

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

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

EMMA YAIZA DIAZ, et al.

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State of
Florida, et al.

Defendants.

**WILLIAM COWLES, ORANGE COUNTY SUPERVISOR OF ELECTIONS, AND
LINDA TANKO, DEPUTY SUPERVISOR OF ELECTIONS FOR ORANGE COUNTY,
FLORIDA, MOTION TO QUASH TRIAL SUBPOENAS**

COMES NOW, WILLIAM COWLES, ORANGE COUNTY SUPERVISOR OF ELECTIONS (“Cowles”) and LINDA TANKO, DEPUTY SUPERVISOR OF ELECTIONS FOR ORANGE COUNTY, FLORIDA (“Tanko”), by and through their undersigned attorney, and file this Motion to Quash Subpoenas to appear at trial the week of February 4, 2008, pursuant to Federal Rule of Civil Procedure 45(c)(3)(A)(ii), and as grounds thereof would state:

1. Bill Cowles was dismissed as a Defendant in this case pursuant to this Court's October 3, 2007, order. As a result, neither he, nor his office, the Orange County Supervisor of Elections, is a party to the case.

2. On January 4, 2008, counsel for the Plaintiffs forwarded trial subpoenas on the undersigned seeking to compel Bill Cowles, the Orange County Supervisor of Elections, and Linda Tanko, a Deputy Supervisor of Elections for Orange County, to testify in the trial in this matter scheduled for the week of February 4, 2008.

3. Both Bill Cowles and Linda Tanko work and reside in Orange County, Florida, and as a result will be compelled to travel well in excess of 100 miles in order to testify in the trial.

4. On August 6, 2007, Linda Tanko was deposed pursuant to Federal Rule of Civil Procedure 30. On August 7, 2007, Bill Cowles was deposed pursuant to Federal Rule of Civil Procedure 30. Both depositions lasted several hours and all parties were provided an opportunity to question both Bill Cowles and Linda Tanko during their respective depositions.

5. Requiring Bill Cowles and Linda Tanko to travel to Miami to testify in the scheduled trial works an unnecessary hardship on Mr. Cowles and Ms. Tanko, as well as the office of the Orange County Supervisor of Elections. Florida's statewide presidential preference primary will occur on January 29, 2008 – the week prior to the trial week. The election also contains a statewide referendum on a proposed amendment to the Florida Constitution relating to property tax reform, a special primary election for a vacant state house seat, and several local government elections in Orange County.

6. In the event of any recounts, the deadline for the initial recount would be Sunday, February 3, 2008 (§ 102.141(7)(c), Florida Statutes). If a manual recount were still needed

pursuant to § 102.166, Florida Statutes, such would necessarily occur during the week of February 4, 2008, the same week Orange County's Chief Elections Official, Bill Cowles, and one of his key deputies, Linda Tanko, will be forced to travel to Miami and testify in the trial. The special primary election for the vacant state house seat, and the municipal election, could result in recounts that affect solely Orange County.

7. In addition, several state required actions will occur during the week of February 4, 2008, relating to the January 29, 2008, election, including meetings of the Orange County Canvassing Board to certify the election results. Bill Cowles is a member of the Orange County Canvassing Board, along with a County Commissioner and a County Court Judge. §104.121(1), Florida Statutes. The canvassing board is responsible for certifying the election results, and the Orange County Canvassing Board has scheduled its meetings to certify the results for February 7 and 8, 2008.

8. In the event of a recount, Linda Tanko's expertise and presence would be needed in the office, as she oversees absentee and provisional ballots, and her general and extensive knowledge of election administration makes her an invaluable person to address issues that may arise during the conduct of an election and particularly in a review by the Canvassing Board of ballots during a recount.

9. Finally, shortly after the January 29, 2008 election, the Orange County Supervisor of Elections must conduct the special general election for the vacant state house seat on February 26, 2008. This special election will require the processing of absentee ballot requests and the mailing of absentee ballots, as well as coordination of early voting activities. There may also be run-off elections in municipal elections which would be on February 26, 2008, as well.

10. Bill Cowles settled this lawsuit with the Plaintiffs and was dismissed from the case. One of the main motivations in settling the case with Plaintiffs was an avoidance of litigation expense and disruption of his office while attempting to administer elections. Compelling Bill Cowles and Linda Tanko to travel almost 200 miles to testify in a trial in a case that Bill Cowles' office settled and in which both Bill Cowles and Linda Tanko gave several hours of deposition testimony which can be used in the trial pursuant to Rule 32, would work an unreasonable hardship on the two individuals subject to the subpoenas, and in the administration of the elections in Orange County, Florida.

11. Pursuant to Federal Rule of Civil Procedure 32(a)(3)(B), the depositions of Bill Cowles and Linda Tanko may be used at trial or hearing in the event this Court finds that Bill Cowles and Linda Tanko are more than 100 miles away from the place of trial.

12. Given the hardships and circumstances set forth herein as to the potential impact of compelling Orange County's Chief Elections Official and a key deputy to travel approximately 200 miles to testify in the trial in a case in which Bill Cowles was dismissed pursuant to a settlement, the week after a major statewide election that also includes local elections in Orange County, and the fact that the testimony of Bill Cowles and Linda Tanko has been preserved through their lengthy depositions, which may be used in the trial pursuant to Federal Rule of Civil Procedure 32, the subpoenas should, respectfully, be quashed.

13. When a non-party's testimony has been preserved, and that party would be compelled to travel more than 100 miles to testify, the Motion to Quash the Subpoena should be granted. *See Mendez v. Unitrin Direct Property & Cas. Ins. Co.*, 2007 WL 2726900 (M.D. Fla. 2007).

14. Attached hereto are affidavits of Bill Cowles and Linda Tanko, Attachments A and B, respectfully, verifying the allegations set forth within this Motion.

15. Undersigned counsel has conferred with counsel for the parties. Plaintiffs' counsel has indicated that they would not object on the condition that the deposition testimony of Bill Cowles and Linda Tanko may be presented during the trial. Counsel for Defendant has indicated that they take no position on the relief sought in this Motion.

WHEREFORE, Bill Cowles and Linda Tanko respectfully request this Court to enter an Order quashing the subpoenas compelling them to testify in Miami in the trial in this case during the week of February 4, 2008.

Dated this 10th day of January, 2008.

Respectfully submitted,

On Behalf of Defendant, William Cowles
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 10, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices for Electronic filing.

BY: s/ Michael D. Cirullo, Jr.
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