

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

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

Civil No. 4:07cv402 SPM/WCS

vs.

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

Defendant.

**PLAINTIFFS’ OBJECTION TO THE SECRETARY’S
UNAUTHORIZED “SUPPLEMENTAL RESPONSE”**

With barely 24 hours left before the hearing on Plaintiffs’ motion for preliminary injunction, the Secretary has filed an unauthorized “Supplemental Response to Plaintiffs’ Motion for Preliminary Injunction and Motion to Dismiss for Lack of Subject Matter Jurisdiction” [Doc. 93]. Such an apparent ambush tactic should be disregarded because it: (1) violates this Court’s Scheduling Order (Doc. #20), which does not provide for a “supplemental response” by the Secretary (and the Secretary has sought no relief from that stipulated order); (2) violates this Court’s Order of November 20 (Doc. #80), granting the Secretary leave to file a response to Plaintiffs’ motion for a preliminary injunction not to exceed 50 pages; and (3) violates N.D. Fla. L.R. 7.1 because the Secretary did not confer with Plaintiffs’ counsel before filing his “supplemental response.”

The Secretary has submitted extensive briefing both in support of his motion to dismiss (for failure to state a cause of action) and in opposition to the Plaintiffs' motion for preliminary injunction, during which time he could have raised this issue without prejudicing the Plaintiffs; for example:

- 10/9/07 - Secretary files oversized memorandum of law in support of his motion to dismiss (Doc. #23; Order granting motion to file oversized memorandum, *see* Doc. # 22);
- 11/12/07 - Secretary files reply in support of motion to dismiss (Doc. #60; leave to file reply granted by Order, Doc. #65, which also extended Secretary's time to respond to motion for preliminary injunction);
- 11/21/07 - the Secretary files oversized response to motion for preliminary injunction (Doc. #81; leave to file oversized response granted by Order, Doc. #80); and
- 12/03/07 - Secretary files motion to amend response to motion for preliminary injunction (Doc. #84; motion granted and amended response deemed filed by Order, Doc. #89).

Having had the benefit of extensive and oversized briefing, extended deadlines, and leave to file additional and amended filings, it is curious that the Secretary waited until the eve of the hearing to inject new substantive argument into this case. Rather than join the instant issue in one of those numerous other filings, the Secretary has chosen to file the unauthorized "supplemental response" at a time apparently designed to preclude Plaintiffs from preparing and filing a written response in time to be considered by the Court prior to the hearing.

For all of the foregoing reasons, Plaintiffs object to the Secretary's "Supplemental Response".

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing was served via the Court's CM/ECF electronic filing system this day, December 10, 2007, upon the following counsel of record:

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