UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI CIVIL DIVISION

Case No. 1:12-cv-22282-WJZ
Honorable Judge William J. Zloch

KARLA VANESSA ARCIA, an individual, MELANDE ANTOINE, an individual, VEYE YO, a civic organization based in Miami-Dade County, FLORIDA IMMIGRANT COALITION, INC., a Florida non-profit corporation, NATIONAL CONGRESS FOR PUERTO RICAN RIGHTS, a Pennsylvania non-profit corporation, FLORIDA NEW MAJORITY, INC., a Florida non-profit corporation, and 1199SEIU UNITED HEALTHCARE WORKERS EAST, a Labor Union,

Plaintiffs,

v.

KEN DETZNER, in his official capacity as Florida Secretary of State,

Defendant.

PLAINTIFFS' MOTION TO RECONSIDER
THE COURT'S OCTOBER 1, 2012 ORDER (DE 102)

Plaintiffs request that this Court reconsider its October 1, 2012 order (DE 102) stating that Plaintiffs' motion for summary judgment "is not yet ripe for consideration." The parties have already fully briefed that motion. Defendant filed an opposition to the motion for summary judgment, an affidavit, and a response to Plaintiffs' Statement of Undisputed Facts. There is nothing left to do to make the summary judgment motion ripe.

At the October 1, 2012 hearing, this Court expressed concern that the time period had not yet passed for Defendant to respond to the motion for summary judgment. 10/1/12 Tr. at 6.

However, Defendant already has responded to that motion. That Defendant would ordinarily have been entitled to a longer period to respond does not entitle Defendant to file a *second* response to Plaintiffs' motion for summary judgment. That is particularly true because the Court's September 21, 2012 Order (DE 74) superseded the standard response time for summary judgment by adopting the schedule set forth in the Plaintiffs' motion to expedite the briefing schedule for both their motion for a preliminary injunction and their motion for summary judgment. Defendant never sought additional time to respond.

Nor is it out of the ordinary for a court to rule on a summary judgment motion based on a briefing schedule set for a preliminary injunction motion. The rules for preliminary injunctions specifically provide for that possibility. *See* Fed. R. Civ. P. 65(a)(2). Moreover, the distinction between a preliminary injunction and summary judgment is particularly blurry here because the only sensible remedy for a violation of the 90-day provision (and only way to prevent the disenfranchisement of eligible voters) is an injunction that would need to be issued prior to the election.

Finally, Defendant has not said what else he would provide in an additional filing to respond to the motion for summary judgment. "[S]ummary judgment is appropriate when there 'is no genuine issue as to any material fact' and the moving party is 'entitled to a judgment as a matter of law.'" *Alabama v. North Carolina*, 130 S.Ct. 2295, 2308 (2010) (quoting Fed. R. Civ. P. 56(c)). In their joint pre-trial stipulation (DE 71), the "parties agree[d] that this action involves a pure question of law under Section 8(c)(2)(A) of the NVRA, 42 U.S.C. § 1973gg-6(c)(2)(A)." DE 71, at 5; *see also id.* at 1, 2 (parties agreeing that "[t]his is a case of statutory construction"). Defendant did not list any trial witnesses in his pre-trial stipulation. Accordingly,

the Court should rule now on the Plaintiffs' motion for summary judgment because Election Day is imminent and there are not – and indeed cannot be – any material facts in dispute.

The October 1, 2012 hearing did not change the posture of the case. Both parties agreed that the motion for summary judgment presented a purely legal issue. *See* 10/1/12 Tr. at 5 (Defendant's counsel stating that "from our perspective, it is a legal issue"); *id.* at 39 (Plaintiffs' counsel stating that "we agree with the Defendant that the statutory issue is . . . purely an issue of law"). And although the Defendant asserted through counsel that he "contest[ed]" the affidavits the Plaintiffs submitted on standing, *id.* at 5, he has not submitted – and has not indicated an intention to submit – any affidavits *rebutting* the assertions in those affidavits.[1] Instead, the Defendant argues that the Plaintiffs' affidavits and the testimony they introduced at the hearing are *insufficient* to confer standing. Thus, to resolve standing, the Court only has to determine whether the Plaintiffs' affidavits and testimony suffice to establish standing. There are no disputed material facts.

Plaintiffs have conferred with Defendant, who opposed this motion.

CONCLUSION

Defendant has made clear that the issue here is a legal one and thus that it has no additional facts that are relevant. Moreover, Defendant has already responded to Plaintiffs' summary judgment motion and is not entitled to an additional submission. For both those reasons, the motion is ripe for the Court's consideration.

[1] To the contrary, in responding to Plaintiffs' Statement of Undisputed Facts, Defendant said that he was "without knowledge of information sufficient to form a belief as to the truth or falsity of the statements" regarding the organizational plaintiffs that were included in Plaintiffs' Statement of Undisputed Facts. Defendant's Response to Statement of Undisputed Facts ¶¶ 13, 14, 16. Because discovery has closed, there are no additional facts Defendant could uncover to provide a basis on which to dispute those statements. As for the individual plaintiffs, Defendant admitted that they were on the list of 2,625 alleged non-citizens. *Id.* ¶ 11. Plaintiffs have explained why these facts are sufficient to confer standing.

Dated: October 3, 2012

Respectfully submitted,

/s/ John De Leon

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 3, 2012, a true and correct copy of the foregoing was served on all counsel of record via CM/ECF.

By: /s/ John De Leon
John De Leon

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[PROPOSED] ORDER GRANTING THE PLAINTIFFS' MOTION TO RECONSIDER THE COURT'S OCTOBER 1, 2012 ORDER (DE 102)

THIS MATTER is before the Court upon Plaintiffs' Motion to Reconsider the Court's October 1, 2012 Order (DE 102). After reviewing the relevant filngs, the Court **ORDERS** that the Motion is **GRANTED** and the Plaintiffs' Motion for Summary Judgment (DE 65) is ripe for review.

DONE AND ORDERED at Fort Lauderdale, Broward County, Florida, this _____ day of _____, 2012.

_____

Honorable William J. Zloch, U.S.D.J.