

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

FLORIDA STATE CONFERENCE OF  
THE NATIONAL ASSOCIATION FOR  
THE ADVANCEMENT OF COLORED  
PEOPLE, *etc.*, *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’  
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF  
MOTION FOR CLARIFICATION OF SCHEDULING ORDER**

Defendant Kurt S. Browning, Secretary of State for the State of Florida (the “Secretary”), files this response to Plaintiffs’ Supplemental Memorandum in Support of Motion for Clarification of Scheduling Order (Doc. 188).

Without seeking leave for good cause, Plaintiffs filed a reply—styled a “Supplemental Memorandum” (Doc. 188)—in support of their motion to extend the discovery deadline—styled a “Motion for Clarification of Scheduling Order” (Doc. 184). But a reply with an alias is still a reply. Because Plaintiffs neither sought nor obtained leave to file a reply, and failed to advance good cause to deviate from Local Rule 7.1(C)(2), their “Supplemental Memorandum” must be stricken.

The “Supplemental Memorandum” is an unconvincing attempt to create a nonexistent controversy. Plaintiffs’ primary complaint is that, instead of instantly producing documents, the Secretary’s responses to Plaintiffs’ request for production (which the Secretary timely served on March 26, 2009—the stipulated deadline) provide that responsive documents will be produced at a mutually agreeable time. This is a universal practice that is expressly prescribed by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 34(b)(2)(B) (“For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.”). The Secretary’s response conformed to this universal practice,<sup>1</sup> and the time and place of production should have been a matter of amicable discussion for the parties. *See* 7 Moore’s Federal Practice 3d § 34.14[3] (3d ed. 2000) (“After the requesting party makes its specification as to [the time, place, and manner for inspection], and the party to whom the request is directed makes its response, the timing, location, and manner of production can be discussed between the parties.”).

Plaintiffs’ counsel, however, did not contact the Secretary’s counsel to arrange for the Secretary’s delivery and production of documents. Instead, Plaintiffs rushed eagerly to court with their “Supplemental Memorandum”—needlessly taxing judicial resources with a baseless dispute—in hopes that it would generate controversy sufficient to bolster their request for extended discovery. In fact, at the very moment Plaintiffs filed their “Supplemental Memorandum,” the Secretary was fully prepared, at any time upon

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<sup>1</sup> Plaintiffs raised no objection to this practice earlier in this litigation, when the Secretary served his response to Plaintiffs’ first request for production on October 10, 2007, and produced the responsive documents shortly thereafter.

Plaintiffs' call, to deliver more than 12,000 pages of documents and an electronic database containing more than 2 million voter registration entries.<sup>2</sup> No call came.

Plaintiffs continue to argue, contrary to obvious facts, that the "Secretary's own delay in producing documents necessitates" their request for extended discovery. (Doc. 188 at 2 ¶ 4.) Not so. The agreed deadline to complete discovery was March 31, 2009. (Doc. 171 ¶ 2(b).) To *complete* discovery by that date, discovery requests were required to have been *served* by February 27. Plaintiffs waited until February 10 to serve their *first* round of discovery requests. Obviously, Plaintiffs' left themselves no room to serve a *second* round of discovery requests subsequent to receipt of timely served responses. The deadline had long since run. Any suggestion that the Secretary is responsible for Plaintiffs' inability to serve follow-up discovery is little more than smoke and mirrors.

**WHEREFORE**, the Secretary respectfully requests that the Court deny Plaintiffs' Motion for Clarification of Scheduling Order (Doc. 184).

/s/ Andy Bardos

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<sup>2</sup> All of these documents have already been delivered to Plaintiffs' counsel.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been served by Notice of Electronic Filing this thirtieth day of March, 2009, to the following:

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