

**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

**REPLY BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR  
PARTIAL RECONSIDERATION, AMENDMENT, AND/OR  
CORRECTION OF PRELIMINARY INJUNCTION ORDER**

Given that Defendants' response brief was almost completely non-responsive to the substance of Plaintiffs' arguments in their main brief in support of their motion for reconsideration, Plaintiffs submit this short reply brief simply to clarify what is apparently not in dispute with respect to this motion.

First, Defendants appear to agree that there is no factual basis in the record to support the Court's finding, in the September 28, 2006, Preliminary Injunction Order [37], that "Some of the Plaintiffs pay registration workers a fee for each completed registration application obtained." (*See* Prelim. Inj. Ord. at 4.) Defendants did not even mention this issue in their response brief, nor did they

cite to any evidence of record that would have supported such a finding. This statement appears to be a simple mistake of fact reflected in the Court's opinion and, as stated previously, did not appear to be germane to the Court's overall analysis of the case. It merits correction, however, because it leaves the false impression that Plaintiffs have engaged in criminal conduct under Georgia law when, in fact, they have not. *See* O.C.G.A. § 21-2-602.

Second, Defendants agree with Plaintiffs that the NVRA preemption question in dispute is a conflict preemption question, and that the issue of conflict preemption was "fully briefed and argued to the Court" during the original preliminary injunction proceedings. (Defs' Resp. Br. at 1.) Therefore, Defendants apparently agree that Plaintiffs are not seeking, by way of their motion for partial reconsideration, to tender new legal theories. Rather, Plaintiffs are seeking to have the Court "correct a legal or factual error . . . that . . . was made despite a clear presentation of the issue by the party seeking reconsideration."

*Servicetrends v. Siemens Medical Sys.*, No. 1:93-CV-299-JTC, 1994 U.S. Dist. LEXIS 15997, \*6-\*7 (N.D. Ga. Jun. 28, 1994) (Camp, J.).

Third, Defendants did not contest and, therefore, apparently do not quarrel with the notion that there are *two* types of conflict preemption — one which arises when a party cannot simultaneously comply with both a federal and a state

regulation, and the other which arises whenever a state regulation “stands as an obstacle to the accomplishment and execution of the full purposes and objectives” of a federal law. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-73 (2000); *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 30-31 (1996); *Teper v. Miller*, 82 F.3d 989, 993 (11th Cir. 1996).

Defendants spend the bulk of their response brief re-arguing the merits of the first type of conflict preemption — i.e., whether it is impossible to comply with both the State Election Board’s copying and sealing regulations and the NVRA. That issue is not in dispute.<sup>1</sup> Clearly, it is not “impossible” to comply with both the Regulation and the NVRA — although, as the Court noted in its preliminary injunction order, compliance with the Regulation imposes a high burden on Plaintiffs and constitutes an unlawful restraint of their First Amendment rights. (*See* Prelim. Inj. Ord. at 14, 16.) Indeed, to the extent Plaintiffs were able to conduct voter registration activity at all within Georgia, they were forced to comply with the SEB’s Regulation prior to this Court’s entry of the preliminary injunction order blocking enforcement of that Regulation.

---

<sup>1</sup>Neither is it disputed that Defendants retain the authority, under the NVRA and the Constitution, to enact *reasonable* election regulations governing the conduct of third party voter registration groups, to the extent those regulations do not conflict with the NVRA. Indeed, Plaintiffs discussed in their main brief several examples of regulations that would be within the state’s purview and that would not violate the NVRA. (*See* Pltfs’ Br. in Supp. of Mot. for Recon. at 21-22.)

To clarify, Plaintiffs' position is that, despite the ability to comply simultaneously with the Regulation and the NVRA, the Regulation is nevertheless preempted by the NVRA because it violates the *second* conflict preemption principle, in that it "stands as an obstacle" to the full implementation of Congress' purposes in enacting the NVRA. As to that argument, Defendants apparently have nothing to say in response. Their brief totally ignores the issue. Therefore, Defendants have effectively conceded that the Regulation stands as an obstacle to the effectuation of Congress' express purposes in enacting the NVRA, for the reasons discussed at length in Plaintiffs' main brief. (*See* Pltfs' Br. in Supp. of Mot. for Recon. at 6-21.) Accordingly, this Court should find that the Regulation is preempted.<sup>2</sup>

### **CONCLUSION**

For the foregoing reasons and those stated in Plaintiffs' main brief, Plaintiffs pray that their motion to reconsider will be granted and that, upon reconsideration, the Court will find that the Regulation is preempted by the NVRA

---

<sup>2</sup>In the very near future, Plaintiffs intend to move for summary judgment as to liability on the entirety of their complaint (i.e., the NVRA claim and the First Amendment claim). Plaintiffs would submit that their pending motion for reconsideration could be taken up at the same time the Court deals with the summary judgment motion.

and that its prior finding of fact related to Plaintiffs' payment of registration workers by the application will be stricken.

Respectfully submitted this 11<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 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 **Reply Brief in Support of Plaintiffs' Motion for Partial Reconsideration, Amendment, and/or Correction of Preliminary Injunction Order** 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 11<sup>th</sup> day of November, 2006.

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