

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

CASE NO. 2020 CA 000908

LILY AARONSON and FARM WORKERS  
ASSOCIATION OF FLORIDA,

Plaintiffs,

vs.

FLORIDA DEPARTMENT OF STATE,  
FLORIDA DIVISION OF ELECTIONS,  
LAUREL M. LEE, Secretary of State  
of Florida, CHRISTINA WHITE, Supervisor  
of Elections, Miami-Dade County, and BILL  
COWLES, Supervisor of Elections, Orange  
County, Florida,

Defendants.

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**RESPONSE TO MOTION TO DISMISS**

The Plaintiffs LILY AARONSON and the FARM WORKERS ASSOCIATION OF FLORIDA, through undersigned counsel, file this Response to the State of Florida Defendants' Motion to Dismiss and to Strike the Third Amended Complaint.

Significantly, the State does not assert prejudice from the alleged technical errors in the filing of the Third Amended Complaint.

The primary argument in the Motion to Dismiss is that naming different plaintiffs than were named in previous complaints, without first dismissing the prior parties or substituting them with the new parties, amounts to fatal error. Without conceding procedural error, and with all due respect to the Defendants, this distracts us from the consistency across all versions of the complaint. The Third Amended Complaint, like its

predecessors, alleged that these plaintiffs – along with all those unnamed registered voters who share the same concerns – are harmed by county supervisors misconstruing state statutes to prohibit the automatic or universal sending of mail-in ballots, whether voters have requested them or not.

Those voters who cannot vote in person and are unable to request mail-in ballots are deprived of an opportunity to vote. That is the harm that these Plaintiffs suffer -- and that is a harm shared by many registered voters whose interests are represented by the named Plaintiffs.

Pursuant to this Court’s July 20, 2020 order, the three Plaintiffs that were initially named lacked standing to carry the lawsuit.

The Court dismissed the complaint without prejudice to file a Third Amended Complaint. Contrary to the Defendant’s representation, the Court’s order did not limit the third amended complaint to *those* three Plaintiffs, to the exclusion of others; it merely provided the opportunity to cure what this Court concluded was a justiciability problem with the case.

We then added two new Plaintiffs and, in view of this Court’s order, omitted reference to the initial three.<sup>1</sup> However – and this is very important – the general

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<sup>1</sup> To the extent that a notice to voluntarily dismiss parties to a lawsuit is deemed necessary, such notice is timely if made before service of a motion for summary judgment or before the case is submitted for trial. *See* Fla. R. Civ. P. 1.420 (a)(1)(A); Fla. R. Civ. P. 1.250; *Image Data, L.L.C. v. Sullivan*, 745 So. 2d 567 (Fla. 5<sup>th</sup> DCA 1999). We are well in advance of either of these stages.

Should this Court deem it necessary for a motion for substitution of parties to be filed, rule 1.260 does not prescribe a timeliness date in cases other than where a party has died. “Florida courts have held that Rule 1.260(a)(1) should be liberally construed to allow for substitution.” Padavano, P.J., *Florida Civil Practice*, Vol. 5, §4:16 at 135 (2014 ed.).

allegations, arguments, and causes of action within the Third Amended Complaint remained exactly the same as they were in the previous complaint. They did not change at all and that is why the Defendants cannot show prejudice. The Defendants' ability to respond to the Complaint and to prepare for a preliminary injunction hearing and, potentially, a trial has not changed.

It is a well-recognized principle of law that courts should strive to address the merits of a case, rather than get distracted by non-prejudicial technical arguments designed to thwart a review of its substance. *See, e.g., Concept, L.C. v. Gesten*, 662 So. 2d 970, 974 (Fla. 4<sup>th</sup> DCA 1995) ("While we would not encourage the random use of any motion for whatever purpose might seem expedient, we nonetheless in this instance favor substance over form"); *State v. Staufley*, 574 So. 2d 1207, 1209 (Fla. 5<sup>th</sup> DCA 1991) ("It should be substance over form and merit, wherever possible, over procedure").

In this instance, the Defendants – without an assertion or showing of prejudice – ask this Court to elevate form over substance, which is contrary to Florida's over-riding public policy. As evidenced by the renewed motion for expedited preliminary injunction and expressed throughout the amended complaint, this case cries out for immediate court review. Absent a showing of prejudice, technical arguments simply do not further the interests of justice.

Aside from the above argument, the Defendants effectively suggest that the proper thing for us to have done would be to voluntarily dismiss the Complaint and re-file it, with the current Plaintiffs, as a new lawsuit. The "value" of this will be to delay addressing the merits of the case and, as a result of the passage of time, probably render the case moot.

The Defendants also draw the Court's attention to the service of process upon the Supervisors of Elections in Miami-Dade and Orange counties. Respectfully, that is a red herring. We have contacted both the supervisors (by U.S. mail, e-mail, and phone call), advising them that they are named Defendants in the action, and sending them the Third Amended Complaint, in compliance with Fla. R. Civ. P. 1.070. This easily comports with the requirement in rule 1.070 (j) that service be made within 120 days of filing the pleading.

As such, the Plaintiffs request that this Court deny the Defendants' Motion to Dismiss the Third Amended Complaint and deny the Motion to Strike it.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed on this 8<sup>th</sup> day of August, 2020 with the Clerk of Court, and e-mailed to Bradley R. McVay, Esq. ([brad.mcvay@dos.myflorida.com](mailto:brad.mcvay@dos.myflorida.com)), Colleen E. O'Brien, Esq. ([Colleen.OBrien@dos.myflorida.com](mailto:Colleen.OBrien@dos.myflorida.com)), and Ashley E. Davis, Esq. ([ashley.davis@dos.myflorida.com](mailto:ashley.davis@dos.myflorida.com)), counsel for the Florida Department of State; Oren Rosenthal, Esq., ([Oren.Rosenthal@miamidade.gov](mailto:Oren.Rosenthal@miamidade.gov)) Assistant County Attorney, counsel for Supervisor of Elections, Miami-Dade County; and Nick Shannin, Esq., ([nshannin@shanninlaw.com](mailto:nshannin@shanninlaw.com)), counsel for Supervisor of Elections, Orange County.

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