

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

FAIR FIGHT ACTION, INC., *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION FILE

NO. 1:18-CV-5391-SCJ

ORDER

This matter appears before the Court for consideration of the parties' discovery disputes as described in their correspondence at Doc. Nos. [131-1], [131-2], [139], and [143]. More specifically, the parties have reached an impasse regarding the issue of whether Plaintiffs may depose Governor (and former Secretary of State) Brian Kemp and the current Secretary of State Brad Raffensperger. Plaintiffs also raise concerns regarding document production and other matters.

The Court held a hearing on November 20, 2019 pursuant to its informal discovery dispute resolution procedure (Doc. No. [34]) and issues the following order.

1. Deposition of Governor Brian Kemp

The Court defers ruling on the question of whether Plaintiffs may depose Governor Kemp until after the Court has reviewed the transcripts of the 30(b)(6) depositions referenced by the parties at the hearing and in their correspondence.

2. Deposition of Secretary of State Brad Raffensperger

The Court defers ruling on the question of whether Plaintiffs may depose Secretary Raffensperger until after the Court has reviewed the transcripts of the 30(b)(6) depositions referenced by the parties at the hearing and in their correspondence.

3. Discovery Production Deficiencies

Plaintiffs assert that there have been discovery production deficiencies, categorized as follows: custodians, searches, experts, and Firefly.

a. Custodians and searches

In response to Plaintiffs' arguments concerning the custodians and searches production deficiencies, Defendants, through Counsel, stated that with

respect to Plaintiffs' Request for Production (RFP) # 12 (which is crux of the discovery dispute), Defendants will provide an additional/expanded production from three additional custodians by November 27, 2019. In response, Plaintiffs indicated that they will welcome the November 27, 2019 production, with the caveat that Plaintiffs may need to request further relief from the Court if Plaintiffs later determine that the November 27, 2019 production is not sufficient. In light of such, the Court deems this issue resolved; however, Plaintiffs may petition the Court for additional relief after November 27, 2019.¹

b. Experts

In their arguments, Plaintiffs indicate that their experts are missing documents that are necessary for expert report completion, i.e., Kansas Cross-Check documents and voter complaints received for the years 2015, 2016, and 2017.

¹ At the hearing, Plaintiffs also stated that there are gaps in certification and poll worker training materials produced by Defendants; however, it is not clear to the Court if these materials fall within RFP # 12. Nevertheless, Defense Counsel indicted that a November 27, 2019 production of the missing training materials was possible. To this regard, the Court considers this matter resolved and Plaintiffs may petition the Court for additional relief if the training materials are not produced on November 27, 2019.

In response, Defendants indicated that the documents that Plaintiffs were requesting in regard to the Kansas Cross-Check do not exist and that the Secretary of State has not used the Kansas Cross-Check data.

In reply, Plaintiffs tendered Exhibit 7, an Official Election Bulletin, in which the State of Georgia's participation as a member of the Kansas Cross-Check program is referenced. Plaintiffs also indicated that they would accept the Kansas Cross-Check list, as responsive to their requests.

After review, the Court **ORDERS** Defendants to produce the Kansas Cross-Check list that Plaintiffs indicated that they would accept as responsive. Said production shall occur on or before November 27, 2019.

4. Scheduling

At the hearing, the parties indicated that they will discuss (and attempt to resolve) any issues of deposition scheduling amongst themselves. The parties have also resolved and set a date for when Plaintiffs will be allowed access to the Secretary of State's Firefly system.

Lastly, it appears that the expert discovery phase is running behind schedule, as there are additional expert reports that Plaintiffs still need to produce to Defendants. As stated at the hearing and for purposes of perfecting

the record, the Court **AMENDS** its prior scheduling order (Doc. No. [79]) to provide that Defendants shall have the full thirty-days that they need to prepare responsive expert reports, even if the thirty-days extends beyond the anticipated December 16, 2019, close of expert discovery date.

In conclusion, the parties' discovery disputes are resolved (*in part*) in accordance with the rulings herein. As stated above, the Court defers ruling on the issue of whether Plaintiffs may depose Governor Brian Kemp and Secretary of State Brad Raffensperger.

IT IS SO ORDERED this 21st day of November, 2019.

s/Steve C. Jones
HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE