

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
PALM BEACH COUNTY SUPERVISOR OF ELECTIONS ARTHUR ANDERSON
AND CHARMAINE KELLY

COMES NOW, Arthur Anderson, Supervisor of Elections of Palm
Beach County (Supervisor Anderson) and Chief Deputy Supervisor
of Elections of Palm Beach County Charmaine Kelly (Kelly), who
move this Court for an Order to protect them from trial

subpoenas issued by the Plaintiffs in this case. As grounds for this Motion, the Defendants would state:

1. Supervisor Anderson was dismissed from this lawsuit pursuant to this Court's Order of October 3, 2007. Plaintiffs in this case served trial subpoenas on Supervisor Anderson and Chief Deputy Kelly on or about January 4, 2008, commanding them to appear at trial beginning February 4, 2008, in Miami, Florida.

2. Arthur Anderson is the Supervisor of Elections in Palm Beach County, which is approximately 75 miles from Miami, Florida. Charmaine Kelly is the Chief Deputy in Palm Beach County and is integrally involved in every aspect of the operation of the Palm Beach County Supervisor of Elections Office.

3. Supervisor Anderson and Kelly were deposed in this case. Those depositions took place on August 9 and 10, 2007. Both depositions were extensive, with Kelly's taking approximately seven hours and Supervisor Anderson's taking three hours.

4. Currently a statewide election is scheduled in Palm Beach County for January 29, 2008. The Presidential Preference Primary to be held that date will also coincide with a significant proposed amendment to the Florida Constitution. Both of the movants herein will be integrally involved in all

aspects of that election on January 29, 2008, and thereafter. Supervisor Anderson is a member of the County Canvassing Board provided for under Section 102.141, Florida Statutes. As a member of the Canvassing Board, Supervisor Anderson must be present in Palm Beach County for all activities related to the certification of the election. Election results are required to be certified to the Division of Elections of the Florida Department of State on February 10, 2008. If there is a recount ordered, the deadline for the initial recount would be Sunday, February 3, 2008 and if a manual recount were required to be undertaken pursuant to Section 102.166, Florida Statutes, such would occur during the week of February 4, 2008, the same week that this case is scheduled to begin trial and the movants herein have been directed to appear before this Court.

5. In addition, following the January 29, 2008 state-wide election, the Palm Beach County Supervisor of Elections will be responsible for the municipal elections for the Town of Palm Beach on February 5, 2008, the municipal elections for the Town of Ocean Ridge on February 12, 2008 and the municipal elections for Jupiter Inlet on February 19, 2008. These municipal elections in three consecutive weeks will require the constant involvement and attention of Supervisor Anderson and Kelly, not only on those specified days, but also for several days in preparation for the elections and for several days subsequent to

the elections, to complete all election activities. Therefore, as reflected in the foregoing, the individuals herein will be involved in administering elections beginning much earlier than January 29, 2008 and extending through the week involving February 19, 2008.

6. Supervisor Anderson made a decision to settle this litigation in order to avoid his continued expense and involvement and the concomitant disruption of the administration of the elections, which coincided with the Trial Court's scheduling of this case on February 4, 2008.

7. As previously stated, the depositions of these two individuals were taken long ago and, as such, are available for use at this trial. While Federal Rule of Civil Procedure 32(a)(3)(b), permits the use at trial of depositions of a party when those individuals are located in excess of 100 miles at the place of the trials, the depositions in this case should be more than sufficient to provide the testimony of these witnesses without requiring them to undertake the time to travel to Miami, as well as the potential interference with the election activities, which are required to be undertaken by Supervisor Anderson and Kelly.

8. In the event that this Court decides not to require the use of the depositions under the circumstances previously stated, Supervisor Anderson and Kelly request that the Court

enter an Order protecting them and requiring Plaintiffs to provide a specified time for Supervisor Anderson and Kelly to be present to provide their testimony to the Court so as to minimize the interference and delay in the election activities in Palm Beach County.

9. Undersigned counsel has conferred with Plaintiffs' counsel, who have advised that they object to using the depositions of the individuals herein. Counsel for Defendant, Secretary of State Browning has advised that Browning does not object to use of the depositions, subject to designation by the parties.

WHEREFORE, Supervisor Anderson and Kelly move this Court to quash the subpoenas issued to them and direct use of their depositions at trial, or in the alternative, to enter an Order directing Plaintiffs to provide them a specific time to be present to testify to avoid unnecessary delays and interference in the elections in Palm Beach County.

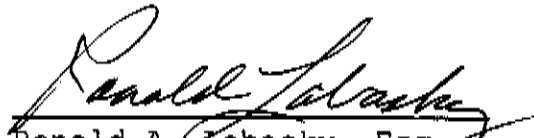
Memorandum of Law

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 Anderson and Kelly 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 Palm Beach County during the conduct of a statewide election and three municipal elections. Moreover, the information being sought from Supervisor Anderson and Kelly is clearly available from another source -- the lengthy depositions taken by Plaintiffs in this proceeding. Accordingly, the Court should quash the subject subpoenas.

Respectfully submitted this 29th day of January, 2008.


Ronald A. Labasky, Esq.
Florida Bar No. 206326
YOUNG VAN ASSENDERP, P.A.
Gallie's Hall
225 South Adams Street
Suite 200
P.O. Box 1833 (32302-1833)
Tallahassee, Florida 32301
Phone: 850/222-7206
Fax: 850/561-6834
Attorney for Defendant
Email: rlabasky@yvlaw.net

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:

SERVICE LIST

Mary Jill Hanson
Hanson, Perry & Jensen, P.A.
400 Executive Center Drive,
Suite 207
West Palm Beach, FL 33401
Tel: 561/686-6550
Fax: 561/686-2802
Email: mjhanson@hpjlaw.com

Judith A. Browne
Sheila Y. Thomas
Elizabeth Westfall
Advancement Project
1730 M Street, NW, Suite 910
Washington, D.C. 20036
Tel: 202/728-9557
Fax: 202/728-9558
Email:
ewestfall@advancementproject.org

Elliot Minberg
People for the American Way
Foundation
2000 M Street, Suite 400
Washington, D.C. 20036
Tel: 202/467-2392
Fax: 202/293-2672
Email: eminberg@pfaw.org

Michael Halberstam, Esq.
Thomas Abt
Paul, Weiss, Rifkind, Wharton,
Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Tel: 212/373-3000
Fax: 202/492-0111
Email: mhalberstam@paulweiss.com
Email: tabt@paulweiss.com

Jonathan P. Hiatt
ALF-CIO
815 Sixteenth Street, NW
Washington, D.C. 20006
Tel: 202-637-5053
Fax: 202/637-5323
Email: jhiatt@aflcio.org

Judith A. Scott
John J. Sullivan
SEIU
1313 L Street, NW
Washington, D.C. 20005
Tel: 202/898-3453
Fax: 202/898-3323
Email: sullivaj@seiu.org

Manny Anon, Jr.
Florida Public Employees
Council
AFSME 79
99 NW 183rd Street, Ste 224
N. Miami, FL 33169
Tel: 305/651-6617
Fax: 305/651-1740
Email: m_anon@afscmefl.org


Peter Antonacci
Allen Winsor
Gray Robinson, P.A.
301 S. Bronough St., Ste 600
P.O. Box 11189
Tallahassee, FL 32302-3189
Tel: 850/577-9090
Fax: 850/577-3311
Email: pva@gray-robinson.com
Email: awinsor@gray-robinson.com

Jeffrey P. Ehrlich
Oren Rosenthal
Assistant County Attorneys
Miami-Dade County Attorney's
Office
111 NW First Street, Ste 2810
Miami, FL 33128
Tel: 305/375-5744
Fax: 305/375-5611
Email: ehrich@miamidade.gov
Email: orosent@miamidade.gov

Burnadette Norris-Weeks
Broward County Attorney's Office
100 S.E. 6th Street
Fort Lauderdale, FL 33301-3422
Tel: 954/768-9770
Fax: 954/768-9790
Email: bnorris199@aol.com

Ernst Mueller
Tracey I. Arpen, Jr.
Scott D. Makar
Office of General Counsel
Duval County, City Hall, St.
James Bldg.
117 West Duval Street, Ste 480
Jacksonville, FL 32202
Tel: 904/630-1700
Fax: 904/630-2388
Email: emueller@coj.net
Email: tarpen@coj.net

Mike Cirullo
David N. Tolces
Orange County Attorney's Office
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, FL 33308
Tel: 954/771-4500
Fax: 954/771-4923
Email: mcirullo@cityatty.com
Email: dtolces@cityatty.com


Attorney