

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CBS BROADCASTING INC., AMERICAN BROADCASTING
COMPANIES, INC., THE ASSOCIATED PRESS, CABLE NEWS
NETWORK LP, LLLP, FOX NEWS NETWORK, L.L.C.
and NBC UNIVERSAL, INC.,

Case No.: 06-22463-CIV

Plaintiffs,

Huck, J./Simonton, MJ

v.

SUE M. COBB, in her official capacity as Secretary
of State of the State of Florida, and LESTER SOLA, in
his official capacity as the Supervisor of Elections of
Miami-Dade County, Florida and as representative of
a defendant class of all county Supervisors of Elections in
the State of Florida,

Defendants. _____/

**PLAINTIFFS' MOTION TO AMEND FINAL JUDGMENT PURSUANT
TO FED. R. CIV. P. 59(e) AND ACCOMPANYING MEMORANDUM OF LAW**

Plaintiffs CBS Broadcasting, Inc., American Broadcasting Companies, Inc., The Associated Press, Cable News Network, LP, LLLP, Fox News Network, L.L.C., and NBC Universal, Inc., hereby move this Honorable Court for entry of an Amended Final Judgment pursuant to Fed. R. Civ. P. 59(e) in this action and in support thereof, state:

Out of an abundance of caution, and to ensure orderly administration of Plaintiffs' exit polling activities on election day and universal enforcement of this Court's order, Plaintiffs request that this Court amend its Final Judgment and Declaratory Relief Order, to clarify that all members of the defendant class of Supervisors of Elections of the State of Florida and their agents are barred from enforcing Fla. Stat. §102.031(4)(a) as applied to Plaintiffs' exit polling behavior.

Plaintiffs intend to conduct exit polls at forty polling sites in various counties throughout the State of Florida on November 7, 2006. On October 24, 2006 this Court declared that Fla.

Stat. §102.031(4)(a) impermissibly proscribed constitutionally protected exit polling and barred Defendants from enforcing Fla. Stat. §102.031(4)(a) as applied to Plaintiffs exit polling behavior. *CBS v. Cobb*, No. 06-22463-CIV, Order Granting Plaintiffs' Declaratory Relief, (October 24, 2006) ("Declaratory Relief Order"). On October 24, 2006, this Court also granted Plaintiffs' Motion for Class Certification and certified a class of all county Supervisors of Elections in the State of Florida with the named defendant, Lester Sola, Miami-Dade County Supervisor of Elections, certified as the class representative. *CBS v. Cobb*, No. 06-22463-CIV, Order Granting Plaintiffs Motion for Class Certification, Certifying Defendant Class, and Designating Class Representative, (October 24, 2006) ("Defendant Class Order"). Two days later, on October 26, 2006, the Court issued Final Judgment in this case. *CBS v. Cobb*, 06-022463-CIV, Final Judgment (October 26, 2006) ("Final Judgment"). The Final Judgment stated that "Defendants are barred from enforcing Fla. Stat. §102.031(4)(a) as applied to Plaintiffs' exit-polling activities."

For the reasons specified in the accompanying Memorandum of Law, amendment of the Final Judgment and Declaratory Relief Order is appropriate.

Plaintiffs request expedited treatment of the instant motion. Elections are just ten days away, and time is needed to see that any order upon this motion is distributed to the appropriate persons.

MEMORANDUM OF LAW

Plaintiffs hereby submit the instant Memorandum of Law in support of their Motion to Amend Judgment pursuant to Fed. R. Civ. P. 59(e). Plaintiffs request that this Court's Final Judgment Order, issued October 26, 2006 and Order Granting Plaintiffs Declaratory Relief, issued October 24, 2006, be amended to specify that all members of the defendant class of

county Supervisors of Elections of the State of Florida and their agents are also bound by the relief granted therein.

ARGUMENT

In order to ensure that Plaintiffs can peacefully and effectively carry out their exit-polling behavior on November 7, 2006, it is critical that the Final Judgment Order and Declaratory Relief Order in this matter specify that all members of the defendant class and their agents, not just the named defendants, are bound by the Final Judgment.¹ The term “Defendants” in the Final Judgment and Declaratory Relief Order is not defined to explicitly include the defendant class of Supervisors of Elections and their agents. Plaintiffs are concerned that their exit polling reporters, who will be at various polling sites throughout Florida, will be met with confusion by polling officials and forced to comply with Fla. Stat. §102.031(a). To combat any confusion, the exit polling reporters intend to have in hand this Court’s Final Judgment and Declaratory Relief Order. The proposed amendment to the Final Judgment and Declaratory Relief Order will ensure that each county Supervisor of Elections, as well as their agents, know that he or she is bound by the relief granted to Plaintiffs in this matter.

Election day is the only day where enforcement of this Court’s Order may be a disputed issue. If there is any ambiguity in the language of the Final Judgment or Declaratory Relief Order as to who is bound by it, the result would be a violation of Plaintiffs’ First and Fourteenth Amendment rights and just the type of manifest injustice Federal Rule 59(e) is designed to circumvent. It would be grossly unfair if a law that has already been declared unconstitutional as

¹ Fed. R. Civ. P. 59(e) provides that any motion to amend a judgment shall be filed no later than 10 days after entry of the judgment. Final Judgment in this matter was entered on October 26, 2006, therefore the instant Motion is timely filed. The decision to alter or amend judgment is committed to the sound discretion of the district judge. *American Home Assurance Co. v. Glenn Estess & Associates, Inc.*, 763 F.2d 1237, 1238-39 (11th Cir. 1985). Rule 59(e) exists to permit the Court to prevent manifest injustice. *Wendy’s International Inc., v. Nu-Cape Construction, Inc.*, 169 F.R.D. 680, 686 (M.D. Fla. 1996).

to Plaintiffs exit polling behavior was still applied to that very behavior due to confusion over this Court's Declaratory Relief Order and Final Judgment.

The proposed amendment to the Final Judgment and Declaratory Relief Order would merely clarify that all members of the defendant class of county Supervisors of Elections and their agents are bound by this Court's relief and ensure that Fla. Stat. §102.031(4)(a) will not be applied to Plaintiffs' exit polling behavior in any county. For example, in *CBS v. Smith*, the Court, in ordering preliminary injunctive relief similar to the permanent injunctive relief granted herein specified in its Order,

Defendant Jim Smith, in his official capacity as Secretary of State of the State of Florida and Defendant David Leahy as Supervisor of Elections of Dade County Florida, and all their officers, agents servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, **including all supervisors of elections in the State of Florida, their officers, agents, servants, employees, and attorneys and all persons in active concert or participation with them** who receive actual notice of this order by personal service or otherwise, are hereby prohibited and restrained until further order of this Court... (emphasis added)

CBS v. Smith, 681 F.Supp. 794, 806 (S.D. Fla 1988).²

This same type of clarity is needed in the instant matter to facilitate Plaintiffs' exercise of their constitutionally protected exit polling rights.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court amend its Declaratory Relief Order and Final Judgment pursuant to Fed. R. Civ. P. 59 (e) and specify that all members of the defendant class of county Supervisors of Elections and their agents, in addition to the

² The language of the Orders in other cases challenging exit polling restrictions in Florida are all similar to that employed by this Court in *CBS v. Smith*. See e.g. *Clean-Up '84 v. Heinrich*, 582 F.Supp. 125 (M.D. Fla. 1984); *Florida Committee for Liability Reform v. McMillan*, 682 F.Supp. 1536 (M.D. Fla. 1988).

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the State of Florida,

Defendants. _____/

**[PROPOSED] ORDER GRANTING PLAINTIFFS
MOTION TO AMEND JUDGMENT**

THIS MATTER is before the Court upon Plaintiffs' Motion To Amend Final Judgment pursuant to Fed. R. Civ. P. 59(e), filed on October 27, 2006. The Court, having reviewed the motion and being otherwise duly advised on the premises, hereby

ORDERS, Plaintiffs Motion to Amend Final Judgment is hereby GRANTED and an Amended Final Judgment shall be entered.

Done in Chambers, Miami, Florida, October _____, 2006

Honorable Paul C. Huck
United States District Judge

Copies furnished to:
All Counsel of Record

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the State of Florida,

Defendants. _____/

AMENDED FINAL JUDGMENT

Pursuant to the Order Granting Plaintiffs Declaratory Judgment [D.E. #30], it is hereby
ORDERED that Plaintiffs' Request for Declaratory Relief and a Permanent Injunction is
GRANTED. Defendants, Sue Cobb in her official capacity as Secretary of the State of Florida,
Lester Sola in his official capacity as the Supervisor of Elections of Miami-Dade County,
Florida, and all members of the defendant class of county Supervisors of Elections of the State of
Florida and their agents and employees are barred from enforcing Fla. Stat. §102.031(4)(a) as
applied to Plaintiffs' exit-polling activities. The Court reserves jurisdiction over appropriate
motions for attorneys fees and costs. The Clerk of the Court is directed to mark this case
CLOSED and DENY all pending motions as moot.

DONE in Chamber, Miami, Florida, this ____ day of October, 2006.

Paul C. Huck
United States District Judge

Copies furnished to: Counsel of Record