

**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’ PROPOSED SCHEDULE FOR
EXPEDITED PRELIMINARY INJUNCTION HEARING**

Pursuant to the Court’s directive at the status conference hearing on August 21, 2006, undersigned Plaintiffs’ counsel attempted to confer in good faith with Defendants’ counsel, Stefan Ritter, immediately after the hearing and later that afternoon, in an effort to come to an agreement as to scheduling for the expedited preliminary injunction hearing. Unfortunately, the parties have vastly different views as to how the scheduling for this hearing should proceed. Accordingly, pursuant to the Court’s instructions, Plaintiffs are herewith filing their proposal for scheduling of an expedited preliminary injunction hearing in this matter.

The Court indicated at the status conference that it was available and amenable to holding a preliminary injunction hearing during the week of September 4 or 11 — specifically on either September 5, 6, 12, or 13. The Court also noted that it would be reasonable for Plaintiffs to have a brief amount of time (at least three business days) to reply to Defendants' response brief and that, if the parties needed limited discovery in connection with the preliminary injunction motion, they could do so in advance of the hearing. It is with these parameters in mind that Plaintiffs propose their schedule.

Copies of the Complaint, preliminary injunction brief, and motion for expedited consideration were served upon Defendants' counsel, via hand delivery, on August 15. [Dkt #4] Pursuant to the local rules of this Court, Defendants would ordinarily have 10 business days within which to file their response brief. *See* L.R. 7.1(B). That would make **Defendants' response deadline Tuesday, August 29, 2006**. Plaintiffs propose to allow Defendants their normal 10-day response time under the rules. Plaintiffs would object, however, to allowing Defendants any additional response time — especially since Plaintiffs have requested an expedited hearing.

Given that Plaintiffs are the parties requesting expedited review, they are proposing to reduce their own time for filing a reply brief from the 10 business days normally allowed under the local rules to four (4) business days, which would make **Plaintiffs' reply brief due on Tuesday, September 5.**¹ This would enable this Court to hold a **preliminary injunction hearing on Wednesday, September 6,** as it previously indicated it could.

Defendants have indicated that they need or want to take depositions in advance of the preliminary injunction hearing, and that they wish to have live evidence at the preliminary injunction hearing.² To the extent the Court feels such pre-hearing discovery and live witness testimony is appropriate, Plaintiffs would also need to take depositions. Plaintiffs would propose that **pre-hearing depositions be scheduled to occur between August 28 and September 1;** that

¹ Plaintiffs would propose that, pursuant to L.R. 7.1(D), the page limitations be set at 40 pages for main briefs and 20 pages for the reply brief, as previously set out in their motion to expedite.

² Plaintiffs have previously stated that they do not believe that such discovery or live witness testimony is necessary at the preliminary injunction stage, since the core issue to be decided is whether Plaintiffs have a substantial likelihood of success in proving that the challenged State Election Board regulation violates Plaintiffs' rights under the NVRA and the First Amendment. All of the relevant factual information can be provided via affidavits and declarations, and the Court need not receive this information via live witness testimony for purposes of a preliminary injunction. *See Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) ("At the preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is 'appropriate given the character and objectives of the injunctive proceeding.'")

each such deposition be limited to 90 minutes; and that a maximum of five depositions be allowed per side. Defendants' counsel has indicated he wishes to take 30(b)(6) depositions of each organizational Plaintiff and perhaps the individual deposition of Plaintiff Dana Williams. Plaintiffs' counsel indicated that, if pre-hearing discovery is ordered or allowed, he would need to take the depositions of Defendant Cathy Cox, two individuals in her Elections Division office (Kathy Rogers and Clifford Tatum), and perhaps one or two of the additional SEB Defendants.

Plaintiffs reiterate that expedited handling of their preliminary injunction motion is necessary because they are being irreparably harmed each day of this federal election season that they are unable, because of the Regulation, to plan and implement effective voter registration, education, and get-out-the-vote ("GOTV") programs in Georgia in connection with the upcoming statewide general election on November 7, 2006. The voter registration deadline for the November elections is October 10, 2006 (less than two months away).³ Plaintiffs need to begin their

³ Pursuant to Georgia law, the voter registration deadline falls on the fifth Monday prior to an election, or the next business day if that Monday is a holiday. O.C.G.A. § 21-2-224(a). The fifth Monday prior to the November 7 general election is October 9 (Columbus Day). Therefore, the deadline is October 10, 2006.

voter registration activities as soon as possible if there is to be any hope of mounting any effective civic engagement programs in Georgia for this election season.

WHEREFORE, Plaintiffs pray that their motion to expedite consideration of the preliminary injunction motion and for leave to file briefs in excess of page limitations will be granted and that a briefing, hearing, and discovery schedule, as outlined above, will be adopted.

This 22nd day of August, 2006.

Respectfully Submitted,

s/ Bradley E. Heard, Esq.

Georgia Bar No. 342209

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Counsel for All Plaintiffs

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.
Georgia Bar No. 342209

CERTIFICATE OF SERVICE

This will certify that I have this day electronically filed the within and foregoing **Plaintiffs' Proposed Schedule for Expedited Preliminary Injunction Hearing** 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:

<NONE>

I further certify that I have served paper copies of the foregoing document via United States Mail, postage prepaid, to the following attorney:

Stefan E. Ritter, Esq.
Senior Assistant Attorney General
Department of Law, State of Georgia
40 Capital Sq SW
Atlanta, GA 30303

Dated this 22nd day of August, 2006.

Respectfully Submitted,

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