. Am., Inc*., Case No. 1:16cv386–RH/GRJ, 2018 WL 2212982, *5 (N.D. Fla. Jan. 5, 2018) (finding that it is the "plaintiffs' job before filing" a complaint to untangle a shotgun pleading "not the court's job").

Plaintiffs' Complaint suffers from just these faults. It contains eight counts, each of which incorporates by reference the allegations of all preceding counts. *See* Compl. at ¶¶ 99, 112, 128, 134, 149, 156, 166. Moreover, none of the counts identities which Defendants it applies to or identifies which Defendants are

responsible for the acts on which the counts are based. This sort of pleading burdens both the Supervisors and the Court with the laborious task of sifting through the Complaint's 172 paragraphs to guess which allegations and counts pertain to which Defendants. Which is why courts regularly dismiss shotgun pleadings just like the one filed here. *See Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1358 (11th Cir. 2018) ("This is why we have condemned shotgun pleadings again and again, and this why we have repeatedly held that a District Court retains authority to dismiss a shotgun pleading on that basis alone").

Accordingly, Plaintiffs' Complaint is a shotgun pleading that should be dismissed.

IV. CONCLUSION

WHEREFORE, the Supervisors respectfully request that this honorable Court enter an order dismissing Plaintiffs' Complaint and granting such further relief as justice may require.

NORTHERN DISTRICT OF FLORIDA LOCAL RULE 7.1 CERTIFICATION

Pursuant to N.D. Fla. Loc. R. 7.1(F), this motion contains fewer than 8,000 words. It contains 3210 words.

Respectfully submitted,

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