

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

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

Plaintiffs,

v.

Case No. 4:07-cv-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' EMERGENCY MOTION TO COMPEL
DEPOSITION OF SARAH JANE BRADSHAW AND A DESIGNATED WITNESS**

Defendant Kurt S. Browning, in his official capacity as Secretary of State for the State of Florida (the "Secretary"), files this response to Plaintiffs' Emergency Motion to Compel Deposition of Sarah Jane Bradshaw and a Designated Witness. (Doc. 142.)

1. Plaintiffs feign surprise at the existence of recent procedural amendments despite their acknowledgement that "these administrative amendments are based, in part, upon Senate Bill 866, which was recently passed by both the House and the Senate." (Motion, ¶ 4.) Senate Bill 866, of which Plaintiffs have long been well aware, was introduced in December of 2007. Moreover, Plaintiffs have not amended their Complaint to target the new law.

2. Plaintiffs have not noticed the depositions they request because they have

no basis to do so at this point. Indeed, this Court authorized limited discovery for the preliminary injunction phase, with all depositions to be concluded no later than November 7, 2007. (Doc. 20.) Therefore, although styled as a “Motion to Compel,” Plaintiffs’ motion actually seeks an order re-opening discovery. Their request should be denied.

3. During the six-month period since this Court entered its preliminary injunction order, Plaintiffs have taken no steps to effect discovery. They have not initiated a discovery planning conference, notwithstanding Federal Rule of Civil Procedure 26(f). And they have not sought additional discovery from the Secretary. When they filed their renewed motion for a preliminary injunction (nearly six weeks ago) they made no request for additional discovery.

4. A preliminary injunction hearing is not a trial on the merits. Instead, the purpose of a preliminary injunction is to preserve the status quo until the court can conduct a trial on the merits. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). “Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved,” preliminary injunction determinations are generally made “on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.” *Id.*

5. At the earlier preliminary injunction hearing, neither side introduced live testimony, and the Court ruled on the basis of the law and the limited factual record comprised of declarations. The Secretary did not depose Plaintiffs’ expert witnesses, the individuals who claimed impact based on Subsection Six, or any of Plaintiffs’ other

witnesses, save their party representatives. When full discovery begins (which Plaintiffs could have initiated months ago by simply conducting a Rule 26(f) conference), and when this Court conducts a full trial on the merits, each side will have an opportunity to fully examine the anticipated witnesses. No such luxuries are permitted when operating on the expedited basis requested by Plaintiffs.¹ A preliminary injunction hearing is simply not a trial on the merits.

WHEREFORE, the Secretary respectfully requests that this Court deny Plaintiffs' Motion.

Respectfully submitted this 26th day of May, 2008.

/s/ Allen Winsor

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¹ This is particularly true when Plaintiffs' counsel are simultaneously challenging another Florida statute in the Southern District of Florida, with a scheduled preliminary injunction hearing less than two weeks after this Court's. Engaging in additional (and needless) discovery at this point would be prejudicial to the Secretary.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by Notice of Electronic Filing this 26th day of May, 2008, to the following:

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