

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA—ORLANDO DIVISION**

ARAMIS AYALA,

Plaintiff,

v.

RICHARD L. SCOTT,
IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF FLORIDA AND IN HIS
PERSONAL CAPACITY, and

BRAD KING,
IN HIS OFFICIAL CAPACITY AS
STATE ATTORNEY FOR THE
FIFTH JUDICIAL CIRCUIT,

Defendants.

No. 6:17-cv-00649-CEM-TBS

PLAINTIFF’S MOTION FOR ABSTENTION AND STAY OF PROCEEDINGS

Plaintiff Aramis Ayala, the elected state attorney for Florida’s Ninth Judicial Circuit, sues here to vindicate her federal constitutional rights in response to Florida Governor Richard Scott’s effort to replace her as prosecutor on various cases. Not only do Governor Scott’s acts violate Ayala’s federal constitutional rights, but they also violate Florida’s state Constitution. While the Governor’s state constitutional violation is plain and Ayala’s success on it would likely resolve this case, these specific facts nevertheless present a case of first impression for Florida courts. Since the Florida courts have not squarely addressed this exact situation, *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941) directs federal courts not to exercise jurisdiction over the relevant state law claims, and further, to abstain from hearing federal constitutional

claims while state law claims are resolved elsewhere. Ayala has therefore filed her federal constitutional claims here, but will file her state law claims later today in the Florida Supreme Court. *England v. Louisiana State Board of Medical Examiners* nevertheless guarantees Ayala the right to return to federal court if she does not succeed on her state law claims, but it requires Ayala to file here first and to ask this Court to abstain under *Pullman* while state law issues are resolved. 375 U.S. 411 (1964). We therefore ask the Court to abstain under *Pullman* pending resolution of state law claims that Ayala is filing today in the Florida Supreme Court.¹

BACKGROUND

In November 2016, voters in Orange and Osceola counties—which included Aramis Ayala herself—elected Aramis Ayala as their state attorney. Ayala won 99.7% of the vote, and she took office in January 2017.

In March 2017, Ayala publicly announced that she would not seek the death penalty in a high-profile murder case that involved the brutal killings of a pregnant woman and a police officer. Ayala indicated that she instead intended to prosecute vigorously and to seek a sentence of life imprisonment without parole, but that the best interests of the community and justice didn't justify seeking the death penalty in that case. Ayala also stated at that time that she did not foresee seeking the death penalty on

¹ Local Rule 3.01(g) requires movant's counsel to consult with opposing counsel before filing this motion. Since we file this motion before the defendants are represented in this Court, defendants' counsel are thus unavailable for consultation. However, consistent with our duty under Rule 3.01(g), we will expeditiously contact opposing counsel once they are identified, will consult with them on this motion, and will supplement this motion promptly with a statement certifying whether or to what extent the parties have resolved the issues presented here.

other cases as long as the current conditions surrounding capital punishment prevailed. At the same time, she made clear that there could be a situation where she would revisit the issue.

In response, Governor Scott abruptly issued an executive order directing Brad King, the elected state attorney for the Fifth Judicial Circuit, to replace Ayala on the case in question. Two weeks later, Scott directed King to replace Ayala on twenty-one other cases that potentially involved the death penalty. And, on April 6, Scott directed King to replace Ayala on yet another case. Scott stated publicly that he believed Ayala “would not fight for justice” because she would not seek the death penalty.

Ayala filed this lawsuit on April 11, 2017, alleging that Governor Scott’s actions violated her rights under the Equal Protection and Due Process Clauses of the United States Constitution. The Equal Protection clause guarantees voters that no citizen’s vote count more than any other’s. By directing a state attorney elected in another Judicial Circuit to prosecute cases in the Ninth Judicial Circuit, Scott deprived local voters—including Ayala as a voter—of the full value of their votes. With respect to the Due Process Clause, Ayala has due process protection both for her job as state attorney and for her reputation, and Scott’s acts violated both.

Apart from contravening the U.S. Constitution, Governor Scott’s acts also violate Florida’s Constitution. The Florida Constitution directs that state attorneys “shall” prosecute cases in their Judicial Circuit, and does not provide the governor power to say otherwise. The governor’s orders also violate Florida’s separation of powers, as a state attorney is a quasi-judicial officer, whose office is created under the “Judicial” article of

Florida's constitution and which therefore cannot be controlled by the executive branch. Ayala therefore is filing later today a petition for a writ of *quo warranto* in Florida Supreme Court, seeking nullification of the governor's orders there.

DISCUSSION

In *Pullman*, 312 U.S. 496, the Supreme Court established that “a federal district court is vested with the discretion to decline to exercise or to postpone the exercise of its jurisdiction in deference to state court resolution of underlying issues of state law.”

Rindley v. Gallagher, 929 F.2d 1552, 1554 (11th Cir. 1991) (citation omitted). A federal court therefore generally abstains from hearing federal constitutional claims where a case meets two criteria: “(1) the case presents an unsettled question of state law and (2) the question of state law is dispositive of the case or would avoid, or substantially modify, the constitutional question presented.” *Id.* Abstention “does not, of course, involve the abdication of federal jurisdiction, but only the postponement of its exercise.” *England*, 375 U.S. at 416 (citation omitted). When a court abstains under *Pullman*, “the district court is ordered to stay proceedings but retain jurisdiction while the parties seek a determination of their state law issues in state court.” *Barrett v. Atl. Richfield Co.*, 444 F.2d 38, 44 (5th Cir. 1971); *see also Ziegler v. Ziegler*, 632 F.2d 535, 539 (5th Cir. 1980).

This case satisfies both of the criteria for abstention, so this Court should stay the case. First, the case presents a question of state law that the Florida courts have not squarely addressed. Specifically, Article V, Section 17 of the Florida Constitution clearly provides that the elected state attorney “shall” prosecute all local cases, and yet Governor Scott maintains that his power in Article IV, Section 1 of the Florida Constitution that he

“take care that the laws be faithfully executed” trumps that provision. The Florida Supreme Court recently ruled in *Whiley v. Scott*, 79 So.3d 702, 715 (Fla. 2011), that such plenary grants of power do *not* supplant specific grants of power in Florida’s constitution, but Florida’s courts have nonetheless never ruled on the interplay of the two constitutional provisions in the specific context of a governor removing an elected prosecutor due to a disagreement over her prosecutorial discretion. Likewise, Governor Scott’s executive orders impair the operation of the state attorney as a quasi-judicial officer, and so plainly violate Florida’s “strict[]” and “fundamental” separation of powers principles. *Whiley*, 79 So.3d at 708. But again, the Florida courts have never ruled expressly on this specific issue. Because “no [state] court has passed upon” this specific issue, abstention is appropriate. *Barrett*, 444 F.2d at 42.

As for the second prong, if Ayala is wholly successful in state court, there will likely be no need for this Court to pass on the constitutional issues raised here. Ayala seeks a ruling that Scott cannot interfere with her exercise of prosecutorial discretion and cannot remove her from cases and replace her with a state attorney of the Governor’s choosing. If the state court grants commensurate relief, there will most likely be no cause to examine Ayala’s federal constitutional claims. So abstention is appropriate for that reason, too.

Out of respect for *Pullman*, Ayala has asserted *only* her federal constitutional claims before this Court. She has chosen to preserve judicial and party resources by asserting her state law claims in the first instance in the forum that *Pullman* directs—namely, state court.

That circumstance, however, should not limit Ayala's right to a federal forum for her constitutional claims if it becomes necessary to decide them. *England* guarantees "[t]he right of a party plaintiff to choose a Federal court" as the forum in which to bring federal constitutional claims, even when state law issues exist. 375 U.S. at 415 (quoting *Willcox v. Consol. Gas Co.*, 212 U.S. 19, 40 (1909)). Consistent with that authority, the Eleventh Circuit has established a procedure for reserving a federal forum for federal constitutional issues, even when related state law issues are heard elsewhere.

Specifically, the Eleventh Circuit has explained that, to properly preserve a federal forum in this situation, "(1) the litigant must first file in federal court, (2) the federal court will stay the federal proceedings to allow the state courts to consider any state law questions, and (3) the litigant must inform the state court that, if necessary, he intends to pursue any federal constitutional questions in federal court following the conclusion of the state proceedings." *Fields v. Sarasota Manatee Airport Auth.*, 953 F.2d 1299, 1304–05 (11th Cir. 1992).

Here, Ayala therefore seeks to follow the process described in *Fields*. She has thus first filed her federal constitutional law claims here, alleging violation of the Equal Protection and Due Process Clauses. Then, recognizing the existence of underlying unresolved state law claims, she now asks this Court to abstain under *Pullman*. Finally, as described above, Ayala will later today file a petition in state court seeking to nullify Governor Scott's acts on state law grounds. If she is unsuccessful there, she intends—as is her right under *England*—to return here to litigate her federal constitutional claims.

CONCLUSION

For the reasons set forth herein, Ayala respectfully asks this Court to invoke *Pullman* to retain jurisdiction over her federal claims and stay this proceeding while she litigates the state issues in state court.

Respectfully Submitted,

/s/ Marcos E. Hasbun

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LOCAL RULE 3.01(g) CERTIFICATE

Because this motion has been filed on the same day as the complaint filed in this action, the defendants have not yet been served, and at this time opposing counsel is not yet known to Plaintiff. As soon as service has been made and opposing counsel is made known to Plaintiff, counsel for Plaintiff will expeditiously contact and confer with counsel for the defendants, and notify this Court immediately as to their position regarding the relief sought by this motion.

s/ Marcos E. Hasbun
MARCOS E. HASBUN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I will serve a copy of this motion on the Defendant according to the Federal Rules of Civil Procedure together with the complaint which is being filed contemporaneously in this action.

s/ Marcos E. Hasbun
MARCOS E. HASBUN