UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
Case No. 1:12-cv-22282-WJZ
Honorable Judge William J. Zloch

KARLA VANESSA ARCIA, et al.,

Plaintiffs,

v.

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

Defendant.
_____/

THE SECRETARY'S OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER THE COURT'S OCTOBER 1, 2012 ORDER (DE 107)

Defendant Florida Secretary of State Kenneth W. Detzner ("Secretary") respectfully submits this Opposition to Plaintiffs' Motion To Reconsider The Court's October 1, 2012 Order (DE 107) ("Pls.' Mot."). This Court correctly concluded that Plaintiffs' motion for summary judgment "is not yet ripe" and, at a minimum, may not be granted at this time. Order (DE 102). *First*, Plaintiffs' contention that this Court can proceed to summary judgment now ignores the expedited posture in which Plaintiffs have placed this case. Plaintiffs joined their motion for summary judgment with a motion for a preliminary injunction—and even though Plaintiffs delayed filing their hybrid motion for preliminary and permanent relief until months after filing their complaint, they insisted on expedited briefing and consideration. *See* DE 66. As the Court has recognized (*see* Pls.' Mot. at 1 (citing 10/1/12 Hr'g tr. at 6))[1], the fact that the Secretary

[1] The Secretary does not cite directly to the hearing transcript because he was unable to obtain it in the compressed time for filing this Opposition, and his request that Plaintiffs provide a courtesy copy given that their Motion created the exigency went unanswered.

"responded to that motion" pursuant to the Court's scheduling order (*id.* at 2) does not mean that the Secretary was accorded sufficient time to defend against Plaintiffs' summary judgment motion. And Plaintiffs are flatly incorrect when they contest that the Secretary "never sought additional time to respond." *Id.* The Secretary opposed Plaintiffs' motion to expedite *and* requested additional time to respond precisely *because* Plaintiffs "interjected significant factual material into the record by joining a motion for summary judgment and filing a statement of undisputed material facts . . . and an expert report." Opp. To Mot. To Expedite at 4 (DE 68).

Second, while Plaintiffs are correct that their purported claim presents a pure question of law on the *merits* (*see* Pls.' Mot. at 3), they overlook the live dispute regarding their failure to establish "sufficient facts" to demonstrate *standing* to pursue that claim. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *see also* Memo. In Opp. To Pls.' Mot. For Prelim. Injun. And Summ. J. at 7–11 (DE 79) ("Memo. In Opp."); Pls.' Reply In Support Of Mot. For Prelim. Injun. And Summ. J. at 1–4 (DE 88). Plaintiffs' evidence consists solely of conclusory declarations and testimony at the preliminary injunction hearing, much of which would be inadmissible, on hearsay and other grounds, on summary judgment. Plaintiffs have adduced no documentary or other admissible evidence to support this self-serving testimony—and the Secretary's cross-examination of two witnesses at an expedited *preliminary injunction* hearing is not a sufficient opportunity to test the *bona fides* of Plaintiffs' attempt to establish standing at *summary judgment*. *See, e.g.*, *Lujan*, 504 U.S. at 561. Thus, at a minimum, the Court cannot *grant* summary judgment in Plaintiffs' favor unless and until the Secretary has had an adequate opportunity to probe Plaintiffs' meager evidentiary submission.

At the same time, as the Secretary has demonstrated that, even if accepted *arguendo*, Plaintiffs' evidence is facially insufficient to demonstrate standing. *See id.*; *see also* Memo. In

Opp. at 7–11. Plaintiffs now appear content with the current state of the record because they have eschewed any attempt to supplement it in favor of a request that the Court proceed immediately to summary judgment. *See* Pls.' Mot. at 3. Thus, although the untested, conclusory, and largely inadmissible evidence submitted by Plaintiffs to date cannot support summary judgment *in their favor*, the Court may now, in light of Plaintiffs' representation that they will offer no further evidence, *deny* Plaintiffs' motion for summary judgment and grant judgment in the Secretary's favor. *See* Memo. In Opp. at 7–11.

CONCLUSION

The Court should deny Plaintiffs' Motion To Reconsider or, in the alternative, deny Plaintiffs' motion for summary judgment.

Dated: October 3, 2012

Respectfully submitted,

/s/ Daniel E. Nordby

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2012, a true and correct copy of the foregoing will be sent electronically to the registered participants through the Court's CM/ECF system.

/s/ Daniel E. Nordby