

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-CIV-KING/O’SULLIVAN

EMMA YAIZA DIAZ; JOHN LANMAN;
AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS; AMERICAN FEDERATION 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,

Defendant.

**SECRETARY OF STATE’S RESPONSE TO
PLAINTIFFS’ COUNTERSTATEMENT OF FACTS**

Kurt S. Browning, in his official capacity as Secretary of State of the State of Florida (the “Secretary”) respectfully submits this Response to Plaintiffs’ “Counterstatement of Material Facts.” (doc. 294).

1. In support of his Motion for Summary Judgment (the “Secretary’s Motion”), the Secretary submitted his Statement of Material Facts (doc. 283). Local Rule 7.5(A) states that motions for summary judgment “shall be accompanied by . . . a concise statement of the material facts as to which the movant contends there is no genuine issue to be tried.” The party opposing a motion for summary judgment shall include “a single concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.” L.R. 7.5(B).

2. In response to the Secretary’s Motion, Plaintiffs did not submit “a single concise statement of the material facts as to which it is contended that there exists a genuine issue to be tried.” Indeed, they stated in their response to the Secretary’s Motion that “there are no genuine

issues of material fact to be tried.” (Doc. 293 ¶ 2.) Instead, they submitted a paragraph-by-paragraph response to the Secretary’s Statement. But “Local Rule 7.5, unlike [local rules elsewhere], does not specifically require that each fact in dispute be numbered and . . . if applicable state the number of the movant’s fact that is disputed.” *Zapata Indus. v. W.R. Grace & Co.*, 1999 WL 33268643 at n.2 (S.D. Fla. Feb. 4, 1999) (marks and ellipses omitted).

3. More problematic is the Plaintiffs’ inclusion of a 41-paragraph “Counterstatement of Material Facts.” Plaintiffs state that this “Counterstatement” is in support of their cross-motion for summary judgment. As explained in the Secretary’s Reply in support of the Secretary’s Motion, this Court denied Plaintiffs’ motion for leave to file a summary judgment motion after the motions deadline, and it prospectively struck any untimely filing. Plaintiffs had no authority to file a cross-motion, and they had no authority to submit the “Counterstatement.” Both should be stricken. Nonetheless, in an abundance of caution, the Secretary submits this brief response to the “Counterstatement.”

4. Plaintiffs’ “Counterstatement” includes a collection of immaterial facts, legal argument, and generalizations about Florida’s election practices. Its various paragraphs combine to assert that the burden of the book-closing statute on the Plaintiffs’ members is great, that the existing book-closing statute does not serve any legitimate interest, and that the implementation of some “grace period” would be without consequence to the orderly administration of elections in Florida. The Secretary disputes each of these general assertions.

5. The Secretary specifically disputes that any of the Union’s members have suffered concrete injury from the existing book-closing statute. *See Roberts Dec.* ¶¶ 1-7.

6. The Secretary specifically disputes that the existing book-closing statute does not serve any beneficial purpose. *Hollarn Dec.* ¶¶ 5-12; *Browning Dec.* ¶¶ 5-9.

7. The Secretary specifically disputes that some “grace period” could be implemented without consequence to the orderly administration of elections in Florida. *Hollarn Dec.* ¶¶ 5-12;

Browning Dec. ¶¶ 5-9.

8. Notwithstanding their “Counterstatement,” Plaintiffs have not come forward with evidence to create any triable issue of fact regarding any of these issues. Accordingly, summary judgment should be granted in favor of the Secretary.

Respectfully submitted, this fifth day of November, 2007.

/s/ Allen Winsor

Peter Antonacci
Florida Bar No. 280690
Allen Winsor
Florida Bar No. 016295
GRAYROBINSON, P.A.
Post Office Box 11189
Tallahassee, Florida 32302-3189
Telephone: 850-577-9090
Facsimile: 850-577-3311
e-mail: pva@gray-robinson.com
awinsor@gray-robinson.com
Attorneys for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 5, 2007, 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 or pro se parties 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 of Electronic Filing.

/s/ Allen Winsor

Peter Antonacci

Florida Bar No. 280690

Allen Winsor

Florida Bar No. 016295

GRAYROBINSON, P.A.

Post Office Box 11189

Tallahassee, Florida 32302-3189

Telephone: 850-577-9090

Facsimile: 850-577-3311

e-mail: pva@gray-robinson.com

awinsor@gray-robinson.com

Attorneys for the Secretary of State

SERVICE LIST

Diaz, et al. v. Kurt S. Browning, Secretary of State of Florida
Case No. 04-22572-CIV-KING/O'SULLIVAN
United States District Court, Southern District of Florida

Mary Jill Hanson
email: mjhanson@hpjlaw.com
Hanson, Perry & Jensen, P.A.
400 Executive Center Drive, Suite 207
West Palm Beach, Florida 33401
Phone: 561-686-6550
Fax: 561-686-2802
Attorney for Plaintiffs
Service via Notice of Electronic Filing

David Becker
email: dbecker@pfaw.org
People for the American Way Foundation
2000 M. Street, Suite 400
Washington, DC 20036
Phone: 202-467-4999
Fax: 202-293-2672
Attorney for Plaintiffs
Service via E-Mail

Judith A. Browne
Sheila Y. Thomas & Elizabeth Westfall
email: ewestfall@advancementproject.org
Advancement Project
1730 M. Street, NW, Suite 910
Washington, DC 20036
Phone: 202-728-9557
Fax: 202-728-9558
Attorneys for Plaintiffs
Service via E-Mail

Jonathan P. Hiatt
email: jhiatt@aflcio.org
AFL-CIO
815 Sixteenth Street, NW
Washington, DC 20006
Phone: 202-637-5053
Fax: 202-637-5323
Attorney for Plaintiffs
Service via E-Mail

Judith A. Scott
John J. Sullivan
email: sullivaj@seiu.org
SEIU, 1313 L. Street, NW
Washington, DC 20005
Phone: 202-898-3453
Fax: 202-898-3323
Attorneys for Plaintiffs
Service via E-Mail

Manny Anon, Jr.
email: m_anon@afscme-fl.org
Florida Public Employees Council 79
3064 Highland Oaks Terrace
Tallahassee, Florida 32301
Phone: 222-0842
Fax: 224-6926
Attorney for Plaintiffs
Service via E-Mail

Michael Halberstam
Sarah Kroll-Rosenbaum
Thomas P. Abt
email: mhalberstam@paulweiss.com
skroll-rosenbaum@paulweiss.com
tabt@paulweiss.com Paul, Weiss,
Rifkind, Wharton, Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Phone: 212-373-3000
Fax: 202-492-0111
Attorneys for Plaintiffs
Service via Notice of Electronic Filing

Tracey I. Arpen, Jr.
Ernst Mueller
email: tarpen@coj.net
City Hall, St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Phone: 904-630-1700
Fax: 904-630-2388
*Attorneys for Duval County Supervisor of
Elections*
Service via Notice of Electronic Filing

Mike Cirullo
email: mcirullo@cityatty.com
Orange County Attorney's Office
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Phone: 954-771-4500
Fax: 954-771-4923
*Attorney for Orange County Supervisor of
Elections*
Service via Notice of Electronic Filing

Jeffrey P. Ehrlich
email: ehrlich@miamidade.gov
Miami-Dade County Attorney's Office
111 N.W. First Street, Suite 2810
Miami, Florida 33128
Phone: 305-375-5151
Fax: 305-375-5634
*Attorney for Miami-Dade County Supervisor of
Elections*
Service via Notice of Electronic Filing

Burnadette Norris-Weeks
e-mail: bnorris199@aol.com
100 S.E. 6th Street
Ft. Lauderdale, Florida 33301-3422
Phone: 954-768-9770
Fax: 954-768-9790
*Attorney for Broward County Supervisor of
Elections*
Service via Notice of Electronic Filing

Ronald A. Labasky
email: rlabasky@yvvlaw.net
Young Van Assenderp, P.A.
225 S. Adams Street, Suite 200
P.O. Box 1833
Tallahassee, FL 32302
Phone: 850-222-7206
Fax: 850-561-6834
*Attorney for Palm Beach County Supervisor of
Elections*
Service via Notice of Electronic Filing