

### Multiple Documents

Part	Description
1	6 pages
2	Brief Memorandum in Support of Plaintiffs' Motion to Open Discovery and for
3	Exhibit A
4	Exhibit B
5	Exhibit C

**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.*

Civ. Act. No. 18-cv-5391 (SCJ)

**PLAINTIFFS' MOTION TO OPEN DISCOVERY AND FOR A  
SCHEDULING CONFERENCE**

Plaintiffs respectfully move this Court to Open Discovery and for a Scheduling Conference. For the reasons set forth in the accompanying Memorandum in Support of Plaintiffs' Motion to Open Discovery and for a Scheduling Conference, the motion should be granted.

Respectfully submitted the 11th day of June, 2019.

## CERTIFICATION

I certify that this motion has been prepared in a Times New Roman 14-point font, one of the font and point selections that this Court has approved. *See* LR 5.1(C)(3).

*/s/Allegra J. Lawrence*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of June, 2019, I electronically filed the foregoing Plaintiffs' Motion to Open Discovery and for a Scheduling Conference with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing upon Counsel of Record:

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*/s/Allegra J. Lawrence*

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FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

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

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, *et al.*,

*Defendants.*

Civ. Act. No. 18-cv-5391 (SCJ)

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO OPEN  
DISCOVERY AND FOR A SCHEDULING CONFERENCE**

In light of this Court's Order on Defendants' Renewed Motion to Dismiss, ECF No. 68, Plaintiffs respectfully request that discovery commence in this case on June 13, 2019, and that the Court set a scheduling conference. In accordance with Local Rule 26.2(A), Plaintiffs' counsel requested Defendants' consent from Carey Miller, one of the lawyers who has entered an appearance on behalf of Defendants. In the letter, counsel indicated that the reason for approaching Mr. Miller was based on an earlier letter from Mr. Miller in which he stated that Defendants' lead counsel (Messrs. Belinfante and Tyson) were unavailable until after June 13, 2019, and another lead counsel for Defendants (Mr. Russo) was on paternity leave. To date, Defense counsel have not responded. (Plaintiffs' letter request is attached as Exhibit A).



## **I. Factual Background**

Plaintiffs filed suit on November 27, 2018. On February 13, 2019, the parties held their Rule 26(f) conference. (ECF No. 44 ¶ XIII.) On February 19, 2019, Plaintiffs filed their First Amended Complaint. (ECF No. 41.) On February 27, 2019, the parties exchanged initial disclosures<sup>1</sup> and filed their Joint Preliminary Report and Discovery Plan. (ECF No. 44.) In the Joint Preliminary Report and Discovery Plan, Plaintiffs requested a scheduling conference to address a discovery schedule, discovery of electronically stored information (ESI), timing of expert disclosures, and timing of expert depositions. (*Id.* at 8-9.) Plaintiffs also informed the Court that they intend to request the Court to conduct a permanent injunction hearing in the fall. (*Id.* at 9.) Defendants stated that a scheduling conference was not necessary until the Court had ruled on Defendants' motion to dismiss. (*Id.*) On March 5, 2019, Defendants filed their Renewed Motion to Dismiss Plaintiffs' First Amended Complaint. (ECF No. 48.)

On March 14, 2019, Plaintiffs served their First Requests for Production of Documents and Things to Defendants State Election Board and the Secretary of State. (ECF No. 49.) On the same day, Plaintiffs served three deposition notices for the depositions of Michael Barnes, Chris Harvey, and Brian Kemp. (*Id.*)

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<sup>1</sup> Plaintiffs' Initial Disclosures can be found at ECF No. 45. Defendants' Initial Disclosures were timely served but not submitted to the Court.

On March 15, 2019, this Court issued a Scheduling Order setting a four-month discovery track and stating that “[d]iscovery and all related deadlines will proceed in accordance with the Local Rules of this Court as well as the Federal Rules of Civil Procedure following the Court’s ruling on the outstanding Motion to Dismiss.” (ECF No. 51.) The order continued, “Plaintiffs may renew their request for a scheduling conference at that time if they wish to do so.” (*Id.* at 2.)

On May 30, 2019, after briefing and oral argument, the Court granted in part and denied in part Defendants’ Renewed Motion to Dismiss Plaintiffs’ First Amended Complaint. (ECF No. 68.) Thus, Defendants’ Answer to Plaintiffs’ First Amended Complaint is due June 13, 2019. *See* Fed. R. Civ. P. 12(a)(4)(A). Because discovery commences thirty days after the appearance of the first defendant by answer to the complaint, L.R. 26.2(A), discovery would not begin in this case until July 15, 2019.

## **II. Argument**

Plaintiffs respectfully request that discovery open in this case on June 13, 2019, the date that Defendants’ Answer is due. Opening discovery at this time is within the Court’s broad discretion over discovery matters. *See Bradley v. King*, 556 F.3d 1225, 1229 (11th Cir. 2009) (“A district court has wide discretion in discovery matters.”). “The court may, in the exercise of its broad discretion, alter the timing, sequence and volume of discovery.” *Doe v. Dominique*, No. 1:13-CV-

04270-HLM, 2014 U.S. Dist. LEXIS 189153, at \*10 (N.D. Ga. Jan. 3, 2014) (quoting *Qwest Commc'ns Int'l, Inc. v. WorldQuest Networks, Inc.*, 213 F.R.D. 418, 419 (D. Colo. 2003)); *see also* Fed. R. Civ. P. 26(b)(2), (d).

Because Plaintiffs seek critical relief for Georgia voters in upcoming elections and anticipate filing a motion for permanent injunction with a request for a hearing late this year, discovery should open as soon as possible to ensure prompt relief. Indeed, courts routinely expedite discovery even before the parties have held their Rule 26(f) conference. *See, e.g., Dominique*, 2014 U.S. Dist. LEXIS 189153, at \*13 (granting in part Plaintiff's Motion to Expedite Discovery prior to a Rule 26(f) conference); *Sabal Trail Transmission, LLC v. 9.669 Acres of Land*, No. 8:16-cv-640-T-33AEP, 2016 U.S. Dist. LEXIS 174633, at \*4 (M.D. Fla. Apr. 20, 2016) (finding that Defendant showed good cause to expedite some discovery in advance of a Rule 26(f) conference). Here, the parties have already held their Rule 26(f) conference, and Plaintiffs have informed both the Court and Defendants of their intent to request a permanent injunction hearing for this fall. (ECF No. 44 at 13, 9.) Opening discovery on June 13 is therefore appropriate and within the Court's discretion.

Opening discovery as soon as possible is also necessary to safeguard Plaintiffs' fundamental constitutional rights and provide relief for Plaintiffs and Georgia voters in time for upcoming elections. Plaintiffs have already sent two

Requests for Production of Documents and Things to Defendants and served three notices of deposition. (*Supra* at 2.) Plaintiffs are prepared to begin discovery as soon as practicable, and opening discovery on June 13 will further the efficient resolution of this case.

Opening discovery on June 13, as opposed to July 15, will not prejudice Defendants. Since February, Defendants have been on notice of Plaintiffs' intention to begin discovery as soon as possible to ensure that relief is in place for upcoming elections. (ECF No. 44; *see also* Tr. for Mot. to Dismiss Hr'g at 83:14-20 (Apr. 29, 2019).) The parties have already conferred as required by Rule 26(f) and filed their Joint Preliminary Report and Discovery Plan. Now that the Court has ruled on Defendants' Renewed Motion to Dismiss Plaintiffs' First Amended Complaint, discovery should begin promptly and without delay. An efficient resolution of this action is in the best interests of all parties involved.

Further, to provide a road map for the four-month discovery period, Plaintiffs have attached as Exhibit B a proposed Scheduling Order that sets out a schedule for fact and expert discovery and that culminates in a hearing on dispositive motions during the month of December, 2019. Plaintiffs recognize this is an ambitious schedule but are committed to working with Defendants and the Court to ensure that the parties are able to adhere to the schedule while completing the necessary discovery.

In addition, and to further facilitate the parties' discussions with the Court, Plaintiffs have attached as Exhibit C a proposed Protective Order which, with the limited exception of referring to this Court's Case Instructions in paragraphs 4.c and 5.c and an additional phrase in paragraph 10, tracks the Stipulated Protective Order to which Defendants agreed before Judge Totenberg in *Common Cause v. Raffensperger*, Civ. Action No 1:18-cv-05102-AT (ECF No. 105).

### **III. Conclusion**

For the foregoing reasons, Plaintiffs request that the Court open discovery in this action on June 13, 2019, and set a scheduling conference as soon as possible. In the event the Court grants the request for a scheduling conference, Plaintiffs attach a proposed scheduling order (Exhibit B) and a proposed confidentiality order (Exhibit C) to facilitate the parties' discussions with the Court.

Respectfully submitted the 11th day of June, 2019.

## CERTIFICATION

I certify that this brief has been prepared in a Times New Roman 14-point font, one of the font and point selections that this Court has approved. *See* LR 5.1(C)(3).

*/s/Allegra J. Lawrence*

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*/s/Allegra J. Lawrence*

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# **EXHIBIT A**

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June 6, 2019

Via email and regular mail

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of Georgia

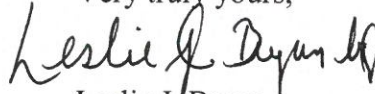
Dear Mr. Miller:

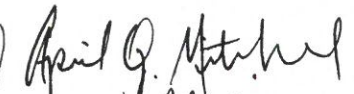
Thank you for your letter responding to our request for deposition dates. I understand that certain members of the defense team are unavailable and we would ordinarily wait until their return but, given the need to try this case in 2019, we write to suggest that we agree to June 13, the date your answer is due, as the date to start discovery. Please let us know if you will agree.

On Monday, June 10, we intend to file a motion seeking the start of discovery on June 13. We would appreciate your letting us know before that whether your clients will agree. We will also be asking for a scheduling conference, entry of a Scheduling Order that results in a hearing on dispositive motions in December, and entry of a Protective Order that tracks the Order to which your clients agreed in the *Curling* case.

I can be available to talk at your convenience. We look forward to hearing from you.

Very truly yours,

  
Leslie J. Bryan

  
w/ permission

cc: Allegra J. Lawrence-Hardy, Esq. (via email)  
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# **EXHIBIT B**

**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.*

Civ. Act. No. 18-cv-5391 (SCJ)

**[PROPOSED] SCHEDULING ORDER AND  
ORDER REGARDING PRETRIAL PROCEDURES**

This Scheduling Order governs the course of all pretrial proceedings in this case. In the parties' Joint Preliminary Report and Discovery Plan, filed on February 27, 2019 (ECF No. 44), the parties stated that this case was on a four-month discovery track, which was ordered by the Court on March 15, 2019 (ECF No. 51).

**I. Schedule**

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan completed and filed by the parties, the Court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure and the Local Rules of this Court, except as herein modified:

1. The four-month discovery period begins June 13, 2019.

2. Counsel will abide by the Instructions for Cases Assigned to the Honorable Judge Jones (ECF No. 34) regarding the procedures set forth therein for discovery disputes. If the parties have discovery disputes that require a formal motion, the Court will consider expedited briefing of such motions.

3. Plaintiffs shall serve their Rule 26(a)(2) expert disclosures by July 1, 2019.

4. Defendants shall serve their Rule 26(a)(2) expert disclosures by July 15, 2019.

5. Plaintiffs shall serve their written expert reports by July 30, 2019 (*see* Rule 26(a)(2)(D)).

6. Defendants shall serve their written expert reports by August 30, 2019 (*see* Rule 26(a)(2)(D)).

7. Plaintiffs shall serve their rebuttal expert reports by September 16, 2019.

8. Fact and expert discovery shall be completed by October 11, 2019.

9. Motions objecting to expert testimony based upon *Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579 (1993), must be filed by October 21, 2019.

10. Dispositive motions shall be due on November 1, 2019.

11. Responses to dispositive motions shall be due on November 15, 2019.

12. Replies to dispositive motions shall be due on November 29, 2019.

13. The hearing on all dispositive motions shall begin on December 16, 2019.

## **II. Pretrial Procedures**

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan completed and filed by the parties and Plaintiffs' Proposed Scheduling Order and Order Regarding Pretrial Procedures, the Court orders that pretrial procedures are as set out in the Federal Rules of Civil Procedure and the Local Rules of this Court, except as herein modified:

1. **Electronically Stored Information.** In accordance with Federal Rule of Civil Procedure 34(b)(2)(E)(ii), the parties will produce electronically stored information (ESI) in a form in which it is ordinarily maintained or in a reasonably usable form. Such production shall be in lieu of permitting inspection.

2. **Production of Documents.** Each party must produce documents within thirty days of receipt of a Request for Production of Documents and Things. Each electronic file produced shall be assigned a unique Bates Number. A cover letter should be included with each production and should include the Bates range.

3. **Claims of Privilege.** To the extent documents contain privileged information and cannot be redacted, such documents will be listed on a privilege log. The parties agree to resolve any privilege issues on a case-by-case basis



according to Rule 26(b)(5). The parties also agree to attempt to resolve any issues on their own prior to seeking the Court's assistance.

4. **Protective Order.** The parties may jointly seek and file a proposed protective order in this action.

**IT IS SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

---

**HONORABLE STEVE C. JONES**  
**UNITED STATES DISTRICT JUDGE**

## CERTIFICATION

I certify that this proposed order has been prepared in a Times New Roman 14-point font, one of the font and point selections that this Court has approved. *See* LR 5.1(C)(3).

*/s/Allegra J. Lawrence*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of June, 2019, I electronically filed the foregoing Proposed Scheduling Order and Order Regarding Pretrial Procedures with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing upon Counsel of Record:

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*/s/Allegra J. Lawrence*

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Allegra J. Lawrence

Georgia Bar No. 439797

# **EXHIBIT C**

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

FAIR FIGHT ACTION, INC.; CARE IN )  
ACTION, INC.; EBENEZER BAPTIST )  
CHURCH OF ATLANTA, GEORGIA, )  
INC.; BACONTON MISSIONARY )  
BAPTIST CHURCH, INC.; VIRGINIA- )  
HIGHLAND CHURCH, INC.; and THE )  
SIXTH EPISCOPAL DISTRICT, INC., )

*Plaintiffs,*

Civil Action No.  
1:18-cv-05391-SCJ

BRAD RAFFENSPERGER, in his official )  
Capacity as Secretary of State of the State )  
Of Georgia and as Chair of the State )  
Election Board of Georgia; REBECCA N. )  
SULLIVAN, DAVID J. WORLEY, and )  
SETH HARP, in their official capacities )  
as members of the STATE ELECTION )  
BOARD; and STATE ELECTION BOARD,) )

*Defendants.*

**PROTECTIVE ORDER**

The Court having heard the arguments of counsel, it is ORDERED:

- 1. Scope and Third Parties.** As used in this Order, the term “document” shall mean all documents, electronically stored information, and tangible things within the scope of Fed. R. Civ. P. 26(a)(1)(A)(ii) and 34(a)(1). A draft or non-



identical copy is a separate document within the meaning of this term. All documents produced in the course of discovery (“documents”) shall be subject to this Order as set forth below. Any party to this case and all third parties who have received subpoenas (collectively for purposes of this Order, “Designating Parties”) may designate materials as “Confidential” or “Attorneys’ Eyes Only” under this Order. This Order is subject to the Local Rules of this District and the Federal Rules of Civil Procedure.

**2. Confidential Material.** The following information contained in documents shall be deemed “confidential” for purposes of this Order:

**a. Particular Voter Information:**

- i. The personal telephone numbers of individuals;
- ii. The personal email addresses of individuals; and,
- iii. Other information that is not public pursuant to federal or state law.

**b. Particular Information in Agency and Organizational Files:**

- i. Non-public information about agency operations;
- ii. Non-public information about Plaintiffs’ operations; and
- iii. Information that is not public pursuant to federal or state law.

**c. Such other information that the parties mutually agree in good faith to consider “confidential.”**

**3. “ATTORNEYS’ EYES ONLY” Material:** “ATTORNEYS’ EYES ONLY” material means information, documents, and things the designating party believes in good faith is not generally known to others and which the designating party (i) would not normally reveal to third parties except in confidence or has undertaken with others to maintain in confidence (as long as such information would not otherwise be publicly available pursuant to federal or state law) or (ii) believes in good faith is sensitive and protected by a right to privacy under federal or state law or any other applicable privilege or right related to confidentiality or privacy. The designation is reserved for information that constitutes proprietary, technical, or sensitive information that the producing party maintains as confidential in the normal course of its operations, including but not limited to plans and strategy for security, countermeasures and defenses, security audits and investigations, and information regarding software and/or database structure or architecture. “ATTORNEYS’ EYES ONLY” material shall include all information, documents, and things referring or relating to the foregoing, including but not limited to copies, summaries, and abstracts of the foregoing, and shall be designated as such in the manner described in Section 5. The following information shall be deemed “ATTORNEYS’ EYES ONLY” material for the

purposes of this order; however, the fact that such information is listed in this order shall not be construed as a waiver of a party's objections to the production or disclosure of said information or as an agreement to produce such information absent a further order of this Court:

**a. Particular Voter Information:**

- i. The social security numbers of individuals;
- ii. The driver's license numbers of individuals;
- iii. The full birth dates of individuals; and
- iv. Other information that is confidential pursuant to federal or state law.

**b. Particular Information Regarding Security:**

- i. Findings of security tests, audits, and investigations; and
- ii. Information related to security of voting systems that would compromise the ongoing security of such systems.

**4. Designation of "CONFIDENTIAL" Material and Application of Confidentiality Provisions.** The designation of material in the form of documents, discovery responses, or other tangible material other than depositions or other pre-trial testimony shall be made by the designating party by affixing the legend "CONFIDENTIAL" on each page containing information to which the designation applies. The designation of deposition testimony shall be in accordance with

paragraph 6 below. All material designated “CONFIDENTIAL” that is not reduced to documentary, tangible, or physical form or that cannot be conveniently designated in the manner set forth above shall be designated by the producing party by informing the receiving party of the designation in writing. The confidentiality rules in this Order will apply to all material marked “CONFIDENTIAL.”

**a. Basic Principles.** A receiving party may use “Confidential” information that is disclosed or produced by any designating party in connection with this case only for prosecuting, defending, or attempting to settle this litigation.

“Confidential” material may be disclosed only to the categories of persons and under the conditions described in this Order. “Confidential” material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

**b. Disclosure of “Confidential” Information or Items.** Unless otherwise ordered by the Court or permitted in writing by the designating party, any material designated “Confidential” may only be disclosed to:

i. counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;

ii. experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

- iii. the Court, court personnel, and court reports and their staff;
- iv. copy or imaging services retained by counsel to assist in the duplication of “Confidential” material;
- v. during, or in preparation for, their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court;
- vi. the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
- vii. Parties; and
- vii. employees, officers, and directors of Parties, only after execution of the “Acknowledgement and Agreement to Be Bound” (Exhibit A).

**c. Filing “Confidential” Material.** Before filing “Confidential” material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the “Confidential” designation, whether the document can be redacted, or whether a motion to seal is warranted. If the parties cannot agree on the handling of “Confidential” material in court filings, then the party seeking to file such material must either move to file the material under seal as described in this Court’s Case

Instructions at page 2.

**5. Designation of “ATTORNEYS’ EYES ONLY” Material and Application of “ATTORNEYS’ EYES ONLY” Provisions.** The designation of material in the form of documents, discovery responses, or other tangible materials other than depositions or other pre-trial testimony shall be made by the designating party by affixing the legend “ATTORNEYS’ EYES ONLY” on each page containing information to which the designation applies. The designation of deposition testimony shall be in accordance with paragraph 6 below. All material designated “ATTORNEYS’ EYES ONLY” that is not reduced to documentary, tangible, or physical form or that cannot be conveniently designated in the manner set forth above shall be designated by the producing party by informing the receiving party of the designation in writing. All documents designated “ATTORNEYS’ EYES ONLY” by any Party shall be governed by this section.

**a. Basic Principles.** A receiving party may use “ATTORNEYS’ EYES ONLY” material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. “ATTORNEYS’

EYES ONLY” material may be disclosed only to the categories of persons and under the conditions described in this Order.

“ATTORNEYS’ EYES ONLY” material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

**b. Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.** Unless otherwise ordered by the Court or permitted in writing by the designating party, any material designated

“ATTORNEYS’ EYES ONLY” may only be disclosed to:

- i. counsel of record in this action, as well as employees of counsel to whom it is reasonably necessary to disclose the information for this litigation;
- ii. experts and consultants to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- iii. the Court, court personnel, and court reporters and their staff;

iv. copy or imaging services retained by counsel to assist in the duplication of “ATTORNEYS’ EYES ONLY” material;

v. during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court;

vi. the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

vii. the following representatives of Plaintiff, only after execution of the “Acknowledgement and Agreement to Be Bound” (Exhibit A):

- Susannah Goodman
- Sara Henderson

**c. Filing “ATTORNEYS’ EYES ONLY” Material.** Before filing “ATTORNEYS’ EYES ONLY” material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party



will remove the “ATTORNEYS’ EYES ONLY” designation, whether the document can be redacted, or whether a motion to seal is warranted. If the parties cannot agree on the handling of “ATTORNEYS’ EYES ONLY” material in court filings, then the party seeking to file such material must either move to file the material under seal as described in this Court’s Case Instructions.

**6. Designation of Deposition Testimony.** In order to designate deposition testimony as “Confidential” or “ATTORNEYS’ EYES ONLY,” the designating party shall give prompt notice that it will seek the protections of this Order either at the deposition or within twenty-one (21) days after receipt of the deposition transcript, in accordance with the provisions and restrictions of this Order. Unless otherwise designated at or during the deposition, all deposition testimony shall be treated as if designated “Confidential” until the expiration of such twenty-one (21) day period.

**7. Use of Documents Containing Redacted Confidential Information.** The parties and their counsel and experts agree to redact confidential information from documents before: (a) using such documents at trial, any hearing, or any court

proceeding; (b) attaching such documents to any pleading or filing; or (c) using such documents in any other way where the documents could be seen by the public or by anyone not bound by this Order.

**8. Other Redactions.** Nothing in this Order precludes the parties from making redactions for privilege or for other legal reasons before documents are produced.

**9. Inadvertent Disclosure.** A Party that has inadvertently produced “Confidential” Information or “ATTORNEYS’ EYES ONLY” Information without so designating it may at any time re-designate such information as “Confidential” or “ATTORNEYS’ EYES ONLY.” The inadvertent or unintentional disclosure of “Confidential” or “ATTORNEYS’ EYES ONLY” Information shall not be deemed a waiver, in whole or in part, of any Party’s claims of confidentiality. If a Party inadvertently or unintentionally produces “Confidential” Information or “ATTORNEYS’ EYES ONLY” Information without designating it as such in accordance with the provisions of this Order, that Party shall promptly upon discovery, either: (a) demand the return of the “Confidential” or “ATTORNEYS’ EYES ONLY” Information; or (b) furnish a properly marked substitute copy, along with written notice to all Parties that such document or information is deemed “Confidential” or “ATTORNEYS’ EYES

ONLY” and should be treated as such in accordance with the provisions of this Order. Each receiving Party must treat such document or information as “Confidential” or “ATTORNEYS’ EYES ONLY” from the date such notice is received, but each receiving Party shall have no liability for any disclosures of such information that were made prior to re-designation. Disclosure of “Confidential” or “ATTORNEYS’ EYES ONLY” Information prior to the receipt of such notice, if known, shall be reported to the designating Party.

**10. No Waiver.** The failure to assert a claim of attorney-client privilege or protection under the work product doctrine shall not constitute a waiver of the right to claim a privilege or protection as long as the party asserting the claim adheres to the procedure set out in Fed. R. Civ. P. 26(b)(5). Any party may challenge any such claim of privilege or protection on any ground.

**11. Order Remains in Effect.** This Order shall remain in effect throughout the course of this litigation and during any appeals.

**12. Destruction of Un-Redacted Documents Containing Confidential Information.** This Paragraph applies to documents that contain un-redacted “Confidential” or “Attorneys Eyes Only” information. Within ninety days after final disposition of this case not subject to further appeal, the parties and their counsel and experts, and all other persons having possession, custody, or control of such documents, shall either: (a) return all such documents and any copies thereof

to the individual or entity that produced the documents; or (b) destroy hard copies of such documents and all copies thereof with a shredder and make reasonable efforts to delete all electronic copies of such documents from all systems and databases. Notwithstanding the above requirement, the parties are entitled to retain (a) one copy of pleadings containing un-redacted confidential information and (b) un-redacted confidential information that is incorporated in attorney work product so long as the parties restrict access to such information to those persons who are permitted access under the Order.

**13. Action by the Court.** Nothing in this Order or any action or agreement of a party under this Order limits the Court's power to make any Orders that may be appropriate with respect to the use and disclosure of any documents produced or used in discovery or at trial, including the ability to order removal of a "Confidential" or "ATTORNEYS' EYES ONLY" designation.

**14. Order Subject to Modification.** This Order shall be subject to modification by the Court on its own motion or on motion of any party or any other person with standing concerning the subject matter.

**15. No Prior Judicial Determination.** This Order is entered based on the presentations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial

determination that any confidential documents or information are subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may rule on a specific document or issue.

**16. Persons Bound and Retroactivity.** This Order shall take effect when entered and shall be binding upon all counsel and their law firms, the parties and their employees, officers, directors, and agents, testifying and non-testifying experts, and persons made subject to this Order by its terms. This Order shall apply to all documents in this litigation, including any “Confidential” or “ATTORNEYS’ EYES ONLY” Information, appropriately marked as such, that was produced by any Party prior to the Order being signed.

IT IS SO ORDERED this \_\_\_\_ day of June, 2019.

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HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE

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

FAIR FIGHT ACTION, INC.; CARE IN )  
ACTION, INC.; EBENEZER BAPTIST )  
CHURCH OF ATLANTA, GEORGIA, )  
INC.; BACONTON MISSIONARY )  
BAPTIST CHURCH, INC.; VIRGINIA- )  
HIGHLAND CHURCH, INC.; and THE )  
SIXTH EPISCOPAL DISTRICT, INC., )

*Plaintiffs,*

Civil Action No.  
1:18-cv-05391-SCJ

BRAD RAFFENSPERGER, in his official )  
Capacity as Secretary of State of the State )  
Of Georgia and as Chair of the State )  
Election Board of Georgia; REBECCA N. )  
SULLIVAN, DAVID J. WORLEY, and )  
SETH HARP, in their official capacities )  
as members of the STATE ELECTION )  
BOARD; and STATE ELECTION BOARD,) )

*Defendants.*

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

The undersigned hereby acknowledges that he/she has read the Protective Order dated June, \_\_\_\_\_, 2019 in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms.

The undersigned submits to the jurisdiction of the United States Court for the Northern District of Georgia in matters relating to the Stipulated Protective Order.

The undersigned acknowledges that violation of the Stipulated Protective Order may result in penalties for contempt of court.

Signed: \_\_\_\_\_ by \_\_\_\_\_ (print name)

Business Address: \_\_\_\_\_

Date: \_\_\_\_\_