

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

KETO NORD HODGES, et al.,

Plaintiffs,

v.

Case No. 8:24-cv-879

KATHLEEN PASSIDOMO, et al.,

Defendants.

_____ /

THE SECRETARY’S MOTION FOR A RULE 26(c) PROTECTIVE ORDER

Defendant Secretary of State Cord Byrd files another discovery motion. This time, it’s to prevent Plaintiffs from deposing his 30(b)(6) representative at the ACLU’s Tallahassee office. Because Plaintiffs’ position is substantially unjustified, the Secretary seeks fees under Federal Rules of Civil Procedure 26(c)(3) and 37(a)(5).

Background

The Department of State, which the Secretary oversees, is headquartered at the R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399. *See also* Fla. Stat. § 15.01 (describing the Secretary’s duties).

On October 1, 2024, Plaintiffs noticed a “deposition of the Florida Department of State pursuant to Federal Rule of Civil Procedure 30(b)(6)” “on December 2, 2024” “at the offices of the ACLU of Florida, 336 East College Avenue, Suite 203, Tallahassee, Florida 32301.” **Attachment 1** (notice).

Counsel for the Secretary conferred with counsel for Plaintiffs. Counsel for the Secretary offered alternative deposition locations: the R.A. Gray Building, the Holtzman Vogel Tallahassee office (where some of his counsel work), and Zoom (which is the agreed upon method for taking expert depositions in this case). **Attachment 2** (redacted email correspondence); **Attachment 3** (expert deposition notices). Counsel for Plaintiffs rejected all of the alternative locations. They stated that it would be more convenient for their attorneys to have the deposition at the ACLU Tallahassee office. No other reason for the preferred location was provided.

Argument

Federal Rule of Civil Procedure 26(c)(1)(B) allows a court, “for good cause,” to “issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including” “specifying” the “time and place” of discovery. The civil rules, however, don’t specify where depositions are to take place, including 30(b)(6) depositions.

“Although the federal rules do not prevent plaintiff’s designating any place he chooses for the taking of a defendant’s deposition, the case[law] indicate[s] that it is presumed that a defendant will be examined at his residence or at his place of business or employment; if another place is named and defendant files a timely objection[,] the objection should be sustained absent some unusual circumstance to justify putting the defendant to such inconvenience.” *Grey v. Cont’l Mktg. Assocs., Inc.*, 315 F. Supp. 826, 832 (N.D. Ga. 1970).

The same is true with corporate defendants: it's "well settled that the deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business, especially when, as in this case, the corporation is the defendant." *Salter v. Upjohn Co.*, 593 F.2d 649, 652 (5th Cir. 1979) (cleaned up).¹ This general rule also applies to governmental entities. *See Miles v. Unites States*, 2015 U.S. Dist. LEXIS 188960, at *32-38 (M.D. Fla. Oct. 19, 2015) (the United States).

Depositions of corporate defendants thus could and should be taken at their principal place of business—at their corporate building. *See generally Sanders v. State Farm Mut. Auto. Ins. Co.*, 2015 U.S. Dist. LEXIS 190714, at *1-3 (N.D. Fla. June 29, 2015); *Simkins Corp. v. Wahnschaff Corp.*, 1986 U.S. Dist. LEXIS 29816, at *4 (E.D. Pa. Jan. 31, 1986).

So strong is this general rule, that it "create[s] a presumption that the corporation has good cause for a protective order" when "a deposition is noticed to be taken at a location other than the corporation's principal place of business." *Chris-Craft Indus. Prods., Inc. v. Kuraray Co.*, 184 F.R.D. 605, 607 (N.D. Ill. 1999).² "In order to

¹ *See also Canupp v. Liberty Behavioral Healthcare Corp.*, 2006 U.S. Dist. LEXIS 102586, at *6 (M.D. Fla. Aug. 4, 2006) ("The deposition for a corporation generally occurs at the corporation's principal place of business."); 7 Moore's Fed. P. – Civil § 30.20[1][iii] ("The deposition of a corporation through its officers or agents normally must be taken at its principal place of business, at least when the corporation is not the plaintiff and did not choose the forum for the lawsuit or was not forced to commence litigation at a location away from its headquarters.").

² *See also Miles*, 2015 U.S. Dist. LEXIS 188960, at *36 (same); *Simpkins*, 1986 U.S. Dist. LEXIS 29816, at *3 ("Defendant has not submitted evidence, by affidavit or otherwise, which would tend to establish 'annoyance, embarrassment, oppression,

overcome this presumption, the party noticing the deposition must demonstrate that considerations of cost, convenience, and litigation efficiency dictate taking the deposition at an alternate location.” *Miles*, 2015 U.S. Dist. LEXIS 188960, at *36.

Here, the R.A. Gray Building is the principal place of business of the Department of State. That makes it the presumptively appropriate location to have the deposition of the Secretary’s 30(b)(6) representative. Plaintiffs, however, haven’t overcome that presumption. They only justified the ACLU Tallahassee office as being more convenient for their attorneys. That’s simply not good enough. No “unusual,” *Grey*, 315 F. Supp. at 832, or outweighing “considerations of cost, convenience, and litigation efficiency” were provided, *Miles*, 2015 U.S. Dist. LEXIS 188960, at *36.

Plaintiffs may also argue that they read the applicable cases differently—that they get to depose a corporate defendant *in any location in the judicial district* where the corporate defendant resides. But that can’t be right. It wouldn’t make sense for case law to afford corporate defendants a broad deposition-location presumption, only to have that presumption fall just short of the corporate headquarter doors. Plus, “[i]f the parties cannot agree upon the location of a party’s deposition, courts presume it will proceed at the deponent’s residence, business, or employment.” *Miles*, 2015 U.S. Dist. LEXIS 188960, at *36. Here, that’s the R.A. Gray Building.

or undue burden or expense.’ Fed. R. Civ. P. 26(c). But the law has established a presumption in cases such as this one, and plaintiff has not shown any reason why I should disturb that presumption now.”).

Simple facts remain. The R.A. Gray Building is more convenient for the corporate deponent (who would work in the building), and for the Secretary's counsel (most of whom work in the building). Plaintiffs are already willing to travel to Tallahassee for the deposition, but they fail to provide any outweighing reason why the ACLU Tallahassee office is a better location. As such, the deposition should take place in the R.A. Gray Building.

Plaintiffs' position is substantially unjustified. The Secretary therefore seeks reasonable expenses under Rule 26(c)(3) and 37(a)(5).

* * *

The Secretary asks this Court to grant his motion, prevent Plaintiffs from deposing his representative at the ACLU Tallahassee office, and assess reasonable expenses against Plaintiffs.

October 10, 2024

/s/ Michael Beato
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Counsel for the Secretary

Local Rule 3.01(g) Certification

I certify that I corresponded with opposing counsel through email, **Attachment 2**, and during a phone conversation on October 8, 2024. Both parties reached an impasse as to the deposition location.

/s/ Michael Beato

Certificate of Compliance

I certify that this motion complies with the typography requirements of Local Rule 1.08, and that it complies with Local Rule 3.01(a)'s page requirements.

/s/ Michael Beato

Certificate of Service

I certify that on October 10, 2024, the foregoing was electronically served on all counsel of record.

/s/ Michael Beato

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Defendants.

_____ /

**PLAINTIFFS' NOTICE OF RULE 30(b)(6) DEPOSITION
OF FLORIDA DEPARTMENT OF STATE**

Please take notice that Plaintiffs will take the deposition of the Florida Department of State pursuant to Federal Rule of Civil Procedure 30(b)(6) upon the topics set forth in **Schedule A**, attached. The deposition will take place before a court reporter who is authorized by law to take depositions in the State of Florida on **December 2, 2024, at 9:00 AM at the offices of the ACLU of Florida, 336 East College Avenue, Suite 203, Tallahassee, Florida 32301.**

The Florida Department of State is required to designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify. The person(s) so designated must testify about matters known or reasonably available to the organization.

This deposition is being taken for the purpose of discovery, for use as evidence,

and for such other uses and purposes as are permitted under the Federal Rules of Civil Procedure and other applicable law. This deposition will be recorded by stenographic means and will continue from day to day until completed.

Dated October 1, 2024.

/s/ Nicholas L.V. Warren

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* *Special admission*

Counsel for Plaintiffs

SCHEDULE A

**Rule 30(b)(6) Topics
for Deposition of the Florida Department of State**

1. The administration of elections for the Florida Legislature, including:
 - a. the cost and burdens of holding special elections, and
 - b. the implementation of new legislative redistricting plans by state and local elections administrators.
2. The implementation of Florida's legislative and congressional redistricting plans in 2022.
3. Each state interest, if any, that the Department of State believes justifies any use of race.
4. The Secretary's responses and objections to:
 - a. Plaintiffs' First Set of Requests for Admission
 - b. Plaintiffs' First Set of Interrogatories
5. The facts supporting the Secretary's first affirmative defense.
6. The witnesses and subjects of information listed on the Secretary's initial disclosures.

From: [David Chen](#)
To: [Michael Beato](#)
Subject: Re: Hodges v. Passidomo: Meet and Confer
Date: Tuesday, October 8, 2024 12:12:07 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Thanks, Michael. We are at an impasse. Plaintiffs maintain that the ACLU of Florida's Tallahassee office is an appropriate location for the deposition.

David

On Tue, Oct 8, 2024 at 10:09 AM Michael Beato <mbeato@holtzmanvogel.com> wrote:

Thanks again for the call, David.

Again, to avert motion practice, I will compromise with a Zoom deposition.

Let me know Plaintiffs' position.

Michael Beato

Associate

Holtzman Vogel

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From: David Chen <davidchen@nyu.edu>

Sent: Tuesday, October 8, 2024 9:58 AM

To: Michael Beato <mbeato@holtzmanvogel.com>

Cc: Nicholas Warren <NWarren@aclufl.org>; Alyssa Cory <acory@shutts.com>; Shutts - KReardon <kreardon@shutts.com>; rpolston@shutts.com; Carlos Rey <Rey.Carlos@flsenate.gov>; Mohammad O. Jazil <mjazil@holtzmanvogel.com>; DOS - Ashley Davis <ashley.davis@dos.myflorida.com>; brad.mcvay@dos.myflorida.com; DOS - Joseph VandeBogart <joseph.vandebogart@dos.myflorida.com>; Zack Bennington <zbennington@holtzmanvogel.com>; Carrie McNamara <CMcNamara@aclufl.org>; James Shaw <jshaw@butler.legal>; DNordby@shutts.com

Subject: Re: Hodges v. Passidomo: Meet and Confer

Good morning Michael,

Regarding the scheduling of the Secretary's 30(b)(6), we still maintain that the ACLU of Florida's Tallahassee office is an appropriate location.

We do not read the law on 30(b)(6) to require depositions to be taken at the corporation's specific office building. At most, it states that such depositions should ordinarily be taken in the same locality as the corporation, and as such, any office in the downtown Tallahassee area would suffice.

Thanks,
David

On Thu, Oct 3, 2024 at 3:47 PM Michael Beato <mbeato@holtzmanvogel.com> wrote:

Understood, David.

[REDACTED]

And as for the deposition location, the “deposition of a corporation through its officers or agents normally must be taken at its principal place of business.” 7 Moore’s Fed. P. – Civil § 30.20[b][ii]; *see also Canupp v. Liberty Behav. Healthcare Corp.*, 2006 U.S. Dist. LEXIS 102586, at *5-6 (M.D. Fla. Aug. 4, 2006) (“The deposition for a corporation generally occurs at the corporation’s principal place of business.” (citing cases)); *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979) (“It is well settled that (t)he deposition of a corporation by its agents and officers should ordinarily be taken at its principal place of business, especially when, as in this case, the corporation is the defendant.”).

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From: David Chen <davidchen@nyu.edu>

Sent: Thursday, October 3, 2024 2:32 PM

To: Michael Beato <mbeato@holtzmanvogel.com>

Cc: Nicholas Warren <NWarren@aclufl.org>; Alyssa Cory <acory@shutts.com>; Shutts - KReardon <kreardon@shutts.com>; rpolston@shutts.com; Carlos Rey <Rey.Carlos@flsenate.gov>; Mohammad O. Jazil <mjazil@holtzmanvogel.com>; DOS - Ashley Davis <ashley.davis@dos.myflorida.com>; brad.mcvay@dos.myflorida.com; DOS - Joseph VandeBogart <joseph.vandebogart@dos.myflorida.com>; Zack Bennington <zbennington@holtzmanvogel.com>; Carrie McNamara <CMcNamara@aclufl.org>; James Shaw <jshaw@butler.legal>; DNordby@shutts.com

Subject: Re: Hodges v. Passidomo: Meet and Confer

Good afternoon Michael,

[REDACTED]

As to the deposition location, could you elaborate on the basis for why you do not think it's appropriate to hold it at ACLU of Florida's Tallahassee's office?

Best,

David Chen

On Wed, Oct 2, 2024 at 10:53 AM Michael Beato <mbeato@holtzmanvogel.com> wrote:

Good morning, David,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]

[REDACTED]

As one final point, I ask that for depositions—for both the individual plaintiffs and for defense

corporate representatives—that we be mindful of where those depositions are taking place. As for our corporate representative, I don't think it's appropriate to have that deposition in the ACLU's Tallahassee location; I'd ask that it be either at the Department of State or HV's Tallahassee office.

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capacity as President of the Florida Senate,
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Defendants.

_____ /

PLAINTIFFS' NOTICE OF DEPOSITION OF MARY ADKINS

Please take notice that, pursuant to Fed. R. Civ. P. 30, Plaintiffs will take the deposition of Mary Adkins. The deposition be recorded stenographically and videographically before a person who is authorized by law pursuant to Rule 28. The deposition will commence at **9:00 AM on November 8, 2024** and will continue from day to day until completed. By consent of the parties and witness, the deposition will be taken by remote videoconference means. The videoconference information will be shared before the deposition.

This deposition will be taken for the purpose of discovery, for use as evidence, and for such other uses and purposes as are permitted under the Federal Rules of Civil Procedure and other applicable law.

Dated October 9, 2024.

/s/ Nicholas L.V. Warren

Nicholas L.V. Warren (FBN 1019018)
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_____ /

PLAINTIFFS' NOTICE OF DEPOSITION OF DR. SEAN TRENDE

Please take notice that, pursuant to Fed. R. Civ. P. 30, Plaintiffs will take the deposition of Dr. Sean Trende. The deposition be recorded stenographically and videographically before a person who is authorized by law pursuant to Rule 28. The deposition will commence at **10:00 AM on November 25, 2024** and will continue from day to day until completed. By consent of the parties and witness, the deposition will be taken by remote videoconference means. The videoconference information will be shared before the deposition.

This deposition will be taken for the purpose of discovery, for use as evidence, and for such other uses and purposes as are permitted under the Federal Rules of Civil Procedure and other applicable law.

Dated October 9, 2024.

/s/ Nicholas L.V. Warren

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