

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.

**DEFENDANT BILL COWLES, ORANGE COUNTY SUPERVISOR OF
ELECTIONS, REPLY IN SUPPORT OF MOTION FOR JUDGMENT ON THE
PLEADINGS AND JOINDER IN DEFENDANT SOLA'S REPLY IN SUPPORT OF
MOTION FOR JUDGMENT ON THE PLEADINGS**

COMES NOW the Defendant, BILL COWLES, ORANGE COUNTY SUPERVISOR OF ELECTIONS ("Defendant Cowles"), by and through its undersigned attorney, and files this Reply to the Secretary of State's Opposition to Judgment on the Pleadings and Plaintiffs' Joinder in Opposition, and joins in Defendant Sola's Reply in Support of Motion for Judgment.

As argued by Defendant Sola, the Plaintiffs have cherry-picked a few County Supervisors of Elections to sue in this case, which under Judge Gold's observation in *Friedman v. Snipes*, 345 F. Supp. 2d. 1356 (S.D. Fla. 2004), would result in unequal treatment of registrants relating to the book closing deadlines in Florida directly contradictory to *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525, 148 L.Ed.2d. 388 (2000). For example, if it is necessary for Bill Cowles to be a defendant on the grace period claim in order that he be compelled to adhere to a judgment in this case, then by analogy a Supervisor that is not before this court would not be subject to this

Court's order. That would mean that, for example, Plaintiff Lanman's rights as will be adjudicated by this Court changed as to the grace period claim simply because he moved from Orange County (a County whose Supervisor is a defendant in the case) to Osceola County (a County whose Supervisor is not a defendant in the case).

On the other hand, if the claim is to find the statute (§97.055, Florida Statutes) itself unconstitutional, or if the Plaintiffs were to argue that this Court could order the Secretary of State to enforce its order statewide, this still demonstrates why Defendant Cowles is not a proper party. His authority is limited to only one of the sixty-seven counties in Florida.

There is but one claim remaining in this case as to Defendant Cowles, and it relates solely to what has been phrased as the "grace period" claim. As argued by the Defendant Supervisors of Election, this case involves, at this time, a simple equation:

- The sole cause of action remaining against Defendant Cowles is the "failure to provide a grace period" claim. D.E. 201.
- The Plaintiffs specifically allege in paragraph 137 of their Third Amended Complaint that state law prohibits the Defendant Supervisors of Election from accepting corrections to applications regarding the check boxes after the close of books.
- Defendant Cowles admitted this allegation. D.E. 207, ¶ 137.
- This Court, in its Order dismissing in part the Third Amended Complaint, held that "[u]nder state and federal law, Defendant Supervisors have no discretion and cannot be held liable." D.E. 201, at 15.

The Motion for Judgment on the Pleadings is not too early, or too late. It is right on time.

Defendant Cowles joins in Defendant Sola's Reply in Support of Motion for Judgment on the Pleadings.

Judgment should be entered in favor of Defendant Cowles.

Respectfully submitted,

On Behalf of Defendant, William Cowles
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, FL 33308
Telephone: (954) 771-4500 / Fax: (954) 771-4923

BY: s/ Michael D. Cirullo, Jr.
MICHAEL D. CIRULLO, JR.
Florida Bar No. 973180
e-mail: mcirullo@cityatty.com

DAVID N. TOLCES
Florida Bar No. 0816353
e-mail: dtolces@cityatty.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 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 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.
MICHAEL D. CIRULLO, JR.

SERVICE LIST

Diaz, et al. v. Hood, et al., Case Number 04-22572-CIV-King O'Sullivan

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

Elliot Mincberg
People for the American Way Foundation
2000 M. Street, Suite 400
Washington, DC 20036
Phone: 202-467-2392
Fax: 202-293-2672
Email: eminberg@pfaw.org
Via U.S. Mail

Judith A. Browne
Sheila Y. Thomas & Elizabeth Westfall
Advancement Project
1730 M. Street, NW, Suite 910
Washington, DC 20036
Phone: 202-728-9557
Fax: 202-728-9558
Email: ewestfall@advancementproject.org
Via U.S. Mail

Jonathan P. Hiatt
AFL-CIO
815 Sixteenth Street, NW
Washington, DC 20006
Phone: 202-637-5053
Fax: 202-637-5323
Email: jhiatt@aficio.org
Via U.S. Mail

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
Via U.S. Mail

Manny Anon, Jr.
Florida Public Employees Council
AFSCME 79
99 N.W. 183 Street, Suite 224
N. Miami, FL 33169
Phone: 305 651 6617
Fax: 305 651-1740
Email: m_anon@afscme-fl.org
Via U.S. Mail

Michael Halberstam, Esq.
Paul, Weiss, Rifkind, Wharton,
Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Phone: 212-373-3000
Fax: 202-492-0111
e-mail: mhalberstam@paulweiss.com
Via U.S. Mail

Tracey I. Arpen, Jr.,
Deputy General Counsel
Duval County
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
Via ECF

Ernst Mueller
Office of the City Attorney
Duval County
City Hall, St. James Building
117 West Duval Street, Suite 480
Jacksonville, Florida 32202-3700
Phone: 904-630-1700
Fax: 904-630-1316
Email: emueller@coj.net
Via U.S. Mail

Jeffrey P. Ehrlich
Oren Rosenthal
Assistant County Attorneys
Miami-Dade County Attorney's Office
111 N.W. First Street, Suite 2810
Miami, Florida 33128
Phone: 305-375-5744 – (305) 375-5151
Fax: 305-375-5611 375-5634
Email: ehrlich@miamidade.gov
Via ECF

Stephanie Alexander
Alexis Marie Yarborough
Edward Joseph Pozzuoli, III
Tripp Scott
110 SE 6th Street
15th Floor P.O. Box 14245
Fort Lauderdale, Florida 33302
Via ECF

S. Gale Dick
Steven S. Michaels
Eliza Sporn
Debevoise & Plimpton
919 SE 3rd Avenue
New York, NY 10022
Via U.S. Mail

Richard Perez
Department of State
R.A. Gray Building
The Capitol
PL-01
Tallahassee, Florida 32301
Via U.S. Mail

Peter Antonacci
Gray-Robinson, P.A.
Post Office Box 11189
Tallahassee, Florida 32302-1189
Tel: (850) 577-9090
Fax: (850) 577-3311
Email: pva@gray-robinson.com
Attorneys for Sue M. Cobb
Secretary of State
Via ECF

Ronald A. Labasky, Esq.
Young Van Assenderp, P.A.
225 S. Adams Street, Suite 200
Tallahassee, FL 32301
P.O. Box 1833
Tallahassee, FL 32302
Phone: 850-222-7206
Fax: 850-561-6834
Email: rlabasky@yvlaw.net
Via ECF

Burnadette Norris-Weeks
100 Southeast Sixth Street
Fort Lauderdale, FL 33301-34422
Tel: (954) 768-9770
Fax (954) 768-9790
Email: Bnorris199@aol.com
Via ECF