

**In the United States District Court
For the Southern District of Ohio
Eastern Division**

North East Ohio Coalition	:	
For the Homeless, <i>et al.</i>	:	
	:	
Plaintiffs,	:	Civil Action No. 1:06-CV-00896
	:	
vs.	:	Judge Algenon Marbley
	:	
Jennifer Brunner, et al,	:	
	:	
Defendants.	:	

**FRANKLIN COUNTY BOARD OF ELECTIONS' MOTION TO QUASH
SUBPOENA ISSUED BY PLAINTIFFS**

The Franklin County Board of Elections, a non-party to this matter, respectfully requests that this Court quash the subpoena served upon it in connection with the above captioned matter. The reasons for this motion are set forth in the accompanying memorandum in support.

Respectfully Submitted,

**RON O'BRIEN
FRANKLIN COUNTY
PROSECUTING ATTORNEY**

/s/ Patrick J. Piccininni
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MEMORANDUM IN SUPPORT

I Introduction

This matter is before the Court on the subpoena issued to the “Franklin County Board of Elections”, on October 21, 2008. (Exhibit 1). The subpoena appears to require that the Franklin County Board of Elections appear on October 23, 2008 to give testimony in the above captioned matter.

While the Plaintiffs have issued this subpoena for a motion for preliminary injunction filed in the 59th minute of the eleventh hour; FCBOE requests that this Court quash the subpoena because the parties have failed to comply with the strictures of Fed. R. Civ. P. 45, in that they failed to take the necessary steps to avoid undue burden on the witness. Counsel for Plaintiffs have taken the deposition of an FCBOE representative in accordance with this Court’s previous order limited the deposition to one hour. Plaintiffs’ counsel has indicated that the only reason that the subpoena is being issued is because the Defendants would not categorically agree that the deposition would be used in lieu of live testimony. Counsel for Defendants have not indicated that the testimony of FCBOE would not be needed and the deposition transcript would be sufficient.

II. Law and Argument

A. Reasonable steps to avoid undue burden to the subject of the subpoena have not been taken.

Fed. R. Civ. P. 45(c)(1) states:

A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction--which may include lost earnings and reasonable attorney's fees--on a party or attorney who fails to comply.

This action is premised on a motion for leave to file a supplemental complaint filed by the Plaintiffs in a case that has been pending for almost two years (Doc. 110, 120). At the same time Plaintiffs filed for expedited discovery. (Doc.112). The Defendants objected to the expedited discovery complaining that the election is only three weeks away and to require the Defendant and the County Boards of Elections to submit to depositions. (Doc.113). The Court recognized the burden on the County Board of Election officials and limited the depositions to one hour in length. (Doc. 121).

On October 21, 2008, Plaintiffs issued a subpoena to the “Franklin County Board of Elections” and not to any one individual in particular. This nebulous subpoena is asking the Franklin County Board of Elections to appear on October 23, 2008 at 9:00AM. While plaintiffs counsel has stated that the only reason that the subpoena is being issued is because the parties have not yet come to an agreement as to whether the deposition may be used in lieu of live testimony.

Currently, the Franklin County Board of Elections is preparing for the upcoming general election. Voting is already under way. Requiring the Franklin County Board of Elections to attend a hearing in which a representative has already provided testimony via deposition and all parties have had the opportunity to conduct cross examination is during this critical time required for preparation would simply render Plaintiffs counsel’s obligations under Fed. R. Civ. P. 45 (c)(1) meaningless. In fact, FCBOE adopts the arguments advanced by the Defendant in their opposition to the motion for expedited discovery as reasons that this subpoena should be quashed. (See, Doc. 113.).

B. The subpoena is invalid because Plaintiffs counsel failed to identify a “person” subject to the subpoena.

Fed. R. Civ. P. 45(a)(1)(A)(iii) states that a subpoena must:

command **each person** to whom it is directed to do the following at a specified time and place: attend and give testimony... (Emphasis added).

Plaintiffs’ counsel failed to identify a person who is required to give testimony. Surely Plaintiffs cannot mean that the entire FCBOE is required to attend the hearing. Further, FCBOE is not a person but an entity. Since the subpoena lacks the specificity of the person, it is submitted that this subpoena is invalid.

III. Conclusion

As this Court has already recognized that subjecting the County Boards of Elections to depositions is unduly burdensome at this stage of the electoral process, it is requested that the Court quash the subpoena and alleviate the need for FCBOE to appear in the morning.

Respectfully Submitted,

**RON O’BRIEN
FRANKLIN COUNTY
PROSECUTING ATTORNEY**

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CERTIFICATE OF SERVICE

I certify that on this 22nd day of October, 2008, the foregoing was electronically filed with the Court's ECF system and served on the attorneys for the parties and movants through the Court's electronic filing system.

/s/ Patrick J. Piccininni
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