

**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**

ANSWER

COME NOW CATHY COX, CLAUD L. (“TEX”) MCIVER III, J. RANDOLPH EVANS, DAVID J. WORLEY and JEFFREY K. ISRAEL, Defendants herein in their official and individual capacities, and, without submitting to the personal jurisdiction of the court as to all of the claims purported to be made against them but specially appearing to answer those claims, hereby answer and respond to the Plaintiffs’ Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted and should be dismissed.

SECOND DEFENSE

The individual capacity claims are not properly asserted against the Defendants and are barred by qualified immunity and should be dismissed.

THIRD DEFENSE

Some or all of the Plaintiffs lack standing to pursue the claims in this action and their claims should be dismissed.

FOURTH DEFENSE

Some or all of the Plaintiffs have failed to make the notice required by the National Voting Rights Act, 42 U.S.C. § 1973gg-9(b), and their claims should be dismissed.

FIFTH DEFENSE

Some or all of the Plaintiffs have suffered no injury in fact or in law by the conduct alleged in the Complaint and their claims should be dismissed.

SIXTH DEFENSE

This Court should abstain from taking jurisdiction in this case since it involves matters of State of Georgia administrative law involving State public policy and import which can and should be resolved at the State level rather than in federal court. *See New Orleans Public Srvc., Inc. v. City Council of New Orleans*, 491 U.S. 350 (1989).

SEVENTH DEFENSE

Plaintiffs have suffered no injury under the Constitution or laws of the United States, and hence their claims are not actionable under 42 U.S.C. § 1983 or the National Voter Registration Act, and their claims should be dismissed.

EIGHTH DEFENSE

The Plaintiffs' claim for injunctive relief is barred by laches, unclean hands, and bad faith due to their extraordinary delay before bring these claims to court then seeking injunctive relief on an emergency and expedited basis. Since the only relief sought by Plaintiffs is injunctive relief, Plaintiffs Complaint should be dismissed.

NINTH DEFENSE

Defendants show that the regulation in question, Ga. Comp. R. & Regs. r. 183-1-6-.03(3)(o)(2), is a valid and duly enacted regulation of the State of Georgia, that it does not prohibit any person from registering to vote, that it does not prevent any person from exercising free speech or unduly burden the right to free speech, that its purpose is not only reasonable but compelling purpose of preventing the dissemination and misuse of the private information of individuals who register to vote, and that, in doing so, it encourages citizens to register to vote, consistent with the findings of the United States Congress.

TENTH DEFENSE

Some or all of the claims asserted by the Plaintiffs in their Complaint are moot.

ELEVENTH DEFENSE

In response to the specific allegations of the Complaint Defendants deny the allegations in the unlabeled introductory paragraph of the Complaint in so far as (1) they imply motives or wrongful conduct to the Defendants; (2) state that the regulation in question, Ga. Comp. R. & Regs. r. 183-1-6-.03(3)(o)(2), violates any law; (3) state or imply that the regulation flouts or was designed to flout or evade any law; or (4) state or imply that the regulation in question is a restriction on voter registration. The relief that the Complaint seeks speaks for itself. In response to the numbered paragraphs of the Complaint Defendants show, respectively, as follows:

1.

Admitted. Defendants do not admit, however, that personal jurisdiction exists over them for individual capacity liability and, further, state that this district court should decline jurisdiction under *New Orleans Public Srvc., Inc. v. City Council of New Orleans*, 491 U.S. 350 (1989).

2.

Admitted.

3.

Except for the final sentence, which is admitted, Defendants can neither admit nor deny the allegations set forth in paragraph 3 of the Complaint for want of specific knowledge or information upon which to form a belief as to the truth thereof.

4.

Except for the final sentence, which is admitted, Defendants can neither admit nor deny the allegations set forth in paragraph 4 of the Complaint for want of specific knowledge or information upon which to form a belief as to the truth thereof.

5.

Defendants admit the first and last sentences of paragraph 5 and otherwise can neither admit nor deny the allegations set forth in paragraph 5 of the Complaint for want of specific knowledge or information upon which to form a belief as to the truth thereof.

6.

Defendants admit the first and last sentences of paragraph 6 and otherwise

can neither admit nor deny the allegations set forth in paragraph 6 of the Complaint for want of specific knowledge or information upon which to form a belief as to the truth thereof.

7.

Admitted.

8.

Defendants admit the allegations of paragraph 8 of the Complaint except to the extent they state or imply that she is subject to the personal jurisdiction of the court in her individual or personal capacity (rather than her official capacity), which is denied.

9.

Defendants admit the allegations of paragraph 9 of the Complaint except to the extent they state or imply that the Defendants named in that paragraph are subject to the personal jurisdiction of the court in their individual or personal capacities (rather than their official capacities), which is denied.

10.

To the extent the allegations in the Complaint involve Plaintiffs ACORN and Dana Williams, the allegations in paragraph 10 of the Complaint are denied. To the extent the allegations in the paragraph 10 of the Complaint involve other

Plaintiffs Defendants can neither admit nor deny the allegations for want of specific knowledge or information upon which to form a belief as to the truth thereof.

11.

Defendants deny the allegations in paragraph 11 of the Complaint to the extent they state or imply that ACORN has conducted voter registration activities in Georgia since 2004 or that Project Vote has assisted ACORN with such activities since 2004. Defendants can neither admit nor deny the allegations concerning the frequency of Plaintiffs GCPA's and Georgia NAACP's "voter registration drives" in Georgia for want of specific knowledge or information upon which to form a belief as to the truth thereof. Likewise, Defendants can neither admit nor deny the allegations concerning the Plaintiffs' desire to engage in "organized voter registration, education and get-out-the-vote ('GOTV') activity in Georgia" although, upon information and belief as to some of the Defendants they believe this to be false.

12.

Defendants can neither admit nor deny the allegations in paragraph 12 for want of specific knowledge or information upon which to form a belief as to the truth thereof, but, to the extent those allegations state or imply that Plaintiffs

ACORN or Dana Williams engage in “voter registration activities” in Georgia at times relevant to this Complaint (i.e. after 2004) they are denied, and, upon information and belief, are likewise denied for Plaintiff Project Vote.

13.

Defendants can neither admit nor deny the allegations in paragraph 13 to the extent they involve the GCPA and NAACP for want of specific knowledge or information upon which to form a belief as to the truth thereof. Defendants deny the allegations to the extent they involve Plaintiffs ACORN or Dana Williams, and, upon information and belief, likewise deny them to the extent they involve Plaintiff Project Vote’s conduct in Georgia. Defendants admit that Project Vote engages in the activity alleged in paragraph 13 for some “voter registration drives” located in other States.

14.

The allegations in paragraph 14 are denied to the extent they involve or imply activity by ACORN (or Project Vote on behalf of ACORN) in Georgia after 2004. The allegations in paragraph 14 are otherwise admitted.

15.

In response to the allegations in paragraph 15, Defendants admit the first

three sentences thereof and otherwise can neither admit nor deny the allegations in paragraph 15 for want of specific knowledge or information upon which to form a belief as to the truth thereof.

16.

Defendants can neither admit nor deny the allegations in paragraph 16 for want of specific knowledge or information upon which to form a belief as to the truth thereof.

17.

The allegations in paragraph 17 are denied to the extent they involve or imply activity by ACORN (or Project Vote on behalf of ACORN) in Georgia after 2004. Defendants can otherwise neither admit nor deny the allegations in paragraph 17 for want of specific knowledge or information upon which to form a belief as to the truth thereof.

18.

Defendants can otherwise neither admit nor deny the allegations in the first sentence of paragraph 18 for want of specific knowledge or information upon which to form a belief as to the truth thereof. Paragraph 18 is otherwise admitted.

19.

Defendants can neither admit nor deny the allegations in paragraph 19 for

want of specific knowledge or information upon which to form a belief as to the truth thereof.

20.

Defendants can neither admit nor deny the allegations in paragraph 20 for want of specific knowledge or information upon which to form a belief as to the truth thereof.

21.

Defendants admit the first sentence of paragraph 21. The remainder of paragraph 21 is denied.

22.

In response to the allegations contained in paragraph 22, Defendants state that the cases cited speak for themselves, and their application involves legal opinions and conclusions, not factual allegations and so require no specific response. Defendants deny that the Plaintiffs have fully or accurately cited or summarized these opinions.

23.

Defendants admit the allegations in paragraph 23 except to the extent (a) they state or imply that the adoption of Ga. Comp. R. & Regs. r. 183-1-6-.03(3)(o)(2) restrict voter registration; (b) that Ga. Comp. R. & Regs. r. 183-1-6-

.03(3)(o)(2) addresses or concerns any specifically designated entities or organizations; (c) that it implies that the allegations in paragraph 22 regarding the *Wesley Foundation* case were correct, which they are not; and (d) to the extent stated in footnote 1 to paragraph 23.

24.

The allegations in paragraph 24 involve legal opinions and conclusions, not factual allegations, and so require no specific response. Those allegations are further denied as stated.

25.

The allegations in paragraph 25 are admitted, except for the allegations in footnote 2 related to paragraph 25, which is denied as stated.

26.

The allegations in paragraph 26 are admitted, except the Defendants deny that the State Election Board can impose criminal penalties.

27.

In response to the allegations in paragraph 27, Defendants deny that paragraph (a) to the extent it states or implies that any of the Plaintiffs herein have provided the notice under 42 U.S.C. § 1973gg-9(b), and (b) to the extent it states

or implies that any of the Defendants have violated the National Voter Registration Act. The allegations in paragraph 27 are otherwise admitted.

28.

Defendants admit the allegations in the final sentence of paragraph 28 of the Complaint. The remaining allegations in paragraph 28 of the Complaint are denied.

29.

The allegations in paragraph 29 of the Complaint are denied.

30.

The allegations in paragraph 30 of the Complaint are denied.

31.

The allegations in paragraph 31 of the Complaint are denied.

32.

The allegations in paragraph 32 of the Complaint are denied.

33.

The allegations in paragraph 33 on page 16 of the Complaint are denied.

34.

The allegations in paragraph 34 of the Complaint are denied.

35.

Upon information and belief, the allegations in paragraph 35 of the Complaint are denied.

36.

In response to the allegations in paragraph 36 Defendants incorporate as if fully set out herein all of their answers and responses in numbered paragraphs 1 through 35, above.

37.

The allegations in paragraph 37 of the Complaint are denied.

38.

In response to the allegations in paragraph 38, Defendants deny that *Wesley Foundation* case -- which was one case -- has the legal effect Plaintiffs claim, and, further, deny that if its did that it is applicable to all of the Plaintiffs. The remainder of paragraph 38 is denied.

39.

The allegations in paragraph 39 of the Complaint are denied.

40.

The allegations in paragraph 40 of the Complaint are denied.

41.

The allegations in paragraph 41 of the Complaint are denied.

“33”

The allegations in paragraph “33” at the top of page 20 of the Complaint are denied.

42.

In response to the allegations in paragraph 42 Defendants incorporate as if fully set out herein all of their answers and responses in numbered paragraphs 1 through 41 and the second “33,” above.

43.

The allegations in paragraph 43 of the Complaint are denied.

44.

The allegations in paragraph 44 of the Complaint are denied.

45.

The allegations in paragraph 45 of the Complaint are denied.

46.

The allegations in paragraph 46 of the Complaint are denied.

47.

The allegations in paragraph 47 of the Complaint are denied except for the

purpose ascribed to the regulation, i.e. the protection of registrants personal information, which is admitted.

48.

The allegations in paragraph 48 of the Complaint are denied.

49.

The allegations in paragraph 49 of the Complaint are denied.

50.

All other allegations in the Complaint not responded to above or below are hereby denied.

WHEREFORE having fully answered the allegations in the Plaintiffs' complaint, Defendants request as follows:

(a) that the relief sought in the Complaint be denied and judgment entered in favor of the Defendants;

(b) that the Defendants be awarded their costs and attorneys fees in this action; and

(c) that the Court award any other relief in favor of the Defendants that it determines is just, equitable, and proper.

THURBERT BAKER 033887
Attorney General

DENNIS DUNN 269350
Deputy Attorney General

/s/Stefan Ritter
STEFAN RITTER 606950
Senior Assistant Attorney General

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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 **ANSWER** with the Clerk of Court using the CM/ECF system, which will send notification of filing to the following CM/ECF participant:

Bradley E. Heard
Molden Holley Fergusson Thompson & Heard
One Park Tower
34 Peachtree Street, NW, Suite 1700
Atlanta, Georgia 30303-4501

This 16th day of October, 2006.

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