

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. 4:07CV-402-SPM/WCS

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

Defendant.

_____ /

SECRETARY OF STATE'S MOTION FOR PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c), Defendant Kurt S. Browning, in his official capacity as Secretary of State for the State of Florida (the "Secretary"), respectfully moves this Court for a protective order prohibiting the depositions of Jim Reed and Sharon Smith, employees of the Supervisor of Elections of Hillsborough County. In support of this Motion, the Secretary states as follows:

1. From the commencement of this litigation, Plaintiffs have insisted on an expedited schedule. To induce the Court and the Secretary to consent to their accelerated timetable, Plaintiffs assured both the Court and the Secretary's counsel that, besides party depositions, Plaintiffs would take the depositions of only "five or six" Supervisors of Elections. Indeed, in their Motion for Expedited Discovery, Plaintiffs stated that they "seek to take fewer depositions than they are entitled under the federal and local rules, and will

carefully target those depositions to minimize the burdens in time and effort.” Doc. 9 at 7.

These representations gave the Secretary assurance that discovery would be manageable and have finite limits. In reliance on this assurance, the Secretary stipulated to the scheduling order that now governs this case, and Plaintiffs proceeded to notice the depositions of six Supervisors, including the Supervisor of Elections of Hillsborough County, who completed his testimony on October 24, 2007. They have also arranged for a Rule 30(b)(6) deposition of the Division of Elections.

2. Over the objection of the Secretary’s counsel, and contrary to their earlier representations, Plaintiffs have now noticed an eighth and ninth deposition—those of Jim Reed and Sharon Smith, employees of the Supervisor of Elections of Hillsborough County. *See* Exhibit A. Plaintiffs have noticed the depositions of Mr. Reed and Ms. Smith for three hours each, failing to consult with the Secretary’s counsel with respect to scheduling.¹ More significantly, these notices contradict Plaintiffs’ earlier representations to the Court and the Secretary’s counsel, undermine the express premise on which the Secretary consented to the scheduling order, and cross the line established by the parties and countenanced by the Court to secure the public interest from harm and undue burden as the presidential preference primary election approaches.

3. Reminded of their pledge to take only five or six depositions, Plaintiffs’ counsel suggested that what they *actually* promised was to take depositions (unlimited in

¹ In fact, Plaintiffs originally noticed the deposition of Mr. Reed on less than twenty-four hours’ notice, rescheduling to the current date only after learning of Mr. Reed’s unavailability. Over the objection of the Secretary’s counsel, counsel for Plaintiffs stated tersely: “We will depose Mr. Reed at 9 AM tomorrow. We think that it is in your best interest to attend.” *See* Exhibit B.

number) in only five or six counties. This assertion is breathtaking. The Supervisors of Elections alone in the six counties identified by Plaintiffs collectively employ about 200 people. It is unfathomable that Plaintiffs, to assure the Court and the Secretary that discovery would be limited, meant to say that they would depose *only* 200 people, or that they would limit the universe of possible deponents to about 200. This would have been no assurance at all. *See* Fed. R. Civ. P. 30(a)(2)(A) (limiting the number of Plaintiffs' depositions without stipulation or court approval to ten). Had the Secretary at that time understood the representations of Plaintiffs' counsel consistently with their self-serving reformulation, the parties would not have been able to stipulate to an expedited scheduling order.²

4. Perhaps to preserve the appearance of limiting themselves to five or six nonparty depositions, Plaintiffs noticed the eighth and ninth depositions as depositions of the previously deposed Supervisor of Elections of Hillsborough County—but “by his designee, Jim Reed,” and “by his designee, Sharon Smith.” The Supervisor, however, completed his deposition on October 24, 2007. The Federal Rules of Civil Procedure prevent the Supervisor from being deposed a second time absent stipulation or court order, neither of which Plaintiffs have secured, *see* Fed. R. Civ. P. 30(a)(2)(B) (“A party must obtain leave of court . . . if . . . the person the person to be examined has already been deposed in the case . . .”), or for more than “one day of seven hours,” *see* Fed. R. Civ. P. 30(d)(2). Because the depositions of Mr. Reed and Ms. Smith, in the name of the

² The Secretary has been informed that a transcript of the hearing at which Plaintiffs' counsel made the remarks in question will be available by October 31.

Supervisor himself, would violate these rules, Plaintiffs cannot disguise the eighth and ninth depositions either as continuations of the Supervisor's deposition or a second deposition of the Supervisor.

5. Finally, Plaintiffs' intended depositions of Mr. Reed and Ms. Smith—and, presumably, of any and all employees of the six Supervisors who could provide Plaintiffs additional information—are needless and would subject the Secretary and the Supervisors to undue burden and expense. *See* Fed. R. Civ. P. 26(c). The depositions of six Supervisors and the voluminous and burdensome document productions required by Plaintiffs of each of the six Supervisors³ provides Plaintiffs ample access to the information they seek. Indeed, it is more than enough. While further discovery might promote unrelated activities in which Plaintiffs or their counsel are engaged, it would be duplicative and unnecessary as it relates to this litigation. And the burdens imposed on elections officials—already disruptive—would interfere with the performance of their duties during this election season.

6. Counsel for the Secretary has consulted with Plaintiffs' counsel in an effort to resolve the issues addressed in this Motion, but was unable to do so.

WHEREFORE, the Secretary respectfully requests the Court to enter a protective order prohibiting the depositions of Jim Reed and Sharon Smith.

/s/ Andy Bardos
PETER ANTONACCI
Florida Bar No. 280690

³ The document request directed to the Supervisor of Elections of Hillsborough County is attached hereto as Exhibit C. Those directed to the other five Supervisors are substantially the same.

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CERTIFICATE OF SERVICE

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

Electronic Filing this 25th day of October, 2007, to the following:

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