

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

GEORGIA STATE CONFERENCE OF THE
NAACP, et al.,

Plaintiffs,

v.

STATE OF GEORGIA, et al.,

Defendants.

CIVIL ACTION FILE

No. 1:21-cv-05338-ELB-SCJ-SDG

THREE-JUDGE COURT

Before BRANCH, Circuit Judge, JONES and GRIMBERG, District Judges.

BY THE COURT:

ORDER

Plaintiffs have raised a discovery dispute pursuant to undersigned's standing order, requesting that they be allowed to either reserve time or be allocated additional time to complete the depositions of certain non-parties referred to as the Legislature Parties. The Court has carefully reviewed the submissions made by counsel for Plaintiffs and counsel for the Legislature Parties. Plaintiffs' request is **DENIED without prejudice**. Plaintiffs may renew their request for additional deposition time of certain witnesses, if necessary, after the Court resolves the legislative privilege issue currently under consideration by the Court. To the extent depositions proceed and occur prior to the Court's resolution

of the legislative privilege issue, Plaintiffs may utilize the entire seven hours of deposition time in one sitting as provided under the Federal Rules, absent agreement of the parties and witness otherwise.

SO ORDERED this 17th day of January, 2023.



Steven D. Grimberg
United States District Court Judge
for the Court

Sonya Lee-Coggins | Courtroom Deputy
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
Chambers of U. S. District Judge STEVEN D. GRIMBERG
75 Ted Turner Drive S.W.
Atlanta, GA 30303
M: 404-215-1470 | D: 404-215-1474
Email: sonya_lee-coggins@gand.uscourts.gov

"Always do more than what is required."

From: Patrick Jaugstetter <patrickj@jarrard-davis.com>
Sent: Friday, January 13, 2023 4:38 PM
To: Sonya Lee-Coggins <Sonya_Lee-Coggins@gand.uscourts.gov>
Cc: GA-Redistricting <GA_Redistricting@crowell.com>; Common Cause Raffensperger <commoncauseraffensperger@dechert.com>; LCCRUL GA Cong. & State Legis Redistricting Litigation <lccrulgacong.statelegisredistrictinglitigation@lawyerscommittee.org>; Bryan Tyson <btyson@taylorenghish.com>; Bryan Jacoutot <bjacoutot@taylorenghish.com>; Shawn Marie Story <shawn.story@legis.ga.gov>; Khoury, Alex <akhoury@sgrlaw.com>; Bryan, Clair <Clair.Bryan@legis.ga.gov>; Canter, Jacob <JCanter@crowell.com>; Karen Pachuta <kpachuta@jarrard-davis.com>
Subject: Re: Georgia State Conf. NAACP et al v State of Georgia et al, 21-cv-5338 - Dispute regarding Depositions

CAUTION - EXTERNAL:

Ms. Lee-Coggins:

This communication is in response to Mr. Jacob Canter's email message earlier today. While the Third-Party Witnesses have worked to avoid any dispute surrounding the taking of depositions, Plaintiffs Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., and Galeo Latino Community Development Fund, Inc. (collectively, the "Georgia NAACP Plaintiffs") have proposed an unworkable extension of the time period during which the Third-Party Witnesses must sit for depositions, and one which the Third-Party Witnesses cannot accept.

As a reminder to the Court, the Third-Party Witnesses are all either former or currently-serving members of the Georgia General Assembly or current staff of the Georgia General Assembly. And, as the Court is undoubtedly aware, the 2023-2024 legislative session is underway.

Depositions are set for next week, beginning on Monday, January 16, 2023. These depositions were scheduled for the upcoming week in response to the Georgia NAACP Plaintiffs' assertion that the depositions of these Third-Party Witnesses must occur prior to January 20. Despite full legislative schedules, the Third-Party Witnesses agreed to make themselves available during this time.

In his email today, Mr. Canter stated that the Georgia NAACP Plaintiffs intend to reserve time and leave the depositions of the Third-Party Witnesses open until there is a ruling on the issue of legislative privilege. The Third-Party Witnesses object to any holding open of any deposition after the already scheduled date, no matter the alleged purpose. Such a holding open of the time during which depositions may be taken (and for when they must be concluded) is not supported under the circumstances of this case, and cuts against the public policy that legislative privilege is designed to enforce—the unencumbered ability of legislators to do the job they were elected to do and serve the constituents they were elected to represent.

The Georgia NAACP Plaintiffs appear to disregard their obligation under FRCP 45 to avoid causing undue burden on the Third-Party Witnesses. These individuals are already consumed with their legislative duties and will continue to be through the end of March, whether because their respective chamber is in session, their assigned committees are

meeting, or they are engaged in the process of drafting and reviewing legislation introduced for consideration. It also bears mention that the Third-Party Witnesses who are currently-serving members of the General Assembly also have professional and personal obligations to tend to on days when the General Assembly is not in session.

Perhaps the most fundamental pillar underlying the existence of legislative privilege is to safeguard legislators in the performance of their elected duties in order to ensure that they are able to perform those duties without interference. Requiring the Third-Party Witnesses to sit for additional depositions would not only present an undue burden on each of them, but would also create an unreasonable interference with their ability to carry out their legislative duties.

In short, the Georgia NAACP Plaintiffs made the decision to schedule the depositions of the Third-Party Witnesses before this Court issued a ruling on legislative privilege. That was their choice. They cannot now contend that the scheduled, agreed upon depositions will be somehow insufficient; nothing has changed from the time they set the dates until now which would justify such a change. The Georgia NAACP Plaintiffs pushed for expedited deposition dates and now claim that there is not enough time - they cannot have it both ways.

And finally, the Georgia NAACP Plaintiffs elected and agreed to permit the Plaintiffs in the *Alpha Phi Alpha Fraternity et al v. Raffensperger*, 22-cv-5337; *Grant et al v. Raffensperger et al.*, 22-cv-122; and *Pendergrass v. Raffensperger*, 21-cv-5339 cases to participate in this coming week's scheduled depositions. Using that decision to justify subjecting the Third-Party Witnesses to another day of deposition—again taking them away from their legislative duties—not only imposes an undue burden, but is fundamentally unfair to these Third-Party Witnesses.

Therefore, we respectfully ask the Court to refuse to grant the Georgia NAACP Plaintiffs' request to reserve portions of the 7 hours of deposition testimony to which they are entitled under FRCP 30 for use at subsequent depositions, or to extend the time for depositions after a ruling on legislative privilege and to issue a ruling stating the same.

Thank you for your consideration.

Patrick D. Jaugstetter
Jarrard & Davis, LLP
222 Webb Street
Cumming, GA 30040
678-455-7150 (Phone)
678-233-8383 (Cell)
patrickj@jarrard-davis.com
www.jarrard-davis.com

CONFIDENTIALITY NOTICE: This e-mail and all attachments transmitted with it may contain legally privileged and confidential information intended solely for the use of addressee. If the reader of this message is not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by telephone (678-455-7150) or by electronic mail, and delete this message and all copies and backups thereof. Thank you.

From: Canter, Jacob <JCanter@crowell.com>

Date: Friday, January 13, 2023 at 10:59 AM

To: [Sonya Lee-Coggins@gand.uscourts.gov](mailto:Sonya_Lee-Coggins@gand.uscourts.gov) <Sonya_Lee-Coggins@gand.uscourts.gov>

Cc: Patrick Jaugstetter <patrickj@jarrard-davis.com>, GA-Redistricting <GA_Redistricting@crowell.com>, Common Cause Raffensperger <commoncauseraffensperger@dechert.com>, LCCRUL GA Cong. & State Legis

Redistricting Litigation <lccrulgacong.statelegisredistrictinglitigation@lawyerscommittee.org>, Bryan Tyson <btyson@taylorenghish.com>, Bryan Jacoutot <bjacoutot@taylorenghish.com>, Shawn Marie Story <shawn.story@legis.ga.gov>, Khoury, Alex <akhoury@sgrlaw.com>

Subject: RE: Georgia State Conf. NAACP et al v State of Georgia et al, 21-cv-5338 - Dispute regarding Depositions

Hello Ms. Lee-Coggins, I understand that Ms. Holland is no longer serving as Judge Grimberg's Courtroom deputy. Thus, please see the email below that I just sent to Ms. Holland. I have also re-pasted the same language here, directed to you. Thank you very much, Jacob

+++

Ms. Lee-Coggins,

I am writing on behalf of Plaintiffs Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., and Galeo Latino Community Development Fund, Inc. (collectively, the "**Georgia NAACP Plaintiffs**") and co-Plaintiffs Common Cause, League of Women Voters of Georgia, Dr. Ursula Thomas, Dr. Cheryl Graves, Brianne Perkins, Jasmine Bowles, and Dr. H. Benjamin Williams (the "**Common Cause Plaintiffs**"). The Georgia NAACP and Common Cause cases are the two which include constitutional claims, unlike the others. I am writing in regards to a discovery dispute with third parties Representative Bonnie Rich, Senator John Kennedy, the Senate Redistricting & Reapportionment Committee, the House Legislative and Congressional Reapportionment Committee, Gina Wright, the Legislative and Congressional Reapportionment Office, Lt. Gov. Geoff Duncan, Sen. Mike Dugan, Rep. Jan Jones, and Rep. Barry Fleming, (collectively, the "**Legislature Parties**"), whose depositions have been scheduled to begin as early as this coming Monday, January 16, 2023.

The parties have been attempting to proceed with discovery as efficiently as possible while the issue of legislative privilege has been pending with the Court. However, we are preparing for depositions and have been unable to resolve a dispute regarding the amount of time the Legislature Parties will sit for deposition. The Georgia NAACP and Common Cause Plaintiffs are entitled to 7 hours of deposition testimony under FRCP 30. However, because the issue of legislative privilege is still pending with the Court, and consistent with the stipulation the Georgia NAACP and Common Cause Plaintiffs entered into with Defendants, which was blessed by this Court, the Georgia NAACP and Common Cause Plaintiffs intend to reserve time and leave the depositions of the Legislature Parties open until there is a ruling. The Georgia NAACP and Common Cause Plaintiffs alerted the Legislature Parties to this intention as depositions were in the process of being scheduled, and no objection was raised until this week, just prior to the scheduled deposition dates. Now, the Legislature Parties have refused to agree to sit for a second day of deposition.

Additionally, as you may be aware, there are other cases pending, *Alpha Phil Alpha Fraternity et al v. Raffensperger*, 22-cv-5337; *Grant et al v. Raffensperger et al.*, 22-cv-122; and *Pendergrass v. Raffensperger*, 21-cv-5339. The APA, Grant and Pendergrass Plaintiffs have also issued subpoenas to the Legislature Parties. The Legislature Parties are contending that the Legislature Parties will only sit for a total of 7 hours on one day, regardless of who is questioning. The Georgia NAACP Plaintiffs and Common Cause Plaintiffs do not object to the Legislature Parties scheduling the APA, Grant and Pendergrass depositions the same day as their deposition, however, any time the APA, Grant and Pendergrass Plaintiffs use questioning should not count toward the Georgia NAACP and Common Cause Plaintiffs' time that they are entitled to under the Federal Rules.

Therefore, in order to allow the depositions to proceed as currently scheduled next week, the Georgia NAACP and Common Cause Plaintiffs are seeking a ruling from the Court on an expedited basis that they will receive at least the 7 hours of deposition testimony that they are entitled to under FRCP 30, and a portion of it can be reserved pending a ruling on the legislative privilege.

Thank you very much for your time and attention to this matter. Kind regards,

Jacob Canter

Pronouns: he/him/his

Crowell & Moring LLP

jcanter@crowell.com

+1.415.365.7210 direct | +1.415.385.3716 mobile

From: Canter, Jacob

Sent: Friday, January 13, 2023 7:47 AM

To: 'Alisha Holland' <Alisha.Holland@gand.uscourts.gov>

Cc: 'Patrick Jaugstetter' <patrickj@jarrard-davis.com>; GA-Redistricting <GA.Redistricting@crowell.com>; Common Cause Raffensperger <commoncauseraffensperger@dechert.com>; LCCRUL GA Cong. & State Legis Redistricting Litigation <lccrulgacong.statelegisredistrictinglitigation@lawyerscommittee.org>; 'Bryan Tyson' <btyson@taylorenghish.com>; Bryan Jacoutot <bjacoutot@taylorenghish.com>; Shawn Marie Story <shawn.story@legis.ga.gov>; Khoury, Alex <akhoury@sgrlaw.com>

Subject: Georgia State Conf. NAACP et al v State of Georgia et al, 21-cv-5338 - Dispute regarding Depositions

Ms. Holland,

I am writing on behalf of Plaintiffs Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., and Galeo Latino Community Development Fund, Inc. (collectively, the "**Georgia NAACP Plaintiffs**") and co-Plaintiffs Common Cause, League of Women Voters of Georgia, Dr. Ursula Thomas, Dr. Cheryl Graves, Brianne Perkins, Jasmine Bowles, and Dr. H. Benjamin Williams (the "**Common Cause Plaintiffs**"). The Georgia NAACP and Common Cause cases are the two which include constitutional claims, unlike the others. I am writing in regards to a discovery dispute with third parties Representative Bonnie Rich, Senator John Kennedy, the Senate Redistricting & Reapportionment Committee, the House Legislative and Congressional Reapportionment Committee, Gina Wright, the Legislative and Congressional Reapportionment Office, Lt. Gov. Geoff Duncan, Sen. Mike Dugan, Rep. Jan Jones, and Rep. Barry Fleming, (collectively, the "**Legislature Parties**"), whose depositions have been scheduled to begin as early as this coming Monday, January 16, 2023.

The parties have been attempting to proceed with discovery as efficiently as possible while the issue of legislative privilege has been pending with the Court. However, we are preparing for depositions and have been unable to resolve a dispute regarding the amount of time the Legislature Parties will sit for deposition. The Georgia NAACP and Common Cause Plaintiffs are entitled to 7 hours of deposition testimony under FRCP 30. However, because the issue of legislative privilege is still pending with the Court, and consistent with the stipulation the Georgia NAACP and Common Cause Plaintiffs entered into with Defendants, which was blessed by this Court, the Georgia NAACP and Common Cause Plaintiffs intend to reserve time and leave the depositions of the Legislature Parties open until there is a ruling. The Georgia NAACP and Common Cause Plaintiffs alerted the Legislature Parties to this intention as depositions were in the process of being scheduled, and no objection was raised until this week, just prior to the scheduled deposition dates. Now, the Legislature Parties have refused to agree to sit for a second day of deposition.

Additionally, as you may be aware, there are other cases pending, *Alpha Phil Alpha Fraternity et al v. Raffensperger*, 22-cv-5337; *Grant et al v. Raffensperger et al.*, 22-cv-122; and *Pendergrass v. Raffensperger*, 21-cv-5339. The APA, Grant and Pendergrass Plaintiffs have also issued subpoenas to the Legislature Parties. The Legislature Parties are contending that the Legislature Parties will only sit for a total of 7 hours on one day, regardless of who is questioning. The Georgia NAACP Plaintiffs and Common Cause Plaintiffs do not object to the Legislature Parties scheduling the APA, Grant and Pendergrass depositions the same day as their deposition, however, any time the APA, Grant and Pendergrass Plaintiffs use questioning should not count toward the Georgia NAACP and Common Cause Plaintiffs' time that they are entitled to under the Federal Rules.

Therefore, in order to allow the depositions to proceed as currently scheduled next week, the Georgia NAACP and Common Cause Plaintiffs are seeking a ruling from the Court on an expedited basis that they will receive at least the 7

hours of deposition testimony that they are entitled to under FRCP 30, and a portion of it can be reserved pending a ruling on the legislative privilege.

Thank you very much for your time and attention to this matter. Kind regards

Jacob Canter

Pronouns: he/him/his

jcanter@crowell.com

+1.415.365.7210 direct | +1.415.385.3716 mobile

[LinkedIn](#)

Crowell & Moring LLP
3 Embarcadero Center
26th Floor
San Francisco, CA 94111

Crowell

Collaboration Powers Success

crowell.com

This message may contain privileged and confidential information. IF IT WAS SENT TO YOU BY MISTAKE, DO NOT READ IT. Instead, please notify the sender (or postmaster@crowell.com) by reply e-mail, and delete this e-mail. Unauthorized dissemination, forwarding or copying of this e-mail is strictly prohibited.

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.