

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-Civ-King

EMMA YAIZA DIAZ et al.,

Plaintiffs,

v.

KURT S. BROWNING, Secretary of State of
Florida, et al.,

Defendants.

**MOTION FOR AN ORDER
EXTENDING THE
MOTIONS DEADLINE**

Plaintiffs move for an Order extending the deadline for filing motions until October 18, 2007. In support of the motion, Plaintiffs state as follows:

1. On October 3, 2007, Defendant Kurt S. Browning, the Secretary of State of the State of Florida, moved for an Order extending the deadline for filing motions until October 18, 2007. Plaintiffs joined that motion on October 4, 2007.

2. On October 8, 2007, without waiting for the Court's ruling on his motion, Defendant Browning submitted motions for summary judgment and to exclude witnesses, thereby mooting his motion of October 3, 2007.

3. Plaintiffs are unsure why Defendant Browning did not wait for the Court's ruling, but the reasoning, logic, and fairness set out in the motions of both parties with regard to extending the motions deadline remain the same. Moreover, Plaintiffs' reasonable request for an extension should not be prejudiced by Defendant Browning's eleventh hour reversal.

4. Given that Defendant Browning's motion is now moot, Plaintiffs hereby withdraw their joinder and move in their own right for an extension of the motions deadline.

5. Among others, Plaintiffs intend to submit their own motion for summary judgment, but first require transcripts from depositions conducted in the past week and one from Supervisor Buddy Johnson which is scheduled, as per the Court's Order, for October 12, 2007. Additionally, Plaintiffs require time to review documents that were timely submitted at the close of discovery, documents produced by nonparties after the close of discovery and documents that have been promised but not yet delivered by nonparties and Defendant Browning.¹

6. Plaintiffs recognize that the Court may grant them summary judgment as non-movants. *See Massey v. Congress Life Ins. Co.*, 116 F.3d 1414, 1417 (11th Cir. 1997) ("The critical question is not whether the district court had the power to grant summary judgment *sua sponte* in favor of a nonmoving party. District courts unquestionably possess the power to trigger summary judgment on their own initiative."). Nevertheless, Plaintiffs believe the Court should have the benefit of a fully-developed and complete evidentiary record when deciding such an important question, and that Defendant Browning should have an adequate opportunity to respond. *Id.* ("At the same

¹ On October 5, 2007, Plaintiffs received over one thousand pages of responsive material from former defendant Dr. Brenda Snipes. Plaintiffs have yet to receive certain data from the Department of Highway Services and Motor Vehicles, as well as certain electronic mail promised by Defendant Browning. Unlike Defendant Browning, Plaintiffs do not seek to exclude relevant evidence from consideration, even if produced shortly after the close of discovery. Instead, Plaintiffs simply require a short extension in order to account for this material.

time, however, district courts must temper their exercise of that power by the need to ensure that the parties receive adequate notice that they must bring forward all of their evidence.”)

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Defendant Browning’s motion and enter an Order extending the deadline for filing motions until October 18, 2007.

Dated: New York, New York
October 9, 2007

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via U.S. mail this 9th day of October, 2007, to counsel for the parties listed in Appendix A, attached hereto.

By: /s/ Robert Harris

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** Pro hac vice motion to be filed.

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