

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 RESPONSE TO PLAINTIFFS'
RENEWED MOTION FOR PRELIMINARY INJUNCTION AND
MOTION FOR SCHEDULING ORDER FOR RESOLUTION OF SAME**

Kurt S. Browning, in his official capacity as Secretary of State of the State of Florida (the "Secretary") files this Response to Plaintiffs' Renewed Motion for Preliminary Injunction and Motion for Scheduling Order for Resolution of Same (doc. 132) (the "Motion").

Plaintiffs seek an order scheduling a hearing for the remaining portions of their preliminary injunction motion, and they seek supplemental briefing. The Secretary does not object to Plaintiffs' request for an additional hearing or to supplemental briefing. Given the request for additional briefing, though, the Secretary respectfully suggests that any such hearing should occur no earlier than thirty days from the date of any Order on

the Motion. Furthermore, the Secretary strongly objects to the Plaintiffs' request for simultaneous briefing.

This Court should permit supplemental briefing and evidentiary submissions, but it should do so consistent with traditional civil practice in this District, which allows a non-moving party to respond to any argument and evidence submitted by a movant. Plaintiffs' additional papers would be supplementing their Preliminary Injunction Motion, (doc. 4), and this Court's local rules allow that "[e]ach party opposing a motion shall have fourteen (14) days from the date of service of the motion in which to file and serve a responsive memorandum." N.D. Fla. L.R. 7.1(C). To the extent Plaintiffs supplement their Motion, the Secretary should not be precluded from supplementing his response with additional argument and/or evidence.¹

Plaintiffs suggest in their Motion that issues of timing demand simultaneous service of supplemental filings. (Motion ¶ 13.) This is not the case. Plaintiffs have proposed serving their supplemental papers fifteen days before the hearing. If the Court adopts that proposal (to which the Secretary has no objection), the Secretary should be permitted to serve his supplemental response five days before the hearing. This will not delay any hearing and will permit the Secretary ten days to respond to papers the Plaintiffs have had weeks to develop.

Finally, Plaintiffs request (in the alternative) permission to reply to a paper that has not yet been filed. (Motion ¶ 14.) This Court's local rules do not permit reply

¹ In addition to paper submissions, the Secretary may wish to present evidence at any hearing on the Plaintiffs' Motion for Preliminary Injunction.

memoranda “absent a showing of good cause.” N.D. Fla. L.R. 7.1(C)(2). Plaintiffs offer none. Despite every litigant’s desire to enjoy the last word, Plaintiffs must show good cause to suspend the operation of the general rule of this Court. Until the Secretary’s response is filed, this Court has no basis for determining whether good cause exists.² Moreover, Plaintiffs’ expressed concern for an expedited resolution of their case counsels against permitting a reply memorandum, which would necessarily delay the completion of the supplemental briefing.

WHEREFORE, the Secretary respectfully requests that this Court deny Plaintiffs’ Motion to the extent it (i) seeks a hearing sooner than thirty days from entry of an order on the Motion, (ii) seeks an order requiring simultaneous submissions, and (iii) permits a reply memorandum. Except to the extent stated in this Response, the Secretary does not object to entry of an order scheduling an additional hearing and permitting supplemental briefing and evidentiary submissions.

² Plaintiffs concede in their Motion that they do not now know whether a reply would be “necessary.” So they attempt to justify their request for relief to which they are not entitled by noting that they wish to “avoid having to engage in additional motion practice.” Motion at 6 n.3. This is no justification at all. Parties may not seek relief to which they are not entitled merely to avoid having to ask for it when (and if) they become entitled to it in the future.

Respectfully submitted, this fifteenth day of April, 2008.

/s/ Allen Winsor

PETER ANTONACCI

Florida Bar No. 280690

ANDY BARDOS

Florida Bar No. 822671

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

pva@gray-robinson.com

abardos@gray-robinson.com

awinsor@gray-robinson.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

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

Electronic Filing this fifteenth day of April, 2008, to the following:

Glenn T. Burhans, Jr.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, Florida 32301
Phone: 850-222-6891
Fax: 850-681-0207

Robert A. Atkins
D. Mark Cave
J. Adams Skaggs
Paul, Weiss, Rifkind, Wharton & Garrison
LLP
1286 Avenue of the Americas
New York, New York 10019-6064
Phone: 212-373-3000
Fax: 212-492-0289

Justin Levitt
Myrna Pérez
Wendy R. Weiser
Brennan Center for Justice at NYU School of
Law
161 Avenue of the Americas, 12th Floor
New York, New York 10013
Phone: 212-998-6730
Fax: 212-995-4550

Elizabeth S. Westfall
Jennifer Maranzano
Advancement Project
1730 M Street, NW, Suite 910
Washington, D.C. 20036
Phone: 202-728-9557
Fax: 202-728-9558

Brian W. Mellor
Project Vote
196 Adams Street
Dorchester, Massachusetts 02124
Phone: 617-282-3666
Fax: 617-436-4878

/s/ Allen Winsor

Allen Winsor