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May 14, 2007

## **VIA ELECTRONIC MAIL ONLY**

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:

My co-counsel and I wanted to follow up with you concerning several issues raised during our conference call earlier today:

1. **Depositions:** We are agreeable to allowing you to depose the following witnesses within 21 days following the Court's ruling on Defendants' motion to compel, or within 21 days following any required supplementation of discovery by Plaintiffs as ordered in connection with Defendants' motion compel, whichever is longer: Brian Kettenring, Stephanie Moore, Nyana Miller, Ron Sykes, Ed DuBose, Helen Butler, Dana Williams, and an appropriate 30(b)(6) witness who can discuss Project Vote and ACORN's training manuals. All other witnesses would need to be deposed at a mutually convenient time within the existing discovery period (i.e., between May 30 and June 4). We have advised non-party witnesses Michael Kieschnick and Meg Gage that you may be seeking their depositions at some point between May 30 and June 4 and that, if you do, you will send them an appropriate subpoena with details as to the time and location thereof. At present, we are not aware of when or whether those deponents are available during that period. However, counsel for Plaintiffs are available to attend those depositions at any point during that period. We would be willing to consent to the telephonic depositions of Mr. Kieschnick and Ms. Gage, so long as both lead counsel and any examining counsel are all physically present at the same location in Atlanta during any such deposition.

2. **Copies of Registration Applications from Project Vote and ACORN:** As we explained to you during the call, we do not believe that copies of voter registration applications maintained by ACORN and Project Vote are in any way relevant or discoverable. To the extent you are disputing whether ACORN and Project Vote engaged in voter registration activity in

Georgia during 2004 and maintained photocopies of applications as part of their practice, we are willing to produce representative samples of the applications maintained by these Plaintiffs to the court, *in camera*, simply to verify their existence. Similarly, we are willing to produce to the court, *in camera*, representative samples of the sign-in sheets, contact lists, and flyers maintained by GCPA and GA-NAACP during the relevant time frame, to the extent they still exist. If you wish, we are also willing to produce redacted copies of these representative samples to you. Given the existing extensive testimony and the affidavits already submitted as to the Plaintiffs' engagement in and interest in voter registration activities in Georgia, however, we believe that such an exercise would be a complete waste of everyone's time — including, most especially, the Court's.

**3. Allegations and Evidence Regarding Plaintiffs' Quality Control Procedures:**

The only way that Plaintiffs contend that their quality control and monitoring procedures are relevant to this case is to the extent that (1) such procedures require that Plaintiffs have access to unsealed copies of completed registration applications in order to effectuate their preferred procedures and (2) the Regulation's interference with Plaintiffs' quality control procedures unconstitutionally prevents them from engaging in voter registration activities. *See Myer v. Grant*, 486 U.S. 414, 436 (1988) ("The First Amendment protects [plaintiffs'] right not only to advocate their cause, but also to select what they believe to be the most effective means for so doing."). Plaintiffs make no contentions, in this lawsuit, concerning the effectiveness of their quality control and monitoring procedures, or that the constitutionality or legality of the SEB Regulation is at all tied to the alleged effectiveness or ineffectiveness of any such procedures. Plaintiffs merely contend that they are entitled, if they wish, to engage in such quality control and monitoring procedures under the First Amendment. We have reviewed the testimony submitted on behalf of ACORN and found no facts that would make the issue of the effectiveness of ACORN's quality control program relevant to any claim or defense in this case. To the extent you find testimony that you believe makes this issue relevant, please identify it and describe how you contend it relates to a claim or defense of either party in this case, and we may consider withdrawing any such testimony, or at least entering into a clarifying stipulation related to that testimony.

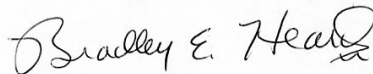
**4. Complaints Regarding Plaintiffs' Voter Registration Activities:** Complaints regarding identity theft brought against Plaintiffs are irrelevant to this lawsuit, given that Defendants did not consider any such instances in enacting the Regulation. Therefore, we believe your request for such complaints is nothing more than an attempt to justify the Regulation, *ex post*. Nevertheless, we have already advised you that we are aware of no complaints against any of the Plaintiffs related to identity theft in connection with their voter registration activities in Georgia or anywhere else. To the extent there are any complaints related to Plaintiffs' alleged untimely submission of registration applications, or their alleged submission of fake applications, they would be completely irrelevant to any issue in this case, or to any issue sought to be protected by the SEB Regulation at issue. Defendants have not alleged (and could not reasonably allege) that the SEB Regulation related to copying and sealing in any way

effectively addresses the issue of alleged fraudulent submission of applications by third party voter registration groups. Nevertheless, in an effort to be somewhat accommodating to your expansive requests, we did produce to you information related to some of these complaints about which you asked. Thus, we believe we have been more than cooperative in providing responsive information to Defendants' requests in this regard.

We are currently reviewing our previous discovery responses, in light of our conference today, to determine whether and where any amendments may be appropriate. Also, Brian has made additional inquiries to Project Vote and ACORN representatives to determine whether there might be additional responsive documents related to the funding of voter registration programs in Georgia. To the extent that there are any additional documents in that regard, we will endeavor to get that information to you expeditiously.

We trust that this letter sufficiently addresses many of the issues raised during our discussion earlier today. I should be around the office tomorrow in the morning if you wish to discuss any of these items in more detail by phone. Thanks.

Sincerely yours,



BRADLEY E. HEARD

/bh

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