

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.04-22572-CIV-KING

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EMMA YAIZA DIAZ, <i>et al.</i> ,	:
	:
Plaintiffs,	:
	:
v.	:
	:
KURT S. BROWNING, Secretary of State of	:
Florida, <i>et al.</i> ,	:
	:
Defendants.	:
-----X	

**PLAINTIFF AFL-CIO’S SECOND SUPPLEMENTAL RESPONSES AND
OBJECTIONS TO DEFENDANT SECRETARY OF STATE’S FIRST SET OF
INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff by its attorneys, submits the following Second Supplemental Objections and Responses to Defendant Secretary of State’s First Set of Interrogatories, dated April 24, 2007.

GENERAL OBJECTIONS TO ALL INTERROGATORIES

The following General Objections are incorporated into each Specific Response and Objection as if fully set forth therein:

1. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that they: (a) are improper; (b) are overly broad as to time and content; (c) are unduly burdensome or oppressive; (d) are vague or

ambiguous; (e) are unreasonably cumulative or duplicative; or (f) seek information that is neither relevant to the claims or defenses of any party nor is reasonably calculated to lead to the discovery of admissible evidence, or is immaterial.

2. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent the information sought: (a) is subject to the attorney-client privilege; (b) constitutes work product; (c) was prepared in anticipation of litigation or for trial; or (d) is otherwise privileged or exempt from discovery. In responding to these Interrogatories, Plaintiff does not intend to waive, and shall not be construed as having waived, any privilege or protection, including but not limited to, the attorney-client and work product privileges.

3. Plaintiff objects to the Interrogatories to the extent that they seek the identification of persons including, but not limited to, any of Plaintiff's counsel, who have gained knowledge or information of facts solely by virtue of their participation in this litigation on the grounds that to list such persons is not reasonably calculated to lead to the discovery of information relevant to the claims or defenses of any party, and impermissibly seeks discovery of attorney work product and attorney-client communications.

4. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that they contain undefined or other terminology that is vague, ambiguous or colloquial, insofar as such terminology does not permit Plaintiff to reasonably ascertain the content of the request, rendering the request unduly burdensome and not reasonably calculated to lead to the discovery of admissible

evidence. Nonetheless, Plaintiff will make a good faith effort to interpret and respond to the Interrogatories subject to the limitations stated herein.

5. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that they would impose on it obligations beyond those imposed by applicable provisions of the Federal Rules of Civil Procedure, the Rules of this Court, or the case law interpreting each of them.

6. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that the information sought contains confidential, personal or private, or sensitive business information, or sensitive union membership or political strategy information protected by the First Amendment, or are protected from disclosure by any agreement with respect to confidentiality or nondisclosure. *See, e.g., NAACP v. Alabama*, 357 U.S. 449 (1958); *Talley v. California*, 362 U.S. 60 (1960); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Watchtower Bible & Tract Society v. Village of Stratton*, 536 U.S. 150 (2002).

7. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that they call for information or documents that Plaintiff may not produce pursuant to the law or a court order of any county or jurisdiction in which it does business. Plaintiff will not produce such information or documents without an appropriate court order addressing such confidentiality issues or obligations.

8. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that they call for information outside Plaintiff's possession, custody or control.

9. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that they call for information already in Defendant's possession, custody or control.

10. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that they call for information readily available through public sources, from sources that are more convenient, less burdensome or less expensive, or from sources that are more readily available to Defendant than to Plaintiff.

11. Plaintiff objects to the Interrogatories, and each and every definition and instruction therein, to the extent that they are not narrowly tailored to call for information likely to be in Plaintiffs' possession, custody or control, but rather seek information likely to be in the possession of other parties or non-parties to this action.

12. Plaintiff objects to the Definition of the terms "you," and "your" on the grounds that such definitions are vague, overly broad and unduly burdensome, except insofar as such definitions refer to those Plaintiff entities, subsidiaries, employees or members with significant involvement in voter registration.

13. Plaintiff objects to the Interrogatories to the extent that they are vague, ambiguous, overly broad, unduly burdensome and oppressive, and seek the identities of "all" individuals with knowledge of a particular subject matter, since it is not feasible to identify "all" individuals with knowledge of a particular subject matter.

14. Plaintiff objects to each and every request to the extent that it calls for the production of "all" documents pertaining to a specific subject, on the ground that such language is overbroad and unduly burdensome. Plaintiff will search those files in its

possession, custody, or control where there is a reasonable likelihood that responsive documents may be located.

15. Plaintiff objects to the definition of "2006 Election Cycle" as the "time period beginning on October 4, 2004, and ending on November 7, 2006" on the grounds that it is overly broad and does not reflect accepted practice that the earliest date upon which an election cycle begins is the day following a general election.

16. Plaintiff objects to the Definition of the term "Person" on the grounds that it is vague, overly broad, and unduly burdensome, except insofar as such definition refers to a natural person or legal entity.

17. Plaintiff objects to the Definition of the term "documents" on the grounds that it is vague, overly broad, and unduly burdensome, and to the extent that it would impose on it obligations beyond those imposed by applicable provisions of the Federal Rules of Civil Procedure, the Rules of this Court, or the case law interpreting them.

18. Plaintiff objects to the Definition of the term "communication" on the grounds that it is vague, overly broad and unduly burdensome.

19. Plaintiff objects to the Definition of the term "identify" on the grounds that providing the witness's telephone number; the name address and telephone number of each of the witness's employers; the corporations of which the witness is an officer or director; and each business in which the witness is a principal is vague, ambiguous, and unduly burdensome. To the extent known, Plaintiff will provide the name and title of persons identified herein and their last known address or present contact address.

20. Plaintiff's responses and objections to the Interrogatories are not intended to be, and shall not be construed as, an agreement or concurrence by Plaintiff with Defendant's characterization of any facts, circumstances, and/or legal obligations. Plaintiff also reserves the right to contest any such characterization as inaccurate. Plaintiff further objects to the Interrogatories to the extent that they contain express or implied assumptions of fact or law with respect to matters at issue in this case.

21. The fact that Plaintiff has responded to a particular request shall not be interpreted as implying that responsive documents exist or that Plaintiff acknowledges the propriety of the request.

22. Plaintiff's responses are not intended to, and shall not, be construed as an admission that the information is relevant, material, admissible in evidence or as a waiver of any applicable privilege.

23. The information provided herein is based on Plaintiff's present knowledge, information, and belief. Plaintiff reserves the right to supplement, amend or correct all or any parts of any response provided herein, and reserves the right to object to the admissibility of all or any part of the responses provided herein and any information contained herein.

SPECIFIC OBJECTIONS AND RESPONSES

Interrogatory No. 2: List the names and addresses of all persons who are believed or known by you, your agents, or your attorneys to have any knowledge concerning any of the issues in this action; and specify the subject matter about which the witness has knowledge.

Supplemental Response to Interrogatory No. 2: Plaintiff objects to Interrogatory No. 2 on the grounds that it is vague, overly broad, unduly burdensome and to the extent that it seeks information to which the Defendant Secretary has equal or superior access than the Plaintiff. Subject to, and without waiving any of the foregoing General Objections, Plaintiff supplements its response as follows: Based on information to date and a reasonable inquiry, Plaintiff believes that:

(1) voter registration applicants, including union members, who submitted a voter registration application during the weeks prior to the close of books for the 2004 or 2006 general elections, whose applications were deemed incomplete, and who were unable to correct their applications due to the lack of a grace period, may have knowledge concerning the injuries they suffered, including loss of the right to vote in a particular election, and the circumstances surrounding their injuries. (Exhibit A includes names and addresses of applicants who have been identified as likely to have been injured in 2006; Exhibit B includes names and addresses of applicants from Miami-Dade County who have been identified as likely to have been injured in 2004; Exhibit C includes names and addresses of applicants from Palm Beach County who have been identified as likely to have been injured in 2004; Exhibit D, entitled "Amended Schedule A", contains names of union members who have been identified either as having been injured or as

likely to have been injured and further describes relevant information or documents obtained concerning certain of these individuals);¹

(2) All persons listed in Plaintiff's response and supplemental response to Interrogatory No. 5, No. 6, or in the Exhibits referenced therein and attached hereto, may have knowledge relevant to injury sustained due to the lack of a grace period, including but not limited to Patricia Anne Benvenuto, Deval Brown, Jr., Bladimir Hernandez, Marie Olive Gayle Kirlew, Ramon Rodriquez, Hubert Elie, and Joan Stephenson-Coke, or have knowledge relevant to the feasibility of implementing a grace period, including but not limited to Buddy Johnson, Chuck Smith, Robert Sweat, and Richard Carlberg;

(3) Buddy Johnson, the Supervisor of Elections for Hillsborough County, Chuck Smith, the Systems Administrator for the Supervisor of Elections for Hillsborough County, and Robert Sweat, the Supervisor of Elections for Manatee County (see Declaration of Bob Sweat attached as Exhibit E), may have knowledge concerning their practice in previous election cycles of permitting applicants who submitted incomplete applications prior to the registration deadline to correct their applications after the registration deadline in time to be added to the rolls for the upcoming elections;

(4) The persons deposed in this action may have knowledge concerning issues in this case, including the party deponents, the 30(b)(6) witnesses, and the

¹ Because of the difficulty of obtaining reliable data from the Counties and of obtaining clarification on the data from the Secretary to date, plaintiffs were not able to further refine the data. Hence Exhibits A through C identify applicants likely to have been injured by proxy and includes all applicants whose applications were incomplete and who applied within 30 days of the close of books.

third parties deposed. Plaintiff refers the Defendant Secretary to the transcripts of their depositions for the subject matter of their testimony;

(5) The persons named by the aforementioned deponents in this action during their testimony may have knowledge concerning issues in this case. For the names of these persons and the subject matter of their knowledge, Plaintiffs refer the Defendant Secretary to the content of the relevant deposition testimony.

Plaintiff reserves the right to supplement its response to this Interrogatory if and when additional information comes to its attention.

Interrogatory No. 3: Have you heard or do you know about any statement or remark made by or on behalf of any party to this action, other than yourself, concerning any issue in this action? If so, state the name and address of each person who made the statement or statements, the name and address of each person who heard it, and the date, time, place, and substance of each statement.

Supplemental Response to Interrogatory No. 3:

Plaintiff objects to Interrogatory No. 3 on the grounds that it is vague, overly broad, unduly burdensome. Subject to, and without waiving any of the foregoing General or Specific Objections, Plaintiff supplements its response as follows. Based on information to date and a reasonable inquiry, Plaintiff believes that:

- (1) The Defendant Supervisors of Elections made a joint declaration attached hereto as Exhibit F, and Plaintiff refers the Defendant Secretary to the declaration for its content;
- (2) Richard Carlberg, a former Assistant Supervisor of Elections of Duval County and certain union representatives have previously filed declarations with the court in this litigation, which declarations have thereby already been disclosed

to the Defendant Secretary and Plaintiff refers the Defendant Secretary to the declarations for their content.

Plaintiff reserves the right to supplement its responses to this interrogatory if and when additional information comes to its attention.

Interrogatory No. 5: Identify all persons whom you intend to call as witnesses at trial.

Supplemental Response to Interrogatory No. 5:

Plaintiff objects to Interrogatory No. 5 on the ground that it is premature. Pursuant to the Court's Order of March 5, 2007, Plaintiff need not provide a list of witnesses it intends to call at trial until the parties submit their Pretrial Stipulation on November 30, 2007. Subject to, and without waiving any of the foregoing General and Specific Objections, Plaintiff supplements its response as follows: Plaintiff may call as witnesses at trial all deponents in this action and all persons identified in Plaintiff's response and supplemental response to Interrogatory No. 2, No. 3, No. 6 or the Exhibits referenced therein, including but not limited to Robert Sweat, Buddy Johnson, Chuck Smith, Richard Carlberg, Patricia Anne Benvenuto, Deval Brown, Jr., Bladimir Hernandez, Marie Olive Gayle Kirlaw, Ramon Rodriquez, Hubert Elie, and Joan Stephenson-Coke. Plaintiff reserves the right to call other witnesses at trial.

Interrogatory No. 6: Do you contend that any of your members who timely filed their voter registration applications during 2006 Election Cycle were not placed on the voter rolls and were prevented from casting a vote in the November 2006 elections? If your answer is "yes," please identify each member, and identify all other persons, facts, and documents which support or are related to your contention.

Supplemental Response to Interrogatory No. 6:

Plaintiff objects to this Interrogatory on the grounds that it is vague, overly broad, unduly burdensome, and to the extent that it seeks material that is neither relevant to the claims or defenses of any party nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving any of the foregoing General and Specific Objections, Plaintiff supplements its response as follows. Plaintiff contends that union members who timely filed their applications were denied their right to vote despite having timely filed an application, because of the lack of a grace period. Plaintiff refers the Defendant Secretary to the declarations of Patricia Anne Benvenuto, Bladimir Hernandez, and Marie Olive Gayle Kirlew attached as Exhibits G, H, and I hereto. Further, Plaintiff refers the Defendant Secretary to Exhibits A through D as described in its supplemental response to interrogatory No. 2. Plaintiff reserves the right to supplement its response to this Interrogatory if and when additional information comes to its attention.²

Interrogatory No. 7: Do you contend that any of your members identified in your answer to interrogatory number (6) were prevented from casting a vote in the November 2006 elections because they did not receive timely notice of an error or omission on their application before the general election? If your answer is “yes,” please identify each member and identify all other persons, facts and documents which support or are related to your contention.

Supplemental Response to Interrogatory No. 7: Plaintiff objects to this Interrogatory to the extent that it seeks material that is neither relevant to the claims or defenses of any party nor reasonably calculated to lead to the discovery of admissible

² Plaintiff is unable at this time to further analyze the data provided during discovery by the Secretary and/or the Counties, because of the form in which the data has been provided. Plaintiff reserves the right to provide further disclosures after it obtains clarifications from the Secretary and/or Counties concerning data that the Secretary and/or Counties produced.

evidence. Subject to, and without waiving any of the foregoing General and Specific Objections, Plaintiff refers the Defendant Secretary to its supplemental response to Interrogatory No. 6. Plaintiff reserves the right to supplement its response to this Interrogatory if and when additional information becomes available.³

Interrogatory No. 8: Do you contend that any of your members identified in your answer to interrogatory number (6) were prevented from casting a vote in the November 2006 elections because they were not provided an opportunity to correct their applications deemed incomplete before the general election? If your answer is “yes,” please identify each member and identify all other persons, facts and documents which support or are related to your contention.

Supplemental Response to Interrogatory No. 8: Plaintiff objects to this Interrogatory on the grounds that it is vague and ambiguous as to the term “before the general election”, overly broad, unduly burdensome, and to the extent that it seeks material that is neither relevant to the claims or defenses of any party nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving any of the foregoing General Objections, Plaintiff refers to its supplemental response to Interrogatory No. 6. Plaintiff reserves the right to supplement its response to this Interrogatory if and when additional information becomes available.

Interrogatory No. 9: Please describe in detail your voter registration efforts during the 2006 Election Cycle, identifying all persons, facts and documents which relate to those efforts, including but not limited to, training provided to persons who conducted or otherwise participated in the voter registration drive, the specific steps taken to register voters, efforts to confirm registration after submission of applications, efforts to correct errors or omissions in the applications both before and after submission of those applications, and voter registration goals.

³ Plaintiff is unable at this time to further analyze the data provided during discovery by the Secretary and/or the Counties, because of the form in which the data has been provided. Plaintiff reserves the right to provide further disclosures after it obtains clarifications from the Secretary and/or Counties concerning data that the Secretary and/or Counties produced.

Supplemental Response to Interrogatory No. 9: Plaintiff objects to Interrogatory No. 9 on the grounds that it is vague, overly broad, unduly burdensome, and to the extent that it seeks material that is neither relevant to the claims or defenses of any party nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this Interrogatory in that it improperly seeks the disclosure of sensitive political information of an association engaged in advocacy to a governmental entity in violation of the plaintiff union members' rights under the First Amendment of the United States Constitution. Plaintiff further objects to this Interrogatory on the grounds that it is calculated to subject Plaintiff to harassment, intimidation, and oppression, in that it has the effect of invading, intruding into, and chilling the First Amendment associational and privacy interests of Plaintiff and its constituents. *See, e.g., NAACP v. Alabama*, 357 U.S. 449 (1958); *Talley v. California*, 362 U.S. 60 (1960); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Watchtower Bible & Tract Society v. Village of Stratton*, 536 U.S. 150 (2002). Subject to, and without waiving any of the foregoing General Objections, Plaintiff supplements its response as follows: Plaintiff refers to the deposition testimony of its 30(b)(6) witness. Plaintiff reserves the right to supplement its response to this Interrogatory if and when additional information comes to its attention.

Interrogatory No. 11: Identify all individuals who are not your members but who were initially registered during the 2006 Election Cycle as a result of your voter registration efforts.

Supplemental Response to Interrogatory No. 11: Plaintiff objects to Interrogatory No. 11 on the grounds that it is vague, overly broad, unduly burdensome, and to the extent that it seeks material that is neither relevant to the claims or defenses of any party nor reasonably calculated to lead to the discovery of admissible evidence. Plaintiff

further objects to this Interrogatory on the grounds that it is calculated to subject Plaintiff to harassment, intimidation, and oppression, in that it has the effect of invading, intruding into, and chilling the First Amendment associational and privacy interests of Plaintiff and its constituents. *See, e.g., NAACP v. Alabama*, 357 U.S. 449 (1958); *Talley v. California*, 362 U.S. 60 (1960); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *Watchtower Bible & Tract Society v. Village of Stratton*, 536 U.S. 150 (2002).

Subject to, and without waiving any of the foregoing General Objections, Plaintiff supplements its response as follows: Plaintiff refers to the deposition testimony of its 30(b)(6) witness and to the documents produced concerning its efforts to register individuals who are not its union members. Plaintiff reserves the right to supplement its response to this Interrogatory if and when additional information comes to its attention.

Dated: New York, New York
October 4, 2007

As to Objections:

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

By: 

Michael Halberstam (MH-3488)

1285 Avenue of the Americas
New York, New York 10019-6064
Phone: (212) 373-3000
Fax: 212-492-0111
E-mail: mhalberstam@paulweiss.com

Robert Harris, Esq.
Florida Bar No.: 0817783
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

VERIFICATION

AFL-CIO

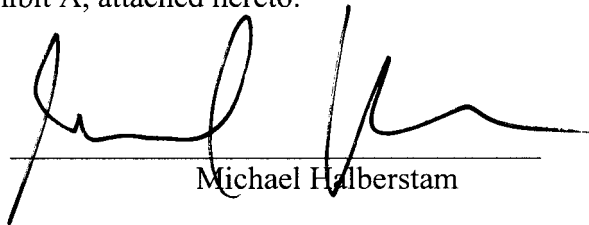
I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 4, 2007.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Second Supplemental Responses and Objections to Defendant Secretary of State's First Set of Interrogatories was sent this 4th day of October, 2007 electronically as an email attachment to counsel for all parties listed in Exhibit A, attached hereto; and a copy of the same document together with the the Exhibits referenced therein were sent via U.S. Mail to counsel for the defendants listed in Exhibit A, attached hereto.

By: _____



Michael Halberstam

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

EXHIBIT A

SERVICE LIST

Counsel for Defendants

Burnadette Norris-Weeks
100 S.E. 6th Street
Ft. Lauderdale, Florida 33301-3422
Phone: 954-768-9770
Fax: 954-768-9790
email: bnorris199@aol.com
*Attorneys for Brenda Snipes, Broward
County Supervisor of Elections*

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

Tracey I. Arpen, Jr.
Deputy General Counsel
City of Jacksonville
City Hall, St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Phone: 904-630-1700
Fax: 904-630-2388
email: tarpen@coj.net
*Attorneys for Jerry Holland, Duval
County Supervisor of Elections*

Ernst Mueller
Office of City Attorney
117 W. Duval Street, Suite 480
Jacksonville, Florida 32202-3700
Phone: 904-630-1700
Fax: 904-630-1731
email: emueller@coj.net
Attorneys for Duval County

Oren Rosenthal
Miami-Dade County Attorney's Office
111 N.W. First Street, Suite 2810
Miami, Florida 33128
Phone: 305-375-5151
Fax: 305-375-5634
email: ehrllich@miamidade.gov
*Attorneys for Lester Sola, Miami-
Dade County Supervisor of Elections*

Michael Cirullo
David N. Tolces
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Phone: 954-771-4500
Fax: 954-771-4923
email: mcirullo@cityatty.com,
dtolces@cityatty.com
*Attorneys for Bill Cowles,
Orange County Supervisor of
Elections*

Ronald A. Labasky
Young Van Assenderp, P.A.
225 S. Adams Street, Suite 200
P.O. Box 1833
Tallahassee, Florida 32302
Phone: 850-222-7206
Fax: 850-561-6834
email: rlabasky@yvlaw.net
*Attorneys for Arthur Anderson, Palm
Beach County Supervisor of Elections*

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

*Michael Halberstam, Esq.
* Adam Skaggs, Esq.
* Thomas P. Abt, 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@aflcio.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

** Pro hac vice motion to be filed.

* Admitted pro hac vice.