SWANSON v. PITT

330 F.Supp.2d 1269 (2004) | Cited 1 times | M.D. Alabama | August 4, 2004

OPINION

Plaintiff Johnny Swanson III brought this lawsuit againstvarious officials of the State of Alabama and of the AlabamaDemocratic Party, challenging the following: the party's refusalto let him run for United States Senate as a Democrat; theState's failure to stop the party from doing so; and the State'sfailure to restore his voting and civil rights. The named "partydefendants" are Redding Pitt, the Chairman of the AlabamaDemocratic Party, and Joe L. Reed, Warren Davis, Amy Burks, PatEdington, and Vickie Holloway, other officials of the AlabamaDemocratic Party; the named "state defendants" are Nancy Worley,the Secretary of State of Alabama; Troy King, the AttorneyGeneral of Alabama; Sidney Williams, the Chair of the AlabamaState Board of Pardons and Paroles; and Robert Riley, theGovernor of Alabama; and the party defendants and the statedefendants are referred to collectively as "thedefendants."[1] Swanson's complaint alleges that thedefendants' actions violated the First, Fourteenth, andSeventeenth Amendments and the ex post facto clause of the UnitedStates Constitution, as applied through 42 U.S.C.A. § 1983; theVoting Rights Act of 1965, 42 U.S.C.A. §§ 1973 through 1973p; and1975 Ala. Code §§ 15-22-20, 15-22-23, 15-22-36.1, and17-3-10.[2] Jurisdiction over Swanson's federal claims isproper under 28 U.S.C.A. §§ 1331 (general federal question) and1343 (civil rights). Supplemental jurisdiction over the state-lawclaims is proper under 28 U.S.C.A. § 1367.

This case is now before the court on the party defendants'motion to dismiss and alternative motion for summary judgment;the state defendants' motion to dismiss; Swanson's motion forsummary judgment; and Swanson's motion for leave to amend hiscomplaint.[3] For the reasons that follow, the partydefendants' alternative motion for summary judgment and the statedefendants' motion to dismiss will be granted; the partydefendants' motion to dismiss will be denied as moot; andSwanson's motions will be denied.

I. STANDARDS OF REVIEW

The party defendants have filed a motion to dismiss and analternative summary-judgment motion. Because both the partydefendants and Swanson submitted evidentiary materials andbecause the court has considered those materials in relation toSwanson's claims against the party defendants, the court hasconsidered only the alternative motion for summaryjudgment.[4] Fed.R.Civ.P. 12(b). The court previouslygave the parties notice of its intention to consider thealternative summary-judgment motion.[5]

Swanson is proceeding pro se in this case. Courts should show"a leniency to pro se litigants not

enjoyed by those with thebenefit of a legal education," GJR Investments, Inc. v. Countyof Escambia, 132 F.3d 1359, 1369 (11th Cir. 1998). However, thisleniency "does not give a court license to serve as de factocounsel for a party or to rewrite an otherwise deficient pleadingin order to sustain an action." Id. (citations omitted).

A. Summary-Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions,answers to interrogatories, and admissions on file, together withthe affidavits, if any, show that there is no genuine issue as toany material fact and that the moving party is entitled to ajudgment as a matter of law." Fed.R.Civ.P. 56(c). UnderRule 56 of the Federal Rules of Civil Procedure, the party seekingsummary judgment must first inform the court of the basis for themotion, and the burden then shifts to the non-moving party todemonstrate why summary judgment would not be proper. CelotexCorp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553(1986); see also Fitzpatrick v. City of Atlanta, 2 F.3d 1112,1115-17 (11th Cir. 1993) (discussing burden-shifting underRule 56). The non-moving party must affirmatively set forth specificfacts showing a genuine issue for trial and may not rest upon themere allegations or denials in the pleadings. Fed.R.Civ.P.56(e).

The court's role at the summary-judgment stage is not to weighthe evidence or to determine the truth of the matter, but ratherto determine only whether a genuine issue exists for trial.Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249,106 S.Ct. 2505, 2511 (1986). In doing so, the court must view the evidencein the light most favorable to the non-moving party and draw allreasonable inferences in favor of that party. Matsushita Elec.Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587,106 S.Ct. 1348, 1356 (1986).

B. Motion-to-Dismiss Standard

A court may dismiss a complaint for failure to state a claimonly if it is clear that no relief could be granted under any setof facts that could be proven consistent with the allegations inthe complaint. Hishon v. King & Spalding, 467 U.S. 69, 73,104 S.Ct. 2229, 2232 (1984); see also Wright v. Newsome,795 F.2d 964, 967 (11th Cir. 1986) ("[W]e may not . . . [dismiss] unlessit appears beyond doubt that the plaintiff can prove no set offacts in support of the claims in the complaint that wouldentitle him or her to relief.") (citation omitted). In evaluatinga motion to dismiss, the court will accept as true allwell-pleaded factual allegations and will view them in a lightmost favorable to the nonmoving party. Hishon, 467 U.S. at 73,104 S.Ct. at 2232; Jackson v. Birmingham Bd. of Educ.,309 F.3d 1333, 1335 (11th Cir. 2002). Furthermore, the threshold is"exceedingly low" for a complaint to survive a motion to dismissfor failure to state a claim. Ancata v. Prison Health Servs.,Inc., 769 F.2d 700, 703 (11th Cir. 1985).

II. BACKGROUND

Pursuant to the above standards, the court will look at thefacts in a light most favorable to Swanson. See Antenor v. D &S Farms, 88 F.3d 925, 927 n. 2 (11th Cir. 1996). In any case,the relevant facts in this case are not in dispute.

In August 2003, Swanson contacted the Alabama Democratic Partyto inquire into what he needed to do in order to run for UnitedStates Senate as a Democrat in 2004. The party sent himqualifying papers to fill out, but did not send him the party'sbylaws, which contain restrictions on who may run for office as aDemocrat.

In March 2004, Swanson filed qualifying papers with the partyand paid a qualifying fee of $3,140. On April 5, 2004, Ed Whiteof Gadsden, Alabama wrote a letter to the party, challengingSwanson's candidacy as a Democrat on the grounds that Swanson ranfor the United States Senate as an independent in 2002.[6]

On April 9, 2004, Redding Pitt, the Chairman of the AlabamaDemocratic Party, wrote to Swanson to inform him that hiscandidacy had been challenged on the basis that he "violatedparty bylaws by not supporting the nominees of the DemocraticParty within the last four years." Pitt's letter set a hearingdate of April 14. On April 12, Swanson sent a letter to the partyin which he admitted that he had run for United States Senate asan independent candidate in 2002, and in which he "pledge[d] hisallegiance to the Democratic Party, and formally switche[d] hisPolitical Party membership to the Alabama Democratic Party, andthe DNC as a whole."

On April 14, 2004, a five-member subcommitteee, composed ofmembers of the State Democratic Executive Committee and chairedby Joe L. Reed, held a hearing. Swanson appeared and defendedhimself. White, who filed the challenge against Swanson, did notappear at the hearing, but his attorney appeared and spoke on hisbehalf.

The subcommittee unanimously sustained White's challenge toSwanson's candidacy. They orally informed Swanson of theirdecision immediately after the April 14 hearing, and expanded ontheir reasoning in an opinion dated April 16, 2004. In theopinion, the subcommittee explained that Swanson had soughtelection to the United States Senate as an independent candidatein 2002 in an election in which there was a Democratic candidate,and Swanson had not been pardoned by the Executive Board for hisopposition to the Democratic nominee. This, the subcommitteeheld, was in violation of the party's bylaws, Article VII, §1(f), which states: "No person shall be permitted to qualify as a candidate for nomination or election to public or Party office as a Democrat in any elections who did not support the nominees of the Democratic Party in all Special or General Elections during the past four years. "Provided, however, any person . . . who has supported the candidacy of someone other than a Democrat . . . and who desires to switch parties and seek office under the Democratic Party, may do so by renouncing his or her previous party allegiance, and the reasons therefore, to that party and pledging loyalty and allegiance to the Democratic Party for admission. The Democratic Party Chairman shall refer the matter to the Executive Board. . . . If, after

such a hearing, the Executive Board is convinced by a preponderance of the evidence that such a person would be an asset to the Democratic Party, the Executive Board may, by a vote of two-thirds of those present and voting, allow that person to seek office as a Democrat."The subcommittee held that Swanson's April 12 letter wasinsufficient to comply with this rule, since Swanson had nottried to seek a pardon from the Executive Board "until 10 daysafter the qualifying deadline had closed."

On April 15, Swanson wrote to Pitt to appeal the subcommittee'sruling. Pitt affirmed the subcommittee's ruling on May 19, 2004,finding that "the decision of the subcommittee was in factsupported by substantial credible evidence." Pitt also rejectedSwanson's claim that White's challenge to his candidacy wasinvalid because White had not posted a bond; Pitt noted thatunder party bylaws "[t]he requirement for posting a bond isoptional at the discretion of the SDEC Chairman . . . For all2004 primary challenges, as opposed to contests, the Chairman haswaived the requirement of posting security for costs." Swanson'squalifying fee of $3,140 was refunded to him on May 24, 2004.

After Swanson was eliminated from the Democratic ballot forUnited States Senate, there was only one other name left on it,that of Wayne Sowell. Like Swanson, Sowell is an African-Americanman. Because Sowell was unopposed, his name did not appear on theJune 1 primary election ballot.

Apart from his claims relating to the Democratic Party'sdecision not to let him run as a Democrat, Swanson raises claimsrelating to the State of Alabama's failure to restore his civilrights and voting rights. The pleadings do not contain manydetails about the facts underlying these claims. It appearssimply that Swanson was previously convicted of a crime inanother State and has not had has civil rights restored despitehis application for a pardon and the restoration of his votingrights.

III. DISCUSSION

A. Claims against Party Defendants

Swanson complains about several things related to the partydefendants' decision not to let him run on the Democratic Partyballot. Construing his complaint liberally, the court finds thathe alleges: (1) that the party's establishment of requirementsfor candidates violates the Constitution;[7] (2) that theparty defendants wrongfully failed to tell him about the relevantbylaws before White filed his complaint;[8] (3) that theprocedures the party followed in processing his complaint wereinadequate for several reasons;[9] (4) that Swanson's April12 letter pledging his allegiance to the Democratic Party wasenough to comply with the party's bylaws and to render himeligible to run for office as a Democrat;[10] and (5) thatthe party "conspired" to engage in "Candidate Tampering," orkeeping "the people's choices" off the ballots.[11]

The court will address each of Swanson's perceived claims inturn.

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1. Party's Rules

The court reads Swanson's complaint as alleging that theparty's establishment of requirements for would-be candidates,which requirements go beyond the rules set forth in the UnitedStates Constitution for Senators, violates the equal protectionclause and the First Amendment.

This claim is due to be rejected. As for the equal-protectionclaim, even assuming a political party's rules could violate theequal protection clause, Swanson has not alleged that the party'srules were intended to, or had the effect of, treating himdifferently from other similarly situated persons. Thus, theparty's rules do not violate the equal protection clause.

Turning to Swanson's First Amendment argument, it is true thatSwanson has a First Amendment interest in being free from statediscrimination based on the content of his speech. Duke v.Massey, 87 F.3d 1226, 1232 (11th Cir. 1996). It is not at allclear how the party's actions could constitute state action. Evenignoring this problem, though, as the party defendants argue, apolitical party also has a First Amendment right to freedom ofassociation. This associational right necessarily includes thefreedom to limit its membership and its candidates for publicoffice according to political belief. Id. at 1234; see alsoDemocratic Party of U.S. v. Wisconsin, 450 U.S. 107, 122,101 S.Ct. 1010, 1019 (1981) ("[T]his Court has recognized that theinclusion of persons unaffiliated with a political party mayseriously distort its collective decisions — thus impairing theparty's essential functions — and that political parties mayaccordingly protect themselves from intrusion by those withadverse political principles.") (citations omitted). Thisassociational right is broad enough to include a party's decisionto exclude people who have not been loyal to the party. AlabamaRepublican Party v. McGinley, ___ So.2d ___, ___, 2004 WL1099995, *9 (Ala. 2004). A would-be candidate does not have aright to "associate with an unwilling partner" by forcing apolitical party to allow him to run for office as that party'scandidate regardless of his political beliefs. Id.; Duke v.Cleland, 954 F.2d 1526, 1530-31 (11th Cir. 1992). Relatedly,political parties have the discretion to govern themselves asthey see fit. Ripon Soc., Inc. v. Nat'l Republican Party,525 F.2d 567, 585 (D.D.C. 1975) ("a party's choice, as among variousways of governing itself, of the one which seems best calculatedto strengthen the party and advance its interests, deserves theprotection of the Constitution as much if not more than itscondemnation") (cited in Democratic Party of U.S. v.Wisconsin, 450 U.S. at 124 n. 26, 101 S.Ct. at 1020 n. 26).

Thus, the court concludes that Swanson's First Amendmentinterest in getting his name on the ballot as a Democrat isoutweighed by the party's associational right to choose its owncandidates for office based on their political beliefs andaccording to the party's bylaws.

2. Party's Failure to Inform Swanson about Bylaws

Swanson alleges that no-one from the party informed him of therelevant party bylaws when he inquired about how he should goabout running for office as a Democrat; he also alleges that hetold

party officials that he had run for office as an independentin 2002.[12] Swanson claims the party defendants' conductviolated the Fourteenth Amendment's guarantees to equalprotection and procedural due process, and the ex post factoclause of the Constitution.[13]

Swanson has not stated a claim for a violation of hisprocedural due-process rights. Even assuming that the bylaws of apolitical party can implicate due-process rights, the partydefendants' alleged failure to inform Swanson of the bylaws didnot violate his right to due process. While in some situations alack of fair notice can deny a person the right to due process,no such violation occurred here because the bylaws in questionwere publicly available and did not change at all during therelevant period. Compare Campbell v. Bennett, 212 F. Supp.2d 1339,1343-44 (M.D. Ala. 2002) (holding that due process waslikely violated when a law shortening the deadline for gatheringnominating signatures went into effect so soon before thedeadline that it denied would-be candidates fair notice of thedeadline). Swanson, who has run for public office before andshould be well aware that there can be procedural hurdles togetting one's name on a ballot, see Swanson v. Bennett,219 F. Supp.2d 1225 (M.D. Ala. 2002), could have and should haveresearched the bylaws on his own.

For similar reasons, Swanson's ex post facto claim is also dueto be rejected.[14] An ex post facto law is one thatapplies retroactively, particularly in a way that negativelyaffects a person's rights. Black's Law Dictionary 601 (7th ed.1999). Even assuming that the party's bylaws constitute "laws" inany sense, the Constitution's ex post facto clause applies onlyto criminal laws, Kansas v. Hendricks, 521 U.S. 346, 370,117 S.Ct. 2072, 2086 (1997), and the party's bylaws certainly are notcriminal laws. Further, even assuming that the bylaws couldviolate the ex post facto clause, the party's bylaws were notenacted after the fact and applied retroactively; Swanson simplydid not find out about them in time to get his name on theballot. The timeworn principle that "ignorance of the law is nodefense" also means that ignorance of the law is not a violationof the ex post facto clause. See United States v. Tapia,981 F.2d 1194, 1196 (11th Cir. 1993).

Neither has Swanson stated a claim for an equal-protectionviolation. He has not alleged that the party defendants treatedanyone else any differently from the way they treated him.

3. Party's Challenge Procedures

Swanson objects to the procedures that the party followed inhandling White's challenge to his candidacy. He states thatWhite's letter was "not a proper complaint as defined by partybylaws,"[15] that the party waived the requirement thatWhite post a bond, that White did not appear at the subcommitteehearing, and that Chairman Pitt did not consider his appeal "onan expeditious basis as requested, denying this Court ample timeto hear this matter and to order relief for the primaryelection."[16] The court construes Swanson's complaint asalleging that these procedures violated his right to proceduraldue process.[17]

The procedures that the party followed in handling White'scomplaints did not violate his right to due process. As the partydefendants argue in their brief, even assuming that Swanson has aliberty or property interest in getting his name on the ballot asa Democrat such that he had a right to due process, and assumingthat the party's actions could violate the Constitution, theparty's procedures were adequate. The Constitution guarantees"the right to be heard at a meaningful time and in a meaningfulmanner" before an individual is deprived of a property interestor suffers other "grievous loss." Mathews v. Eldridge,424 U.S. 319, 333, 96 S.Ct. 893, 902 (1976). The party afforded Swansonsuch an opportunity: it notified Swanson of the challenge and thebasis for the challenge, and of the time when the hearing wouldbe held; Swanson attended the hearing and was allowed to defendhimself and to present evidence on his own behalf. See AlabamaRepublican Party v. McGinley, ___ So.2d ___, 2004 WL 1099995(Ala. 2004) (stating that would-be candidate's proceduraldue-process rights were not violated by procedures RepublicanParty used to decide challenge to her candidacy, where party gaveplaintiff notice that her candidacy had been challenged andinformed her of the time of the hearing and that she had theright to be present, to participate in the hearing, and topresent evidence). Finally, Swanson has not shown that any ofthese procedures prejudiced him in any way.

As for Swanson's appeal from the subcommittee's decision, theappeal was resolved fairly quickly; Chairman Pitt issued anopinion on May 19, 34 days after Swanson appealed. Swanson cannotshow that this delay prejudiced him; he did not file this lawsuituntil 13 days after Pitt decided his appeal, and this courtdenied Swanson's motion for a temporary restraining order.

4. Swanson's April 12 Letter of Allegiance

Swanson states that the April 12 letter he sent to the party,in which he pledged his allegiance to the party, was enough tocomply with the party's bylaws, and thus that the party shouldhave allowed him to run as a Democrat. The court construes thisas a procedural and substantive due-process claim.

This claim is due to be rejected because, even assuming thatthe party's actions could violate the Fourteenth Amendment, theparty's actions in no way denied due process to Swanson. Asstated, the right to procedural due process includes the right tobe heard at a reasonable time and in a reasonable manner. Swansonwas given a chance to be heard on his argument that his April 12letter complied with the bylaws; both the subcommittee andChairman Pitt considered this argument, as demonstrated by theirwritten opinions which clearly stated their reasoning.

Conduct by a government actor constitutes a substantivedue-process violation "only if the act can be characterized asarbitrary or conscience shocking in a constitutional sense."Waddell v. Hendry County Sheriff's Office, 329 F.3d 1300, 1305(11th Cir. 2003). Even assuming that party officials could insome way constitute government actors, Swanson's substantivedue-process claim fails because the party's actions were notunreasonable, let alone arbitrary or conscience-shocking. Boththe subcommittee and Pitt concluded that the bylaws requiredSwanson to request, and receive, permission from the ExecutiveBoard before seeking a candidacy, not after his candidacy hadbeen

challenged. This is certainly a reasonable interpretation ofthe bylaws. See State Democratic Executive committee of AlabamaBylaws, Article VII, § 1(f) ("any person . . . who desires toswitch parties and seek office under the Democratic Party, may doso by renouncing his or her previous party allegiance . . . andpledging loyalty and allegiance to the Democratic Party foradmission . . . [T]he Executive Board may, by a vote oftwo-thirds of those present and voting, allow that person to seekoffice as a Democrat.") (emphasis added).

Even if the party's interpretation of its own bylaws were morequestionable, the court would be wary of second-guessing theparty's conclusion that Swanson had not satisfactorily shown hisallegiance to the party. As discussed above, a political party'sFirst Amendment right of association includes the right to chooseits candidates for public office according to their politicalbeliefs. Duke v. Massey, 87 F.3d 1226, 1234 (11th Cir. 1996).The party was exercising its associational rights when itdecided, consistent with its bylaws, that Swanson had not shownloyalty or allegiance to the party and thus that the party didnot want Swanson to be its candidate.

5. "Candidate Tampering" Charge against Party Defendants

Swanson's charge that the party conspired with state officialsto engage in "Candidate Tampering," or keeping "the people'schoices" off the ballot, is due to be rejected. It is not clearwhat law Swanson alleges this conduct violated. In any case, theparty did not prevent Swanson from getting his name on theballot, but just from getting his name on the ballot as theDemocratic Party's candidate. Swanson has not alleged facts whichwould show that the party decided not to allow him to run as aDemocrat for any impermissible reason, such as because of hisrace. As discussed above, the party acted within itsassociational rights when it decided not to allow Swanson to runas a Democratic candidate.

B. Claims against State Defendants

Swanson asserts the following against the state defendants: (1)that the state defendants have conspired to engage in "candidatetampering"; specifically, the Alabama Secretary of State and theAlabama Board of Pardons and Paroles have "sought to work incollusion with special interest [sic] or upon certain directivesto insure that certain candidates did not gain constitutionalBallot access";[18] (2) that the State "must be mandated tocorrect it's [sic] procedures to be required to registerCandidates and to allow the names to appear under any party ororganization of the candidate filing qualification papers andpaying any required qualification fee";[19] (3) that theballot access laws applicable to independent candidates areunconstitutional;[20] (4) that the state defendants have"failed to properly supervised the elections;"[21] and (5)that the Board of Pardons and Paroles failed to reinstateSwanson's voting rights.[22] The court will address each ofthese contentions in turn.

1. "Candidate Tampering" Charge against State Defendants

Swanson's charge that the state defendants conspired with theDemocratic Party to engage in

"Candidate Tampering," or keeping"the people's choices" off the ballot, is due to be rejected. Itis not clear what law Swanson alleges this alleged conductviolated. In any case, Swanson's complaint does not state anyfacts which would show that the state defendants were involved inany way in the decision not to allow Swanson to run for office asa Democrat. Indeed, Swanson's complaint makes clear that thisdecision was made by the party. Further, because the party didnot violate Swanson's rights by preventing him from running foroffice as a Democrat, even if the state defendants were involvedin the decision, their involvement would not constitute a"conspiracy" to break any laws.

2. Charge that State Should Place Persons Who File Qualification Papers on the Ballot

Swanson's second claim seeks to force the State to includecandidates on the ballot "under any party or organization of thecandidate filing qualification papers and paying any requiredqualifying fee."[23] The court interprets this to mean thatthe State should be required to override the decision of apolitical party and to place an individual, like Swanson, on theballot as the candidate of that party if that individual filledout qualifying papers and paid a qualifying fee, even if theparty had decided that it did not want that individual to be itscandidate.

This claim is due to be rejected. As was explained, a politicalparty has an associational right to chose its candidates foroffice based on their political beliefs, and thus this courtcannot override a party's legitimate decision about who itscandidates should be. This also means that this court cannotaccomplish the same end by telling the State to override aparty's decision about who its candidates will be.

3. Ballot Access Laws for Independent Candidates

Swanson's complaint states "[t]here is now substantial basisfor this Court to utilize it's [sic] Equity Powers to grant somerelief in this matter on a expeditious basis, and to declare therules related to Ballot Access for even IndependentCandidates/Parties as Unconstitutional."[24] Swansonalleges that by the time the Democratic Party had made itsdecision not to allow him to run as a Democrat, it was too latefor him to gather the signatures necessary to get his name on theballot as an independent candidate.

Swanson's complaint gives no hint as to what provision of theConstitution this could have violated. Swanson has not stated aclaim for a violation of any of the provisions of theConstitution he mentions in his complaint (the First, Fourteenth,and Seventeenth Amendments and the ex post facto clause). Themere fact that Swanson was not able to get his name on the ballotas an independent candidate does not mean that the rules fordoing so are unconstitutional.

Swanson also alleges that Alabama's laws are inconsistent withthose of other States, but this is also not a violation of theequal protection clause.

Thus, this claim is due to be rejected for failure to state aclaim.[25]

4. State Defendants' Failure to Supervise Elections

Swanson claims that the state defendants failed to "properlysupervise the elections,"[26] in violation of the First,Fourteenth, and Seventeenth Amendments to theConstitution.[27] The court construes this claim to meanthat if the state defendants had done a better job supervisingthe election, they could have prevented the party defendants'illegal acts of which Swanson complains.

However, as is explained exhaustively above, Swanson has notshown any illegal acts on the part of either the party or thestate defendants. Thus, the State's failure to prevent any ofthese acts does not violate any laws. To the extent that Swansonis claiming a due-process violation stemming from the statedefendants' failure to be adequately involved in the elections,the claim must also be rejected because Swanson has not shown anyprejudice arising from the state defendants' alleged failure.

5. Swanson's Voting Rights

Swanson states that he applied to the Alabama State Board ofPardons and Paroles "to receive a Pardon and/or re-instatement ofhis voting rights" in August 2003, and that his voting rightshave not yet been restored. He claims that this violates variousprovisions of state law.[28] He also states that the Statetakes longer to process the applications of people who committedcrimes out of state than it does to process the applications ofthose who violated Alabama law, and claims that this violates theVoting Rights Act and the equal protection clause of theFourteenth Amendment to the United States Constitution, asenforced through 42 U.S.C.A. § 1983.

a. State-Law Voting Rights Claims

Swanson's claims based on the state defendants' alleged failureto comply with state law are due to be rejected. In order togrant relief on these claims, this court would have to orderstate officials to comply with state law. This a federal courtcourt cannot do. Pennhurst State School & Hospital v.Halderman, 465 U.S. 89, 106, 104 S.Ct. 900, 911 (1984).

b. Voting Rights Act

Swanson's claim that the state defendants' failure to restorehis voting rights violates the Voting Rights Act is due to berejected. The Voting Rights Act prohibits the use of any "votingqualification or prerequisite to voting or standard, practice, orprocedure . . . which results in a denial or abridgement of theright of any citizen of the United States to vote on account ofrace or color." 42 U.S.C.A. § 1973. Swanson does not allege thatthe state defendants' failure to restore his voting rights hasanything to do with race, or that Alabama's laws on restoring theright to vote to people convicted of crimes have a particularimpact on voters of a certain race. Thus, he has not stated aclaim for a

violation of the Voting Rights Act.

c. Equal Protection Voting Rights Claims

Swanson's claim of a violation of the equal protection clause,as enforced through 42 U.S.C.A. § 1983, is based on hisallegation that "in-state violators of the law are processed andprovided relief, and out of State violators are not processed inthe same expeditious manner, nor is a letter provided to out ofstate applicant [sic] to grant them temporary relief while theadministrative difficulties are handled." [29] This claimappears to be asserted against only defendant Sidney Williams,the Chair of the Alabama State Board of Pardons and Paroles. Thestate defendants admit that cases involving out-of-stateconvictions "are presently taking a disproportionate amount oftime."[30]

The equal protection clause of the Fourteenth Amendmentrequires that similarly situated people be treated alike. Cityof Cleburne v. Cleburne Living Center, 473 U.S. 432, 439,105 S.Ct. 3249, 3254 (1985). While most equal-protection cases allegediscrimination on the basis of suspect classifications such asrace, sex, or national origin, the equal protection clause moregenerally "protects citizens from arbitrary or irrational stateaction." Batra v. Board of Regents of the Univ. of Nebraska,79 F.3d 717, 721 (8th Cir. 1996). Even when a legislative enactmentdoes not discriminate on its face, if it is applied in adiscriminatory manner it can violate the guarantee of equalprotection.

Here, Swanson does not allege that the State's laws orregulations are facially discriminatory. It is unclear whetherhis claim is that Williams is applying the law in adiscriminatory manner, see, e.g., Strickland v. Alderman,74 F.3d 260, 264 (11th Cir. 1996) ("It is well settled that unequalapplication of a facially neutral statute may violate the EqualProtection Clause."), or whether he is claiming that theseemingly neutral law was passed for discriminatory reasons andhas a disparate impact on a certain group such that itsenforcement is unconstitutional, see, e.g., Hunter v.Underwood, 471 U.S. 222, 105 S.Ct. 1916 (1985) (holding thatfacially neutral Alabama law adopted in order to discriminateagainst blacks and which continued to have a disparate impactagainst blacks violated the equal protection clause).

However, government officials do not violate the equalprotection clause every time they treat two people differently.Snowden v. Hughes, 321 U.S. 1, 8, 64 S.Ct. 397, 401 (1944).Neither does the fact that a facially neutral law affects"certain groups unevenly, even though the law itself treats themno differently from all other members of the class described bythe law," constitute an equal-protection violation. PersonnelAdm'r of Massachusetts v. Feeney, 442 U.S. 256, 271-72,99 S.Ct. 2282, 2292 (1979). "When the basic classification is rationallybased, uneven effects upon particular groups within a class areordinarily of no constitutional concern." Id. Rather, in orderto establish an equal protection clause violation, a plaintiffmust show that the challenged state action was motivated by anintent to discriminate. Village of Arlington Heights v.Metropolitan Hous. Dev. Corp., 429 U.S. 252, 265, 97 S.Ct. 555,563 (1977); Elston v. Talladega County Bd. of Educ.,997 F.2d 1394, 1406 (11th Cir. 1993).

Swanson's complaint does not allege that the law allowingfelons to regain their voting rights, or Williams's actions inenforcing that law, were motivated by an intent to discriminate.Neither are there any facts or allegations in the complaint fromwhich the court could infer the existence of such an intent.Indeed, the complaint states that the reason for the delay inprocessing Swanson's application is due to a computer problem.Thus, Swanson has failed to state a claim for a violation of theequal protection clause. GJR Investments, Inc. v. County ofEscambia, 132 F.3d 1359, 1368 (11th Cir. 1998) (stating that aplaintiff failed to state a claim for an equal protection clauseviolation because, among other reasons, he used "broad pejorativewords to describe the defendants' intentions without giving anyspecifics" as to their discriminatory intent).[31]

C. Swanson's Motion for Leave to Amend

In Swanson's brief in support of his motion for summaryjudgment, he states three new claims that he did not state in hiscomplaint: (1) that the party defendants' actions in failing toinform him of the existence of the party bylaws constituted abreach of fiduciary duty; (2) that the party defendants' actionin removing him from the Democratic ballot constituted a breachof contract;[32] and (3) that the party defendants failedto confirm whether Ed White, the person who challenged Swanson'scandidacy, was a Democrat. Because Swanson is proceeding pro se,the court interprets his pleadings liberally. Thus, the courtinterprets the brief in support of the motion for summaryjudgment as a motion for leave to amend the complaint to add thenew claims.

Under Fed.R.Civ.P. 15(a), leave to amend a complaint shallbe freely given when justice so requires. However, the EleventhCircuit has found it within a district court's discretion to denya motion to amend due to futility. United Food and CommercialWorkers Unions v. Philip Morris, Inc., 223 F.3d 1271, 1275 (11thCir. 2000) (finding no error in the district court's decision todeny leave to amend the complaint as futile for failure to statea claim).

The court will deny Swanson's motion for leave to amend hiscomplaint because the amendment would be futile. None ofSwanson's three new claims would state a claim upon which reliefcould be granted.

Swanson's assertion that the party defendants breached afiduciary duty by failing to tell him about the party's bylawscould not succeed. A fiduciary relationship exists when oneperson has a duty to act for the benefit of the other within thescope of the relationship. Some examples of fiduciaryrelationships are attorney/client, trustee/beneficiary, andguardian/ward. Black's Law Dictionary 601 (7th ed. 1999).Swanson's telephone conversations with Democratic Party officialsabout what he would need to do in order to run for office as aDemocrat could not, by any stretch of the imagination, establisha fiduciary relationship between Swanson and the partydefendants. Thus, because the party defendants did not have afiduciary duty to Swanson, they could not have breached suchduty.

Swanson's claim that the party breached a contract with himwould also be futile because there was no contract betweenSwanson and the party. Swanson asserts that his telephoneconversations with the party and his payment of a qualifying feeestablished a contract, and that the party breached that contractby refusing to let him run for office as a Democrat. However, theparty defendants clearly did not enter into a contract withSwanson when they answered his questions and sent him qualifyingpapers to fill out. Thus, this claim is also futile.

Finally, Swanson's claim that the party wrongfully failed toconfirm whether White is a Democrat does not state a claim uponwhich relief can be granted. Swanson does not point to any lawthat this action violated, nor can the court conceive of one thatit might violate. Also, Swanson did not make this argument to theparty during the subcommittee hearing or the appeal on White'schallenge to his candidacy. Thus, he cannot now bring a claimabout the party's failure to reject White's challenge based onthis argument. This claim would be futile.

An appropriate judgment will be entered.

JUDGMENT

In accordance with the opinion entered on this date, it is theORDER, JUDGMENT, and DECREE of the court as follows:

(1) The party defendants' alternative motion for summaryjudgment, filed on June 14, 2004 (Doc. no. 17), is granted.

(2) Judgment is entered in favor of defendants Redding Pitt,Joe L. Reed, Warren Davis, Amy Burks, Pat Edington, and VickieHolloway, and against plaintiff Johnny Swanson III, withplaintiff Swanson taking nothing by his complaint as to thesedefendants.

(3) The party defendants' motion to dismiss, filed on June 14,2004 (Doc. no. 17), is denied as moot.

(4) The state defendants' motion to dismiss, filed June 14,2004 (Doc. no. 18), is granted.

(5) Plaintiff Swanson's claims against defendants Nancy Worley,Troy King, Sidney Williams, and Robert Riley are dismissed.

(6) The motion for summary judgment, filed by plaintiff Swansonon June 29, 2004 (Doc. no. 25), is denied.

(7) Plaintiff Swanson's brief in support of his motion forsummary judgment, filed June 29, 2004 (Doc. no. 26), is treatedas a motion for leave to amend the complaint and the motion isdenied as futile.

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330 F.Supp.2d 1269 (2004) | Cited 1 times | M.D. Alabama | August 4, 2004

1. It appears from Swanson's complaint that he is suing thestate defendants in only their official capacities.

2. Swanson does not cite these statutes in his complaint, butincludes their text as part of his evidentiary record. Book ofexhibits, filed June 29, 2004 (Doc. no. 27), pp. 56-72.

3. The court construes Swanson's brief in support of hismotion for summary judgment, filed June 29, 2004 (Doc. no. 26),as including a motion for leave to amend his complaint.

4. The evidentiary materials are not relevant to Swanson'sclaims against the state defendants, and the court has notconsidered them in relation to those claims; thus, it is notnecessary to treat the state defendants' motion to dismiss as amotion for summary judgment.

5. Order entered June 15, 2004 (Doc. no. 21).

6. Swanson ran as an independent write-in candidate for UnitedStates Senator from Alabama in 2002, and received about 1,350votes. There was a Democratic candidate in the race as well.Before the 2002 election, Swanson attempted to get his name onthe ballot as the candidate of the Independent Democrats ofAlabama (a group that he had formed) but did not succeed in doingso. Swanson, along with two other individuals, filed a suit inthis court challenging the rules governing ballot access forindependent candidates. Swanson v. Bennett, Civ. A. No. 02-644(M.D. Ala., filed June 4, 2002). Motions for summary judgment arepending in that case.

7. Complaint, filed June 14, 2004 (Doc. no. 1), pp. 13-14.

8. Id. at 3.

9. Id.

10. Id. at 13-14.

11. Id. at 3, 13.

12. Plaintiff's brief in support of motion for summaryjudgment, filed June 29, 2004 (Doc. no. 26), p. 3.

13. In Swanson's brief in support of his motion for summaryjudgment, he also states that the party's failure to inform himabout the bylaws constitutes a breach of fiduciary duty. Thisclaim is addressed infra in Section III.C. To the extent that Swanson is also alleging that this conductviolated the Seventeenth Amendment or the Voting Rights Act, suchclaims are also due to be rejected.

14. The party defendants did not read Swanson's complaint tostate a violation of the ex post facto clause, and so they didnot respond specifically to the claim in their original motion todismiss, filed June 14, 2004 (Doc. no. 17). However, afterSwanson expanded on his ex post facto claim in his brief insupport of his motion for summary judgment, filed June

29, 2004(Doc no. 26), the party defendants did respond to the claim.Response to motion for summary judgment, etc., filed July 16,2004 (Doc. no. 32). Since the court, interpreting Swanson's complaint liberally,reads his complaint as asserting an ex post facto claim, seecomplaint, filed June 1, 2004 (Doc. no. 1), p. 8, and since theparty defendants moved to dismiss all the claims against them intheir motion to dismiss, or, in the alternative, for summaryjudgment (Doc. no. 17), the court will address the ex post factoclaim.

15. Complaint, filed June 1, 2004 (Doc. no. 1), p. 3.

16. Id.

17. If Swanson is alleging an equal-protection violation withrespect to the application of these procedures to him, this claimis due to be rejected because he has not shown that any similarlysituated person was treated differently.

18. Complaint, filed June 14, 2004 (Doc. no. 1), p. 4.

19. Id. at 12.

20. Id. at 11.

21. Id. at 13.

22. Id. at 4, 11-12.

23. Id. at 12.

24. Complaint, filed June 1, 2004 (Doc. no. 1), p. 11.

25. To the extent that Swanson is attempting to incorporate byreference the claims based on the qualifications clause of theConstitution that he raised in another case before this court,Swanson v. Bennett, Civ. A. No. 02-644 (M.D. Ala., filed June4, 2002), in which summary judgment motions are pending, thecourt rejects that attempt. A litigant cannot obtain a fasterruling in one case simply by filing another case.

26. Complaint, filed June 1, 2004 (Doc. no. 1), p. 13.

27. One sentence in Swanson's complaint states that the statedefendants' failure to supervise the elections was "in violationto Amendments I, X, IV, and XVII — United States Constitution."Complaint, filed June 1, 2004 (Doc. no. 1), at 14. Because therest of Swanson's filings do not mention the Tenth or FourthAmendments, the court assumes that Swanson simply inserted anerrant comma and that he meant "Amendments I, XIV, and XVII."However, to the extent that Swanson is alleging a violation ofthe Fourth or Tenth Amendment, such claims are due to bedismissed for failure to state a claim.

28. Complaint, filed June 1, 2004 (Doc. no. 1), p. 11.

29. Id. at 12.

30. Memorandum in support of motion to dismiss claims againststate defendants, filed June 14, 2004 (Doc. no. 19), p. 6.

31. While it appears that Swanson has sued the statedefendants in their official capacities only, he would fail if hehad sued them in their individual capacities as well. TheEleventh Circuit employs a heightened pleading standard forplaintiffs alleging § 1983 claims against state officials intheir individual capacities, Omar ex rel. Cannon v. Lindsey,334 F.3d 1246, 1251 (11th Cir. 2003) ("As Defendants point out,the Eleventh Circuit requires § 1983 plaintiffs to fulfill ahigher standard of specificity in their complaints"); GJRInvestments, 132 F.3d. at 1367 ("[T]his circuit, along withothers, has tightened the application of Rule 8 with respect to §1983 cases in an effort to weed out nonmeritorious claims,requiring that a § 1983 plaintiff allege with some specificitythe facts which make out its claim."). Swanson has not met thisstandard; he has not alleged with sufficient "specificity thefacts which make out [his] claim," id., such as what inparticular Williams did to violate his rights. However, the court must note that many other circuit courtshave noted that a heightened pleading standard for § 1983 casesis in tension with the Federal Rules of Civil Procedure, whichprovide for a liberal pleading standard except in cases of fraudor mistake, Fed.R.Civ.P. 8 and 9(b), and also with the SupremeCourt cases Leatherman v. Tarrant County Narcotics Intelligence& Coordination Unit, 507 U.S. 163, 113 S.Ct. 1160 (1993), whichheld that courts could not require heightened pleading for § 1983claims against municipalities, and Swierkiewicz v. Sorema N.A.,534 U.S. 506, 122 S.Ct. 992 (2002), which held that a Title VIIcomplaint need not contain facts showing the elements of aMcDonnell Douglas prima facie case in order to survive a motionto dismiss. See Educadores Puertorriquenos en Accion v.Hernandez, 367 F.3d 61, 62 (1st Cir. 2004) ("Because neither theCivil Rules nor any applicable statute authorizes the impositionof a heightened pleading standard for civil rights actions, wedisclaim our earlier practice and overrule the decisionsauthorizing it."); Alston v. Parker, 363 F.3d 229, 233 (3d Cir.2004) ("Although once enforced in several circuits, includingours, a fact-pleading requirement for civil rights complaints hasbeen rejected by the Supreme Court in no uncertain terms");Smith v. City of Salem, 369 F.3d 912, 924 (6th Cir. 2004)("Claims made pursuant to 42 U.S.C. § 1983 are not subject toheightened pleading standards."); Thomson v. Washington,362 F.3d 969, 971 (7th Cir. 2004) ("Federal judges are forbidden tosupplement the federal rules by requiring `heightened'" pleadingof claims not listed in Rule 9."); Miranda v. Clark County,Nevada, 319 F.3d 465, 470 (9th Cir. 2003) (en banc) ("We havenow held that no heightened pleading standard applies unlessrequired by the Federal Rules of Civil Procedure."); Steele v.Federal Bureau of Prisons, 355 F.3d 1204, 1211 (10th Cir. 2003)("A requirement of greater specificity for particular claims is aresult that must be obtained by the process of amending theFederal Rules, and not by judicial interpretation.") (quotingSwierkiewicz v. Sorema N.A.); Phelps v. Kapnolas,308 F.3d 180, 187 (2d Cir. 2002) (holding that prior circuit cases whichcreated heightened pleading standards for § 1983 actions wereoverruled by Swierkiewicz).

32. Swanson's complaint does mention "contract violations."Complaint, filed June 1, 2004 (Doc. no. 1), p. 8. However, thecomplaint does not explain, and the court could not discern, whatallegedly constituted a contract violation. Thus, the court hasnot addressed any allegations of contract violations in resolvingthe defendants' motions. However, in Swanson's brief in support of his motion forsummary judgment, filed June 29, 2004 (Doc. no. 25), he explainshis contract claim more fully. Thus, the court treats this as anew claim.