



produced by February 25, 2019 to the offices of Plaintiff's attorney, Skip Sugarman. The Department asserts that the nine categories set forth in the attachment to the subpoena are overly broad in their reach, vague and production would be unduly burdensome to the Department. Additionally, the subpoena requests information that is confidential pursuant to federal and state law.

Based on the Department's reading of the complaint, Plaintiff's claims center around the alleged irregularities in the casting of provisional ballots in election contests held in 2018. *See* Dkt. 1 at 20-21. The Department has no information regarding electors who voted by provisional ballot in 2018. The Department does not determine the eligibility of persons to vote and does not keep any sort of list of registered voters. *See* O.C.G.A. § 49-2-6 (authority and responsibilities of the Department). The Department's role is to offer voter registration application, and in those instances where a paper form is utilized, to assist in completion of the form (if requested) and mail the form to the Georgia Secretary of State (if requested). *See* 52 U.S.C. § 20506(a)(2)(A); Ga. Div. of Family and Children Servs. Policy Manual at 1088, 2980, 3010 (<https://odis.dhs.ga.gov/General>). As such, the Department is only a conduit for the application and has **no** role in the determination of voter eligibility or the maintenance of voter rolls. *See id.*

## II. ARGUMENT AND CITATION OF AUTHORITY

A party may propound discovery that is relevant to a claim or defense. *See* Fed. R. Civ. P. 26(b). However, “a party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(3). The subpoena issued may be quashed if it “requires disclosure of [] protected material” or “subjects a person to undue burden.” Fed. R. Civ. P. 45(d)(3)(A).

### A. The subpoena seeks protected, confidential material.

The Department administers several assistance programs for Georgians in need, including Medicaid (eligibility), the Supplemental Nutrition Assistance Program (“SNAP,” also known as “food stamps”) and Temporary Assistance to Needy Families (“TANF”). *See* O.C.G.A. § 49-2-6. As part of the National Voter Registration Act (“NVRA”), the agencies offering public assistance were also made places where applicants and recipients for public assistance could obtain an application to register to vote. *See* 42 U.S.C. § 20506(a)(2)(A). The Department offers voter registration applications when persons apply to the Department for public assistance, recertify or renew any application for assistance or present the Department with a change of address in connection with their receipt of public assistance. *See* Ga. Div. of Family and Children Servs. Policy Manual at 1088, 2980, 3010 (<https://odis.dhs.ga.gov/General>).

Records and information regarding the applicants for and recipients of public assistance are expressly confidential under state and federal law and the Department is constrained from releasing such information. *See* 7 U.S.C. § 2020(e)(8); 42 U.S.C. § 602; 42 U.S.C. § 1396(a)(7); 7 C.F.R. § 272.1; 42 C.F.R. § 431.300; 45 C.F.R. § 205.50(a); O.C.G.A. §§ 49-4-14, 49-4-150, 49-5-40. Additionally, the locus of a voter's registration is protected by the NVRA and the information sought by the subpoena in this case would reveal the "voter registration agency through which any particular voter is registered." *See* 52 U.S.C. § 20507(a)(6).

More specifically, the statute setting out SNAP allows "disclosure of information obtained from applicant households" only in five situations: in connection with the administration of the program; for federal audit purposes; for federal government agencies to recapture overissuance of benefits; to law enforcement investigating violations of SNAP procedure (*i.e.* fraud); or to law enforcement in "fleeing felon" situations. 7 U.S.C. § 2020(e)(8); Ga. Div. of Family and Children Servs. Policy Manual at 3005 (<https://odis.dhs.ga.gov/General>).

The statutes governing Medicaid require "safeguards which restrict the use or disclosure of information concerning applicants and recipients...." 42 U.S.C. § 1396a(a)(7)(A). Such information may only be disclosed for "purposes directly

connected with [] the administration of the plan....” *Id.* The purposes of the plan are to establish eligibility for benefits, determine the amount of assistance due, provide services for beneficiaries and assist with civil and criminal proceedings related to the plan. *See* 42 CFR § 431.302; Ga. Div. of Family and Children Servs. Policy Manual at 2010 (<https://odis.dhs.ga.gov/General>).

The statutes regulating TANF “restrict the use and disclosure of information about individuals and families.” 42 U.S.C. § 602(a)(1)(A)(iv). The disclosure of TANF information is limited to: the administration of the plan; criminal or civil proceedings connected to administration of the plan; administration of other federal assistance programs; verification that an individual has been a benefit recipient for 90 days for tax purposes; financial audits regarding the administration of the plan; to assist in the administration of unemployment compensation; and in instances of child maltreatment or exploitation. *See* 45 C.F.R. 205.50; Ga. Div. of Family and Children Servs. Policy Manual at 1002 (<https://odis.dhs.ga.gov/General>).

These statutes make clear that confidentiality of public assistance records is to be taken seriously and the exceptions to confidentiality are quite narrow. Plaintiff’s situation does not fall under any of the exceptions set out by law and due to the subpoena’s breadth, along with the Department’s attempt to comply, could require the revelation of the identities and personal information regarding persons

receiving public assistance. Further, these statutes do not provide for production under a protective order or with redaction. For these reasons, this Court should quash Plaintiff's subpoena to the extent it would require the Department to produce any records of persons who apply for and receive public assistance through the Department.

**B. The subpoena is overly broad, vague and burdensome.**

The subpoena requirements are overly broad, vague and burdensome, in addition to requiring confidential data as shown in the previous section. *See* Fed. R. Civ. P. 45(d)(3)(A). The subpoena includes three pages of definitions and three pages of instructions which significantly broaden the scope of the subpoena. *See* Exhibit "1" at 1-6. Additionally, the subpoena places "applicable date range for these request [to be] January 1, 2014 through the present." *See* Exhibit "1" at 6. The NVRA, however, requires that records be retained for only two years. *See* 52 U.S.C. § 20507(i)(1).

Request Nos. 1 through 3 in Exhibit "1" require the production of "all communications" and documents regarding voter registration process and voter registration status. *Id.* at 6-7. These requests are overly burdensome given that the Department has approximately 8800 employees and provides public assistance to over 1.5 million Georgians. *See* Georgia Department of Human Services (<https://dhs.georgia.gov/division-family-children-services-office-family->

independence-data). Added to this is the expansive definition of “communication” set forth in the definitions section. *See* Exhibit “1” at 1. Given this, capturing all such communications would be overly burdensome. Additionally, the term “voter registration status” is vague. *Id.* at 6-9.

Requests No. 4 and 5 also are overly burdensome in that they require documents identifying “all individuals” who have complained about their voter registration status in addition to seeking protected information. *See* Exhibit “1” at 7. Requests Nos. 6, 8 and 9 are linked to Request No. 4 and present the same issues and burden. As stated previously, production under this request would violate confidentiality laws. Further, given the number of employees and benefit recipients, this request works a heavy burden on the Department to fulfill. Moreover, all voter registration applicants who present questions are strictly referred to the Georgia Secretary of State. *See* Ga. Div. of Family and Children Servs. Policy Manual at 1008, 3010, 2980. (<https://odis.dhs.ga.gov/General>). For these reasons, any response to Requests No. 4, 5, 6, 8 and 9 also place an undue burden, including possible significant financial outlay, on the Department. Finally, most complaints of this nature, to the extent they are even made to the Department, may be verbal in nature. Thus, the burden of such attempted production would be overly burdensome on the Department and such would be disproportionate to any benefit such discovery might provide to Plaintiff.

Request No. 7 requires “list of individual contained in Your database” and their voting status at certain time periods. Exhibit “1” at 8. The identity of such individuals is confidential and the information requested exceeds the NVRA retention period as set forth in the previous section. *See* 52 U.S.C. § 20507(i)(1). This request also is overly burdensome, with possible financial burdens, as it would require the Department to cull through its database not just once but for six different time periods. Given the uncertainty of the meaning of “voter registration status,” and given that the Department is not responsible for determining eligibility or “status,” it is dubious that any response the Department might attempt regarding this request would be of any value to Plaintiff. As such, the burden, including financial expenditure, on the Department would be overly burdensome and disproportionate to any benefit such discovery, if any, might provide to Plaintiff.



WHEREFORE, the Department respectfully requests that its Motion to Quash Subpoena be granted

This 15th day of March, 2019.

Respectfully submitted,

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**CERTIFICATION OF COMPLIANCE WITH RULE AND ORDER**

I do hereby certify that the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH SUBPOENA BY NON-PARTY GEORGIA DEPARTMENT OF HUMAN SERVICES was prepared in 14-point Times New Roman in compliance with Local Rule 5.1(C).

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have this day served the within and foregoing  
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH  
SUBPOENA BY NON-PARTY GEORGIA DEPARTMENT OF HUMAN  
SERVICES with the Clerk of the Court using the CM/ECF system which will  
automatically send email notification of such filing to the following attorneys of  
record:

*Sugarman Law LLP*  
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This 15th day of March, 2019.

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