

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

ASSOCIATION OF COMMUNITY)	
ORGANIZATIONS FOR REFORM)	
NOW, et al.,)	
)	
Plaintiffs,)	CIVIL ACTION NO.
)	
v.)	1:06-CV-1891-JTC
)	
CATHY COX, et al.,)	
)	
Defendants.)	
)	

**PLAINTIFFS’ OBJECTIONS TO AND MOTION
TO STRIKE IN PART DEFENDANTS’ PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Plaintiffs, by and through undersigned counsel, respectfully submit their Objections to and Motion to Strike in Part Defendants’ Proposed Findings of Fact and Conclusions of Law (“Defendants’ Proposed Findings”), on the grounds that they include numerous purported “facts” that are unsupported by any evidence of record and proposed conclusions of law that are unsupported by any decisional or statutory law, in complete disregard of the express instructions of this Court.¹

¹ Plaintiffs disagree, on the merits, with most of Defendants’ Proposed Findings. However, Plaintiffs do not seek in this motion to strike Defendants’ Proposed Findings based on the merits

Specifically, Plaintiffs object to and move to strike the following paragraphs of Defendants' Proposed Findings: **I. Factual and Procedural Background** at ¶¶ 1, 3, 4, 9, 11, 14, 15, 16, 18, 20, 21; **III. Proposed Conclusions of Law at A. Substantial Likelihood of Success on the Merits (The NVRA)** at ¶¶ 1, 4, 7, 9, 11, 12-17; **(The First Amendment)** at ¶¶ 1, 2, 5, 6; **(Irreparable Injury)** at ¶¶ 1-5; and **(The Interest of the Public and the Defendants)** at ¶¶ 1-2.

In its Order of August 25, 2006, the Court directed the parties, *inter alia*, to file proposed findings of fact and conclusions of law no later than September 11, 2006. The Court admonished the parties that “[t]o the extent possible, each proposed finding of fact *shall cite with particularity the evidence supporting such fact*” and “each proposed conclusion of law *shall cite applicable legal authority.*” Because Defendants' Proposed Findings disregard these instructions in large part, as explained below, they should be stricken.

First, Defendants' Proposed Findings of Fact should be stricken because many purported “facts” improperly include argument and proposed legal conclusions and lack evidentiary support. For example, in the section of Defendants' Proposed Findings entitled “Factual and Procedural Background” at

of those findings; nor, by filing this motion, do Plaintiffs waive their right to challenge Defendants' Proposed Findings on the merits. Rather, by way of this motion, Plaintiffs are seeking merely to eliminate those proposed findings and conclusions as to which there is a complete absence of support, or as to which the referenced citations do not apply.

paragraph 16, Defendants state that “[i]t cannot be disputed that ‘identity theft’ is a significant and growing problem in our society, and that the privacy of social security numbers, as well as other personal information is not necessary [sic] to prevent such theft,” yet fail to cite any evidence whatsoever. Likewise, at the Factual Background at paragraph 4, Defendants argue, based solely on deposition testimony of Kathy Rogers (on behalf of the Defendant State Election Board members) that “the only question in this case is whether copying of an application without permission violates the rights of the Plaintiffs.” Because this assertion is both argument and a legal conclusion, it is not properly asserted as a proposed fact and should be stricken.

Second, Defendants’ Proposed Findings of Fact include several “undisputed facts” that should be stricken because they fail to cite any admission by Plaintiffs’ that could be construed as support of those “facts.” For example, in the section entitled “Factual and Procedural Background” at paragraph 9, Defendants assert that the reasons for the Regulation at issue “are not in dispute,” yet only cite affidavit testimony from Ms. Rogers, a defense witness. Defendants’ failure to cite any fact from which one could infer that Plaintiffs agree with Ms. Rogers’s testimony is a ground for striking paragraph 9. Moreover, Plaintiffs argued vigorously in their Reply to Defendants’ Opposition to Plaintiffs’ Motion for

Preliminary Injunction that Defendants’ purported reason for its Regulation—preventing misuse of personal information on voter registration applications—is not legitimate because Defendants have failed to show a single instance of such misuse in the history of Georgia’s registration of voters. Thus, Defendants do not even have a good faith basis for their assertion that such reason for the Regulation is “undisputed.”

Finally, virtually all of Defendants’ Proposed Conclusions of Law should be stricken because they are nothing more than arguments of counsel unsupported by any decisional or statutory law. Paragraphs 9 and 13-17 of the Proposed Conclusions of Law fail to cite any legal support, as do paragraphs 1, 2, and 6 of the section entitled “First Amendment,” as well as the sections entitled “Irreparable Injury” and “The Interest of the Public and the Defendants” in their entirety.

CONCLUSION

For the foregoing reasons, Plaintiffs pray that their objections will be sustained and that their motion to strike in part Defendants’ Proposed Findings of Fact and Conclusions of Law will be granted.

This 12th day of September, 2006.

Respectfully Submitted,

s/ Bradley E. Heard, Esq.

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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 Times New Roman and a point size of 14.

s/ Bradley E. Heard, Esq.
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CERTIFICATE OF SERVICE

This will certify that I have this day electronically filed the within and foregoing **Plaintiffs' Objections to and Motion to Strike in Part Defendants' Proposed Findings of Fact and Conclusions of Law** 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.
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Dated this 12th day of September, 2006.

Respectfully Submitted,

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