

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LEAGUE OF WOMEN VOTERS OF
FLORIDA, et al.,

PLAINTIFFS,

vs. CASE NO. 08-CIV-21243 (S.D. Fla.)

KURT S. BROWNING, et al.,

DEFENDANTS.

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DEPOSITION OF EVAN KOLODNY

DATE: June 11, 2008
TIME: 2:15 p.m.
PLACE: 401 North Avenue of the Arts
Fort Lauderdale, Florida
TAKEN BY: Plaintiff
BEFORE: Laura E. Melton, Registered Merit
Reporter and Notary Public of the State
of Florida at Large

Elisa Dreier Reporting Corp. (212) 557-5558
780 Third Avenue, New York, NY 10017

1 THEREUPON:

2 EVAN KOLODNY

3 a witness called by the Plaintiff, being first duly
4 sworn, testified as follows:

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Q. And but in 2004, the overall volume was higher than in other presidential election years, is that correct?

MR. WINSOR: Objection to the form.

THE WITNESS: Yes.

BY MS. WEISER:

Q. Okay.

A. The last minute, I should say. I don't know that it was the total number, but at least as far as -- because the law had changed. And back in -- and the National Voter Registration Act became law, anybody could go out and do voter registrations. Prior to that we had a volunteer deputy registrar program where you had to be trained and deputized before you could do voter registration in Florida. And then that was restricted to certain days of the week, no holidays; I believe Sundays were excluded. I'm not sure. I don't want to say that. And also all registrations had to be advertised in advance, either posted by legal notice or a newspaper ad.

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1 So it's sort of you didn't have as many voter
2 registration drives out there as we did once the law
3 changed.

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Q. And when you learned that a third-party voter registration organization was conducting voter registration activities in the county, would you do outreach to that organization to inform them of this policy or preference?

A. We were -- we were not always aware of everything that was happening. When we had -- we lost control of registration in 1995 when they passed the National Voter Registration Act. Prior to that, we knew who was out there, they had our forms, the forms were accountable. Unused forms had to be returned to us. We provided -- you know, in other words, registrations were advertised in advance. Once National Voter Registration Act became law, we had absolutely no idea when forms were picked up, how many they had, who to contact when the forms were changed.

Q. Uh-huh.

A. And the State said we would not accept -- we could not accept certain forms once they were updated. And that was always a problem because we knew people out

1 there were holding on to the old forms, and we have no
2 way of knowing who to contact, telling them that they
3 needed to update their forms or tear -- throw away the
4 old forms and pick up new forms.

5 Q. And to clarify, are you saying that there was a
6 problem that third-party voter registration organizations
7 were using voter registration forms, state voter
8 registration forms, that had since been changed?

9 A. That has happened, yes.

10 Q. Okay. And that's what you were previously
11 referring to?

12 A. Over the years -- one time it was not mandatory
13 for a driver's license. There was still people out there
14 that had forms that it was an optional box.

15 Q. Right. I see.

16 A. And that sort of thing. And the State did -- You
17 know, give credit to the State. They did have an amnesty
18 period or whatever, where we could accept the old forms,
19 as well as the new ones. But they did always have a cut
20 off date a few months after the new forms, we were
21 instructed that we should not accept the old forms. That
22 would be another reason for rejection of a form.

23 Q. I see. And so, but you indicated that you didn't
24 always know when a third-party voter registration
25 organization was operating in Broward County, is that --

1 A. That's correct. Especially if they contacted the
2 State directly for forms. We were not informed of that.

3 Q. But were there occasions that you did learn that
4 a third-party voter registration organization was
5 operating in Broward County?

6 A. I guess when the forms starting coming into the
7 office.

8 Q. Okay. And so when you learned that a third-party
9 voter registration organization was operating in the
10 county, did you have a practice of reaching out to that
11 organization and --

12 A. We -- we had a hand out. When people came in and
13 asked for forms, not only did we give them forms, we gave
14 them a guideline, a sheet of guidelines, a two-page
15 guidelines. As far as meeting, we -- we were -- we were
16 not required -- no group was ever required under the law
17 to meet with us. So it all depended on the situation.
18 Had we met -- we met with ACORN on a few occasions, yes,
19 because we were having problems.

20 Q. And even though no group was required to meet
21 with you, did groups resist meeting with you
22 when requested?

23 A. We were always open if they wanted to meet with
24 us. But it was not -- it was -- the law did not require
25 that they do so.

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Q. Okay. So let's see. I believe you testified earlier that in 2004 your office received many more voter registration applications than in prior federal election years. When did you discover that there was a surge in the number of voter registration applications that year?

A. On the day of closing.

Q. Did you learn earlier than book closing that a higher volume of voters --

A. We had had a problem with ACORN in particular, if you don't mind my mentioning the names. But they were turning -- we had noticed that after the primary -- I think the primary -- it might have been August 31st. I'm not sure. This was in 2004; I think it was August 31st. Forms were turned in to us and we noticed they were dated

1 June and July. And we said, Why are you turning these
2 forms in to us now? These people would have been
3 eligible to vote. And I'm talking about -- I think it
4 was about 28 -- or 3,000 -- 2,800 or 3,000 forms were
5 turned in because I counted them. And that's when we
6 demanded a meeting with them. We might have met prior to
7 that. But a letter was sent out by Dr. Snipes basically
8 blasting them for what they had done because they had
9 the -- basically had -- senior moment -- they had
10 disenfranchised people. And the answer to me, when I
11 complained about that, was they didn't want to
12 vote -- they didn't want to vote in the primary, they
13 wanted to vote in November. And I said, you can't make
14 that determination. And we were quite upset.

15 I mean, these people -- their registration dates
16 were, well, a month and two months after this when they
17 actually registered, if the handwritten date is correct.
18 And you have to assume that they were -- I have to assume
19 they were correct because the person wrote it themselves.

20 Q. Now, do you have any -- I want to -- So, after
21 this incident when ACORN supposedly submitted forms after
22 the primary voter registration deadline, was it?

23 A. Yeah. Which would have been around -- August 3rd
24 was the book closing. The election was August 31st. I
25 may have my -- August 1st was maybe the book closing,

1 August 31st. I'm close. I don't remember the dates.
2 But these were -- arrived after the book closing. It was
3 before the election, but it was after the book closing.
4 And we were very, very upset that the -- so many people
5 were being disenfranchised because of their --

6 Q. And did any --

7 A. -- lack of responsibility.

8 Q. Did any of the individuals attempt to vote in the
9 primary election and --

10 A. It's hard to say.

11 Q. -- find they were unable to vote?

12 A. Quite frankly, we do get a very low turnout for
13 those primaries in the fall, very low. I mean, 10, 15,
14 percent sometimes. So probably in the majority of the
15 cases it made no difference. But the point is, that's
16 not the question.

17 They legally were entitled to vote. I'm sure
18 there was some -- we had no count. I worked the call
19 center on election day. But I can't say that there
20 were -- we have any -- any idea of how many people of
21 that group tried to vote on that day and were turned
22 away.

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Q. Are there any incidents which you are aware in which ACORN or another group collecting -- or another group collected voter registration applications before a book closing deadline and then submitted them to your office after a book closing deadline?

A. No. But there were many instances where applications were turned in way later than they should have been. And if it's a reflection of us -- if a person, when they register to vote, many of them -- in fact, the people that registered with ACORN said they thought they were -- they were representing our office. They had clipboards. Some of them even registered in

1 front. In our Deerfield, they were actually standing in
2 front of the courthouse, registering people and they
3 assumed -- they were shocked to find out they -- they
4 were not -- they did not represent our office. They were
5 quite upset when -- you know, when the forms didn't turn
6 up. And then we told -- they said but we registered in
7 Deerfield. What do you mean? We registered right under
8 a tree outside. I said that was not our person. And
9 they were upset because they gave personal information,
10 including Social Security information to people who were
11 not even -- who we don't know who they were and what they
12 are doing with this information. That's -- you know,
13 so --

14 Q. But did they -- they submitted those voter
15 registration applications to your office?

16 A. They did. But sometimes they -- people would
17 submit them late. I'm getting off the point, but that's
18 right.

19 Q. When you say late, you don't mean --

20 A. That's --

21 Q. -- past the book closing deadline, do you?

22 A. No. No. Generally they did get those in on time
23 because there was a motive involved, that there were
24 certain candidates they were supporting or a party or
25 whatever. So they would get them in on a timely basis,

1 as far as book closing was concerned.

2 But many times they were held back and we -- and
3 applications would come in six, eight weeks after
4 they -- people registered. And it looks like our office
5 is just slow. So the natural thing is to think our
6 office is slow in processing applications. So it's a bad
7 reflection on us.

8 Q. Do you have any evidence that ACORN or any other
9 group was purposefully withholding applications or
10 delaying the submission of voter registration
11 applications?

12 MR. WINSOR: Objection to the form.

13 THE WITNESS: It's difficult -- I mean, was
14 it willful or was it just --

15 BY MS. WEISER:

16 Q. Yes.

17 A. I don't know. I can't get into the heads of
18 why -- I think it was just incompetence on their part.

19 Q. Okay. And other than ACORN, do you have any
20 experience of any other third-party voter
21 registration -- third-party voter registration groups
22 taking more than 6 to -- or I am sorry -- taking 6 to
23 8 weeks to submit a voter registration application that
24 they collected?

25 A. It happened in certain individual cases, but I

1 can't -- I don't remember the groups or the names. It
2 could have been an individual just put them in the car
3 and forgot about them, and all. It happened. And
4 it's -- you know, we process it, but it's -- it's just --
5 as I said, it's a reflection of us, we feel. And people
6 get their cards way after they register to vote.

7 Q. But they did receive them in time to be able to
8 vote and --

9 A. I believe.

10 MR. WINSOR: Object to the form.

11 THE WITNESS: This is the one instance where
12 I recall that -- especially in such a mass
13 number. I'm sure somewhere along the line that
14 we might have gotten an application after the
15 books closed, but not in numbers like ACORN was
16 giving us.

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2 Q. Okay. And if we could just unpack a little bit
3 about the problems. You have already -- that ACORN
4 caused. You have already testified that there was one
5 incident of a batch of registration applications that
6 were submitted past the book closing deadline for the
7 primary election in 2004. And you indicated that there
8 were some organizations -- some applications that were
9 submitted -- that were submitted sometime after they were
10 signed by the applicants.

11 A. They seemed to get to them to us by book closing.
12 The only problem was that's the day they delivered them,
13 book closing day. And Dr. Snipes has a table in
14 her -- the conference room. I don't know if you have
15 seen her conference room. It's a table bigger than this
16 and it was piled, literally piled with boxes and things
17 of forms. I believe they were anywhere from 5 to 20,000
18 forms, just came in that day, mostly from ACORN. Not all
19 from ACORN, but the vast majority were from ACORN.

20 Q. Do you know who else -- do you know who else
21 submitted forms on that date?

22 A. Well, I think there was a group called ACT.

23 Q. Uh-huh.

24 A. I don't remember what that stood for. I just
25 remember the acronym ACT. And there were individuals and

1 we got mail. We got a lot of mail, which is natural.
2 The people tend to wait. So we got a lot of letters that
3 came in that day, too. But it was mostly hand-delivered
4 applications. And we had told them we did -- you know,
5 please. Because the problem is that with the way the law
6 is written, that if these applications were deficient, we
7 don't have time -- there is no time to tell these people
8 your application is missing information, you know. You
9 know how I told you we mailed a corrected application or
10 a full application with the letter, this is what is
11 missing, we can't even do that when it is turned in on
12 the book closing day. And we couldn't -- the processing
13 took -- we took the 15 days, whatever it was, necessary.
14 We brought in volunteers, we had people in groups
15 bringing people in just to process all of this stuff, to
16 get through all of this paperwork. It was -- it was a
17 mess.

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