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April 4, 2007

Stefan E. Ritter, Esq.
Senior Assistant Attorney General
Georgia Department of Law
40 Capital Square, SW
Atlanta, GA 30334-1300

Re: *Association of Community Organizations for Reform Now, et al. v. Cathy Cox, et al.*,
Civil Action No. 1:06-CV-1891-JTC, U.S. District Court, Northern District of
Georgia, Atlanta Division

Dear Stefan:

We are in receipt of your March 30 letter, regarding your clients' disagreements with Plaintiffs' recent responses to Defendants' requests for production of documents. We write to respond thereto and, hopefully, to clarify our positions.

Let me begin by clarifying a couple of procedural points. First, we timely requested an extension of time to respond to your document requests prior to the time that responses would have been due, and you granted the extension, as is the custom in this district. Therefore, there was no waiver of Plaintiffs' right to assert objections to those requests. Second, although we did request an extension in a timely manner, based on when you served your requests, we both had already recognized that there was some question as to whether discovery had even commenced, given that Judge Camp had never entered a scheduling order in the case. Third, while I did state that we would hand deliver our responses to you, along with any documents that we were willing to produce at that time, given that there were no such documents, I elected simply to email you our written objections and responses, since there would have been no need to incur the expense of hand-delivering a document that could have just as easily (and more quickly) have been transmitted by email. Thus, there was no material breach of the discovery extension agreement.

With respect to our substantive objections and responses, we disagree that they are "vituperative" in any way. We merely sought to interpose good-faith objections to requests that we believed to be objectionable. We certainly did not intend any personal offense or rebuke by doing so. We strongly disagree, however, that your requests were narrowly drawn. Indeed, we can hardly conceive of how those requests could have been any more broadly articulated.

I believe the fundamental disconnect that we are having here relates to our respective contentions of what this case is and is not about. This case, from the Plaintiffs' perspective, is about a challenge to an election regulation that the SEB passed and whether that regulation comports with the First Amendment or the NVRA. This case is *not* about the conduct of Plaintiffs or any other third-party voter registration group. They are not on trial, and Defendants have asserted no counterclaims against them. Rather, this case is about the conduct of the defendant governmental officials. What is relevant, therefore, is what information the SEB had in its possession at the time it

took the allegedly unconstitutional and unlawful action of enacting this election regulation, and whether their actions comported with federal law — not how many voter registration drives Plaintiffs had, where and when they had them, what flyers they distributed at such drives, whom they registered at such drives, how and with whom they planned such drives, how they maintained their contact lists in connection with such drives, and whether in fact, they copied voter registration applications. As the Supreme Court has held, repeatedly, such intrusive inquiries by government officials into the associational activities of private groups is in contravention of the First Amendment. The NAACP was, after all, a named plaintiff in one such case. Thus, I find it curious that you cannot appreciate how and why Defendants' requests in that regard would receive objections.

Plaintiffs have alleged and testified that the SEB regulation restricting the copying and requiring the sealing of third-party collected voter registration applications interferes with their voter registration and GOTV activities and, in some cases, has prevented some groups from obtaining the necessary funding to engage in voter registration and GOTV activity in Georgia. They have described in detail how, in their opinion, the regulation interferes with their activities; how alternate methods of maintaining contact information, such as sign-in sheets and separate lists, are unduly burdensome; and how allowing copying of the voter registration applications and allowing them to be collected without being sealed would assist them in their lawful activities.

It can hardly be questioned that these Plaintiffs have, as one of their primary purposes, voter registration and GOTV activities. ACORN, Project Vote, the NAACP, and the People's Agenda have a long track record of activity in this regard, including in Georgia. Their standing to challenge these SEB regulations is clear, as demonstrated by the Eleventh Circuit's *Wesley Foundation v. Cox* case and numerous other federal appellate cases — including, most recently, the Supreme Court's decision in *Massachusetts v. EPA*, No. 05-120, 549 U.S. _____, slip op. at 13-14 (U.S. Apr. 2, 2007). To the extent that Defendants' document requests are designed to elicit discoverable information in that regard, they are overly broad, unduly burdensome, and harassing. Helen Butler, Ed DuBose, and Dana Williams have all testified already that they have *personally* engaged in voter registration and GOTV activity on behalf of their respective organizations, and Nayana Miller testified that Project Vote has an interest in continuing to do or sponsor voter registration and GOTV initiatives in Georgia as it has in the past. Defendants have no reason to contest this testimony and, in any case, the document requests that Defendants made would not reach those questions.

Your clients have already testified that they had nothing but speculation and conjecture upon which to base their regulation, and that they had no real evidence that voter registration fraud was a true issue in Georgia (or anywhere else). Further, they testified that they did not even consider less restrictive means of addressing any legitimate concerns they had in regard to protecting against voter registration fraud. *Those* are the real relevant points in this lawsuit.

With respect to Defendants' requests for security procedures, training manuals and the like, Project Vote and ACORN have already produced their quality control manual to you, in connection with the preliminary injunction proceedings. We mistakenly thought that we had produced the national 2004 voter registration training manual as well, but apparently we have not. Therefore, we will produce that document to you. Other than that, Project Vote and ACORN do not believe that they have any other responsive and non-privileged information to produce to you. GCPA and Georgia NAACP may have some training materials and hand-outs, and they are trying to locate any

such material. We will produce any responsive information that they find as soon as possible after we receive it; however, that may not be by April 6. Right now, they have not located anything responsive. We cannot produce to you information that we do not have. Further, you are not entitled to Mr. Mellor's working drafts of any training materials.

As for Defendants' requests for complaints against my clients, once again, Defendants are not entitled to this information (to the extent it even exists) because the Plaintiffs are not on trial here, and there are no claims asserted against them. Thus, this information is relevant to nothing in this case. To the extent your clients may have been aware of any such information at the time they enacted the challenged SEB Rule, that would possibly be relevant, as it may have provided some basis for them taking action that otherwise would have been inappropriate under the First Amendment. However, we already know from their testimony that they were not aware of any complaints involving Plaintiffs or other third-party voter registration groups regarding their collection and submission of voter registration applications in Georgia. If the State Election Board has some good-faith basis, other than your mere speculation, for believing that a "substantial body of evidence" exists as to my clients' alleged illicit activities in Georgia, they are certainly authorized by statute to launch a formal investigation and endeavor to uncover it. However, this lawsuit is not the forum for that type of investigation, and, at this point, we have not been made aware by the SEB of any basis for the commencement of any such investigation.

We have stated to you that we are not aware of any criminal or civil complaints having been filed in any court of record or any public agency related to Plaintiffs' voter registration activities in Georgia. Again, however, in order to be accommodating, ACORN directs your attention to two other civil cases brought against it elsewhere in 2004. One is *Rousseau v. ACORN*, United States District Court, Southern District Florida, Miami Division, Case No. 04-61636 Martinez / Bandstra. The other is *Rubick v. America Coming Together et. al.*, Court of Common Pleas, Wood County, Ohio, Case No. 04 CV 650. *Rousseau* was dismissed with prejudice. *Rubick* was dismissed by the plaintiffs. Additionally, Manuel Iglesia filed an FEC Complaint against ACORN in Florida on September 2006. This matter is still under investigation by the FEC. These are the only additional documents of which ACORN and Project Vote are currently aware, relating to formal civil or criminal complaints brought against either entity related to voter registration since 2004. You may obtain documents in the *Rousseau* case through PACER. ACORN will produce the Complaint and Notice of Dismissal in the *Rubick* case, as well as the complaint in the FEC case.

We reiterate that your attempt to discover, after-the-fact, information that you speculate may exist about the supposed "misdeeds" of my clients is not relevant to any issue in this lawsuit, and to the extent it is based on your mere hunch, it is harassing, annoying, and oppressive to my clients. Further, it intrudes unlawfully on their First Amendment Right to be left alone, and for the government not to be poking around in their internal affairs. Finally, it does not change what the SEB knew and when it knew it; whether there was a sufficient basis for them to enact any third-party voter registration regulation; and, if so, whether this SEB Rule was the least restrictive and most narrowly tailored rule they could enact.

Your repeated assertions or insinuations that ACORN and Project Vote are intentionally withholding discoverable documents related to their voter registration activity in Georgia is disingenuous and insulting. As we discussed before, ACORN and Project Vote have not conducted any significant or formalized voter registration activity in Georgia since 2004 — due, in significant

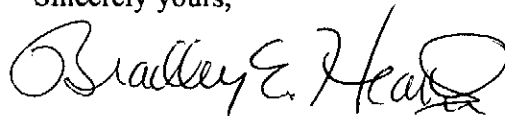
part, to the existence of the SEB Regulation at issue in this lawsuit. Many of the documents from that time period were discarded well before the initiation of this law suit.

To clarify the issue of "grants" and "financial assistance" from Project Vote to ACORN, we can tell you that during the 2004 election cycle, Project Vote contracted with ACORN branches across the country, including in Georgia, to conduct voter registration drives. There was no specific contract for Georgia ACORN, and the national contract was not a "grant" *per se*, but rather, more of a service contract between Project Vote as the customer and ACORN as the contractor. Upon further reflection, this contract may arguably fall within the definition of "financial assistance," so we will try to locate and produce to you a copy of the national contract. Again, we do not see how this is really relevant to the claims at issue, but we will try to be somewhat accommodating to you and your clients' expansive requests.

Regarding your request for depositions, I would first suggest to you that your requests in that regard might be a bit broad and overreaching, given the allegations at issue in this lawsuit. Second, we are not inclined to allow you a second opportunity to depose Helen Butler and Dana Williams, unless you can provide some substantial basis for why you would need to do so. We would also suggest that your depositions of Edward DuBose and Nyana Miller would be similarly duplicative, given that they have already testified at length, in open court, about their knowledge and involvement in this case. In addition, Ms. Miller, Mr. Keishnick, and Ms. Gage do not work for ACORN or Project Vote, are all out of state, and would need to be deposed wherever they live. If you find that you really need these depositions, we will attempt to make contacts with these individuals to coordinate the depositions. Finally, as you know, Mr. Mellor is a counsel in this case, and we would object to him being deposed. To the extent you need to obtain further information about the training or quality control manuals and their application, Project Vote can produce other knowledgeable individuals for that purpose. With those limitations in mind we are willing to be as accommodating as possible in the scheduling of depositions; however, it may make sense for us first to determine which depositions you actually intend to move forward with and, possibly, which ones we may need to contest.

We may need to confer by conference call to resolve some of these issues. If so, we are willing to do so. Otherwise, I trust this clarifies our position with respect to the issues raised in your March 30 letter. We will stand by our objections as raised in our responses and as discussed in greater detail in this letter.

Sincerely yours,



BRADLEY E. HEARD

/bh
Enclosures

cc: Brian W. Mellor, Esq.
Elizabeth S. Westfall, Esq.