

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

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

**PLAINTIFFS' MOTION TO QUASH DEPOSITION NOTICES  
AND FOR PROTECTIVE ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiffs move to quash the following deposition notices served by Defendants via hand delivery and email after the close of business on Friday, August 25, 2006: (1) Rule 30(b)(6) Notice of Deposition to Georgia Coalition for the People's Agenda (attached as Exhibit A); (2) Rule 30(b)(6) Notice of Deposition to Project Vote/Voting for America, Inc. (attached as Exhibit B); (3) Rule 30(b)(6) Notice of Deposition to Association of Community Organizations for Reform Now, Inc. (attached as Exhibit C); (4) Rule 30(b)(6) Notice of Deposition to Georgia State

Conference of NAACP Branches (attached as Exhibit D); and (5) Notice of Deposition of Dana Williams (attached as Exhibit E).

Plaintiffs seek to have these deposition notices quashed on the grounds that they were served in violation of Rule 26(d) of the Federal Rules of Civil Procedure and Local Rule 26.2(A), both of which prohibit parties from commencing civil discovery, absent an order of the Court or by stipulation, until after the parties have met and conferred pursuant to Rule 26(f). Under this Court's local rules, the Rule 26(f) conference is to be held within 16 days after the appearance of the first defendant by answer or motion, N.D. Ga. L.R. 16.1, and the discovery period commences 30 days after the appearance of the first defendant by answer, N.D. Ga. L.R. 26.2(A). The Complaint in this action was filed on August 14, 2006 (13 days ago), and the parties have not met and conferred pursuant to Rule 26(f). Likewise, there has been no stipulation or order authorizing discovery. Therefore, these deposition notices are *per se* a legal nullity. Nevertheless, in an abundance of caution, Plaintiffs formally seek, by way of this motion, to have these notices quashed.

Plaintiffs also seek a protective order as to these notices because Defendants have failed to work in good faith to coordinate the scheduling of these depositions

with Plaintiffs and their counsel and have failed to agree to reasonable discovery limitations for any depositions that are to occur in advance of the motion for preliminary injunction.

At this point, Plaintiffs have not yet consented to pre-hearing discovery because they do not believe it to be necessary, given the declarations that were supplied in connection with their motion for preliminary injunction, and they believe that such discovery will unnecessarily expand and multiply the litigation. (*See* Pltfs' Prop. Sched. for Exp. Prelim. Inj. Hearing [Dkt #8] at 3-4 & n.2; Pltfs' Resp. to Defs' Prop. Sched. for Exp. Prelim. Inj. Hearing [Dkt #11] at 5-6 & n. 3.) Nevertheless, Plaintiffs have indicated that, if the Court agrees that pre-hearing depositions and/or live witness testimony is necessary in connection with the preliminary injunction motion, they will work with Defendants to schedule the same and, indeed, will need to schedule some pre-hearing depositions of their own.<sup>1</sup> (*Id.*) Therefore, there was no need for Defendants unilaterally to notice five

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<sup>1</sup> Plaintiffs had previously indicated a possible need to depose at least three witnesses in the event pre-hearing depositions or live witness testimony is ordered or permitted in connection with the preliminary injunction motion: Defendant Secretary of State Cathy Cox; Clifford Tatum, Assistant Director of Legal Affairs for Secretary Cox's Elections Division; and Kathy Rogers, Director of the Elections Division. However, in the effort to streamline pre-hearing discovery, it may be possible for Plaintiffs simply to take a Rule 30(b)(6) deposition of the State Election Board and leave it to Defendants whom to designate for said deposition.

depositions, in violation of local court and federal civil procedure rules, and without first attempting to coordinate the scheduling of same with Plaintiffs.

Also, if pre-hearing depositions are ordered or permitted, Plaintiffs believe that it is appropriate to limit the scope, number, and duration of said depositions. Plaintiffs have previously suggested that the number of depositions be limited to a maximum of five per side and that each deposition be limited to a maximum of 90 minutes. Plaintiffs also request that the scope of the depositions be limited to matters directly related to the preliminary injunction motion.<sup>2</sup>

WHEREFORE, Plaintiffs pray that their motion to quash and for protective order be granted.

[Signatures Contained on Following Page]

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<sup>2</sup> Many of the items listed in Defendants' Rule 30(b)(6) notices far exceed the scope of information necessary or relevant to the preliminary injunction motion.

Respectfully submitted this 27<sup>th</sup> day of August, 2006.

**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' Motion to Quash Deposition Notices and for Protective 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.  
Senior Assistant Attorney General  
Department of Law, State of Georgia  
40 Capital Sq SW  
Atlanta, GA 30303

Dated this 27<sup>th</sup> day of August, 2006.

Respectfully Submitted,

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