Memorandum

MIAMI-DADE COUNTY

Date: October 16, 2007

Agenda Item No. 12(A)(1)

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Settlement Authorization: Diaz, et. al. v. Kurt S. Browning, et. al., 04-22572-CIV-KING/GARBER

RECOMMENDATION

We recommend that the Board of County Commissioners adopt the attached resolution approving the settlement of the above-referenced action.

BACKGROUND

This civil rights lawsuit has been pending in federal court for three years. The Defendants are the Secretary of State and five Supervisors of Elections, including the Supervisor of Elections for Miami-Dade County. Plaintiffs (several individuals and a union) claim that the state's voter registration laws unconstitutionally disenfranchise voters and disproportionally affect minority communities. Specifically, Plaintiffs allege that Florida's confusing Uniform Voter Registration Application is confusing and that a "grace period" should be allowed to correct errors in otherwise timely filed forms. Although the Supervisor of Elections for Miami-Dade County was one of the few Supervisors in the State that took extraordinary steps to register voters with some missing information, State law prohibits Supervisors from accepting most corrections after the book closing date for elections.

Last month, the five Supervisors of Elections (Miami-Dade County, Broward County, Palm Beach County, Orange County, and Duvall County) and Plaintiffs engaged in court-ordered settlement negotiations with former Miami-Dade Chief Circuit Judge Gerald Wetherington serving as the mediator. During these negotiations, the Supervisors of Elections and Plaintiffs reached a tentative settlement agreement. Although the settlement agreement is final as to the other Defendant Supervisors of Elections, for Miami-Dade County the settlement agreement is subject to this Board's approval. The Secretary of State did not participate in the settlement negotiations and the suit will continue against the State.

Pursuant to the terms of the settlement agreement, each of the five defendant Supervisors of Elections will pay ten thousand dollars to cover restitution, costs, and attorney's fees. In addition to the monetary terms of the settlement, the Supervisors have agreed to stipulate to facts regarding the feasibility of implementing a proposed "grace period" for applicants to correct errors contained in their otherwise timely filed registration forms by means of declarations. In return, Plaintiffs will release the County's Supervisor of Elections from all claims and related costs which could be substantial if this issue is litigated to its conclusion.

The funds for this settlement will come from general funds.

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: October 16, 2007

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 12(A)(1)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

✓ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(1)
10-16-07

RESOLUTION NO. _____

RESOLUTION APPROVING SETTLEMENT OF LAWSUIT RELATING TO THE CORRECTION OF VOTER REGISTRATION APPLICATIONS; AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO TAKE ALL NECESSARY STEPS TO EFFECTUATE THE SETTLEMENT AGREEMENT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board approves the terms and conditions of the settlement of the litigation styled Emma Yaiza Diaz, et al. v. Kurt S. Browning, Secretary of State of Florida, et al., 04-22572-CIV-KING/GARBER, S.D. Fla., on the terms and conditions specified in the Settlement Agreement attached hereto.

Section 2. The County Mayor or his designee is authorized to take all necessary steps to effectuate the Settlement Agreement in the above-referenced matter in substantially the form attached hereto.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of October, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-Civ-King

EMMA YAIZA DIAZ et al., Plaintiffs, v. KURT S. BROWNING, Secretary of State of Florida, et al., Defendants.	**SETTLEMENT AGREEMENT**

WHEREAS, this action was commenced alleging, inter alia, that Plaintiffs were, and continue to be, denied the right to vote in violation of the First, Fifth and Fourteenth Amendments of the United States Constitution because of Defendants' failure to provide Plaintiffs and their members with an opportunity to correct errors or omissions in their voter registration applications after the close of books; and

WHEREAS, in order to protect the voting rights of Plaintiffs and their members, Plaintiffs seek a "grace period," which is defined as a period between the close of books and Election Day during which voter registration applicants, who are otherwise eligible to vote and submitted timely (i.e. before the close of books) but incomplete or incorrect voter registration applications, are permitted to complete or correct their applications in order to be placed on the registration rolls and vote in the upcoming elections; and

WHEREAS, Defendant Supervisors of Elections Brenda Snipes (Broward County), Jerry Holland (Duval County), Lester Sola (Miami-Dade County), Bill Cowles (Orange County), and Arthur Anderson (Palm Beach County) (hereinafter the

"Supervisors"), who have taken oaths to support, protect, and defend the Constitution and the laws of the United States and of the State of Florida, maintain that their conduct has been legal and proper and continue to deny any and all fault, liability or wrongdoing; and

WHEREAS, Supervisors are dedicated to act in a manner consistent with the requirements of all federal, state, and local election laws; and

WHEREAS, Plaintiffs have not alleged that the Supervisors acted in a purposefully discriminatory manner toward any group; and

WHEREAS, Plaintiffs and the Supervisors ("the parties"), in order to save the expense of protracted litigation, and without any admission of fault, liability or wrongdoing by the Supervisors, now wish to settle and discontinue this action only upon the terms and conditions set forth below;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that:

1. Because Florida election law currently does not permit a grace period, if there is to be a grace period, it must be pursuant to a change in legislation or order from a court of competent jurisdiction.

2. If the law changed to allow grace periods, the Supervisors would implement such grace period as provided by law. The Supervisors would take reasonable steps to ensure that voter registration applicants who timely submit applications that are incomplete or incorrect will receive official notice of their deficiency to permit them to correct their application within the grace period and for the application to be processed in time for them to be placed on the rolls to cast a ballot in that election. In doing so, the Supervisors shall be governed by, and shall comply with, the deadlines established in Fla. Stat. §§ 97.053(7) and 97.052(6).

3. If the law changed to allow grace periods, the Supervisors would make reasonable efforts to properly administer a grace period in their respective counties, including but not limited to the allocation of sufficient staff and resources, subject to their availability.

4. Supervisors shall execute the declaration attached hereto as Exhibit A (the "Declaration").

5. Each Supervisor shall pay to Plaintiffs the sum of Ten Thousand Dollars ($10,000) in full settlement of Plaintiffs' claims for nominal damages as well as attorneys' fees and costs in this action pursuant to 42 U.S.C. § 1988 ("Payment"). Payment shall be made to "The Advancement Project" as attorneys for Plaintiffs within thirty (30) days of the Court's entry of the Order as described in paragraph 6 immediately below. The Supervisors maintain that their payments do not constitute an agreement or admission that the Plaintiffs are entitled to nominal payments or attorneys fees, but are made primarily to avoid the expenses of protracted litigation.

6. The parties shall jointly apply for an Order dismissing any claims in this action against the Supervisors and retaining jurisdiction over all parties to the Settlement Agreement, attached hereto as Exhibit B ("the Order"). This Agreement shall not take effect, and neither party will issue any public statement regarding this Agreement, until the Order is entered substantially in the form attached hereto.

7. The Court shall retain jurisdiction over all parties with regard to any ultimate relief that may be ordered by the Court, the Settlement Agreement or the Order. Any application or proceeding by any party thereto shall be brought to this Court for decision.

8. Should Plaintiffs believe that a Supervisor has materially breached the terms of this Agreement, Plaintiffs' counsel will first provide written notice to the Supervisor of the provisions of this Agreement with which they believe Supervisor has not complied within a reasonable amount of time after Plaintiffs counsel obtains knowledge of the alleged noncompliance. A copy of the notice shall be forwarded to Supervisor's counsel. Supervisor agrees that, upon receipt of the notice, Supervisor will conduct an investigation and respond in writing to Plaintiffs within a reasonable period of time. If Plaintiffs reasonably believe that the response provided by Supervisor does not resolve the issue of the alleged breach, the parties will confer with each other in good faith in an attempt to resolve the matter, and may invoke mediation to resolve the matter. Only after proceeding through this paragraph, or should the Supervisor fail to respond within a reasonable amount of time, provided that Plaintiffs will make at least one request for a response if they believe it has not come within a reasonable time, will Plaintiffs seek relief from the Court. There shall be no award of attorneys' fees or costs to either party for any actions/inactions taken at this stage, regardless of the eventual outcome of the dispute.

9. Plaintiffs by and through their undersigned counsel agree to release the Supervisors from any and all claims, liability and damages for all claims brought in this action, *provided, however*, that nothing in this Release shall discharge any of the Supervisors from their obligations as otherwise provided in this Agreement or the Order.

10. Supervisors by and through their undersigned counsel agree to release Plaintiffs from any claim for damages, attorneys' fees or costs that any Supervisor has, could, or may assert against one or more Plaintiff with respect to any matter related to this action.

11. The undersigned represent and warrant that they are fully authorized to enter into this Agreement on behalf of their clients.

12. This Agreement, Order and all exhibits attached hereto constitute a complete and exhaustive expression by the parties of the settlement agreed to by them, and may not be changed orally.

13. This Agreement may be signed in counterparts which, when taken together, shall be deemed one and the same document.

Dated: October 1, 2007

Thomas P. Abt
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Sarak Kroll-Rosenbaum
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Dated: _____, 2007

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Fax: 202-728-9558
email: ewestfall@advancementproject.org
Attorney for Plaintiffs

11. The undersigned represent and warrant that they are fully authorized to enter into this Agreement on behalf of their clients.

12. This Agreement, Order and all exhibits attached hereto constitute a complete and exhaustive expression by the parties of the settlement agreed to by them, and may not be changed orally.

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Dated: _____, 2007

_____

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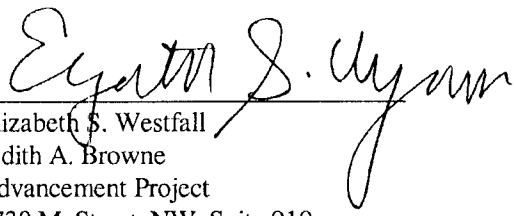
Attorney for Plaintiffs

Dated: October 1, 2007



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Attorney for Plaintiffs

Dated: 10/1/, 2007

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Dated: _____, 2007

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Dated: _____, 2007

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Attorney for Defendant Lester Sola, Miami-Dade County Supervisor of Elections

Dated: _____, 2007

_____

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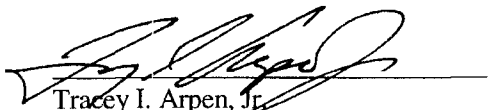
Dated: October 1, 2007



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Dated: _____, 2007

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Dated: October 1, 2007

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Attorney for Defendant Bill Cowles, Orange County Supervisor of Elections

Dated: _____, 2007

_____

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Dated: _____, 2007

_____

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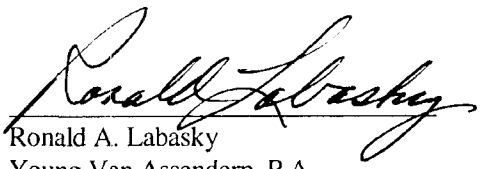
Dated: October 1, 2007



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Attorney for Defendant Arthur Anderson, Palm Beach County Supervisor of Elections

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-Civ-King

EMMA YAIZA DIAZ et al., Plaintiffs, v. KURT S. BROWNING, Secretary of State of Florida, et al., Defendants.	DECLARATION OF DEFENDANTS ARTHUR ANDERSON, PALM BEACH COUNTY SUPERVISOR OF ELECTIONS; BILL COWLES, ORANGE COUNTY SUPERVISOR OF ELECTIONS; JERRY HOLLAND, DUVAL COUNTY SUPERVISOR OF ELECTIONS; DR. BRENDA SNIPES, BROWARD COUNTY SUPERVISOR OF ELECTIONS; AND LESTER SOLA, MIAMI-DADE SUPERVISOR OF ELECTIONS

We declare as follows:

1. Each of the Defendant Supervisors signing below is a Supervisor of Elections for his or her respective County.

2. The Supervisors are either independently-elected county officers, or in the case of Miami-Dade County appointed by the County Mayor, and are the principal election officials in their respective Counties, responsible for implementing, administering and enforcing Florida election law.

3. Each of the Supervisors is required to ensure that any eligible voter registration applicant in his or her respective County is registered to vote, and to process each application in accordance with Federal and Florida law.

4. The Supervisors' offices receive voter registration applications, process those applications, enter the applications into an electronic database, make certain eligibility determinations, notify applicants of the disposition of their applications, and add eligible voters

to the rolls, among other responsibilities. In addition, our respective offices enter voter registration information into Florida's central statewide computerized voter registration database.

5. In the previous federal election cycles, the Supervisors' offices were available to work with unions, and in some cases worked with representatives of AFL-CIO, AFSCME Council 79, and SEIU to register members of their respective unions.

6. Florida election code requires Supervisors of Elections to close the registration books twenty-nine (29) days before Election Day. Fla. Stat. § 97.055. This date is commonly referred to as the "book-closing deadline."

7. For purposes of this Declaration, the term "incomplete application," is one where the applicant has entered a name, an address, a date of birth and a signature, but has omitted or made an error on his or her response to any of the other required fields; or an application on which the applicant has provided a name, address and signature, but an incorrect date of birth, provided that the incorrect date of birth may be corrected in person prior to election day, or if corrected on election day vote pursuant to a provisional ballot.

8. Under current law, applicants who submit an incomplete application prior to the book-closing date and submit a correction after the book-closing deadline have their applications processed, and are placed on the voting registration system and the voter rolls, but are nevertheless not eligible to vote in the election for which the books have already closed.

9. Registered voters in Florida may correct, by updating, their voter registration record regarding their signatures, addresses, or any name change, after the book-closing deadline, and such corrections are effective for the upcoming election. Fla. Stat. §§ 97.055 and 101.045.

10. During federal election cycles in 2004 and 2006, the number of voter registration

applications that our offices received increased sharply in the weeks shortly before the book-closing deadline, for many reasons.

11. Many voter registration applicants who were otherwise eligible to vote submitted incomplete or incorrect voter registration applications in the weeks leading up to the book-closing deadline. Many of these persons were not able to correct their applications in order to be able to vote in the upcoming election.

12. During the 2004 and 2006 federal election cycles, in the weeks leading up to the book-closing deadline, the number of voter registration applicants submitting incomplete or incorrect voter registration applications in our respective Counties ranged from the hundreds to thousands in each County.

13. The Supervisors expect that, given the current lack of a grace period, many applicants who timely submit an incomplete application for the 2008 federal election cycle, may be unable to correct their application in time to become registered to vote in the 2008 federal election cycle.

14. Florida election code currently requires Supervisors of Elections' offices to enter voter registration applications into the central statewide computerized voter registration database within fifteen (15) days of receipt, Fla. Stat. § 97.053(7),[1] and to notify applicants who submit an incomplete or incorrect voter registrations application within five (5) business days. Fla. Stat. § 97.052(6).

15. Currently, Florida election law does not provide grace periods.

16. The Supervisors understand that the Plaintiffs in this lawsuit are requesting a grace period to be the period between the book-closing deadline and Election Day during which

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[1] As of January 1, 2008, Fla. Stat. § 97.053(7) will require Supervisors of Elections' offices to enter voter registration applications into the statewide voter registration database within thirteen (13) days of receipt.

voter registration applicants who are otherwise eligible to vote and submitted timely (i.e. before the book-closing deadline) but incomplete or incorrect voter registration applications are permitted to complete or correct their applications in order to be placed on the registration rolls and vote in the upcoming elections.

17. If there is to be a grace period, it must be pursuant to a change in legislation or order from a court of competent jurisdiction. The Supervisors do not oppose such a change.

18. Absent a change in the law, the Supervisors have no authority to provide a grace period in 2008.

19. If the law changed to allow grace periods, the Supervisors would implement such grace period as provided by law. The Supervisors would take reasonable steps to ensure that voter registration applicants who timely submit applications that are incomplete or incorrect will receive official notice of their deficiency to permit them to correct their application within the grace period and for the application to be processed in time for them to be placed on the rolls to cast a ballot in that election. In doing so, the Supervisors shall be governed by, and shall comply with, the deadlines established in Fla. Stat. §§ 97.053(7) and 97.052(6).

20. If the law changed to allow grace periods, the Supervisors would make reasonable efforts to properly administer a grace period in their respective counties, including but not limited to the allocation of sufficient staff and resources, subject to their availability.

21. Other than Florida Statutes and opinions issued by the Secretary of State, none of the Supervisors know of any policy precluding the provision of a grace period.

22. Assuming the relative number of applicants from the federal 2004 and 2006 election cycles who submitted applications prior to the book-closing deadline and attempted to correct their application after the book-closing deadline remain constant in the future, the

Supervisors believe that if the law changed to allow a grace period, and remained the same in all other respects, providing the grace period would not interfere with the orderly administration of elections, would not unduly burden the respective offices' resources, and would not interfere with other election-related activities between the book-closing deadline and Election Day. The Supervisors have no information, data or evidence to support the conclusion that a grace period as described herein would cause an increase in voter fraud.

I declare under penalty of perjury that foregoing is true and correct.
Dated this 1st day of October, 2007, in Palm Beach County, Florida

A. W. Anderson

Dr. Arthur Anderson, Supervisor of Elections,
Palm Beach County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____

Bill Cowles, Supervisor of Elections,
Orange County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____

Jerry Holland, Supervisor of Elections,
Duval County, Florida

Supervisors believe that if the law changed to allow a grace period, and remained the same in all other respects, providing the grace period would not interfere with the orderly administration of elections, would not unduly burden the respective offices' resources, and would not interfere with other election-related activities between the book-closing deadline and Election Day. The Supervisors have no information, data or evidence to support the conclusion that a grace period as described herein would cause an increase in voter fraud.

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____
Dr. Arthur Anderson, Supervisor of Elections,
Palm Beach County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this 28th day of September, 2007, in Orlando, Florida

Bill Cowles
Bill Cowles, Supervisor of Elections,
Orange County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____
Jerry Holland, Supervisor of Elections,
Duval County, Florida

Supervisors believe that if the law changed to allow a grace period, and remained the same in all other respects, providing the grace period would not interfere with the orderly administration of elections, would not unduly burden the respective offices' resources, and would not interfere with other election-related activities between the book-closing deadline and Election Day. The Supervisors have no information, data or evidence to support the conclusion that a grace period as described herein would cause an increase in voter fraud.

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____
Dr. Arthur Anderson, Supervisor of Elections,
Palm Beach County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____
Bill Cowles, Supervisor of Elections,
Orange County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this 1st day of October, 2007, in Duval County, Florida

_____
Jerry Holland, Supervisor of Elections,
Duval County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____
Jerry Holland, Supervisor of Elections,
Duval County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this 1st day of October, 2007, in Hollywood, Florida

Brenda C. Snipes
Dr. Brenda Snipes, Supervisor of Elections,
Broward County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____
Lester Sola, Supervisor of Elections,
Miami-Dade County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this _____ day of _____, 2007, in _____, Florida

_____
Dr. Brenda Snipes, Supervisor of Elections,
Broward County, Florida

I declare under penalty of perjury that foregoing is true and correct.
Dated this 2nd day of Oct, 2007, in Miami, Florida

_____
Lester Sola, Supervisor of Elections,
Miami-Dade County, Florida