

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.

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**SECRETARY OF STATE'S RESPONSE TO PLAINTIFFS'  
OBJECTION TO DR. KEVIN HILL'S DECLARATION**

Defendant Kurt S. Browning, in his official capacity as Secretary of State for the State of Florida (the "Secretary"), responds as follows to Plaintiffs' Objection to Dr. Kevin Hill's Declaration (doc. 97):

1. Dr. Hill's education and experience as a political scientist amply qualify him to render the limited expert opinions set forth in his declaration. *See* doc. 81-7. As indicated by his *curriculum vitae*, Dr. Hill graduated from the University of Florida in 1991 with an M.A. in Political Science and in 1993 with a Ph.D. in Political Science. *Id.* He has authored or co-authored numerous journal articles in the field of political science and has been an Assistant or Associate Professor at Florida International University since 1993. *Id.* In addition, Dr. Hill has served as an expert witness in at least four election-related cases, including *Matter of Protest Election Returns and Absentee Ballots in November 4, 1997 Election for City of Miami, Fla.*, 707

So. 2d 1170 (Fla. 3d DCA 1998), in which, as a result of rampant fraud, the Court invalidated all absentee ballots cast in the Miami mayoral election. Based on his knowledge as a political scientist and his review of the relevant documents filed in this case, Dr. Hill is qualified to render an expert opinion on the likely effect of the challenged law.

2. Even if Dr. Hill were not qualified to render expert witness testimony as a political scientist (which he is), this Court is entitled to give weight to his declaration. “At the preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is appropriate given the character and objectives of the injunctive proceeding.” *Levi Strauss & Co. v. Sunrise Int'l Trading*, 51 F.3d 982, 985 (11th Cir. 1995) (internal marks omitted); *accord Sierra Club, Lone Star Chapter v. Federal Deposit Insurance Corporation*, 992 F.2d 545, 551 (5th Cir. 1993) (“At the preliminary injunction stage, the procedures in the district court are less formal, and the district court may rely on otherwise inadmissible evidence . . .”). Dr. Hill’s declaration is appropriate given the character and objectives of this proceeding and should be accorded weight by the Court.

3. In addition to challenging Dr. Hill’s qualifications, Plaintiffs inject argument designed to rewrite his testimony. Dr. Hill did not testify, as Plaintiffs assert, that the challenged law “fails to prevent fraud.” *See* doc. 97 at 2. Rather, he testified that Section 97.053(6), Florida Statutes, combats a “subclass” of voter fraud. Hill Depo., 34:25-36:13.<sup>1</sup> The fact that the challenged law may not eradicate all forms of voter fraud is not material to any of Plaintiffs’ claims. Likewise, Plaintiffs’ observation that the Secretary’s counsel, after consultation with Dr. Hill, prepared the draft of Dr. Hill’s declaration, is little more than rhetoric and is completely

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<sup>1</sup> This excerpt from Dr. Hill’s deposition is attached hereto as Exhibit A.

irrelevant to his qualifications as an expert. If Dr. Hill's declaration is struck for this unremarkable assertion, those of Andrew Borthwick and Conny McCormack, which, after all, were shown to be plain wrong at the hearing on Plaintiffs' Motion for Preliminary Injunction, should be struck as well.

**WHEREFORE**, the Secretary respectfully requests that the Court enter an order accepting Dr. Hill's declaration as that of an expert witness.

*/s/ Andy Bardos*

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**CERTIFICATE OF SERVICE**

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

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