

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-Civ-King

EMMA YAIZA DIAZ *et al.*,

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State of
Florida

Defendant.

**PLAINTIFFS' OPPOSITION TO MOTION FOR PROTECTIVE ORDER
FOR PALM BEACH COUNTY SUPERVISOR OF ELECTIONS
ARTHUR ANDERSON AND CHARMAINE KELLY**

Plaintiff unions, the AFL-CIO, AFSCME, Council 79, and SEIU ("Plaintiffs"), respectfully submit this opposition to the Motion for Protective Order for Palm Beach County Supervisor of Elections Arthur Anderson and Charmaine Kelly.

Supervisors of Elections, like Arthur Anderson, are the chief election officials within their respective counties. Supervisor Anderson is therefore in a position to provide the Court with testimony critical to the central issues in this case: the reasonableness of the state's failure to provide for a grace period. *See* Pre-Trial Stipulation, D.E. No. 304 ¶ 17 (an issue of fact that remains to be litigated at trial is "[t]he precise interests put forward by the State as justifications for the burden imposed by the lack of grace period, and the legitimacy and strength of those interests."). As the Court stated at oral argument on Defendant's motion for summary

judgment, “I’m looking for somebody sitting in that witness stand, sworn to tell the truth, subject to cross-examination” (Pre-Trial Conference hearing on December 7, 2007, 76:8-10) In order to fully understand the issues in this case, the Court must hear from, and ask questions of, multiple Supervisors of Elections. Supervisor Anderson is one such witness.

Attending the trial does not subject Supervisor Anderson to an “undue burden.” Supervisor Anderson lives in West Palm Beach, which is within the Southern District of Florida. Thus, he is properly subject to the subpoena. Fed. R. Civ. P. 45(b)(2)(A). The Presidential Preference Primary is now over. Plaintiffs are not aware of an order for a recount. To be sure, Mr. Anderson has responsibilities going forward, but he can take time from his schedule to testify in this trial, which is of the utmost importance to the voters of Florida. *See Int’l Ass’n of Machinists & Aerospace Workers v. P & B Transport*, No. 3:05-cv-1083, 2007 WL 4145974, *2 (M.D. Fla. Nov. 19, 2007) (denying motion to quash where moving party did not sufficiently demonstrate an undue burden).

Charmaine Kelly is the Chief Deputy of the Palm Beach County Supervisor of Elections office. She has about 20 years of voter registration experience. Aside from Supervisor Anderson, she is the most knowledgeable person with regard to voter registration in Palm Beach County. Her testimony is essential because she has extensive first-hand knowledge of how voter registration is conducted in Palm Beach. The Court needs to hear Ms. Kelly’s testimony in person, as the Court will then have the opportunity to ask its own questions of the witness.

Like Supervisor Anderson, Ms. Kelly lives in West Palm Beach, which is within the Southern District of Florida. Thus, she too is properly subject to the subpoena. Fed. R. Civ. P. 45(b)(2)(A). Both witnesses have responsibilities to their office. However, neither has

demonstrated a burden sufficient to outweigh the value of their in-person testimony in this important case. *See Int'l Ass'n of Machinists & Aerospace Workers*, 2007 WL 4145974 at *2.

Accordingly, Plaintiffs respectfully request that the Court deny the Motion of Arthur Anderson and Charmaine Kelly for a Protective Order.

Dated: Miami, Florida
January 30, 2007

RESPECTFULLY SUBMITTED,

/s/ Robert Harris
Robert Harris, Esq.
Florida Bar No.: 0817783
Stack Fernandez Anderson & Harris, P.A.
1200 Brickell Avenue, Suite 950
Miami, Florida 33131
Telephone: 305-371-0001
Fax: 305-371-0002
E-mail: rharris@stackfernandez.com

*Thomas Abt
*Michael Halberstam
*Sarah Kroll-Rosenbaum
*Sarah Nolan
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Phone: 212-373-3000
Fax: 212-757-3990
E-mail: tabt@paulweiss.com

Attorneys for Plaintiffs
*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent electronically as an email attachment this 30th day of January, 2008, to counsel for the parties listed in Exhibit A, attached hereto.

Dated: Miami, Florida
January 30, 2008

By: /s/ Robert Harris
Robert Harris, Esq.
Florida Bar No.: 0817783
Stack Fernandez Anderson & Harris, P.A.
1200 Brickell Avenue, Suite 950
Miami, Florida 33131
Telephone: 305-371-0001
Fax: 305-371-0002
E-mail: rharris@stackfernandez.com

EXHIBIT A
SERVICE LIST

Counsel for Defendants

Peter Antonacci
Allen C. Winsor
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
P.O. Box 11189
Tallahassee, Florida 32302-3189
Phone: 850-577-9090
Fax: 850-577-3311
email: pva@gray-robinson.com,
awinsor@gray-robinson.com
Attorneys for Secretary of State

Counsel For Plaintiffs

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

Robert Harris, Esq.
Stack Fernandez Anderson
& Harris, P.A.
Suite 950, 1200 Brickell Avenue
Miami, Florida 33131
Phone: 305-371-0001
Fax: 305.371.0002
E-mail: rharris@stackfernandez.com

* Judith A. Browne
* Elizabeth S. Westfall
Advancement Project
1730 M. Street, NW, Suite 910
Washington, DC 20036
Phone: 202-728-9557
Fax: 202-728-9558
email: ewestfall@advancementproject.org

* Thomas P. Abt, Esq.
* Michael Halberstam, Esq.
* Sarah Kroll-Rosenbaum, Esq.
* Sarah A. Nolan, Esq.
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Phone: 212-373-3000
Fax: 212-492-0111
email: mhalberstam@paulweiss.com

** Jonathan P. Hiatt
AFL-CIO
815 Sixteenth Street, NW
Washington, DC 20006
Phone: 202-637-5053
Fax: 202-637-5323
email: jhiatt@aficio.org

Manny Anon, Jr.
Florida Public Employees Council 79
3064 Highland Oaks Terrace
Tallahassee, Florida 32301
Phone: 850-222-0842
Fax: 850-224-6926
email: m_anon@afscmeffl.org

** David Becker
People for the American Way Foundation
2000 M Street, Suite 400
Washington, DC 20036
Phone: 202-467-2360
Fax: 202-293-2672
email: dbecker@pfaw.org

** Judith A. Scott
** John J. Sullivan
SEIU
1313 L. Street, NW
Washington, DC 20005
Phone: 202-898-3453
Fax: 202-898-3323
email: sullivaj@seiu.org

* Admitted pro hac vice.

** Pro hac vice motion to be filed.