

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.

**SECRETARY OF STATE'S STATEMENT OF MATERIAL
FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Kurt S. Browning, in his official capacity as Secretary of State of the State of Florida (the "Secretary"), pursuant to Federal Rule of Civil Procedure 56 and Local Rule 7.5, and in support of the motion for summary judgment (the "Motion"), filed concurrently with this document, submits this statement of the material facts as to which there is no genuine issue to be tried.

1. No Union Plaintiff has identified a member who submitted a voter registration application before the book-closing deadline for the 2006 November election, who failed to mark the required checkboxes, and who subsequently attempted to correct the application after book-

closing but before the election and then attempted to vote. *See* Plaintiffs Response to Interrogatories (attached to the Motion as Composite Exhibit 2) at 7 (identifying only members who *may* have been injured); Rule 30(b)(6) deposition of AFL-CIO at 31 (attached to the Motion as Exhibit 10); Rule 30(b)(6) deposition of AFSCME Council 79 at 63 (attached to the Motion as Exhibit 11); Rule 30(b)(6) deposition of SEUI at 30-32 (attached to the Motion as Exhibit 12).

2. None of the three Union Members who submitted declarations in this case were affected by the absence of a “grace period” to correct missing checkboxes. Roberts Declaration (attached to the Motion as Exhibit 3), ¶ 12.

3. All three of the Union Members who submitted declarations in this case submitted applications that were not deemed incomplete because of missing checkboxes. Roberts Dec. ¶ 12.

4. The following nineteen individuals voted in the 2006 election: Lorenzo Sharpe; Anna Stasiulis; Jane Cohen; Brinsfeld Jones; Karen Pantin; Mike Douthat; Rosa Cruz; Zoya Newell; Martha Sanchez; Ernest Hitchlock; Jasma Cineus; Garcia Ondina; Michael Bean; Claudette Dixon; Thomas Schendera; Thelma Battick; Geraldine Root; Timothy Deguise; and Derrick Fraser. Roberts Dec. ¶ 7.

5. The following ten individuals were registered in time to vote in 2006 but did not do so: Jason Freeman; Alexis Ramirez; Charles Houghtaling; Deval Brown, Jr.; Bladimir Hernandez; Amos Pierre; Victoria Herrera Rodriguez; Eric Toy; Lilliam Avello; and Juan Alberto Llossas. Roberts Dec. ¶ 8.

6. The following sixteen individuals submitted applications that were incomplete without regard to the challenged checkboxes: Sergio Hrvatin (incomplete date of birth; left drivers license/ssn blank); Jonathan Nilo (left drivers license/ssn blank); Michael Walker (left

drivers license/ssn blank); Christopher Martin (left drivers license/ssn blank); Gwendolyn Foote (left address incomplete); Heather Buchanan (left drivers license/ssn blank); Hiroshima Soto (left drivers license/ssn blank); Edony Princivil (left drivers license/ssn blank); Nakia Sutton (left drivers license/ssn blank); Zita Bilibio (left drivers license/ssn blank); Jan Rokyta (left drivers license/ssn blank); John Stephenson-Coke (left drivers license/ssn blank); Brian Kelly Grimm (left drivers license/ssn blank); Hubert Elie (left drivers license/ssn blank); Madeline Jozile (left drivers license/ssn blank); and David Fleuriot (left drivers license/ssn blank). Roberts Dec. ¶ 9.

7. The following ten individuals submitted drivers license or social security numbers that failed to match government records: Teresa Waters-Cain; Vinolia Dawkins; Mayorie Saavedra; Patricia Benvenuto; Terrell Hart; Jose Herrera; Juana De Jesus; Marie Olive Gayle; Pierre Phillippe-Auguste; and Charlennessie Carrion. Roberts Dec. ¶ 10.

8. Supervisors of Election have come to rely on the book closing deadline to prioritize, manage and staff all the duties that must be accomplished, in specific order, prior to election day. Hollarn Dec. ¶ 5 (attached to the Motion as Exhibit 7).

9. The book closing deadline gives the Supervisors of Elections offices certainty to finalize the voter lists, including the newly registered, while at the same time permitting concentration on the enormous workload that accumulates in advance of any election. The book closing deadline contributes to the management of this workload spike during the four weeks prior to an election. Hollarn Dec. ¶ 6.

10. The four weeks before the election comprise the most tumultuous period of the year for the Supervisors of Elections. All the necessary and interlocking duties that are required to run a successful election compress into the final four weeks before the election. The duties

and responsibilities presented during that time frame visit enormous pressure and stress upon all the employees of each Florida Supervisor of Elections. Hollarn Dec. ¶ 7.

11. All of the pre-election tasks put tremendous strain on the Supervisors and staff. Hollarn Dec. ¶ 10.

12. Since January 1, 2006, only 12 persons out of a total of 12,430 new registrants (*i.e.*, less than one tenth of one percent) in Okaloosa County have failed to complete the voter registration application due solely to the failure to check one of the three check boxes. Hollarn Dec. ¶ 11.

13. The Supervisors' preparation of the final precinct registers for each precinct is an exacting task. The precinct register lists all voters permitted to vote in that precinct. Adding new voters to precinct registers after book closing would add a level of burden and complication that will make for errors on election day. Hollarn Dec. ¶ 9.

14. Early voting begins and ends during the book-closing period. Early voting must be supervised and staffed. Early voting, which began 2000, represents a workload and management challenge to each Supervisor beginning fifteen days before election day. Hollarn Dec. ¶ 9.

15. The book closing deadline is an essential tool in conducting an accurate, reliable and orderly election. Dec. ¶ 12.

16. The voter registration book closing deadline, Fla. Stat. § 97.055 (2006), provides a critical pre-election benchmark whereby the Supervisors of Elections have virtual certainty with respect to the number of voters in the county, and by precinct, whom they must service for absentee balloting, early voting, and election day voting. The Supervisors rely on this certainty as a means of organizing, prioritizing and managing the numerous pre-election day

responsibilities, particularly those occurring during the last four weeks before election day.

Their careful attention to these administrative duties promotes the interest of orderly elections and helps to prevent fraud. Browning Declaration ¶ 5 (attached to the Motion as Exhibit 8).

17. The voter registration process, particularly book closing, has been scheduled by the Legislature to work in concert with the numerous other responsibilities found in the election code. Browning Dec. ¶ 6.

18. The book closing deadline is an essential tool in the conduct of credible, orderly and reliable elections in Florida. Browning Dec. ¶ 9.

Respectfully submitted, this 8th day of October, 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 8th day of October, 2007 (with mail to post on October 9, 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

David Becker
People for the American Way Foundation
2000 M. Street, Suite 400
Washington, DC 20036
Phone: 202-467-2392
Fax: 202-293-2672
email: dbecker@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@aflcio.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

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: ehrllich@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