

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

**PLAINTIFFS' INITIAL DISCLOSURES**

**(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including plaintiff's contentions as to what defendant did or failed to do, and a succinct statement of the legal issues in the case.**

**Response:**

This is a voting rights case wherein Plaintiffs have asserted claims for declaratory and injunctive relief, compensatory and punitive damages, and attorneys' fees, arising out of Defendants' interference with Plaintiffs' rights secured under the constitution and laws of the United States, specifically the National Voter Registration Act of 1993, as amended, 42 U.S.C. §§ 1973gg *et seq.* ("NVRA"), and the First and Fourteenth Amendments to the U.S. Constitution.

The action was filed on August 14, 2006. The District Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1367.

Plaintiffs claim that a regulation recently adopted by the Georgia State Election Board unlawfully interferes with their rights (and the rights of other third-party voter registration groups) to engage in organized voter registration activity as permitted by federal law. The Regulation at issue (1) requires completed voter registration applications to be separately sealed by each voter before being handed to a private voter registration worker (the “sealing requirement”); and (2) prohibits the copying of completed voter registration applications (the “copying ban”). *See* Ga. Comp. R. & Regs. r. 183-1-6-.03(3)(o)(2) (as amended eff. Jan. 17, 2006) (the “Regulation”). Plaintiffs contend that Defendants’ Regulation violates their rights under the NVRA and the First Amendment, and that it is specifically contrary to the District Court’s and the Eleventh Circuit’s holdings in another NVRA case involving third-party voter registration groups, *Charles H. Wesley Educ. Found. v. Cox*, 324 F. Supp. 2d 1358 (N.D. Ga. 2004) (“*Wesley Foundation I*”), *aff’d*, 408 F.3d 1349 (11<sup>th</sup> Cir. 2005) (“*Wesley Foundation II*”).

On September 28, 2006, this Court issued a preliminary injunction prohibiting enforcement of the Regulation, holding that Plaintiffs had shown a

substantial likelihood of success on the merits of its claim that the Regulation infringed upon Plaintiffs' First Amendment rights. (See Order of Sep. 28, 2006 [Dkt # 37].)

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

**Response:**

- The National Voter Registration Act of 1993, 42 U.S.C. 1973gg *et seq.*
- The First and Fourteenth Amendments to the U.S. Constitution.
- 42 U.S.C. § 1983.
- Ga. Comp. R. & Regs. § 183-1-6-.03.
- *Charles H. Wesley Educ. Found. v. Cox*, 324 F. Supp. 2d 1358 (N.D. Ga. 2004), *aff'd*, 408 F.3d 1349 (11<sup>th</sup> Cir. 2005).
- *Anderson v. Celebreeze*, 460 U.S. 780 (1982).
- *Burdick v. Takushi*, 504 U.S. 428 (1992).
- *Buckley v. Am. Const. Law Found.*, 525 U.S. 182 (1999).
- *Meyer v. Grant*, 486 U.S. 414 (1988).
- *Project Vote v. Blackwell*, No. 1:06-CV-1628-KMO, 2006 U.S. Dist. LEXIS 64354 (N.D. Ohio Sep. 8, 2006).

- *League of Women Voters v. Cobb*, No. 06-21265-CIV-SEITZ/  
MCAILILEY, 2006 U.S. Dist. LEXIS 61070 (S.D. Fla. Aug. 28, 2006).

**(3) 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:**

Please see Attachment A.

**(4) 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 Responses to Initial Disclosures as Attachment B.)**

**Response:**

Plaintiffs have not yet declared any expert witnesses for use at trial. Should they do so, Plaintiffs will supplement their response to this disclosure as necessary, in accordance with applicable rules of procedure.

**(5) Provide a copy of, or a 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:**

Please see Attachment C.

(6) 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 injuries suffered, making such documents or evidentiary material available for inspection and copying as under Fed. R. Civ. P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)

**Response:**

Plaintiffs have not yet made an exact calculation or computation of damages incurred in this lawsuit, as most elements of damages claimed (e.g., compensatory and punitive damages, equitable relief, and attorneys' fees) are within the sound discretion of the jury or the Court and cannot be determined. As discovery progresses, and to the extent practicable, Plaintiffs will supplement

their response to this disclosure as necessary, in accordance with applicable rules of procedure.

**(7) 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 made to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)**

**Response:**

Not applicable.

**(8) Disclose the full name, address, and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in plaintiff's cause of action and state the basis and extent of such interest.**

**Response:**

Not applicable.

Respectfully submitted this 15<sup>th</sup> day of November, 2006.

**s/ Bradley E. Heard, Esq.**  
Georgia Bar No. 342209  
*Counsel for All Plaintiffs*

MOLDEN HOLLEY FERGUSON  
THOMPSON & HEARD, LLC  
34 Peachtree Street, NW, Suite 1700  
Atlanta, GA 30303-2337  
Tel.: 404-324-4500  
Fax: 404-324-4501  
Email: [bheard@moldenholley.com](mailto:bheard@moldenholley.com)

Brian W. Mellor\*  
Massachusetts Bar No. 543072  
*Counsel for ACORN, Project Vote, and Dana Williams*

1486 Dorchester Avenue  
Dorchester MA 02122  
Tel.: 617-282-3666  
Fax: 617-436-4878  
Email: [electioncounsel1@projectvote.org](mailto:electioncounsel1@projectvote.org)

Elizabeth S. Westfall\*  
D.C. Bar No. 458792  
*Counsel for ACORN, Project Vote, and Dana Williams*

ADVANCEMENT PROJECT  
1730 M Street, NW, Suite 910  
Washington, DC 20036  
Tel.: 202-728-9557  
Fax: 202-728-9558  
Email: [ewestfall@advancementproject.org](mailto:ewestfall@advancementproject.org)

\* *Admitted Pro Hac Vice*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1**

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Book Antiqua and a point size of 13.

**s/ Bradley E. Heard, Esq.**  
Georgia Bar No. 342209

## ATTACHMENT A

### LIST OF POTENTIAL WITNESSES

*Note: The following list is based on information presently available to counsel for Plaintiffs in the preliminary preparation and planning stages of this action. Plaintiffs anticipate that other witnesses may be identified in the course of discovery and during further investigation of this case and that witnesses so identified may be called to testify on topics other than those identified below. Plaintiffs reserve the right to alter, add to, or amend this list as necessary and in accordance with applicable rules of procedure.*

*In addition to the individuals identified below, Plaintiffs specifically incorporate herein by reference all relevant individuals identified in Defendants' Rule 26(a)(1) Disclosures or in response to other discovery requests or otherwise identified during the course of discovery.*

| NAME, ADDRESS, AND TELEPHONE NUMBER   | DISCOVERABLE KNOWLEDGE  |
|---|---|
| Helen Butler<br><b>(May be contacted only through Plaintiff's counsel)</b>                  | General knowledge regarding the claims and defenses asserted in the litigation. |
| Dana Williams (Plaintiff)<br><b>(May be contacted only through Plaintiff's counsel)</b>     | General knowledge regarding the claims and defenses asserted in the litigation. |
| Edward DuBose<br><b>(May be contacted only through Plaintiff's counsel)</b>                 | General knowledge regarding the claims and defenses asserted in the litigation. |
| Nyana Miller<br><b>(May be contacted only through Plaintiff's counsel)</b>                  | General knowledge regarding the claims and defenses asserted in the litigation. |
| Brian Kettenring<br><b>(May be contacted only through Plaintiff's counsel)</b>              | General knowledge regarding the claims and defenses asserted in the litigation. |
| Stephanie Moore<br><b>(May be contacted only through Plaintiff's counsel)</b>               | General knowledge regarding the claims and defenses asserted in the litigation. |
| Michael Kieschnick<br>Working Assets<br>101 Market St., Ste. 700<br>San Francisco, CA 94105 | General knowledge regarding the claims and defenses asserted in the litigation. |

| NAME, ADDRESS, AND TELEPHONE NUMBER   | DISCOVERABLE KNOWLEDGE  |
|---|---|
| Margaret Gage<br><b>Proteus Fund</b><br>101 University Drive, Suite A2<br>Amherst, MA 01002       | General knowledge regarding the claims and defenses asserted in the litigation. |
| Cathy Cox (Defendant)<br><b>(May be contacted only through Defendants' counsel)</b>               | General knowledge regarding the claims and defenses asserted in the litigation. |
| Claud L. ("Tex") McIver (Defendant)<br><b>(May be contacted only through Defendants' counsel)</b> | General knowledge regarding the claims and defenses asserted in the litigation. |
| J. Randolph Evans (Defendant)<br><b>(May be contacted only through Defendants' counsel)</b>       | General knowledge regarding the claims and defenses asserted in the litigation. |
| David J. Worley (Defendant)<br><b>(May be contacted only through Defendants' counsel)</b>         | General knowledge regarding the claims and defenses asserted in the litigation. |
| Jeffrey K. Israel (Defendant)<br><b>(May be contacted only through Defendants' counsel)</b>       | General knowledge regarding the claims and defenses asserted in the litigation. |
| Kathy A. Rogers<br><b>(May be contacted only through Defendants' counsel)</b>                     | General knowledge regarding the claims and defenses asserted in the litigation. |

## **ATTACHMENT C**

### **LIST OF RELEVANT DOCUMENTS**

At this time, Plaintiff has identified the following categories of documents and things that may be used to support her claims and defenses in this action:

- Relevant documents related to Defendants' rules, regulations, policies, and procedures regarding voter registration.
- Relevant documents related to preclearance submissions pursuant to Section 5 of the Voting Rights Act.

Plaintiff anticipates that additional documents and things will be identified during the course of discovery and during further investigation of this case.

Plaintiff reserves the right to alter, add to, or amend this list as necessary and in accordance with applicable rules of procedure.

**CERTIFICATE OF SERVICE**

This will certify that I have this day electronically filed the within and foregoing **Plaintiffs' Initial Disclosures** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

Stefan E. Ritter, Esq.

[Stefan.Ritter@law.state.ga.us](mailto:Stefan.Ritter@law.state.ga.us)

Brian W. Mellor, Esq.

[electioncounsel1@projectvote.org](mailto:electioncounsel1@projectvote.org)

Elizabeth S. Westfall, Esq.

[ewestfall@advancementproject.org](mailto:ewestfall@advancementproject.org)

Dated this 15<sup>th</sup> day of November, 2006.

**s/ Bradley E. Heard, Esq.**

Georgia Bar No. 342209