

**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

Plaintiffs,

vs.

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

Defendant.

**PLAINTIFFS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION
FOR CLARIFICATION OF SCHEDULING ORDER**

Plaintiffs submit this supplemental memorandum in support of its Motion for Clarification of Scheduling Order [doc. 184].

1. On March 26, 2009, the Secretary again made clear that a June 1 deadline for fact discovery would better serve the interests of justice than a March 31 deadline. The Secretary is in sole possession of information relating to registration processes undertaken by the Secretary's own staff, and crucial to the just resolution of the issues in this case — yet, to date, he has still failed to produce the information in question.

2. On March 26, the Secretary purported to respond to requests for documents concerning the procedures for processing voter registration forms before the 2008 election, and the impact of those procedures, by explaining that to the extent that

the pertinent documents exist, “they will be produced at a time and place mutually agreeable to the parties.”¹

3. The Secretary had been apprised of the substance of Plaintiffs’ document request since September 18, 2008, when Plaintiffs served the Secretary with a request for documents, to which the Secretary objected as premature.. On February 10, 2009, after the Secretary apprised Plaintiffs that it continued to treat that request for documents as premature, Plaintiffs re-served their request, specifying that documents should be produced within 30 days at the office of Plaintiffs’ counsel in Tallahassee, mere blocks from the office of the Secretary’s counsel. On or about March 10, 2009, the Secretary asked Plaintiffs for a two-week extension, which Plaintiffs granted. And now, on the latest deadline for a discovery request pending for more than six months, the Secretary has responded that he will only produce the documents in question at some future date that is “agreeable.”

4. Plaintiffs have refrained from conducting discovery in smaller counties, because it is the information in the Secretary’s possession that will indicate which counties have information relevant to this case, and which do not. Similarly, Plaintiffs have refrained from deposing the Secretary’s representatives regarding the procedures used in the 2008 election, because documents in the Secretary’s possession will indicate whether it is necessary to ask for staff time to explain the procedures relevant in this case. The Secretary’s own delay in producing documents necessitates this request.

5. The deadline clarification that Plaintiffs have requested is not excessive. Before the Court set the discovery schedule at issue in this motion, there had been only

¹ The Secretary of State’s Responses to Plaintiffs’ Third Request for Production of Documents is attached as exhibit A.

two expedited and extremely limited periods of discovery in this case. The first was expedited discovery in support of a motion for preliminary injunction from October 3 through November 9, 2007 [docs. 20, 41]. The second consisted entirely of two emergency depositions granted by this Court and conducted to investigate purported amendments to the procedures at issue in the case, which were disclosed for the first time on May 19, 2008, two weeks before this Court's hearing on Plaintiffs' renewed motion for preliminary injunction. The discovery now sought concerns the effect of procedures implemented only after the discovery above was complete — procedures which the Secretary claims are pivotal to the resolution of the case, but which he has thus far refused to explain.

6. Moreover, the Secretary has identified no cognizable burden or prejudice that could be caused by granting Plaintiffs' Motion. The Secretary already possesses all of the information necessary for him to prepare a vigorous defense: he has the information within his own control that Plaintiffs have requested but not yet received, and he also has the Plaintiffs' prompt and timely responses to all lawful discovery requests made of them. Moreover, the Secretary would incur no "extra" cost: the issue here is time, not extent, of discovery. Plaintiffs ask for a clarification of the deadline, but do not request any quantum of discovery not already contemplated by this Court's original discovery order. If limited discovery beyond the Secretary's existing tardy production is necessary to reveal the nature of the procedures at issue in this case and the impact of those procedures, the Secretary's own production will be at fault; he should not be permitted to defeat full disclosure through his own efforts to run out the clock. Plaintiffs' Motion should be granted.

Dated: March 27, 2009

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Supplemental Memorandum* was served via the Court's CM/ECF electronic filing system this day, March 27, 2009, upon the following counsel of record:

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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 RESPONSES TO PLAINTIFFS'
THIRD REQUEST FOR PRODUCTION OF DOCUMENTS**

Defendant Kurt S. Browning, Secretary of State for the State of Florida (the
"Secretary"), responds to Plaintiffs' Third Request for Production of Documents.

Request for Production No. 1:

Documents, including Registration Records, sufficient to show the registration status of Applicants who were Unmatched Applicants at any time between January 1, 2008 and November 7, 2008—including whether such Applicants were rejected, provisionally or conditionally registered, or fully registered as active voters—the date on which such Applicant's Application was submitted, and the date on which such Applicant's current registration status become (sic) final.

Response: The Secretary objects to this request and, specifically, to the definition of "Registration Records" as overbroad. At a time and place mutually agreeable to the parties, however, the Secretary will produce records sufficient to show the registration status of applicants whose identifying numbers the Department of Motor Vehicles and Highway Safety was unable to verify between January 1, 2008, and November 7, 2008; the

Exhibit A

date on which such applicant's application was submitted; and the date on which such applicant's current registration status became final.

Request for Production No. 2:

Documents sufficient to show policies and procedures (including all initiatives, instructions, guidelines, forms, agreements or standards) relating to the enforcement of Subsection 6 between July 28, 2008 and November 7, 2008. This request includes, but is not limited to, documents sufficient to show all policies and procedures (including all initiatives, instructions, guidelines, forms, agreements or standards) relating to:

- (a) The verification of an Applicant's driver's license number or Social Security digits, or the determination that an Applicant does not have such a number;
- (b) The modification or correction of an Applicant's driver's license number or Social Security digits;
- (c) The comparison of data within an Applicant's Registration Record with the associated Application Image and any actions taken in response thereto;
- (d) Correspondence with Unmatched Applicants and any actions taken in response thereto, including but not limited to the further processing of Applications submitted by Unmatched Applicants in light of information received as a result of correspondence;
- (e) Pollworker instructions concerning Unmatched Applicants, including drafts of any pending update to the Division of Election's (sic) Polling Place Procedures Manual;
- (f) The issuance and counting of provisional ballots cast by Unmatched Applicants;
- (g) The review of Applications conducted by BVRs.

Response: To the extent documents responsive to this request exist, and to the extent such documents are not already in Plaintiffs' possession, they will be produced at a time and place mutually agreeable to the parties.

Request for Production No. 3:

Documents identifying any and all difficulties or failures in verifying or matching information in Registration Records pursuant to Subsection 6, between June 5, 2008 and the present, regardless of whether the Registration Record was subsequently verified or

matched, and documents identifying the resolution or attempted resolution of those difficulties or failures.

Response: The Secretary objects to this request as vague and overbroad. Documents responsive to this request, located after a reasonable search, will be produced at a time and place mutually agreeable to the parties.

Request for Production No. 4:

Documents, including Registration Records, related to any and all instances in which (i) more than 13 days elapsed between the time an Application was received by You or a County Supervisor and data from the Application was entered into a Registration Record in FVRS; (ii) more than two days elapsed between the date a Registration Record was transmitted to DHSMV for verification and DHSMV reported that the information therein was not verified; (iii) more than 72 hours elapsed between the time data from an Application was entered into a corresponding Registration Record and an Application Image was attached to the Registration Record; and (iv) more than 10 days elapsed between the time BVRS informed a County Supervisor that an Application had not been verified and the County Supervisor provided notice of the failed verification to the Applicant.

Response: The Secretary objects to this request as vague and overbroad. To the extent correspondence or policy documents regarding this issue have been located upon a reasonable search, they will be produced at a time and place mutually agreeable to the parties.

Request for Production No. 5:

Documents sufficient to show policies and procedures (including all initiatives, instructions, guidelines, forms, agreements or standards) relating to any notice, information or instructions, whether or not pre-cleared by the U.S. Department of Justice, that were provided by You or any County Supervisor to Unmatched Applicants between June 5, 2008 and November 7, 2008, including any notice, information or instructions provided when:

- (a) An Application is deemed incomplete because the driver's license number or Social Security digits on the Application have not been verified;
- (b) An Unmatched Applicant arrives at an early voting location during early voting and attempts to vote;
- (c) An Unmatched Applicant requests an absentee ballot;

- (d) An Unmatched Applicant arrived at the polls on November 4, 2008 and attempted to vote; and
- (e) An Unmatched Applicant voted by provisional ballot on November 4, 2008.

Response: The Secretary objects to this request as vague and overbroad. To the extent documents responsive to this request exist, and to the extent such documents are not already in Plaintiffs' possession, they will be produced at a time and place mutually agreeable to the parties.

Request for Production No. 6:

Documents sufficient to show policies and procedures (including all initiatives, instructions, guidelines, forms, agreements or standards) relating to any notice, information or sample ballot provided by You or any County Supervisor to Unmatched Applicants before November 4, 2008, including any information regarding the location of the polling place where an Unmatched Applicant may cast a ballot.

Response: To the extent documents responsive to this request exist, and to the extent such documents are not already in Plaintiffs' possession, they will be produced at a time and place mutually agreeable to the parties.

Request for Production No. 7:

Documents sufficient to show the number and percentage of BVRS employees involved in the entry or verification of data in Registration Records pursuant to Subsection 6 between September 8, 2008, and November 7, 2008.

Response: To the extent documents responsive to this request exist, and to the extent such documents are not already in Plaintiffs' possession, they will be produced at a time and place mutually agreeable to the parties.

Request for Production No. 8:

All correspondence between You and any County Supervisor or the Florida States Association of Supervisors of Elections concerning Unmatched Applicants' verification of their Registration Record on Election Day or during early voting.

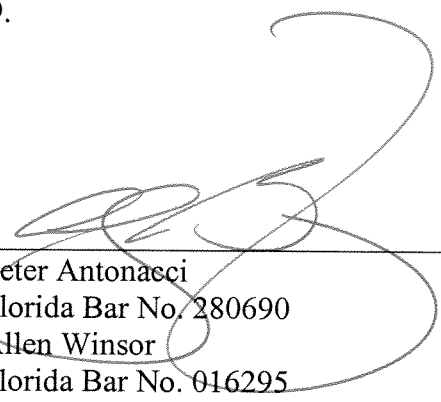
Response: To the extent documents responsive to this request exist, and to the extent such documents are not already in Plaintiffs' possession, they will be produced at a time and place mutually agreeable to the parties.

Request for Production No. 9:

Documents used to answer any Interrogatory propounded by Plaintiffs including, but not limited to, Plaintiffs' Third Set of Interrogatories.

Response: None which is not already in Plaintiffs' possession.

Respectfully submitted, this 26th day of March, 2009.



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CERTIFICATE OF SERVICE

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

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