

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

MARTA VALENTINA RIVERA
MADERA, etc., *et al.*,

Plaintiffs,

Case No. 1:18-cv-00152-MW-GRJ

v.

KIM A. BARTON, in her official
capacity as Alachua County Supervisor
of Elections, etc.,

Defendants.

**LEON COUNTY SUPERVISOR OF ELECTIONS' AMICUS
CURIAE BRIEF IN OPPOSITION TO CLASS CERTIFICATION AND
JOINDER IN THE ARGUMENTS IN OPPOSITION TO CERTIFICATION
PRESENTED IN THE SEVEN SUPERVISORS OF ELECTIONS' AMICUS
CURIAE BRIEF IN OPPOSITION TO CLASS CERTIFICATION**

Pursuant to this Court's invitation, Mark Earley, the Supervisor of Elections Leon County, respectfully files this amicus curiae brief "addressing the issue of whether this Court should certify a defendant class." ECF No. 172 at 3 and 5.

INTRODUCTION

Plaintiffs ask this Court to certify a defendant class of 32 Supervisors of Elections, even though they challenge various local practices of 32 Supervisors, rather than a uniform statewide policy. Supervisor Earley opposes defendant class

certification for the reasons set forth herein and joins in and adopts the arguments in opposition to certification presented in the Seven Supervisors of Elections Amicus Curiae Brief in Opposition to Class Certification.

Supervisor Earley submits the following information in support of the argument that local practices differ from county to county such that Plaintiffs have not established commonality and typicality as required by Federal Rule of Civil Procedure 23(a) and 23(b).

**BECAUSE THEY CHALLENGE LOCAL PRACTICES THAT DIFFER
FROM COUNTY TO COUNTY, PLAINTIFFS HAVE NOT ESTABLISHED
COMMONALITY AND TYPICALITY**

Pending before this Court is a resubmitted motion to certify plaintiff and defendant classes. ECF No. 172 at 1. As noted by the Court, since 2018 the alleged facts underlying this litigation have changed. ECF No. 172 at 3. There is a new *status quo* that suggests, at least as to Supervisor Earley, that this litigation is moot.

On May 10, 2020, this Court entered its Order Granting in Part Plaintiff's Motion for Preliminary Injunction. ECF No. 131. The Order required the Secretary of State to provide written direction to the supervisors of elections in the 32 counties, including Leon County, with respect to the matters set forth below.

- The supervisor of elections shall have official Spanish language ballots available on a (1) unilingual ballot; (2) bi- or multilingual ballot; and/or (3) an electronic Voter Assistance Terminal, such as the Automark. (footnote omitted). ECF 131 at 10.

- The supervisor of elections shall create a toll-free, county-specific, Spanish-language hotline (footnote omitted) with at least one bilingual employee for the purpose of translating or otherwise assisting Spanish-language voters during all early voting hours, hours when polls are open, and all hours during which voters can cure deficiencies with absentee or provisional ballots following election days, and all business hours on other days. The supervisors of elections shall visibly display at each polling place the availability of Spanish-language hotline assistance, including the county's Spanish-language hotline number and the state's Spanish-language hotline number. ECF 131 at 10.
- The supervisor of elections shall provide in Spanish all official election-related written and electronic materials, including, but not limited to, ballots (as described in Subsection (b), *supra*), absentee and early voting applications and envelopes, provisional ballot envelopes and certifications, voter registration cards and applications, voting instructions, voter information guides and pamphlets, notifications of elections and polling place changes, polling place signage, and all information available on the supervisors' websites. The existence of these materials shall be made known at polling places and the supervisors of elections' offices with prominent displays. Signage shall be prominently posted and explain in English and Spanish how voters can obtain Spanish-language assistance. ECF 131 at 10-11.
- The supervisor of elections shall provide in Spanish all notifications, announcements, and informational materials about all stages of the electoral process, including materials concerning the opportunity to register, voter registration deadlines, the times, places, and subject matters of the elections, the absentee and early voting processes, offices up for election, candidates who have qualified, and local issues or referenda and announcements applicable to elections in the counties. ECF at 11.
- The supervisor of elections shall provide a copy of the Spanish-English Election Terms Glossary prepared by the U.S. Election Assistance Commission at each polling place. ECF at 11.
- The supervisor of elections shall provide Spanish-language information on websites that is readily accessible through prominent and

identifiable Spanish-language links on each website. Smaller counties with less means and resources to fully translate their websites may provide a Spanish-language link, prominently displaced, to the state's election-information website. ECF at 11.

- The supervisor of elections shall provide information in Spanish on websites and at each polling place that any voter who requires assistance to vote may bring a helper to assist them. ECF at 11.
- To the extent practicable, the supervisor of elections shall recruit, hire, train, and assign bilingual poll workers who are able to understand speak, write, and read English and Spanish fluently and can provide effective translation assistance to Spanish-speaking voters at the polls on election days, at early voting locations, and at locations where voters can cure deficiencies with absentee or provisional ballots following election days. (footnote omitted) Supervisors shall continue to make good-faith recruiting efforts to provide bilingual assistance, particularly for the benefit of those polling locations with a higher proportion of individuals who fall under the ambit of Section 4(e). ECF at 11-12.
- The supervisor of elections shall train all poll officials and other election personnel regarding the requirements of Section 4(e) of the Voting Rights Act, including the legal obligation and means to make effective Spanish-language assistance and materials available to voters. ECF at 12.

Supervisor Earley has complied with these directives and requirements and his office continues to be in compliance in these directives and requirements.

Thus, the new *status quo* in Leon County suggests that the Plaintiffs have not demonstrated commonality or typicality with respect to their claims as to the other 31 supervisors in the proposed class.

CONCLUSION

For the reasons set forth herein and in the Seven Supervisors of Elections Amicus Curiae Brief in Opposition to Class Certification, the Court should decline to certify a defendant class.

/s/ S. Denay Brown

Mark Herron
Florida Bar No. 199737
Primary Email: mherron@lawfla.com
clowell@lawfla.com
S. Denay Brown
Florida Bar No. 88571
tweiss@lawfla.com
statecourtpleadings@lawfla.com
MESSER CAPARELLO, P.A.
Post Office Box 15579
Tallahassee, FL 32317
Telephone (850) 222-0720
Facsimile: (850) 558-0659

Attorneys for Mark Earley

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy was electronically filed using the Case Management/Electronic Case Filing (“CM/ECF”) system on September 30, 2020, which will send a Notice of Electronic Filing to all counsel of record for the parties who have appeared in this proceeding.

/s/ S. Denay Brown
S. Denay Brown