

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-CIV-KING

EMMA YAIZA DIAZ;
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,

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State of Florida;
BRENDA SNIPES, Broward County Supervisor of
Elections; JERRY HOLLAND, Duval County Supervisor
of Elections; LESTER SOLA, Miami-Dade
Supervisor of Elections; BILL COWLES, Orange County
Supervisor of Elections; and ARTHUR ANDERSON,
Palm Beach County Supervisor of Elections,

Defendants.

ANSWER OF KURT S. BROWNING

Kurt S. Browning, in his official capacity as Secretary of State of the State of Florida (the “Secretary”) files this Answer to the Third Amended Class Action Complaint for Declaratory Relief, Injunctive Relief, and Nominal Damages (Doc. no. 170). The Secretary responds paragraph by paragraph as follows:

I. PRELIMINARY STATEMENT

1. The first portion of Paragraph 1 is merely a characterization of the complaint, to which no response is necessary. Deny that Plaintiffs were ever denied the right to vote because of Defendants’ practices. Deny any remaining allegations.

2. Admit that Diaz is an eligible voter. Without knowledge regarding eligibility of other Plaintiffs, and therefore denied. Deny that Defendants inappropriately refused to process registration applications. Deny any remaining allegations.

3. Admit that some Defendant County Supervisors of Elections designated applications incomplete because individuals had not checked required eligibility boxes. Deny any remaining allegations.

4. Deny.

5. Admit that in some instances Defendant Supervisors of Elections did not allow applicants to correct incomplete applications after the close of books and before the election. Without knowledge as to remaining allegations, and therefore denied.

6. Deny.

7. Admit that the volume of voter registration applications is cyclical, with increases generally preceding registration deadlines. Deny any remaining allegations.

8. Deny.

9. Deny.

10. Deny.

11. Deny.

12. Deny.

13. Admit that the Florida Voter Registration Application Forms used in 2004 and 2006 speak for themselves. Deny any remaining allegations.

14. Deny.

15. Deny.

16. Deny.

17. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

18. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny implication that processing of voter registration applications has been inefficient.

19. Deny.

20. Deny.

21. Paragraph 21 merely characterizes the relief sought, and no response is necessary.

22. Deny.

23. Deny.

II. JURISDICTION AND VENUE.

24. Admit existence of subject matter jurisdiction based on 28 U.S.C. §§ 1331 and 1343(a)(4). Deny jurisdiction under 28 U.S.C. § 1367.

25. Admit for procedural purposes only. Deny that relief is warranted.

26. Admit.

III. THE PARTIES.

A. The Individual Plaintiffs.

27. Admit.

28. Admit.

B. The Union Plaintiffs.

29. The first portion of Paragraph 29 is merely a characterization of the complaint, to which no response is necessary. Deny any remaining allegations.

30. Without knowledge and therefore deny.

31. Admit that content of AFL-CIO Constitution speaks for itself. Deny any remaining allegations.

32. Without knowledge and therefore deny.

33. Without knowledge and therefore deny.

34. Without knowledge and therefore deny.

35. Admit that content of AFSCME International Constitution speaks for itself. Deny any remaining allegations.

36. Without knowledge and therefore deny.

37. Without knowledge and therefore deny.

38. Without knowledge and therefore deny.

39. Without knowledge and therefore deny.

40. Without knowledge and therefore deny.

41. Admit that content of SEUI Constitution speaks for itself. Deny any remaining allegations.

42. Without knowledge and therefore deny.

43. Without knowledge and therefore deny.

C. Defendants.

44. Deny that Sue M. Cobb is the Secretary of State. In January 2007, Kurt S. Browning succeeded Cobb as Secretary of State. Secretary Browning was automatically substituted as a defendant. Admit that Secretary Browning has responsibilities set out in the Florida Election Code, which speaks for itself.

45. Admit that Secretary Browning has statutory duties detailed in the Florida Election Code, which speaks for itself. Admit that Secretary Browning has certain obligations under federal law, which speaks for itself. Deny any remaining allegations.

46. Admit that Secretary Browning has certain rulemaking authority detailed in the Florida Election Code, which speaks for itself. Deny any remaining allegations.

47. Admit that Secretary Browning has statutory duties detailed in the Florida Election Code, which speaks for itself. Admit that Secretary Browning has certain obligations under federal law, which speaks for itself. Deny any remaining allegations.

48. Admit that Secretary Browning has statutory duties detailed in the Florida Election Code, which speaks for itself. Admit that Secretary Browning has certain obligations under federal law, which speaks for itself. Deny any remaining allegations.

49. Admit.

50. Admit.

51. Admit that Supervisors of Elections have certain statutory duties detailed in the Florida Election Code, which speaks for itself. Deny any remaining allegations.

52. Admit that Supervisors of Elections have certain statutory duties detailed in the Florida Election Code, which speaks for itself. Deny any remaining allegations.

53. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

IV. LEGAL BACKGROUND

54. Paragraph 54 states only legal conclusions, to which no response is necessary.

A. Defendants' Unlawful Actions, Insufficient Notice, and Lack of Grace Period

55. Admit.

56. Admit.

57. Admit that Supervisors of Elections have certain statutory duties detailed in the Florida Election Code, which speaks for itself. Deny any remaining allegations.

58. Admit that counsel for former Secretary Hood sent a letter on September 28, 2004 addressing certain registration requirements. Admit that September 28, 2004 letter, a copy of which is attached to the initial Complaint (DE 1) speaks for itself. Deny any remaining allegations.

59. Deny.

60. Admit that the Florida Election Code speaks for itself. Deny any remaining allegations.

61. Admit that the Florida Election Code speaks for itself. Deny any remaining allegations.

62. Admit that the volume of registration applications submitted is cyclical, with increases generally preceding registration deadlines. Deny any remaining allegations.

63. Deny.

64. Without knowledge and therefore deny.

65. Without knowledge and therefore deny.

66. Without knowledge and therefore deny.

67. Without knowledge and therefore deny.

68. Deny.

69. Deny.

70. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

71. Without knowledge of the definition of the term “efficiency” with respect to voter registration applications and therefore deny. Deny to the extent the Plaintiffs allege that the pre-2006 Florida voter registration system was not “efficient.”

72. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

73. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

74. Deny.

75. Deny.

76. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

77. Paragraph 77 states only legal conclusions, to which no response is necessary.

78. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

79. Deny.

80. Admit the existence of the Florida Division of Elections’ Guide to FVRS (Sept. 7, 2005), which speaks for itself. Deny any remaining allegations.

81. Deny.

82. Deny.

B. The Mental Incapacity Box¹

83. The form attached to the Third Amended Complaint speaks for itself. Deny any remaining allegations.

84. Deny.

85. The form attached to the Third Amended Complaint speaks for itself. Deny any remaining allegations.

86. Admit that Supervisor Defendants refused to process voter registration applications on which the applicant failed to check the mental incapacity box. Deny any remaining allegations.

87. Deny.

88. Without knowledge and therefore deny.

89. Deny.

90. Deny.

91. Deny.

92. Without knowledge as to disposition of guardianship petitions in Florida and therefore deny. Deny any remaining allegations.

93. Deny.

94. Admit state interest in determining voter eligibility and excluding ineligible applicants from voting. Deny any remaining allegations.

95. Deny.

96. Deny.

¹ All claims relating to the mental incapacity box were dismissed by the Court's February 27 Order (Doc. no. 201.) Nonetheless, because the remaining claim incorporates these paragraphs, (Compl. ¶ 135) the Secretary answers these allegations.

97. Deny.

98. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

99. Admit that Defendants have statutory duties detailed in the Florida Election Code, which speaks for itself. Deny any remaining allegations.

100. Deny.

101. Admit that effective in 2006, the Florida Election Code was amended. The current law speaks for itself. Deny any remaining allegations.

102. Deny.

103. The form attached to the Third Amended Complaint speaks for itself. Deny any remaining allegations.

C. The Plight of the Individual Plaintiffs

104. Without knowledge and therefore deny.

105. Without knowledge and therefore deny.

106. Without knowledge and therefore deny.

D. The Harm to the Injured Union Members

107. Deny.

108. Without knowledge and therefore deny.

109. Without knowledge and therefore deny.

110. Without knowledge and therefore deny.

111. Without knowledge and therefore deny.

112. Without knowledge and therefore deny.

113. Without knowledge and therefore deny.

114. Deny.

115. Without knowledge and therefore deny.

116. Without knowledge and therefore deny.

117. Without knowledge and therefore deny.

118. Deny.

119. Without knowledge and therefore deny.

120. Paragraph 120 is merely a characterization of the Complaint, to which no response is necessary.

121. Paragraph 121 is merely a characterization of the Complaint, to which no response is necessary.

122. Deny.

123. Deny.

124. Deny.

125. Deny.

126. Deny.

127. Deny.

128. Deny.

V. FIRST CAUSE OF ACTION FOR FAILURE TO PROVIDE ADEQUATE NOTICE AND AN OPPORTUNITY TO CORRECT IN 2004²

129. The Secretary repeats each and every response in the foregoing paragraphs 1 through 128 above as if fully set forth herein.

130. Paragraph 130 states only legal conclusions, to which no response is necessary.

² All claims against the Secretary for conduct occurring in 2004 have already been dismissed. *See* Doc. no. 167.

131. Deny.

132. Deny

133. Deny.

134. Deny.

VI. SECOND CAUSE OF ACTION FOR FAILURE TO PROVIDE ADEQUATE NOTICE AND AN OPPORTUNITY TO CORRECT IN 2006

135. The Secretary repeats each and every response in the foregoing paragraphs 1 through 128 above as if fully set forth herein.

136. Paragraph 136 states only legal conclusions, to which no response is necessary.

137. Paragraph 137 states only legal conclusions, to which no response is necessary.

138. Deny.

139. Deny.

140. Deny.

141. Deny.

142. Deny.

143. Deny.

VII. THIRD CAUSE OF ACTION RELATING TO THE MENTAL INCAPACITY CHECKBOX³

144. The Secretary repeats each and every response in the foregoing paragraphs 1 through 128 above as if fully set forth herein.

145. Paragraph 145 states only legal conclusions, to which no response is necessary.

146. Admit that some individuals failed to check the mental incapacity checkbox and that such applications are incomplete. Deny any remaining allegations.

³ All claims relating to the mental incapacity checkbox have already been dismissed. *See* Doc. no. 201.

147. Deny.

148. Deny.

149. Deny.

150. Deny.

151. Deny.

152. Deny.

153. Deny.

154. Deny.

155. Deny.

The Secretary specifically denies each and every allegation not specifically admitted above, including any allegations in the Prayer for Relief and the Wherefore paragraphs following paragraph number 155.

Respectfully submitted, this 29th day of March, 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

Phone: 850-577-9090

Fax: 850-577-3311

Email: pva@gray-robinson.com

awinsor@gray-robinson.com

Attorneys for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been served electronically through the Court's CM/ECF system or by United States mail this 29th day of March, 2007, to the following:

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

Elliot Minberg
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

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

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

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

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

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

Jeffrey P. Ehrlich
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: ehrich@miamidade.gov

Burnadette Norris-Weeks
100 S.E. 6th Street
Ft. Lauderdale, Florida 33301-3422
Phone: 954-768-9770
Fax: 954-768-9790
e-mail: bnorris199@aol.com

Ronald A. Labasky
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
email: rlabasky@yvlaw.net

Tracey I. Arpen, Jr.
Cindy A. Laquidara
Office of General Counsel
City of Jacksonville
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Phone: 904-630-1700
Fax: 904-630-2388
email: tarpen@coj.net

Mike Cirullo
Goren, Cherof, Doody & Ezrol
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Phone: 954-771-4500
Fax: 954-771-4923
email: mcirullo@cityatty.com

/s/ Allen Winsor

Allen Winsor