

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
(NAACP), as an organization and representative
of its members; *et al.*;

Plaintiffs,

v.

CASE NO. 4:07CV-402-SPM/WCS

KURT S. BROWNING, in his official capacity as
Secretary of State for the State of Florida,

Defendant.

**SECRETARY OF STATE'S MOTION TO
COMPEL ANSWERS TO INTERROGATORIES**

Pursuant to Federal Rule of Civil Procedure 37, Defendant Kurt S. Browning, in his official capacity as Secretary of State for the State of Florida (the "Secretary"), respectfully moves this Court for an order compelling Plaintiffs to answer interrogatories and to produce documents. In support of this Motion, the Secretary states as follows:

1. On October 3, 2007, the Secretary served its First Set of Interrogatories on the Plaintiffs. Plaintiffs served their responses on October 19, 2007.

2. Interrogatory No. 1 asked:

If you contend that Section 97.053(6), Florida Statutes, has prevented one or more of your members from voting, please identify such member(s) and identify the facts and circumstances surrounding his or her efforts to register to vote.

3. Plaintiffs¹ refused to answer, objecting to Interrogatory No. 1 as follows:

Plaintiff objects to Interrogatory No. 1 insofar as it presumes that Plaintiff is required to show that it has been injured in the past. Subject to, and without waiver of, the foregoing General Objections and this Specific Objection, Plaintiff responds as follows: Based on information to date and a reasonable inquiry, Plaintiff has reason to believe that it has identified members whose rights to vote were burdened or denied by Section 97.053(6), Fla. Stat. (“Subsection 6”). However, the information that will confirm this inquiry is in the possession of the Secretary of State and/or the Supervisor of Election (sic) for the county in which the member submitted her voter registration application. Further, Plaintiff will only release information relating to the identity of any of its members under the terms of an appropriate protective order. If additional information becomes available, Plaintiff will produce the information pursuant to its obligations under federal and local civil rules of procedure and the entry of an appropriate protective order.

(emphasis added). Thus, Plaintiffs refused to answer Interrogatory No. 1 on the ground that a protective order was necessary to secure their identities of its members from public disclosure. Plaintiffs’ suggestion that they are not required as a matter of law to show injury and that their belief that members’ rights have been burdened or denied can be confirmed by information in the possession of the Secretary are simply not legitimate objections.

4. Interrogatory No. 2 asked:

If you contend that Section 97.053(6), Florida Statutes, has presented substantial burdens to one or more of your members, please identify such member(s) and identify the specific burdens faced.

5. Plaintiffs refused to answer, objecting to Interrogatory No. 2 as follows:

Plaintiff objects to Interrogatory No. 1 insofar as it presumes that Plaintiff is required to show that it has been injured in the past. Subject to, and without waiver of, the foregoing General Objections and this Specific Objection, Plaintiff responds as follows:

¹ For purposes of this Motion, any reference to “Plaintiffs” excludes the Southwest Voter Registration Education Project, which objected on the ground that it is not a membership organization and therefore has no members. The Secretary does not challenge this assertion.

* * *

Based on information to date and a reasonable inquiry, Plaintiff has reason to believe that it has identified members whose rights to vote were burdened or denied in the past by Subsection 6. However, the information that will confirm this inquiry is in the possession of the Secretary of State and/or the Supervisor of Election (sic) for the county in which the member submitted her voter registration application. Further, Plaintiff will only release information relating to the identity of any of its members under the terms of an appropriate protective order. If additional information becomes available, Plaintiff will produce the information pursuant to its obligations under federal and local civil rules of procedure and the entry of an appropriate protective order.

(emphasis added). Like their answers to Interrogatory No. 1, Plaintiffs purported to condition their answers to Interrogatory No. 2 on the entry of a protective order protecting the identities of their members from public disclosure. And again, whether Plaintiffs are required to show injury, or whether Plaintiffs' beliefs can be confirmed by information in the possession of the Secretary, are not valid objections.

6. On October 23, 2007, this Court, on Plaintiffs' motion, entered a protective order which, among other things, secures from public disclosure the "identity of any member of a membership organization that is a party to" this action. *See* doc. 36 at ¶ 1(b)3. Under this order, disclosure of the identity of any member of the Plaintiff membership organizations is strictly limited to the individuals enumerated in Paragraph 5 of the order.

7. Plaintiffs not only prepared and proposed the initial draft that led to the Court's order, *see* doc. 24-1, but their counsel were fully engaged in negotiating the stipulated proposed order on which the Court's order was more immediately based. In fact, Plaintiffs' counsel submitted the final, stipulated draft to the Court by e-mail on October 23, 2007, and the Court, with limited amendments, issued its protective order on the same day.

8. The Court's entry of a protective order securing the confidentiality of Plaintiffs' members removes the objection (assuming its validity) raised by Plaintiffs' answers to Interrogatories No. 1 and 2. In light of the active involvement of Plaintiffs' counsel in preparing the stipulated order protecting its members' identities, it cannot now assert that the protective order entered by this Court is insufficient to secure confidentiality. Accordingly, the Federal Rules of Civil Procedure now require Plaintiffs to identify the members, if any, that they contend were prevented from voting or substantially burdened by Section 97.053(6), Florida Statutes, together with the facts and circumstances surrounding their efforts to register to vote and the specific burdens faced.

9. The Secretary's counsel conferred with Plaintiff's counsel regarding the issue raised herein but without a satisfactory resolution.

WHEREFORE, the Secretary respectfully requests the Court to enter an order directing Plaintiffs to provide answers responsive to Interrogatories No. 1 and 2 of the Secretary's First Set of Interrogatories.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by Notice of

Electronic Filing this 29th day of October, 2007, to the following:

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