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

Plaintiff unions, the AFL-CIO, AFSCME, Council 79, and SEIU ("Plaintiffs"), respectfully submit this response to the Motion to Quash Trial Subpoenas filed by William Cowles, Orange County Supervisor of Elections, and Linda Tanko, Deputy Supervisor of Elections for Orange County, Florida.

Plaintiffs do not object to the relief requested in the motion, provided that the previously-taken deposition testimony of Mr. Cowles and Ms. Tanko may be introduced in lieu of their live testimony. Both witnesses are authoritative election officials who have provided deposition testimony critical to this matter.

According to the Federal Rules, Plaintiffs are permitted to read the deposition testimony of Mr. Cowles and Ms. Tanko at trial. Fed. R. Civ. P. 32(a)(3) (deposition of third-

party witness may be read if court finds the witness is more than 100 miles from the place of trial). Defendant Secretary of State was represented by counsel at the depositions of Cowles and Tanko and thus "had an opportunity and similar motive to develop the testimony" at the depositions. Fed. R. Evid. 804(b)(1). There will be no prejudice to the Defendant as a result of the introduction of this deposition testimony.

It should be noted that Plaintiffs conferred with Defendant Secretary of State about stipulating to the admissibility of such deposition testimony prior to issuing subpoenas to Mr. Cowles and Ms. Tanko. The Secretary refused to enter into such a stipulation.

Accordingly, Plaintiffs respectfully request that the Court grant the Motion of William Cowles and Linda Tanko only if their previously-taken deposition testimony can be introduced at trial.

Dated: Miami, Florida
January 11, 2007

RESPECTFULLY SUBMITTED,

/s/ Robert Harris

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent electronically as an email attachment this 11th day of January, 2008, to counsel for the parties listed in Exhibit A, attached hereto.

Dated: Miami, Florida
January 11, 2008

By: /s/ Robert Harris
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EXHIBIT A

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** Pro hac vice motion to be filed.