

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 04-22572-CIV-KING/O'SULLIVAN

EMMA YAIZA DIAZ et al.,

Plaintiffs,

v.

SUE M. COBB, Secretary of State  
of Florida, et al.,

Defendants.

---

**MOTION FOR MORE DEFINITE STATEMENT  
AND SUPPORTING MEMORANDUM OF LAW BY DEFENDANT  
LESTER SOLA, MIAMI-DADE COUNTY SUPERVISOR OF ELECTIONS**

The Second Amended Class Action Complaint for Declaratory Relief, Injunctive Relief, and Nominal Damages (the “Second Amended Complaint”)—like each of its predecessors—is a “shotgun” pleading, the type of which is simply not permitted in the Eleventh Circuit. Because it is not possible to meaningfully respond to such a pleading, Defendant Lester Sola, Miami-Dade County Supervisor of Elections (“Supervisor Sola”), pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, moves for a more definite statement.<sup>1</sup>

The Second Amended Complaint contains 173 paragraphs (not including subparts or the three-page “Prayer for Relief”), and asserts seven claims against six Defendants. In the first paragraph of each claim, Plaintiffs “repeat and reallege each and every allegation in the foregoing paragraphs.” See Second Am. Compl. ¶¶ 144, 148, 151, 156, 160, 163, 168. Plaintiffs’ incorporation of every allegation into every count renders the Second Amended Complaint a shotgun pleading, in violation of the practice in this Circuit.

As the Eleventh Circuit has explained,

The typical shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (i.e., all but the first) contain irrelevant factual allegations and legal conclusions. Consequently, in ruling on the sufficiency of a claim, the trial court must sift out the irrelevancies, a task that can be quite onerous.

---

<sup>1</sup> Should Plaintiffs correct their deficient pleading, Supervisor Sola intends to file a response, as he is permitted to do under the Federal Rules of Civil Procedure.

Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp., 305 F.3d 1293, 1295 (11th Cir. 2002). Indeed, the Eleventh Circuit is well aware of the negative effects that shotgun pleadings have on the district courts. See, e.g., Byrne v. Nezhad, 261 F.3d 1075, 1131 (11th Cir. 2001) (“Shotgun pleadings, if tolerated, harm the court by impeding its ability to administer justice. The time a court spends managing litigation framed by shotgun pleadings should be devoted to other cases waiting to be heard.”); Cramer v. Florida, 117 F.3d 1258, 1263 (11th Cir. 1997) (observing that “[s]hotgun pleadings . . . exact an intolerable toll on the trial court’s docket”).

Because shotgun pleadings place such burdens on the courts and the defendants who must respond to them, they have been consistently frowned upon by the Eleventh Circuit. See Strategic Income Fund, 305 F.3d at 1295 n.9 (citing cases and noting that the court “has addressed the topic of shotgun pleadings on numerous occasions in the past, often at great length and always with great dismay”); see also Lumley v. City of Dade City, 327 F.3d 1186, 1192 n.13 (11th Cir. 2003) (observing that court has “repeatedly condemned” shotgun pleadings); Magluta v. Samples, 256 F.3d 1282, 1283 (11th Cir. 2001) (recognizing that shotgun pleadings in the Eleventh Circuit have been “condemned repeatedly, beginning at least as early as 1991”).

For these reasons, the Eleventh Circuit has suggested that a district court confronted with a shotgun complaint should require the plaintiff to try again. See Lumley, 327 F.3d at 1192 n.13 (“We . . . suggest that, when faced with such a pleading, the district court, acting on its own initiative, require a repleader.”); Byrne, 261 F.3d at 1129 (holding that when a district court is faced with a shotgun complaint, it should—either in response to a defendant’s motion for more definite statement or on its own initiative—require repleader).<sup>2</sup>

This is exactly what the Court should do here. Plaintiffs’ pleading consists of seven counts, each of which incorporates all of the preceding paragraphs of the pleading. The result of Plaintiffs’ pleading practice is that several counts contain allegations that are relevant only to preceding counts. As just one example, in Plaintiffs’ “Fourth Cause of Action,” a constitutional vote denial claim based on conduct in 2006, Plaintiff alleges that Plaintiff Emma Yaiza Diaz had her voter registration application unlawfully rejected in 2004. See Second Am. Compl. ¶ 156

---

<sup>2</sup> In cases where the district court allowed the plaintiffs to proceed on their shotgun pleadings, the Eleventh Circuit has vacated judgments and remanded with instructions to begin all over again. See, e.g., Magluta, 256 F.3d at 1284 (“In the past when faced with complaints like this one, we have vacated judgments and remanded with instructions that the district court require plaintiffs to replead their claims.”).

(incorporating by reference, among others, paragraph 152). Obviously, allegations about what occurred in 2004 have nothing to do with whether Plaintiffs were unconstitutionally denied the right to vote in 2006. In situations such as this, striking the Complaint is appropriate. See, e.g., Magluta, 256 F.3d at 1284-85; Delgado v. Miami-Dade County, Case No. 05-23061-CIV, 2005 WL 3871599, at \*1 (S.D. Fla. Dec. 21, 2005) (Moore, J.) (granting Miami-Dade County's motion to strike a shotgun pleading).

Because Plaintiffs' Second Amended Complaint is a shotgun pleading, this Court should require Plaintiffs to replead and to provide a more definite statement of their claims.

Respectfully submitted,

MURRAY A. GREENBERG  
MIAMI-DADE COUNTY ATTORNEY

By: s/. Jeffrey P. Ehrlich  
Jeffrey P. Ehrlich  
Oren Rosenthal  
Assistant County Attorneys  
Florida Bar No. 51561 & 86320  
Miami-Dade County Attorney's Office  
111 N.W. 1st Street, Suite 2810  
Miami, Florida 33128  
Telephone: (305) 375-5744  
Facsimile: (305) 375-5611  
Email: ehrlich@miamidade.gov

**CERTIFICATION OF COUNSEL**

I hereby certify that I have conferred with counsel for Plaintiff in a good faith effort to resolve the issues raised in this motion but have been unable to do so.

s/. Jeffrey P. Ehrlich  
Assistant County Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by mail on May 15, 2006 on all counsel or parties of record on the attached Service List.

s/. Jeffrey P. Ehrlich  
Assistant County Attorney

## SERVICE LIST

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

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

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

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  
email: mhalberstam@paulweiss.com

Mike Cirullo  
Orange County Attorney's Office  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Phone: 954-771-4500  
Fax: 954-771-4923  
email: mcirullo@cityatty.com

Elliot Mincberg  
People for the American Way Foundation  
2000 M. Street, Suite 400  
Washington, FC 20036  
Phone: 202-467-2392  
Fax: 202-293-2672  
email: emincberg@pfaw.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

Manny Anon, Jr.  
Florida Public Employees Council 79  
3064 Highland Oaks Terrance  
Tallahassee, Florida 32301  
Phone: 222-0842  
Fax: 224-6926  
email: m\_anon@afscmeffl.org

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

Jeffrey P. Ehrlich  
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: ehrlich@miamidade.gov

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

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

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  
Peter Antonacci  
Allen C. Winsor  
GrayRobinson, P.A.  
301 South Bronough Street, Suite 600  
P.O. Box 11189  
Tallahassee, FL 32302-3189  
Phone: 850-222-7717  
Fax: 850-222-3494  
email: pva@gray-robinson.com