

SEP 11 2003

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

By: W. McCORMACK, CLERK  
DEP CLERK

ADAM R. COPELAND, ET AL.

PLAINTIFFS

Case Number: 4:02CV00675 GH

MIKE HUCKABEE, in his official  
capacity as Governor of the  
State of Arkansas, et al.

DEFENDANTS

ORDER

Plaintiffs filed this action under 42 U.S.C. § 1983 seeking to enforce their rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. They seek declaratory and injunctive relief requiring defendants to restore to the voting rolls all persons rejected or purged as a result of the alleged unconstitutional application of Ark. Code Ann. §7-5-201(b)(6), which they contend has been interpreted to disenfranchise students and other persons living in university housing.<sup>1</sup>

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<sup>1</sup>Ark. Code Ann. § 7-5-201(b)(6) provides:

"Voting residence" shall be a voter's domicile and shall be governed by the following provisions: . . .

(6) Persons who are temporarily living in a particular place because of a temporary work-related assignment or duty post or as a result of their performing duties in connection with their status as military personnel, students, or office holders shall be deemed residents of that place where they established their home prior to beginning such assignments or duties.

On October 22, 2002, Circuit Judge John A. Thomas of the Circuit Court of Clark County, Arkansas issued a writ of mandamus ordering defendant Williams, the County Clerk of Clark County, to stop accepting voter registration applications from "persons present in the County for the purpose of attending a university as a student." Judge Thomas further ordered Williams to immediately purge from the voter rolls all persons, other than university staff, "listing as their address a university post office box, university dormitory, or other university owned student housing. Defendant Williams began to comply with Judge Thomas' Order.

Plaintiffs are individuals, other than university staff, who registered to vote in Clark County, Arkansas using a university address. The Court granted plaintiffs' motion for a Temporary Restraining Order (TRO) on October 30, 2002, enjoining defendants from failing to restore to the voting rolls all persons rejected or purged as a result of implementation of Judge Thomas' Order of October 22, 2002. Pursuant to the parties' agreement, the Court converted the TRO to a preliminary injunction to remain in effect until further Order of the Court.

On May 5, 2003, the Court entered an Order denying the motion to dismiss of Secretary of State Sharon Priest, dismissing Governor Huckabee as a defendant, and substituting Charlie Daniels for defendant Sharon Priest.

Defendant Williams, sued in her official capacity as County Clerk for Clark County, Arkansas, filed a post-trial brief in which she contends that plaintiffs' claim against her should be dismissed. Relying on Monell v. Dep't of Soc. Services, 436 U.S. 658 (1978), Williams states that plaintiffs must demonstrate that a policy, practice, or

custom of Clark County, Arkansas resulted in their constitutional rights being violated. Williams states that prior to October 2002, the policy of Clark County was to allow all persons to register to vote and to vote in all elections held in Clark County who completed the Arkansas Voter Registration Application regardless of whether they listed a university address as their primary address. She states that Judge Thomas' order was not consistent with the policy of Clark County.

The Court, in its May 5<sup>th</sup> Order directed plaintiffs and Williams to further address the issue of Williams' liability. The parties have filed supplemental briefs.

Plaintiffs continue to argue that Monell does not apply. The suit here is against Williams for the actions she took in her official capacity. Thus, plaintiffs need only establish that Williams is liable for the actions she took as the county clerk.

"The 'official policy' requirement [of Monell] was intended to distinguish acts of the municipality from acts of employees of the municipality, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." Pembaur v. City of Cincinnati, 476 U.S. 469, 479-80 (1986). See Graning v. Sherburne County, 172 F.3d 611, 615 (8<sup>th</sup> 1999) (to establish § 1983 claim against sheriff, plaintiff must show his conduct deprived her of a constitutional right, privilege, or immunity and that he acted under color of state law; to establish establish a claim against the county, plaintiff must further establish that the decisionmaker possessed the final authority to establish municipal policy with respect to the action ordered); Glatt v. Chicago Park Dist., 87 F. 3d 190, 193 (7<sup>th</sup> Cir. 1996) (allegation of "custom or policy" not necessary where "plaintiff claims that the defendant committed the

unlawful act directly rather than through employees below the policymaking level”).

Here, plaintiffs contend that Williams violated their constitutional rights by rejecting plaintiffs or purging their names from the voter lists. See Amended Complaint (document no. 14, ¶28 Williams’ application of Ark. Code Ann. § 7-5-201(b)(6) violates plaintiffs’ right to Equal Protection). Williams counters that she did not violate any law and that it is the policy of Clark County to allow all registered voters to vote regardless of their student status. However, such was not the case in this instance, where Williams removed a group of registered voters from the voting rolls.

The Court is persuaded that plaintiffs need not establish a custom or policy of Clark County in order to hold Williams liable for her conduct. It is the action of Williams herself that is sufficient to hold her liable.

Furthermore, even if Monell did apply, the Court would find that plaintiffs have stated a claim against Williams. The Court in Pembaur held that “municipal liability may be imposed for a single decision by municipal policymakers,” but only “where the decisionmaker possesses the final authority to establish municipal policy with respect to the action ordered.” 475 U.S. at 480-81. Here, there is no dispute that Williams is the final policymaker with respect to voter registration in Clark County. The parties stipulated that Williams “is the chief voter registrar in Clark County and is charged by statute with processing voter registration applications and maintaining the list of registered voters in Clark County” (document no. 15, ¶ 13). Under Arkansas law, the county clerk is responsible for removing names from the voter registration lists, and

is the final policy maker with respect to voter registration lists. See Ark. Const. Amend. 51 § 11 (2003) (“ It shall be the duty of the permanent registrar to cancel the registration of voters”); Ark. Const. Amend. 51 § § 7, 9-14 (2003) (prescribing duties of county clerks with regard to voter registration). Thus, it is clear that Williams is the final policymaker for voter registration and her unconstitutional action is enough to state a claim against Williams in her official capacity.

Thus, the Court finds that plaintiffs have stated a claim against Williams and that she should not be dismissed.

The Court notes that the parties agreed to the entry of a preliminary injunction pending further order of the Court. Plaintiffs were restored to the voting rolls and the election has been held. Thus, it appears that no further relief is necessary with regard to ensuring that plaintiffs are registered to vote in Clark County. Plaintiffs are directed to file, within eleven days of this Order, a memorandum addressing what further action is necessary to obtain final disposition of their claims against Williams.

IT IS SO ORDERED this 11 day of September, 2003.

THIS DOCUMENT ENTERED ON  
DOCKET SHEET IN COMPLIANCE  
WITH RULE 58 AND/OR 79(a) FRCP  
ON 9-11-03 BY [Signature]

[Signature]  
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
Eastern District of Arkansas  
U.S. Court House  
600 West Capitol, Suite 402  
Little Rock, Arkansas 72201-3325

September 11, 2003

\* \* MAILING CERTIFICATE OF CLERK \* \*

Re: 4:02-cv-00675.

True and correct copies of the attached were mailed by the clerk to the following:

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Date: 9/11/03

BY: Doris Collins