

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:08-21243-CIV-ALTONAGA

LEAGUE OF WOMEN VOTERS OF FLORIDA,
FLORIDA AFL-CIO, and MARILYNN WILLS,

Plaintiffs,

vs.

KURT S. BROWNING, in his official capacity
as Secretary of State of the State of Florida, and
DONALD L. PALMER in his official capacity as
Director of the Division of Elections within the
Department of State for the State of Florida,

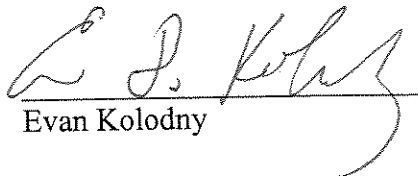
Defendants.

DECLARATION OF EVAN KOLODNY

I, Evan Kolodny, declare as follows:

1. I am over the age of eighteen and competent to make this Declaration.
2. Until my recent retirement, I was Director of Registration Services for the Broward County Florida Supervisor of Elections Office.
3. In February, 2008, I testified in the trial of *Diaz, AFL-CIO, et al., v. Browning*. I was called to testify by the Plaintiffs.
4. I have reviewed the attached transcript excerpts, which accurately recount a portion of my trial testimony. All of my testimony in that case was accurate and truthful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Evan Kolodny

JUNE 11, 2008

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS;
AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES; AFL-CIO FLORIDA
PUBLIC EMPLOYEES COUNCIL 79, AFSCME; AFL-CIO
SERVICE EMPLOYEES INTERNATIONAL UNION,

Case No. 04-22572-CIV-KING

Plaintiffs.

vs.

Miami, Florida
February 6, 2008
9:00 a.m.

KURT S. BROWNING, SECRETARY OF THE
STATE OF FLORIDA,

Defendant.

TRANSCRIPT OF PROCEEDINGS
NON-JURY TRIAL
BEFORE THE HONORABLE JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
THIS BEING AN EXCERPT THEREOF

REPORTED BY: DAWN M. WHITMARSH, RPR
Official Court Reporter
United States District Court
400 N. Miami Avenue
Room 10S30
Miami, Florida 33128
Telephone: 305-523-5598

1 APPEARANCES:

2 FOR THE PLAINTIFFS:

Paul, Weiss, Rifkind, Wharton & Garrison, LLP

3 BY: THOMAS ABT, ESQ.

4 BY: MICHAEL HALBERSTAM, ESQ.

5 BY: SARAH A. NOLAN, ESQ.

6 BY: SARAH KROLL-ROSENBAUM, ESQ.

1285 Avenue of the Americas

New York, NY 10019-6064

(212) 373-3111

7
8 FOR THE DEFENDANT:

GrayRobinson, P.A.

9 BY: PETER ANTONACCI, ESQ.

10 BY: ALLEN C. WINSOR, ESQ.

11 BY: ANDRE V. BARDOS, ESQ.

Suite 600

301 South Bronough Street (32301)

P.O. Box 11189

Tallahassee, Fl. 32302-3189

13
14
15
16
17
18
19
20
21
22
23
24
25

* * * * *

1 EVAN KOLODNY, PLAINTIFF'S WITNESS, SWORN.

2 THE CLERK: Please be seated. State your name and spell
3 it.

4 THE WITNESS: Name is Evan Kolodny, K OL OD
5 N Y. First name Evan, E V AN.

6 MR. ABT: Your Honor, may I inquire?

7 THE COURT: Yes, of course.

8 DIRECT EXAMINATION

9 BY MR. ABT:

10 Q. Good afternoon, Mr. Kolodny.

11 A. Good afternoon.

12 Q. Until recently, were you employed with the Broward County
13 Supervisor of Elections Office?

14 A. That is correct.

15 Q. Is Brenda Snipes the supervisor of elections for Broward
16 County?

17 A. Yes, she is.

18 Q. What was your position at Broward County?

19 A. I was director of registration services.

20 Q. And what were your responsibilities in that position?

21 A. My responsibilities were to register voters, also to
22 process voter registration applications that came in whether it
23 be by mail or in person. I also was the charge of selling
24 voter access to voter lists. I was in charge of the intake
25 department. I was also in charge of the mail room.

1 Q. How long did you serve in that position?

2 A. Well, I worked for the office for 21 years, but I did not
3 serve in that position. But I was always all throughout the
4 years I was tied to -- my jobs were related to registration, voter
5 registration.

6 Q. 21 years experience.

5 A. That's correct.

6 Q. Okay. Mr. Abt walked you through what would happen with
7 one single application, but you don't deal with individual
8 applications.

9 In other words, you don't give one application and walk it
10 through the whole process before moving on to the
11 next, do you?

12 A. No.

13 Q. You deal with thousands of applications?

14 A. Depending on the time of the year, it could be, as we get
15 closer to book closing, we could be dealing with thousands of
16 applications, yes.

17 Q. It gets higher right before book closing?

18 A. Yes.

19 Q. Particularly in presidential elections?

20 A. Especially, yes.

21 Q. Did you have over 20,000 applications come in in the last
22 minute in 2004; do you remember?

23 A. Yes, we did.

24 Q. And were those all new applications or were some of them
25 changes?

1 A. It was a mixture. They were mostly from third party
2 groups that had conducted voter registration.

3 Q. And sometimes third party groups will collect applications
4 from people who are already registered, right?

5 A. Yes.

6 Q. And sometimes they'll collect applications from people
7 that have attempted to register but have been unsuccessful for
8 whatever reason?

9 A. Yes.

10 Q. And so if you get a box right before book closing, you -- the
11 office that has 20,000 applications in it or probably be more than
12 one box, if there were that many, of all application forms, some
13 of them are probably new applications.

14 THE COURT: Well you know, we can go on and on, the
15 speculation could go on for hours. I'm sorry, but all these
16 things are just simply -- you argue this to the court. I mean,
17 that's what you do, you establish facts from this witness.

18 Did I hear you say that you got in one grouping or one
19 bundling, 20,000 applications for registrations at one time?

20 THE WITNESS: In one day actually.

21 THE COURT: One day. I thought that's what I heard you
22 say.

23 And in proximity in time of the -- near the time, when did
24 it come in, if you can figure roughly a few days.

25 THE WITNESS: Book closing day.

1 THE COURT: Closing day?

2 THE WITNESS: Book closing day.

3 THE COURT: Book closing day, you got 20,000 in one day. And
4 did you get that from basically one group, one third party
5 collecting group or several or what?

6 THE WITNESS: Mostly -- well, the vast majority came from
7 several groups. Can I mention groups or -- ACORN was one of the
8 -- collected them over a period of time but turned them in on that
9 one day.

10 THE COURT: All right. And how do you know they collected
11 them over a period of time? The dates on them?

12 THE WITNESS: The dates that the people -- when it asks for a
13 signature and date, so the handwritten dates indicated that some
14 of them had been held back for a period of time.

15 THE COURT: All right. Now then -- okay. And this -- when
16 this 20,000 you're talking about that occurred with reference to
17 which election, if you recall.

18 THE WITNESS: The presidential election of 2004.

19 THE COURT: 2004. Okay. All right. Now, so that's a fact.

1 BY MR. WINSOR:

2 Q. Now, when those 20,000 applications came in, you or your
3 staff had to enter all those into the computer system, correct?

4 A. We had to hire, bring in temporary workers. We
5 could not handle it, our office could not handle that volume on
6 a timely basis.

7 Q. And how long did it take to enter in those 20,000
8 applications?

9 A. Well, we did it within the legal time frame but I think we
10 had to use the 15 days basically to get all those
11 applications in.

12 Q. You used the maximum time allowed by law?

13 A. The maximum time allowed.

14 Q. And today the maximum time allowed by law is only 13 days?

15 A. Correct.

16 Q. So if you get another 20,000 in 2008 -- withdrawn.

17 And during that same time period, the 15 days after the close
18 of books, there's a lot of other stuff going on in the office,
19 right?

20 A. Correct. We're handling absentee ballot requests, we're
21 getting ready to produce the precinct registers, we're getting
22 a lot of phone calls, the volume of calls increases every day
23 as we get closer and closer to election day.

7 Q. My understanding is that employees in your office work on
8 the tasks on an as-needed basis; is that right?

9 A. Yes.

10 Q. In other words, if there's a bunch of absentee ballots
11 to go out, they'll go work on that. If there's a bunch of
12 registration applications to be processed, they'll go work on
13 that. Mix and match, right?

14 A. Right. We have to work as a team to get our -- all the --
15 everything accomplished.

16 Q. Okay. I'd like to ask about -- we talked about 20,000 coming
17 in before book closing. I wanted to ask about what comes in after
18 book closing date or during the book closing period.

19 I suspect you're getting a volume of mail in during that time
20 as well; is that right?

21 A. That is correct.

22 Q. What kind of things are coming in then?

23 A. Mostly voter registration applications and changes are
24 coming in. The 20,000 number I mentioned was basically
25 people are -- brought into the office. Some of it was mailed but

1 most of it was actually hand-delivered.

2 Q. Now, for the things that were received after book
3 closing, did you tend to those after you dealt with the
4 20,000?

5 A. We say book closing would be the postmark because even a
6 day or two after book closing we're still getting items. But
7 technically our -- after the 29 days because they're postmarked,
8 you know, prior to that.

9 Q. Let me maybe be a little more clear.

10 Things that were postmarked after book closing deadline and
11 came in to your office after book closing deadline, what would you
12 do with those?

13 A. We would prioritize the book closing things. First off we
14 would process them, but we would give priority to those --
15 anything that arrived on or before book closing.

16 Q. So the late arriving things you'd process as you're
17 available to?

18 A. Right.

19 Q. Priority would be the things that came in before book
20 closing?

21 A. Yes, sir.

22 Q. And that's out of necessity, right? Because you've only
23 got so many days to enter in applications that came in before
24 book closing?

25 A. That's correct.

1 Q. And it's also necessary to make sure that those people who
2 timely submitted applications are able to vote, right?

3 A. Correct.

4 Q. And that's all taken care of before early voting begins,
5 correct?

6 A. Yes.

1 Q. Now, when mail comes in shortly before an election, is the
2 office always able to process that mail, new voter registration
3 applications or amendments before the election?

4 A. They're processed but we may have to take a longer -- it may
5 not be processed the same day. During a period like now, we can
6 be on a day-to-day basis, but it would take a little longer.

7 Q. Something comes in a week before November presidential
8 election, that volume may be such that you can't process it all
9 before the election, right?

10 A. It may be days before we get to input it.

11 Q. It may in some instances take the statutory maximum, right?

12 A. It could, yes.

13 Q. Depending on volume.