

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-CIV-KING/O' SULLIVAN

EMMA YAIZA DIAZ; AMERICAN
FEDERATION OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS;
AMERICAN FEDERAL OF STATE, COUNTY
AND LOCAL EMPLOYEES, AFL-CIO;
FLORIDA PUBLIC EMPLOYEES COUNCIL
79, AFSCME, AFL-CIO; AND SERVICE
EMPLOYEES INTERNATIONAL UNION,
AFL-CIO,

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State
Of Florida; BRENDA SNIPES, Broward
County Supervisor of Elections; JERRY
HOLLAND, Duval County Supervisor of
Elections; LESTER SOLA, Miami-Dade
County Supervisor of Elections; BILL
COWLES, Orange County Supervisor of
Elections and ARTHUR ANDERSON, Palm
Beach County Supervisor of Elections,

Defendants.

**MOTION FOR PROTECTIVE ORDER FOR
MANATEE COUNTY SUPERVISOR OF ELECTIONS ROBERT SWEAT**

COMES NOW, Robert Sweat, Supervisor of Elections of Manatee
County (Supervisor Sweat), who moves this Court for an Order to
protect him from the trial subpoena issued by the Plaintiffs in
this case. As grounds for this Motion, Supervisor Sweat states:

1. Supervisor Sweat is the elected Supervisor of
Elections in Manatee County, Florida.

2. Supervisor Sweat was served with a subpoena by the Plaintiffs in the above case on or about January 23, 2008. The subpoena commands Supervisor Sweat to appear before this Court at 9:00 a.m. on February 4, 2008.

3. As Supervisor of Elections, Supervisor Sweat is responsible for overseeing all election matters in Manatee County. On January 29, 2008, the State of Florida is holding a statewide election, which will be undertaken in Manatee County. After the election is held on January 29, 2008, as Supervisor of Elections Supervisor Sweat will be involved in ensuring that all election activities and reporting of results are undertaken.

4. Supervisor Sweat, pursuant to Section 102.141, F.S., is a member of the County Canvassing Board. The Manatee County Canvassing Board is responsible for the review and certification of the election results to the State of Florida. That certification is required to be forwarded on or before February 10, 2008. In the event that there is a recount ordered or a manual recount is required under Section 102.166, F.S., such activities will be undertaken during the week of February 4, 2008. The subpoena issued to Supervisor Sweat directs him to appear in Miami on February 4, 2008.

5. Supervisor Sweat has not been a party in this case. He has not been deposed by either the Plaintiffs or Defendant. Based upon his responsibilities for administering the elections

in Manatee County and the great distance, in excess of 200 miles, Defendant Sweat should be excused from the subpoena issued herein and this Court is requested to quash the subpoena.

6. Defendant Sweat does not believe he has any unique information that he can provide to the Court relative to the Plaintiffs' request for a grace period after the books close on the 29th day before the election. Any testimony he might provide is available through witnesses who have been deposed. As such, he should not be required to appear due to the expense and the excessive time involved, which will detract, if not completely interfere with his responsibilities concerning the January 29, 2008 election, as Supervisor of Elections and as a member of the Manatee County Canvassing Board leading up to the February 10 certification of the election.

7. Counsel for Supervisor Sweat has contacted the Plaintiffs who have issued the subpoena to Supervisor Sweat and they have advised that they will not release him from the subpoena in spite of the foregoing issues.

8. In the alternative to quashing the subpoena, Supervisor Sweat requests this Court to enter an Order protecting him by requiring the Plaintiffs to provide a specific time when Supervisor Sweat will be needed in Miami, so as to minimize the time involved in his travel and presence before this Court and minimize the interference and delay of any

election activities that are required to be undertaken in Manatee County, Florida.

MEMORANDUM OF LAW

Rule 45(c)(3)(A)(iv), Fed. R. Civ. Pro., provides that the court shall quash or modify a subpoena where the subpoena subjects a person to "undue burden." Whether a subpoena subjects a potential witness to undue burden generally raises a question of the subpoena's reasonableness which "requires a court to balance the interests served by demanding compliance with the subpoena against the interests furthered by quashing it." "This balance of the subpoena's benefits and burdens calls upon the court to consider whether the information is necessary and unavailable from any other source." 9A Charles Alan Wright & Arthur P. Miller, Federal Practice and Procedure, § 2463.

Here the burdens imposed on Supervisor Sweat far outweigh the benefit of the testimony being sought by Plaintiffs. The subpoena poses the very real risk of interrupting the operations of the Supervisor of Elections Office in Manatee County during the conduct of a statewide election. Accordingly, the Court should quash the subject subpoena.

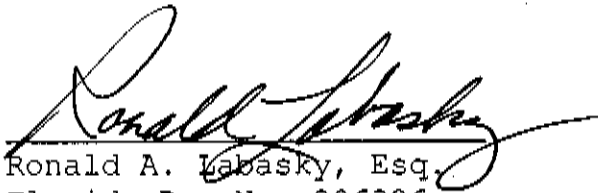
In the instance of Supervisor Sweat, the Plaintiffs certainly had the opportunity to take his deposition and avoid the burden and the inconvenience, as well as the expense

involved in making him travel more than 200 miles to present testimony to this Court. Any testimony that would be presented by Supervisor Sweat will be duplicative of testimony provided by other witnesses in this case. The appearance of Supervisor Sweat, if it involves more than a portion of one day, will interrupt the completion of the election responsibilities required under the Florida Statutes individually by Supervisor Sweat and as a party to the Manatee County Canvassing Board.

Therefore, Supervisor Sweat clearly should be excused from appearance before this Court pursuant to the subpoena issued by the Plaintiffs and that subpoena should be quashed. However, if this Court is inclined to make him come to Miami and appear based upon assertions of his unique knowledge of the issues in this case, then clearly the Court should ensure the Manatee County elections proceed as smoothly as possible and require the Plaintiffs to provide a specified time when Supervisor Sweat can present his testimony to the Court and then return to his responsibilities in Manatee County.

WHEREFORE, Supervisor Sweat moves this Court to quash the subpoena issued to, or in the alternative, to enter an Order directing Plaintiffs to provide him a specific time to be present to testify to avoid unnecessary delays and interference in the elections in Manatee County, Florida.

Respectfully submitted this 29th day of January, 2008.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served this 29th day of January, 2008, on all counsel of record identified on the following Service List via electronic mail or facsimile and U.S. Mail:

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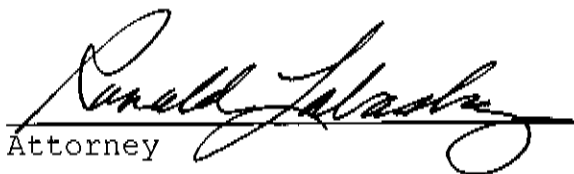
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