

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**ASSOCIATION OF COMMUNITY)
ORGANIZATIONS FOR REFORM)
NOW, et al.,)**

Plaintiffs,)

v.)

CATHY COX, et al.,)

Defendants.)

**CIVIL ACTION NO.
1:06-CV-1891-JTC**

**DEFENDANTS' AMENDED INITIAL DISCLOSURES
(SUBSTITUTING INITIAL PARAGRAPH)**

Pursuant to Local Rule 26.1, CATHY COX, CLAUD L. ("TEX") MCIVER
III, J. RANDOLPH EVANS, DAVID J. WORLEY and JEFFREY K. ISRAEL,
Defendants herein file their Initial Disclosures and shows this Court as follows:

Initial Disclosure No. 1:

**If the defendant is improperly identified, state defendant's correct
identification and state whether defendant will accept service of an
amended summons and complaint reflecting the information furnished in
this disclosure response.**

Response No. 1:

Defendants are properly identified (although Defendants dispute the
capacities in which they have been named as Defendants to this action).

Initial Disclosure No. 2:

Provide the names of any parties whom defendant contends are necessary parties to this action, but who have not been named by plaintiff. If defendant contends that there is a question of misjoinder of parties, provide the reasons for defendant's contention.

Response No. 2:

Defendant is unaware of any necessary parties not named in the action.

Initial Disclosure No. 3:

Provide a detailed factual basis for the defense or defenses and any counterclaims or crossclaims asserted by defendant in the responsive pleading.

Response No. 3:

This case involves claims by the Plaintiffs that they are impaired in their ability to conduct voter registration drives or to engage in speech because the Defendants, acting in their capacities as members of the State Elections Board, enacted a regulation that prohibits unauthorized copying of completed voter registration applications and which requires completed voter registration applications to be sealed before they are returned to the registration office. Ga. Comp. R. & Regs. r. 183-1-6-.03(3)(o)(2). The Regulation is clear that it is not a basis to refuse to register an applicant. *Id.* There is no dispute that some of the information provided on Georgia's voter registration forms is highly confidential,

including personal information of voters, social security numbers, and so forth.

The facts, as well as federal law, are that the unauthorized release of this information may inhibit voter registration as well as leading to crimes such as identity theft. The Regulation is a legitimate, and, indeed, narrowly tailored, exercise of the State's lawful power to protect its citizens and encourage voter registration, as well as protecting the elective franchise, and it does not violate the National Voter Registration Act ("NVRA").

To sue under the NVRA the Plaintiffs were required to provide prior notice of the suit, per 42 U.S.C. § 1973gg-9(b), which some (if not all) of the Plaintiffs did not make, barring their claims as a matter of law.

The Plaintiffs also claim that their rights to engage in free speech are violated since the Regulation prohibiting them from making unauthorized copies of other voters' completed voter registration applications. The Defendants have agreed that the Plaintiffs may make authorized copies without prosecution. There are numerous other avenues available to the Plaintiffs to obtain the information in question if Registrants wish to voluntarily provide it. For instance, in addition to obtaining voluntary copies, they can keep sign in logs at their voter registration drives. Preventing unauthorized copies legitimately protects the registrants' privacy (as well as furthering the State's interest in registration and voting) and the

Regulation is a legitimate time, place, and manner restriction to the extent it impacts speech at all. The Plaintiffs do not have the right to surreptitiously obtain registrants' private information for the purpose of pursuing the Plaintiffs' own agendas.

The Plaintiffs have suffered no injury due to the regulation. There have been no prosecutions under the regulation, and their ability to conduct voter registration drives has not been impaired -- indeed, some of the Plaintiffs were not even conducting voter registration drives before the Regulation drives before the regulation came into place. Moreover, to the extent an injunction was claimed to be necessary before the 2007 election, that justification is now moot as the elction has been completed. Indeed, at the time the injunction was issued voter registration was all but completed. The delay in this action was due to the Plaintiffs; they waited eight months before bringing this action and, and their equitable claims are barred by their unclean hands and wrongful conduct, as will be shown at summary judgment or trial.

Plaintiffs' individual capacity claims against the Defendants (i.e. Plaintiffs claims for damages) are frivolous and should be immediately dismissed.

Initial Disclosure No. 4:

Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which defendant contends are applicable to this action.

Response No. 4:

Defendants have previously briefed this case in response to Plaintiffs' Motion for Preliminary Injunction, and the law cited in that response is incorporated herein by reference.

Constitution, Statutes, and Regulations

- a. U.S. Const. amend. I
- b. U.S. Const. amend XI
- b. 42 U.S.C. 1973gg *et seq.*
- c. 42 U.S.C. § 1983
- d. Ga. Comp. R. & Regs. r. 183-1-6-.03(3)(o)(2)

Caselaw

- a. *Anderson v. Celebrezze*, 460 U.S. 780 (1982)
- b. *Burdick v. Takushi*, 504 U.S. 428 (1992)
- c. *Charles H. Wesley Educ. Found. v. Cox*, 324 F. Supp. 2d 1358 (N.D. Ga. 2004), *aff d*, 408 F.3d 1349 (11th Cir. 2005)
- d. *Fulani v. Krivanek*, 973 F.2d1539, 1543 (11th Cir. 1992)

- e. *Mainstream Marketing Services, Inc. v. F.T.C.*, 358 F.3d 1228 (10th Cir.), *cert. den.* 543 U.S. 812 (2004)
- f. *National Coalition of Prayer, Inc. v. Carter*, 455 F.3d 783 (7th Cir. 2006)
- g. *The Broadcast Team, Inc. v. F.T.C.*, 429 F.Supp.2d 1292 (M.D. Fla. 2006)
- h. *New Orleans Public Srvc., Inc. v. City Council of New Orleans*, 491 U.S. 350 (1989)
- i. *Purcell v. Gonzalez*, 549 U.S. ____, 2006 U.S. LEXIS 8000 (Oct. 20, 2006)
- j. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 213-14, 107 S. Ct. 544, 548 (1986)
- k. *Young v. Fordice*, 520 U.S. 273, 275 (1997)

Other Sources

H.R. Rep. 103-9

S. Rep. 103-6

Defendant reserves the right to amend and/or supplement its response to this Disclosure as necessary. In addition to the above-referenced case law, Defendant

will rely on any and all current precedents articulated through the Eleventh Circuit Court of Appeals and other courts interpreting the above cited sources.

Initial Disclosure No. 5:

Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, identifying the subjects of the information. (Attach witness list to Initial Disclosures as Attachment A).

Response No. 5:

Please see attachment A hereto.

Initial Disclosure No. 6:

Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P.26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Initial Disclosures as Attachment B.)

Response No. 6:

At this time, Defendants have not identified any expert witnesses.

Initial Disclosure No. 7:

Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Initial Disclosures as Attachment C.)

Response No. 7:

Please see Attachment C hereto. Copies of these documents are already in Plaintiffs' attorney's possession.

Initial Disclosure No. 8:

In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of the injuries suffered, making such documents or evidentiary material available for inspection and copying under Fed.R.Civ.P.34. (Attach any copies and descriptions to Initial Disclosures as Attachment D).

Response No. 8:

Defendants are not making any claim for damages. Defendants anticipate making a claim for attorney's fees in a currently unspecified amount.

Initial Disclosure No. 9:

If defendant contends that some other person or legal entity is, in whole or in part, liable to the plaintiff or defendant in this matter, state the full name, address, and telephone number of such person or entity and describe in detail the basis of such liability.

Response No. 9:

Not applicable.

Initial Disclosure No. 10:

Attach for inspection and copying as under Fed.R.Civ.P.34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as

Attachment E).

Response No. 10:

Not applicable.

Respectfully submitted,

THURBERT BAKER 033887
Attorney General

DENNIS DUNN 269350
Deputy Attorney General

/s/Stefan Ritter
STEFAN RITTER 606950
Senior Assistant Attorney General

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SIGNATURE CERTIFICATION

I certify that the originally executed document contains the signatures of all filers indicated herein and therefore represents consent for filing of this document.

/s/Stefan Ritter
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ATTACHMENT A

POTENTIAL WITNESSES

NAME, ADDRESS, AND TELEPHONE	DISCOVERABLE KNOWLEDGE
Helen Butler (May be contacted only through Plaintiff's counsel)	General knowledge regarding the claims and defenses asserted in the litigation.
Dana Williams (Plaintiff) (May be contacted only through Plaintiff's counsel)	General knowledge regarding the claims and defenses asserted in the litigation.
Edward DuBose (May be contacted only through Plaintiff's counsel)	General knowledge regarding the claims and defenses asserted in the litigation.
Nyana Miller (May be contacted only through Plaintiff's counsel)	General knowledge regarding the claims and defenses asserted in the litigation.
Brian Kettenring (May be contacted only through Plaintiff's counsel)	General knowledge regarding the claims and defenses asserted in the litigation.
Stephanie Moore (May be contacted only through Plaintiff's counsel)	General knowledge regarding the claims and defenses asserted in the litigation.
Michael Kieschnick Working Assets 101 Market St., Ste. 700 San Francisco, CA 94105	General knowledge regarding the claims and defenses asserted in the litigation.
Margaret Gage Proteus Fund 101 University Drive, Suite A2 Amherst, MA 01002	General knowledge regarding the claims and defenses asserted in the litigation.
Cathy Cox (Defendant) (May be contacted only through Defendants' counsel)	General knowledge regarding the claims and defenses asserted in the litigation.

<p>Kathy A. Rogers (May be contacted only through Defendants' counsel)</p>	<p>General knowledge regarding the claims and defenses asserted in the litigation.</p>
<p>Cliff Tatum (May be contacted only through Defendants' counsel)</p>	<p>General knowledge regarding the claims and defenses asserted in the litigation.</p>

ATTACHMENT C

DOCUMENTS

- 30(b)(6) deposition of the Association Of Community Organizations For Reform Now, Inc.;
- 30(b)(6) deposition of the Georgia Coalition For The People's Agenda, Inc.;
- 30(b)(6) deposition of the State Election Board;
- Affidavit of Kathy Rogers; and
- Each affidavit or declaration filed by Plaintiffs' with Plaintiffs' Motion for Preliminary Injunction.
- All exhibits used at the deposition of kathy Rogers (previously filed by Defendants with the Court);
- the consent order of the district court in *Schwier v. Cox*, civil action no. 1:00-CV-2820-JEC in the United States District Court for the Northern District of Georgia; and
- the consent order of the district court in *Charles Wesley Educational Foundation, Inc. v. Cox*, civil action no. 1:04-CV-1780-WCO in the United States District Court for the Northern District of Georgia.

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing **DEFENDANTS' INITIAL DISCLOSURES** with the Clerk of Court using the CM/ECF system, which will send notification of filing to the following CM/ECF participant:

Brad Heard, Esq.
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Brian W. Mellor, Esq.
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Elizabeth S. Westfall, Esq.
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This 15th day of November, 2006.

/s/Stefan Ritter
STEFAN RITTER
Georgia Bar No. 606950
Attorney for Defendants