

**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**

**MEMORANDUM
IN SUPPORT OF DEFENDANTS'
MOTION TO COMPEL**

SUMMARY

As shown by the discovery reviewed below, Plaintiffs' responses to Defendants' attempts to conduct discovery in this action have been to make repeated broad objections. Plaintiffs have produced collectively a total of only five (5) documents despite numerous specific requests for documents. They have objected to every single interrogatory. In a few instances after objecting they claimed there is no information or provided supposedly informational responses that are, at best, evasive and are not informative at all.

Plaintiffs' interrogatory responses are unverified. This is so despite repeated requests that they be verified. Their original documentary responses – which at that time included one (1) document – were served forty (40) days late. The Court should be aware here that Defendants informally agreed, *after the response time*, that Plaintiffs could respond if all responsive documents were delivered to Defendants' counsel by hand, thus setting the end date for providing the documents. Plaintiffs did not comply – indeed, they only then referred Defendants' counsel to a document he already had and made numerous (and in Defendants' view frivolous) objections to the document requests.

The Defendants' interrogatories and document requests were specific and tailored to the facts of this case, as pled by the Plaintiffs, and to the defenses asserted by the Defendants. They are set out below, in the Argument, consistent with the Local Rules, and the Court may see this for itself.

Moreover, Defendants respectfully believe Plaintiffs approach, as shown by the evidence, is consistent with a refusal to be cooperative since the beginning of this case. The evidence of this, which must speak for itself, is included in the Statement of the Case, below. Defendants have fully complied with their Rule 7.1 obligation to confer, and, now, within the time permitted by the Rules, move to compel.

STATEMENT OF THE CASE

This case involves claims that a Georgia State Election Board regulation supposedly violates the National Voter Registration Act (“NVRA”) and the First Amendment. (Dkt. 1 pp. 2, 17-19 (Complaint Count I), 20-22 (Complaint Count II).) The regulatory subsection in question provides:

No person may accept a completed registration application from an applicant unless such application has been sealed by the applicant. No copies of completed registration applications shall be made. This paragraph shall not apply to registrars and deputy registrars.

Ga. Comp. R. & Regs. r. 183-1-6-.03(3)(o)(2).

A preliminary injunction was granted against the regulation on September 27, 2006, on the basis that there was a substantial likelihood that Plaintiffs would prevail on their claim that the regulation violated the First Amendment. (Dkt. 37.) Defendants timely filed their Answer on October 16, 2006. (Dkt. 40.) Preliminary reports and discovery schedules were filed by the parties on November 15 and 16, 2006, and discovery was extended until June 4, 2006. (Dkt. 46, 49; minute order of March 2, 2007.)

In the Complaint Plaintiffs Association of Community Organizations for Reform Now (“ACORN”), Project Vote/Voting for America Inc. (“Project Vote”), Georgia Coalition for the People’s Agenda (“GCPA”), and Georgia State Conference of NAACP Branches (“Ga. NAACP”) apparently assert standing

(without mentioning standing *per se*) as groups that engage in voter registration.¹

(Dkt. 1 at pp. 2-4, pp.5-6.) Plaintiffs allege, for example, “All Plaintiffs intend and desire to engage in organized registration, education and get-out-the-vote (‘GOTV’) activity within Georgia during the 2006 election season.” (*Id.* at p. 6.)

They allege their activities training their registration workers, how their registration workers interact with the public and attempt to recruit members, and the help they provide in assisting voters in registering. (*Id.* at 6.) They allege they use “internal quality control procedures” and that they contact registration applicants and “correct” the applications if they feel there are errors. (*Id.* 7, 9.) They allege that photocopying completed registration applications is necessary for this purpose.² (*Id.*)

At the preliminary injunction hearing Plaintiffs presented the testimony of Nyana Miller, an “Election Coordinator” employed by Plaintiff Project Vote who

¹ Project Vote appears to be a group that primarily finances and supports voter registration drives of ACORN rather than conducting registration drives itself, although its activity is not clear from the pleadings. (*See, e.g.*, Dkt. 1 at pp. 5, 9.) Whether it is or not may depend on the circumstances, but Plaintiffs refuse to allow the circumstances to be inquired into although they rely on their conduct in doing this. (*Id.*; *see also* Dkt. 41 (hearing transcript).)

² As mentioned to the Court during oral argument on the motion for preliminary injunction, privately modifying the signed completed voter registration applications in this manner is probably illegal. *See* O.C.G.A. § 21-2-562.

assists in “quality control processes” and is involved in registration monitoring and training. (Dkt. 41 p. 39 (hearing transcript).) Ms. Miller stated that “they” review and correct the applications, like changing check boxes as to citizenship or “correcting” birthdates, and then photocopy them. (*Id.* at p. 40, 41, 46, 50.) She testified that this needs to be done in the office for purposes of oversight. (*Id.* at 44.) They review social security numbers and other private information in this process. (*See id.* at p. 50, 51.) Their monitoring activities come off of the photocopies they make. (*See id.* at pp. 52-54.) But Project Vote seems to not be currently funding voter registration activities in Georgia by her testimony. (*Id.* at 51.)

In the limited discovery the Court permitted before the motion for preliminary injunction the 30(b)(6) witness ACORN designated, Dana Williams, seemed to admit that ACORN had not engaged in voter registration activities in Georgia since November 2004 (i.e. a year and one half before the regulation now in question came into effect). (Dkt. 54. pp. 38-40 (transcript); *see also* dkt. 23 (filing of transcript for consideration in opposition to motion).) The Court ignored this in its order granting a preliminary injunction. (Dkt. 37.)

The allegations from Ga. NAACP and GCPA were that they do not copy (or do not universally copy) currently registration applications but would like to, and

that they do or can keep sign-in or registration logs of people who come to their registration drives. (Dkt. 1, p. 7, 8; *see* dkt. 2 (Affidavit of Helen Butler at ¶ 6); dkt. 55 at pp. 29-30 (deposition of GCPA represented by Helen Butler); dkt 54 at pp. 22, 27, 30, 57.) Likewise, all Plaintiffs claimed that copying is easier than getting the information they seek other ways, such as by having registrants sign-in when they register, and that it makes it harder for them to get funding, making these activities issues in the case. (*See, e.g.*, Dkt. 1 at pp. 7-9.) They claim that “[t]he copying ban eliminates Plaintiffs’ ability to retain the best evidence of how an application was filled out and the date and time that an application was filled out, collected, and delivered.” (*Id.* at p. 16.) The Plaintiffs alleged that “private voter registration drives” were prohibited in Georgia until the 2005-06 litigation in *Charles H. Wesley Found., Inc. v. Cox*, civil action no. 1:04-cv-1780-WCO (N.D. Ga.). (Dkt. 1 at p. 11.) Prior registration activity is, thus, in issue by the allegations in the Complaint.

As to sealing of the Plaintiffs alleged that the sealing requirement requires them to provide individual envelopes or applications with sealing strips. (Dkt. 1 at p. 15.) Similarly, they contend that they need to be able to inspect the applications because they assert that their “fraud” prevention and “quality control” activities are the ones they rely upon, not those conducted by election officials. (*Id.* at 9, 16-17;

Dkt. 41 at pp. 46-50 .) Whether Plaintiffs’ “fraud’ control or “quality control” activities really work, and whether they are a substantial First Amendment right of Plaintiffs, are obviously issues in this case.

In its order granting a preliminary injunction the Court relies on the Plaintiffs’ “quality control” procedures and their “correcting” of registration forms. (Dkt. 37 pp. 4-5, 7.) Regarding the magnitude of the Plaintiffs’ alleged First Amendment injuries the Court found that the regulation reduces Plaintiffs’ participation in voter registration drives and burdens their post-drive activities, that it impairs their ability to obtain funding, and that “ACORN has not conducted any formal registration drives in 2006 as a result of the sealing and copying restrictions.” (*Id.* at p. 14.) It found that the registration makes it more difficult for the Plaintiff’s to gather information to contact voters and advocate their organizations’ causes. (*Id.*) It likewise found that there was a lack of evidence of fraud. (*Id.* at 15, 16.) In sum, the Court found that the alleged impact of the regulation on the Plaintiffs outweighed the justifications for the regulation. (*Id.*) All of these are, then, obviously subjects for discovery in the case.

In their Answer the Defendants asserted, *inter alia*, an absence of standing by the Plaintiffs, that the Regulation was either not impairing the Plaintiffs’ First Amendment rights at all or was only impacting them in a minimal way, and,

indeed, that Plaintiffs had not suffered an injury in fact by the regulation. (Dkt. 40 at pp. 2, 3 (Answer).) Likewise, the Defendants assert that they are protected by immunity (Plaintiffs assert Defendants are subject to § 1983 damages), and believe that the evidence will show that Plaintiffs are only challenging Defendants' legislative conduct in enacting the regulation since the regulation has never been enforced against Plaintiffs or anyone else. (*Id.*; *see also* dkt. 37 at pp. 7-8 (Order).) Defendants' defenses are issues in the case.

In an order issued on Wednesday, August 28, 2006 – that is before the preliminary injunction hearing – the Court held that Defendants were to file their preliminary injunction brief by Friday September 1, 2006 – i.e. two days from the order. (Dkt. 16.) That order also stated that Defendants and the Plaintiffs were permitted to take up to two depositions (although the Plaintiffs had previously not sought to take depositions) by Friday September 8, 2006. (*Id.*) On Defendants side, if the deposition testimony was to be addressed in their brief, then the depositions testimony, had to be completed by September 1, 2006 – i.e. within two days, like the brief. Taking the depositions after the brief's deadline was filed would obviously mean that the factual content of the depositions could not be by the Defendants (Plaintiffs were given until September 8 for their brief, ameliorating this problem from them). (*See id.*)

This Court should be aware, uncomfortable as this fact may be, that the emergency nature of the preliminary injunction proceedings was undeniably brought about by Plaintiffs' delay alone: they filed their action eight months after the regulation became law – although they were well aware of it (*see, e.g.*, dkt 1 at p. 13) – and then sought expedited relief. This is relevant to this discovery motion since it is the Defendants' contention that this delay was purposeful to prevent discovery and limit analysis of Plaintiffs' claims and position. (*See, e.g.*, dkt. 40 at p. 2 (unclean hands defense).) At the status conference prior to preliminary injunction Plaintiffs' counsel expressed the view that Defendants should receive no discovery before the hearing. (*See, e.g.*, Dkt. 44 at pp. 35-36, Dkt. 8 p. 3 n.2.) The Court instructed the parties to confer in good faith regarding scheduling (dkt. 44 at pp. 37-40), and it is Defendants' contention, as shown by a certificate of counsel filed with documentation, that Plaintiffs unfortunately did no such thing. (Dkt. 10.)

Plaintiffs requested an extension, on the day their responses were due to requests for production: Defendants' counsel was not in the office then, but later agreed Plaintiffs could have an extension to produce the documents if Plaintiffs produced to Defendants' counsel by hand by a date certain. (Certificate of counsel filed herewith.) No objections were then discussed or raised by Plaintiff. (*Id.*)

When the date arose no documents were produced by Plaintiffs; their responses (discussed below) consist largely of a series of vituperative objections. (*Id.*)

Defendants served interrogatories and received unverified responses and more of the same objections. (*Id.*) No verifications have ever been provided despite repeated requests. (*Id.*) Plaintiffs have taken the position that they are not required to verify because they are objecting to all the discovery. (*Id.*)

Defendants repeatedly sought deposition dates at dates and times convenient to Plaintiffs (although Defendants could simply have noticed the depositions instead of attempting to proceed in a cooperative manner). (*Id.*) Plaintiffs refused to provide dates. (*Id.*) Instead they said their *counsel* would be available the last four (4) business days of the discovery period. (*Id.*) Defendants' counsel sought an informal status conference with the Court in the attempt to address this and other issues between counsel, but was rebuffed. (*Id.*)

Plaintiffs have continued to serve amended discovery responses asserting additional or revamped objections. (*See, e.g.,* Dkt. 64.) On June 4, the day of this motion, they sent a new unverified response by mail and email in the form of a letter. (Certificate of counsel filed herewith.)

It is Defendants' contention that Plaintiffs' discovery responses are improper and proper responses must now be compelled by the Court.

ARGUMENT AND CITATION OF AUTHORITY

A. STANDARD OF REVIEW GOVERNING DISCOVERY

Federal Rule of Civil Procedure 26 provides, in pertinent part:

(b) Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. ... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. ...

Fed. R. Civ. P. 26(b)(1).

In addition, the Rules provide:

(d) *Timing and Sequence of Discovery.* ... Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

Fed. R. Civ. P. 26(b)(1).

Rule 37 expressly allows for motions to compel discovery and provides that “[f]or the purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose answer or respond.” Fed. R. Civ. P. 37(a)(2)(B), 37(a)(3).

The district court is given wide latitude in considering discovery matters, and it is not normally subject to reversal unless its conduct constitutes an abuse of discretion or clear error. *NHL v. Metro. Hockey Club*, 427 U.S. 639 (1976) (referring to abuse of discretion); *DeVaney v. Continental Am. Ins. Co.*, 989 F.2d 1154, 1159 (11th Cir. 1993) (referring to “clear error”).

B. REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendants served requests for production of documents before serving interrogatories, so these are addressed here first.

1. Waiver of Objections.

Plaintiffs’ responses were served forty (40) days late. (*See* Dkt. 56, dkt. 61.) This court should be aware that Plaintiffs’ counsel attempted to contact Defendants’ counsel the day the responses were due and negotiate an extension. Defendants’ counsel was not in, but he certifies to the court that he did agree that Plaintiff could provide the documents within forty days but they must be hand delivered to his office. No objections were mentioned by Plaintiffs’ counsel at that time. Indeed, although Plaintiffs did not perfect any extension, if some of the requests were improper – none are – Defendants’ counsel would have understood a failure to provide documents. What Defendants’ counsel received were no documents delivered (but a reference to one document) with the later provision of

five training manuals. (*Certificate of Counsel*.) Plaintiffs' response fails to meet either the letter or spirit of any agreement. There was no agreement that allowed Plaintiffs to then, forty days later, refuse to produce anything and assert numerous improper objections. There is no order of the Court in this regard, nor was there any agreement to do so under Rule 29, which requires written stipulations.

Rule 34 expressly provides:

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29.

Fed. R. Civ. P. 34(b).

It is a well settled proposition that failure to timely respond waives all objections. *Marx v. Kelly, Hart & Hallman, P.C.*, 929 F.2d 8, 10, 12-13 (1st Cir. 1991) (district court order that objections to requests for production were waived by failure to make timely objections affirmed on appeal); *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989) ("We readily agree with the district court that as a general rule, when a party fails to object timely to interrogatories, production requests, or other discovery efforts, objections thereto are waived."); *Alexander v. Certegy Check Servs.*, no. 2:05CV449-MHT [WO], 2006 U.S. Dist. LEXIS 62372 (S.D. Fla. May 30, 2006) ("The defendants' verified responses and their signed objections were simply too late, and the objections are therefore waived."); *Sheehy*

v. Wehlage, No. 02CV592A, 2006 U.S. Dist. LEXIS 56310 (WDNY August 9, 2006) (failure to timely assert objections waived objections).

In the absence of a prior order from this Court or Rule 29 written stipulations, Plaintiffs' objections are waived. And Defendants will emphasize, in this regard, that they normally would be flexible in this regard, but Plaintiffs "scorched earth" approach to discovery (as evidence by their objections) in conjunction to abide by the parties informal agreement make this impossible. The objections were waived by failure to assert them timely, and all responsive documents should be ordered to be produced.

2. Individual document requests and responses.

In the interest of brevity, related document requests are grouped together, below. Each issue is fully set out with the response summarized consistent with LR 37.1, NDGa.

a. Voter registration applications

Request 1 to ACORN: Copies of voter registration applications made or collected by ACORN for persons registering to vote in Georgia after September 2006.

Request 2 to ACORN: Copies of voter registration applications made or collected by ACORN for persons registering to vote in Georgia between September 30, 2004 and September 30, 2006.

Request 1 to Project Vote: Copies of voter registration applications made or collected by Project Vote for persons registering to vote in Georgia after September 2006.

Request 2 to Project Vote: Copies of voter registration applications made or collected by Project Vote for persons registering to vote in Georgia between September 30, 2004 and September 30, 2006.

Request 1 to GCPA: Copies of voter registration applications made or collected by GCPA for persons registering to vote in Georgia after September 2006.

Request 2 to GCPA: Copies of voter registration applications made or collected by GCPA for persons registering to vote in Georgia between September 30, 2004 and September 30, 2006.

Request 1 to Ga. NAACP: Copies of voter registration applications made or collected by Georgia NAACP for persons registering to vote in Georgia after September 2006.

Request 2 to Ga. NAACP: Copies of voter registration applications made or collected by Georgia NAACP for persons registering to vote in Georgia between September 30, 2004 and September 30, 2006.

In objections each spanning about three-quarters of a page, Plaintiffs objected to the requests to produce copies of the Georgia voter registration applications they held on the grounds that the they were not relevant or likely to lead to discoverable evidence, that the requests were allegedly overly broad and burdensome, and the burden or production outweighed their relevance, that producing them would subject the Plaintiffs to “harassment, intimidation, and oppression” and that producing them would allegedly invade their First

Amendment right to association. Regarding the later, Plaintiffs cited *NAACP v. Alabama*, 357 U.S. 449 (1958); *Talley v. California*, 362 U.S. 60 (1960); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); and *Watchtower Bible & Tract Society v. Village of Stratton*, 536 U.S. 150 (2002).

Finally, shortly before discovery closed in this action, and without prior notice to Defendants, ACORN and Project vote (but not Ga. NAACP and GACP) amended their responses to say that they would allow *in camera* inspection “to prove the existence and/or to produce copies of a representative sampling of such applications to Defendants, with identifying information redacted.”

Each of these claims will be taken up in turn.

1. *Relevance.*

As noted above in the standards section, the Federal Rules permit discovery of relevant matters of those likely to lead to the discovery of admissible evidence. This case is about Plaintiffs’ copying of completed voter registration applications. Copies of the applications are obviously relevant to this case. They are relevant in their own right, since Plaintiffs have brought them into question, and in the following particulars:

- They relate to the merits of the case, since Plaintiffs claim they are not only entitled to copy the completed forms but long have been doing so,

and that copying them is less burdensome than keeping registration logs, although they do that, too;

- They relate to Plaintiffs’ alleged “quality control” and security procedures and their subsequent alteration of the forms;
- They relate to possible permission or lack of permission by the registrants for the forms’ copying,;
- They relate to potential failure to file the forms by Plaintiffs with the appropriate governmental authority, as well as showing the proper governmental response to receipt of the forms, which Plaintiffs have disclaimed.
- They allow impeachment of Plaintiffs’ preliminary injunction and final hearing testimony. And
- They relate to standing and the jurisdiction of the Court, since Plaintiffs’ claims to standing are based on collecting such forms, which Defendants believe is incorrect and are entitled to examine.

2. Narrowness and Specificity of the Requests.

The requests to each Plaintiff were divided into two requests related to different time periods: before and after the injunction issued in the present case.

The forms in issue – the forms Plaintiffs copied – are the subjects of specific

allegations in their Complaint. Seeking these specific forms is not somehow “vague.”

3. *Burdensomeness.*

Plaintiffs claim they keep copies of the requests: that forms the core of their Complaint. Producing such evidently relevant material is not burdensome nor a basis to throw out this boilerplate objection. The requests were carefully delineated as to date, not overreaching (that go back far enough only to show an absence of standing), and specific.

4. *Oppressiveness*

This Court should not forget that the forms in question are those of the State of Georgia and its citizens. The information on them is information that is supposed to be disclosed to the State authorities and the particular Defendants in this case. This is information that should indeed be hidden from third parties (at least in some of its specifics) – that is the crux of the Defendants’ case. But it turns the world of registration on its head to say that third parties are allowed to keep copies of others’ registration forms but that they cannot be produced to election authorities! The oppressiveness objection is meritless.

5. *Right to Association.*

The requests do not seek membership lists. Plaintiffs may have membership

lists; Defendants have not sought them. Nor have Defendants sought them for any purpose other than defending the case that Plaintiffs brought against them.

In the cases Plaintiffs cite, *NAACP v. Alabama*, 357 U.S. 449 (1958), *Talley v. California*, 362 U.S. 60 (1960), *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963), and *Watchtower Bible & Tract Society v. Village of Stratton*, 536 U.S. 150 (2002), the Court rejected attempts during the civil rights era of southern States to intimidate civil rights groups by obtaining membership lists and then taking action against the organization's members.

No membership lists have been sought in the present case. Nor do the Defendants desire to take action against Plaintiffs' members. To the contrary, the regulations in issue provide that even if they are violated, the registration application is to be processed thus protecting the registrant. Ga. Comp. R. & Regs. r. 183-1-6-.03(3)(s). The cases cited by Plaintiffs are not a free pass to avoid discovery on issues they bring into Court.

Numerous cases – indeed, more than have cited the above cases positively on their discovery issues – have declined to follow them. Thus, for one example, in *In re: the Matter to Quash Roberts Grand Jury Subpoena*, 650 F. Supp. 159 (N.D. Ga. 1987), Judge Evans declined to follow the case since there was an insufficient showing that associational rights would be chilled. The crux of the

cases Plaintiffs cite is that the members would be retaliated against and that there is evidence of record supporting this. That was certainly true of the NAACP during the civil rights era in actions by Alabama's Attorney General to do just that. There is no evidence of it in the present case.

Indeed, not all people who Plaintiffs register to vote would be members of their organization, and not every application to register to vote is a membership application to Plaintiffs. These applications, however, are relevant for the numerous reasons stated above and subject to production.

6. *In camera inspection*

Some but not all of the Plaintiffs would now purportedly allow *in camera* inspection of a representative sample of the applications "to prove their existence." Defendants have no idea what an *in camera* inspection is supposed to do, or what the Court would do with the documents.

Again, the information on the documents is not privileged in relation to the Defendants since these are election forms which the law requires to be produced to the Defendants. If the Plaintiffs are contending the forms have private information, that concurs precisely with Defendants' contentions from the beginning of this case. It is startling that Plaintiffs, who are private persons in

relation to the registration process, claim they have more right to view the forms than election officials.

In any regard, the *in camera* option would defeat the purpose of discovery in the first instance. Plaintiffs agreed they would produce all responsive documents to Defendants when the document responses were due. If this does not waive their objections, then they must be held to their agreement to produce to Defendants.

b. Sign-in Sheets.

Request 3 to ACORN: All sign-in sheets, logs, or registers made or used at “voter registration drives”(as that phrase is used in the Complaint) that were conducted by you in 2004, 2005 or 2006.

Request 3 to Project Vote: All sign-in sheets, logs, or registers made or used at “voter registration drives”(as that phrase is used in the Complaint) that were conducted by you in 2004, 2005 or 2006.

Request 3 to GCPA: All sign-in sheets, logs, or registers made or used at “voter registration drives”(as that phrase is used in the Complaint) that were conducted by you in 2004, 2005 or 2006.

Request 3 to Ga. NAACP: All sign-in sheets, logs, or registers made or used at “voter registration drives”(as that phrase is used in the Complaint) that were conducted by you in 2004, 2005 or 2006.

Plaintiffs serve up the same objections to producing their sign-in sheets as they do to the completed Georgia voter registration applications they have copied.

The Court should be mindful that Defendants contend it is no more difficult to

keep a sign in sheet as to make copies, and in some respects easier. These are subject to production for the same reasons the voter registration forms are.

c. Descriptions of Plaintiffs' voter registration activities

Request 12 to ACORN: All documents (except those that may be pleadings in the present case) related to, discussing, or describing ACORN's voter registration activities in Georgia in 2004, 2005, and 2006.

Plaintiffs again make the same objections to producing their sign-in sheets as they do to the completed Georgia voter registration applications they have copied.

d. Awards of Financial Assistance.

Request 4 to Project Vote: All documents concerning or related to awards of financial assistance or grants to ACORN, the Georgia Coalition for the People's Agenda, Inc. ("GCPA"), or the Georgia State Conference of NAACP Branches ("Georgia NAACP") to conduct voter registration drives in Georgia at any time during the years 2004, 2005, and/or 2006.

Request 4 to GCPA: All grant applications, applications for financial assistance, or documents showing an award of a grant or financial assistance to GCPA for it to conduct voter registration drives in Georgia at any time during the years 2004, 2005, and or 2006.

GCPA in response relied on "general objections" and said it would produce documents at a latter date. None were ever produced. The other Plaintiffs disclaimed having any such documents. This was amazing given that their Complaint, affidavits (including the affidavits from third persons they supplied) and the holding of the Court were based in part on supposed funding issues and problems regarding their registration drives.

e. Correspondence

Request 5 to ACORN: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of ACORN and Project Vote and/or Project Vote/Voting for America, Inc. (“Project Vote”) in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 6 to ACORN: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of ACORN and Working Assets and/or Working Assets, Inc. and/or Michael Kleschnick in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 7 to ACORN: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of ACORN and Proteus Fund and/or Margaret Gage in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 9 to ACORN: All letters and emails, and all enclosures to those documents, exchanged between Dana Williams and Brian Kettenring in 2004, 2005 and 2006.

Request 10 to ACORN: All letters and emails, and all enclosures to those documents, exchanged between Dana Williams and Stephanie L. Moore in 2004, 2005 and 2006.

Request 11 to ACORN: All letters and emails, and all enclosures to those documents, exchanged between Brian Kettenring and Stephanie L. Moore in 2004, 2005, and 2006 and which concerned, discussed or related to voter registration.

Request 5 to Project Vote: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of Project Vote and ACORN Project in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 5 to GCPA: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of GCPA and Project Vote and/or Project Vote/Voting for America, Inc. (“Project Vote”) in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 6 to GCPA: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of GCPA and Working Assets and/or Working Assets, Inc. and/or Michael Kleschnick in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 7 to GCPA: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of GCPA and Proteus Fund and/or Margaret Gage in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 5 to Ga. NAACP: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of Georgia NAACP and Project Vote and/or Project Vote/Voting for America, Inc. (“Project Vote”) in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 6 to Ga. NAACP: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of Georgia NAACP and Working Assets and/or Working Assets, Inc. and/or Michael Kleschnick in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Request 7 to Ga. NAACP: All letters and emails, and all enclosures to those documents, exchanged between employees, volunteers or officers of Georgia NAACP and Proteus Fund and/or Margaret Gage in 2004, 2005, and 2006 which concerned or related to voter registration activities or programs in Georgia.

Since it is routine to see objections to correspondence as overly broad, Defendants asked for copies of relevant correspondence in a variety of ways,

above, being specific in dates and people addressed to obtain the right correspondence and have it properly separated. In response Plaintiffs asserted a grab-bag of objections, ultimately taking all those in covered in the voter registration documents addressed above: i.e. that producing the correspondence sought was irrelevant, burdensome, vague, oppressive and violated the First amendment. Plaintiffs' objections are meritless; the requests were specific and relevant and narrowly tailored. It should be noted, in this regard, that every individual mentioned was someone who executed an affidavit in this case. And amazingly, after making their various objections, the Plaintiffs claimed, generally, that they have no responsive correspondence. At all. Defendants are dumbfounded by this response.

f. Voter registration hand-outs and flyers

Request 8 to ACORN: All handouts, flyers, or advertisements for “voter registration drives” (as that phrase is used in the Complaint) held in 2004, 2005 or 2006.

Request 8 to GCPA: All handouts, flyers, or advertisements for “voter registration drives” (as that phrase is used in the Complaint) held in 2004, 2005 or 2006.

Request 8 to Ga. NAACP: All handouts, flyers, or advertisements for “voter registration drives” (as that phrase is used in the Complaint) held in 2004, 2005 or 2006.

Again, while ACORN amended its response to rely on general objections, the other Plaintiffs – GCPA and GA. NAACP – continue to assert that all such documents fall within the broad objections they assert to voter registration applications. The objections are meritless.

g. Training documents.

Request 14 to ACORN: All documents used for or concerning the training of volunteers, employees, or officers of ACORN to conduct “voter registration drives” in Georgia or to process, transmit, copy, safeguard, or follow-up on voter registration applications.

Request 11 to Project Vote: All documents used for or concerning the training of volunteers, employees, or officers of Project Vote to conduct “voter registration drives,” or to process, transmit, copy, safeguard, or follow-up on voter registration applications.

Request 11 to GCPA: All documents used for or concerning the training of volunteers, employees, or officers of GCPA to conduct “voter registration drives,” or to process, transmit, copy, safeguard, or follow-up on voter registration applications.

Request 11 to Ga. NAACP: All documents used for or concerning the training of volunteers, employees, or officers of Georgia NAACP to conduct “voter registration drives,” or to process, transmit, copy, safeguard, or follow-up on voter registration applications.

The only documents produced by the Plaintiffs in response to Defendants’ discovery was in response to these requests. And here the only documents were Project Vote training manuals. All of these were finals – no drafts were produced, although the requests’ instructions specifically called of drafts as well. The

implication is that either ACORN, GCPA and Ga. NAACP do not have training manuals – which appears to be contradicted by Mr. DuBose’s testimony by Ga. NAACP at the preliminary injunction hearing (who testified as to national NAACP practice), or not all documents have been produced.

Again, Plaintiffs asserted that seeking their registration training materials was “vague” and “overly broad” and that some of them would produce documents at a future date, which they never did. All such documents, including drafts, should be immediately produced.

- h. Documents concerning the protection of voter registration information and to prevent fraud.

Request 6 to Project Vote: All documents discussing or showing steps taken by Project Vote to maintain the privacy and confidentiality of full nine digit social security numbers when they are included on voter registration applications.

Request 7 to Project Vote: All documents showing or discussing steps taken by Project Vote to maintain the privacy of drivers license numbers when they are included on voter registration applications.

Request 8 to Project Vote: All documents showing or discussing steps taken by Project Vote to maintain the privacy and confidentiality of voter identification numbers (other than full social security numbers or drivers license numbers) when they are included on voter registration applications.

Request 9 to Project Vote: All documents showing or discussing Project Vote’s policies or practices designed to prevent voter registration fraud.

Request 10 to Project Vote: All documents showing or discussing Project Vote's policies or practices intended to prevent voting fraud by persons unlawfully voting for others.

Since it is Defendants' contention that fraud is an issue regarding third party copying of voter registration applications, and that registrants' privacy must be maintained, steps to maintain the secrecy of this information are important. No documents of any kind were produced by Plaintiffs in response to these requests. Instead Plaintiffs (notably here, Project Vote) asserted that these specific and carefully broken out requests were each vague and overly broad. To the contrary, there are so many of these related requests because each is specific in what it seeks. The objections are meritless and should be struck, and Plaintiffs should acknowledge that there are no such documents if there are none in response to a lawful request.

C. INTERROGATORIES

Defendants served separate interrogatories on each of the four Plaintiffs since they are separate organizations and may have separate response, and their responses should be separately verified. The responses that were served were never verified by Plaintiffs. As above, consistent with the Local Rules, each of the interrogatories at issue is set forth below followed by a summary of the response. *See* L.R. 37.1, NDGa. Similar requests to different Plaintiffs are grouped together.

a. Witnesses

Interrogatory 1 to ACORN: Please identify (providing the information called for in the instructions) each person who prepared or assisted in preparing the responses to these interrogatories.

Interrogatory 1 to Project Vote: Please identify (providing the information called for in the instructions) each person who prepared or assisted in preparing the responses to these interrogatories.

Interrogatory 1 to GCAP: Please identify (providing the information called for in the instructions) each person who prepared or assisted in preparing the responses to these interrogatories.

Interrogatory 1 to Ga. NAACP: Please identify (providing the information called for in the instructions) each person who prepared or assisted in preparing the responses to these interrogatories.

Plaintiffs made no objection to this interrogatory. Thus their assertion that verification is unnecessary since they objected to all interrogatories is incorrect. They stated evasively, though, that the responses were drafted by counsel “subject to review and correction by the appropriate corporate representatives of Plaintiff.”

Plaintiffs are missing the point of discovery. Discovery is intended to glean information from parties, not their counsel. No doubt counsel must assist in the response, but the facts are supposed to come from witnesses. Who reviewed and prepared interrogatory responses is critical. Sometimes it is a good indication of who a party views as its most reliable witnesses, and it provides a blueprint of

whom to depose. These interrogatories were perfectly valid (and unobjected to).

Proper non-evasive response is required.

b. Prior Complaints

Interrogatory 2 to ACORN: Please identify (providing the information called for in the instructions) each criminal, civil or administrative action or complaint to which ACORN (or any subsidiary or affiliated organization of ACORN or any organization or person under ACORN's supervision or control) has been a defendant, respondent, or target of an investigation, regarding voter registration activities or conduct anywhere in the United States in 2005, 2006, and/or 2007.

Interrogatory 2 to GCPA: Please identify (providing the information called for in the instructions) each criminal, civil or administrative action or complaint to which GCPA (or any subsidiary or affiliated organization of GCPA or any organization or person under GCPA's supervision or control) has been a defendant, respondent, or target of an investigation, regarding voter registration activities or conduct in 2005, 2006, and/or 2007.

Interrogatory 2 to Project Vote: Please identify (providing the information called for in the instructions) each criminal, civil or administrative action or complaint to which Project Vote (or any subsidiary or affiliated organization of Project Vote or any organization or person under Project Vote's supervision or control) has been a defendant, respondent, or target of an investigation, regarding voter registration activities or conduct anywhere in the United States in 2005, 2006, and/or 2007.

Interrogatory 2 to Ga. NAACP: Please identify (providing the information called for in the instructions) each criminal, civil or administrative action or complaint to which Georgia NAACP (or any subsidiary or affiliated organization of Georgia NAACP or any organization or person under Georgia NAACP's supervision or control) has been a defendant, respondent, or target of an investigation, regarding voter registration activities or conduct anywhere in the United States in 2005, 2006, and/or 2007.

Plaintiffs objected to these interrogatories as allegedly irrelevant and not leading to discoverable evidence, vague, overly broad, calculated to lead to harassment, intimidation and oppression, and its value was outweighed by undue prejudice.

Defendants believe that substantial evidence exists that rather than following the “quality control” procedures Plaintiffs allege they follow, there are numerous instances of misconduct on some or all of their parts. This is obviously relevant: it is Plaintiffs who brought the whole issue of the propriety fo their own conduct in question in the first place with their assertions of “quality control” and preventing fraud, etc. Defendants are not required to search all fifty states for this information: Plaintiffs are obligated to produce it in response to these lawful questions.

c. Descriptions of voter registration activities

Interrogatory 3 to ACORN: Please describe in detail ACORN’s voter registration activities that have taken place in Georgia during the 2007 calendar year and identify the person or persons responsible for those activities.

Interrogatory 4 to ACORN: Please describe in detail ACORN’s voter registration activities that have taken place in Georgia during the 2006 calendar year and identify the person or persons responsible for those activities.

Interrogatory 5 to ACORN: Please describe in detail ACORN’s voter registration activities that have taken place in Georgia during the 2005

calendar year and identify the person or persons responsible for those activities.

Interrogatory 6 to ACORN: Please describe in detail ACORN's voter registration activities that have taken place in Georgia during the 2004 calendar year and identify the person or persons responsible for those activities.

Interrogatory 3 to GCAP: Please describe in detail GCPA's voter registration activities that have taken place in Georgia during the 2007 calendar year and identify the person or persons responsible for those activities.

Interrogatory 4 to GCAP: Please describe in detail GCPA's voter registration activities that have taken place in Georgia during the 2006 calendar year and identify the person or persons responsible for those activities.

Interrogatory 5 to GCAP: Please describe in detail GCPA's voter registration activities that have taken place in Georgia during the 2005 calendar year and identify the person or persons responsible for those activities.

Interrogatory 3 to Project Vote: Please describe in detail Project Vote's voter registration activities that have taken place in Georgia during the 2007 calendar year and identify the person or persons responsible for those activities.

4.

Interrogatory 4 to Project Vote: Please describe in detail Project Vote's voter registration activities that have taken place in Georgia during the 2006 calendar year and identify the person or persons responsible for those activities.

5.

Interrogatory 5 to Project Vote: Please describe in detail Project Vote's voter registration activities that have taken place in Georgia during the 2005 calendar year and identify the person or persons responsible for those activities.

6.

Interrogatory 6 to Project Vote: Please describe in detail Project Vote's voter registration activities that have taken place in Georgia during the 2004 calendar year and identify the person or persons responsible for those activities.

Interrogatory 3 to Ga. NAACP: Please describe in detail Georgia NAACP's voter registration activities that have taken place in Georgia during the 2007 calendar year and identify the person or persons responsible for those activities.

Interrogatory 4 to Ga. NAACP: Please describe in detail Georgia NAACP's voter registration activities that have taken place in Georgia during the 2006 calendar year and identify the person or persons responsible for those activities.

Interrogatory 5 to Ga. NAACP: Please describe in detail Georgia NAACP's voter registration activities that have taken place in Georgia during the 2005 calendar year and identify the person or persons responsible for those activities.

Interrogatory 6 to Ga. NAACP: Please describe in detail Georgia NAACP's voter registration activities that have taken place in Georgia during the 2004 calendar year and identify the person or persons responsible for those activities.

Plaintiffs assert that providing information about their voter registration activities – although this is a central issue in the case – is irrelevant, will not lead to discoverable information, is overly broad, is vague, is oppressive, and violates their First Amendment Rights.

The Plaintiffs' objections in the above regards are simply frivolous. Plaintiffs' voter registration activities lie at the heart of this case. It discloses whether their alleged interests are really infringed by the regulation, It also shows

(or disproves) their standing. Their objections should be struck and they should be required to respond.

Finally, it should be noted regarding these interrogatories, that Project Vote and ACORN both responded evasively by referring to witness testimony from the preliminary injunction hearing as supposedly describing this. Respectfully, the witness testimony did not do this in any detail; Defendants were permitted only truncated discovery at that time. Proper responses should be ordered.

CONCLUSION

For the foregoing reasons, Plaintiffs should be required to fully answer, without object, and to produce documents, without objection, each of the above interrogatories and requests for production of documents.

Respectfully submitted,

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Attorney General

DENNIS DUNN 269350
Deputy Attorney General

/s/Stefan Ritter
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SIGNATURE CERTIFICATION

I certify that the originally executed document contains the signatures of all filers indicated herein and therefore represents consent for filing of this document.

/s/Stefan Ritter
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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing
**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO
COMPEL** with the Clerk of Court using the CM/ECF system, which will send
notification of filing to the following CM/ECF participants:

Bradley Heard, Esq.
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This 4th day of June, 2007.

/s/Stefan Ritter
STEFAN RITTER
Georgia Bar No. 606950
Attorney for Defendants