

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

Case No. 2022 CA 000666

CORD BYRD, in his official capacity as
Florida Secretary of State, et al.,

Defendants.

**THE SECRETARY'S RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR JUDGMENT ON THE PLEADINGS**

The Secretary opposes Plaintiffs' motion for judgment on the pleadings. Simply put, Plaintiffs again bring the wrong type of motion to challenge two of the Secretary's affirmative defenses. Their motion should be denied.

Florida Rule of Civil Procedure 1.140(c) authorizes a party to move for *judgment* on the pleadings "[a]fter the pleadings are closed." Fla. R. Civ. P. 1.140(c). "A motion for judgment on the pleadings should only be granted where it will dispose of the entire case." *See* 1 Fla. Civ. Proc. § 7-8(c). That's why Rule 1.140(c) doesn't authorize a *partial* motion for judgment on the pleadings. *Bolen Int'l, Inc. v. Medow*, 191 So. 2d 51, 53 (Fla. 3d DCA 1966) ("[T]he Rules of Civil Procedure do not provide for a partial final decree upon the pleadings."); *Ropiza v. Reyes*, 583 So. 2d 400, 401 (Fla. 3d DCA 1991) ("In entering a judgment for the Reyeses on the pleadings, however, the court incorrectly

foreclosed Ropiza’s claim under separate allegations for damages based on breach of contract.”); *Morris v. Traux*, 152 So. 2d 515, 519 (Fla. 2d DCA 1963) (the motion “may not be used to test the legal sufficiency of merely some of the defenses”); *Martinez v. Fraxedas*, 678 So. 2d 489, 491 n.5 (Fla. 3d DCA 1996) (“We also note that a partial judgment on the pleadings is not authorized.” (cleaned up)). Compare Fla. R. Civ. P. 1.140(c) (not allowing for a *partial* motion for judgment on the pleadings), with Fla. R. Civ. P. 1.510(a) (allowing for a *partial* motion for summary judgment).

After all, the “purpose of the motion” “is to permit a trial judge to examine the allegations of the bare pleadings and determine whether there are any issues of fact based thereon.” *Bradham v. Hayes Enters., Inc.*, 306 So. 2d 568, 570 (Fla. 1st DCA 1975) (emphasis removed). “If the bare pleadings reveal that there are no facts to be resolved by a trier of facts then the trial judge is authorized to *enter a judgment* based upon the uncontroverted facts appearing from the pleadings as applied to the applicable law.” *Id.* at 571 (emphasis added).

Here, even if this Court grants Plaintiffs’ motion, the entire case wouldn’t be resolved. The Secretary has other affirmative defenses, and, obviously, there are still “facts to be resolved by a trier of fact[.]” *Bradham*, 306 So. 2d at 571. Plaintiffs’ motion is thus unwarranted.

* * *

In their joint response, the Florida House and the Florida Senate argue that this Court should deny Plaintiffs’ motion because the motion asserts an avoidance that

Plaintiffs didn't plead and therefore waived. *See* House & Senate Resp. at 2-3. The Secretary agrees with the House and Senate's argument and incorporates and adopts it by reference.

* * *

If this Court believes that Plaintiffs' motion is appropriate, then the Secretary incorporates and adopts the arguments made in his motion-to-strike oral argument. *See* Plaintiffs' Mot. for Judgment on the Pleadings, Ex. A (transcript). The Secretary maintains that the public-official-standing doctrine applies to challenges to statutes, not constitutions. The separation-of-powers principle that animates the doctrine doesn't apply to a situation where there's a conflict between a state constitutional provision and a federal constitutional provision, as here. As stated during the hearing, under Plaintiffs' construction of the doctrine, the doctrine would force a state official to enforce a hypothetical state-constitutional racial-segregation provision, even though it conflicts with the federal constitution. That can't be right.

* * *

All told, Plaintiffs' motion should be denied.

DATED: June 28, 2023

Respectfully submitted,

Bradley R. McVay (FBN 79034)
Deputy Secretary of State
brad.mcvay@dos.myflorida.com
Joseph S. Van de Bogart (FBN 84764)
General Counsel
Joseph.vandebogart@dos.myflorida.com
Ashley Davis (FBN 48032)
Chief Deputy General Counsel
ashley.davis@dos.myflorida.com
W. David Chappell (FBN 120449)
Assistant General Counsel
david.chappell@dos.myflorida.com
FLORIDA DEPARTMENT OF STATE
R.A. Gray Building
500 S. Bronough St.
Tallahassee, FL 32399
(850) 245-6536

/s/ Mohammad O. Jazil
Mohammad O. Jazil (FBN 72556)
mjazil@holtzmanvogel.com
Gary V. Perko (FBN 855898)
gperko@holtzmanvogel.com
Michael Beato (FBN 1017715)
mbeato@holtzmanvogel.com
zbennington@holtzmanvogel.com
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIK
119 S. Monroe St. Suite 500
Tallahassee, FL 32301
(850) 270-5938

Counsel for the Secretary

Certificate of Service

I certify that a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal, on June 28, 2023.

/s/ Mohammad O. Jazil
Mohammad O. Jazil

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