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

ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW, *et al.*, Plaintiffs, v. CATHY COX, *et al.* Defendants.	CIVIL ACTION NO. 1:06-CV-1891-JTC

PLAINTIFFS' MOTION FOR PARTIAL RECONSIDERATION, AMENDMENT, AND/OR CORRECTION OF PRELIMINARY INJUNCTION ORDER

Pursuant to Local Rule 7.2(E) of the Northern District of Georgia, Plaintiffs respectfully request that this Court reconsider and correct that portion of its September 28, 2006, Order (the "Preliminary Injunction Order") which held that the challenged Regulation in this case did not violate and/or was not preempted by the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg *et seq.* ("NVRA").[1] Plaintiffs submit that, contrary to the Court's ruling with respect to

[1]Plaintiffs agree with and do not seek reconsideration of that portion of the Court's Preliminary Injunction Order finding that the Regulation infringes upon Plaintiffs' First Amendment rights. Likewise, with the exception of the Court's finding that some Plaintiffs paid their voter registration workers on a per-application basis (*see* Preliminary Injunction Order at 4), Plaintiffs do not disagree with any other findings of fact in the Preliminary Injunction Order.
(continued...)

that issue in the Preliminary Injunction Order, the Court's findings that the Regulation severely burdens and impairs Plaintiffs' ability to conduct registration drives compel the conclusion that the Regulation is preempted by the NVRA, because the Regulation "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting the NVRA. *See Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Teper v. Miller*, 82 F.3d 989, 993 (11th Cir. 1996).

Plaintiffs also request that the Court modify and correct the Preliminary Injunction Order to delete the erroneous finding that "Some of the Plaintiffs pay registration workers a fee for each completed registration application obtained." (*See* Prelim. Inj. Ord. at 4.) This finding was not urged by either party, is not supported by the record, and is simply inaccurate as a matter of fact. While the finding does not appear to be germane to the Court's overall analysis of the case, it

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Plaintiffs submit, however, that additional factual findings included in Plaintiffs' Proposed Findings of Fact and Conclusions of Law may be relevant to the Court's consideration of the NVRA preemption issues.

Plaintiffs bring this motion, in an abundance of caution, to preserve their right to contest the Court's conclusion that NVRA preemption does not apply to bar the Regulation, in the event the case proceeds to an ultimate determination on the merits. Plaintiffs recognize that the Court's Preliminary Injunction Order, as currently drafted, is sufficient to protect their interests and avoid irreparable harm pending a full hearing on the merits, given the Court's determination of the First Amendment issues. Hence, Plaintiffs are not requesting expedited review of this motion. Nevertheless, Plaintiffs would like to preserve the opportunity to have this Court reconsider its ruling as to the NVRA issue at a later stage in this case.

is nonetheless a significant issue that warrants correction because, under Georgia law, it is a crime to pay voter registration workers on a per-application basis. *See* O.C.G.A. § 21-2-602.

STANDARD FOR EVALUATING A MOTION FOR RECONSIDERATION

Plaintiffs seek to have this Court reconsider in part an earlier interlocutory order (i.e., the Preliminary Injunction Order) for purposes of correcting clear and manifest errors of fact and law made therein. While the Federal Rules of Civil Procedure do not speak directly to "motions for reconsideration," courts generally construe such motions to be requests for the Court to exercise its plenary supervisory authority over cases in its jurisdiction, or a request to alter or amend a judgment under Fed. R. Civ. P. 59(e).

The only grounds for granting a Rule 59(e) motion to alter or amend a judgment are newly-discovered evidence or manifest errors of law or fact. *Kellogg v. Schreiber*, 197 F.3d 1116, 1119 (11th Cir. 1999). By contrast, a court has plenary authority and discretion to revisit, revise, alter, or amend its own interlocutory orders at any time before final judgment, and such authority is not limited by the restrictions of Rule 59. *Toole v. Baxter Healthcare Corp.*, 235 F.3d

1307, 1315 (11th Cir. 2000); *Bon Air Hotel, Inc. v. Time, Inc.*, 426 F.2d 858, 862 (5th Cir. 1970).

Under this Court's local rules, parties are ordinarily required to file motions for reconsideration within 10 days of the entry of the order sought to be reconsidered. N.D. Ga. L.R. 7.2(E). The local rule governing reconsideration motions generally incorporates the standards set forth in Rule 59(e), stating that reconsideration should be granted only when there is newly-discovered evidence, an intervening development in controlling law or precedent, or a manifest error of law or fact. *Hornor, Townsend & Kent, Inc. v. Hamilton*, No. 1:01-CV-2979-JEC, 2004 U.S. Dist. LEXIS 20789, *8 (N.D. Ga. Sep. 30, 2004) (Carnes, J.).

"A motion for reconsideration cannot properly be employed as a vehicle to tender new legal theories or to introduce new evidence that could have been presented in conjunction with the previously filed motion or response." *Servicetrends v. Siemens Medical Sys.*, No. 1:93-CV-299-JTC, 1994 U.S. Dist. LEXIS 15997, *6-*7 (N.D. Ga. 1994) (Camp, J.). However, "the Court is at all times ready to correct a legal or factual error where that error was made despite a clear presentation of the issue by the party seeking reconsideration." *Id.* In this case, Plaintiffs submit that reconsideration is warranted on the grounds of clear factual error (i.e., the erroneous finding regarding Plaintiffs' payment of

registration workers by the application) and clear legal error (application of the wrong conflict preemption standard).

In its Preliminary Injunction Order, the Court stated that because the NVRA does not regulate the conduct of third parties but instead only regulates the states by mandating their acceptance and processing of all timely submitted voter registration forms and proscribing the form's final contents, "the copying and sealing restrictions are invalid under the NVRA only if they conflict with the NVRA's regulation of the method of delivery or the form's final content." (Prelim. Inj. Ord. at 10-11.) While this might be an appropriate standard by which to construe the *first* type of conflict preemption, which arises when a party cannot simultaneously comply with a federal and a state regulation, Plaintiffs respectfully submit that it is not the appropriate standard by which to analyze the *second* type of conflict preemption, which arises whenever a state regulation "stands as an obstacle" to the full implementation of Congress' purposes in enacting a statute.

As discussed below, and previously at oral argument, the second conflict preemption category is much broader than the first and requires an analysis of the "entire scheme" of the federal statute, both express and implied, to determine Congress' ultimate intent. Thus, for example, where (as here) Congress has made specific findings regarding the negative impact of "unfair" and "discriminatory"

voter registration rules on traditionally disenfranchised groups and has specifically chosen to allow and encourage private voter registration drives as a means of facilitating registration of members of these groups, one must approach the conflict preemption question by determining whether the additional state restrictions advance or interfere with the overall Congressional purpose behind the NVRA. If the state restrictions interfere with Congress' objectives (as Plaintiffs contend the copying ban and sealing requirement do here), then the regulations fail under the broader second conflict preemption principle.

ARGUMENT AND CITATION OF AUTHORITY

"A fundamental principle of the Constitution is that Congress has the power to preempt state law." *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372 (2000). Congress may do so in one or more of three basic ways: (1) *express preemption*, where the statute contains specific language revealing the degree to which Congress intended to preempt state law; (2) *field preemption*, where Congress has created such an extensive regulatory scheme as to leave no room for states to supplement the law; and (3) *conflict preemption*, which occurs either when it is impossible for a party to comply with both the state law and the federal law, or when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives" of the federal statute. *Id.* at 372-73;

Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 30-31 (1996); *Teper v. Miller*, 82 F.3d 989, 993 (11th Cir. 1996).

The language of the NVRA reflects both express and conflict preemption principles.[2] In the instant case, however, the parties are generally in agreement that to the extent the NVRA poses a preemption issue with respect to the Regulation, it is a conflict preemption issue. More specifically, it is the second form of conflict preemption — i.e., where the Regulation imposes an obstacle to Congress' purposes in enacting the NVRA.

The question of what constitutes an "obstacle" is to be determined by examining the "entire scheme" of the federal statute as a whole, identifying its purposes and intended effects, and determining whether the state law in question frustrates or obstructs the full implementation of Congress' desires. *Crosby*, 530 U.S. at 373; *Hines*, 312 U.S. at 67 n.20. The ultimate objective in preemption analysis is to determine the clear and manifest intent of Congress to supersede state law in a given area; however, in doing so, courts must give full and equal

[2]For instance, the express language of the Act provides that states are required to establish additional voter registration procedures for federal elections (including registration by use of a federally mandated mail-in registration form) "notwithstanding any other Federal or State law [and] in addition to any other method of voter registration provided for under state law." 42 U.S.C. § 1973gg-2(a). In addition, Congress specifically directed states to provide federal mail registration applications to governmental *and private* entities, particularly for their use in organized voter registration programs. 42 U.S.C. § 1973gg-4(b).

effect both to the express language of the statute and to the implied intent to preempt that can reasonably be garnered "from the structure and purpose of a statute even if it is not unambiguously stated in the text." *Teper*, 82 F.3d at 993.

A. The Structure and Purpose of the NVRA

As this Court correctly noted, "Congress enacted the NVRA in order to establish procedures to increase the number of citizens who register to vote, enhance the participation of eligible voters in elections, protect the integrity of the electoral process, and ensure accurate and current voter registration rolls. 42 U.S.C. § 1973gg(b)." (Prelim. Inj. Order at 9.) Congress specifically found that voting is a fundamental right of United States citizenship; that federal, state, and local governments have a duty to promote the exercise of that right; and that "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities." 42 U.S.C. § 1973gg(a).

In Section 4 of the Act, entitled, **"National Procedures for Voter Registration for Elections for Federal Office,"** Congress mandated (*inter alia*) that, notwithstanding any other state or federal law, and in addition to any other methods of voter registration provided under state law, states establish procedures

to accept mail-in voter registration applications as specified in the Act. 42 U.S.C. § 1973gg-2(a)(2). In Section 6 of the Act, Congress specifically directed states to provide the specified mail applications to governmental *and private* entities, "with particular emphasis on making them available for organized voter registration programs." 42 U.S.C. § 1973gg-4(b).

As the Eleventh Circuit found, by sanctioning and impliedly encouraging privately organized voter registration drives as a means of facilitating the federally mandated mode of voter registration by mail, Congress accorded to private entities a legally enforceable federal right to conduct such drives and, in the process, to assist eligible citizens with the completion and submission of their voter registration applications to the applicable state and local election officials. *Wesley Foundation II*, 408 F.3d at 1353-54.[3]

[3]Prior to the enactment of the NVRA, private entities had no express or implied federal right to collect, submit, or otherwise physically handle voter registration applications and therefore could not offer direct assistance to voter registration applicants absent permission from the state. As the Court noted, "Regulating voter registration has traditionally been the responsibility of the states" (Prelim. Inj. Ord. at 10), although Congress has always had the authority to make laws or alter any existing state laws and procedures respecting voting and voter registration for federal elections. *See Wesley Foundation I*, 324 F. Supp. 2d at 1366. In Georgia and many other states, voter registration was handled exclusively by state and local election officials (including deputy registrars) prior to the NVRA. Indeed, for nearly a decade after the enactment of the NVRA and until the injunction and eventual consent decree entered in the *Wesley Foundation v. Cox* case, Georgia continued to flout federal law by completely prohibiting third-party collection and submission of voter registration applications.

Section 8(i) of the NVRA requires states to maintain and make available for public inspection and copying records related to the implementation of voter registration programs designed to ensure the accuracy and currency of voter registration rolls. 42 U.S.C. § 1973gg-6(i). Completed voter registration applications plainly fall within this category of records.

Finally, to demonstrate how strongly it felt about the procedures it was establishing, Congress in Section 12 of the NVRA established criminal felony penalties for any person, *including an election official*, who "knowingly and willfully intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, any person for — (A) registering to vote, or voting, or attempting to register or vote; (B) *urging or aiding any person to register to vote, to vote, or to attempt to register or vote; or (C) exercising any right under [the NVRA]*. . . ." 42 U.S.C. § 1973gg-10 (emphasis added). Violations of Section 12 of the NVRA can carry penalties of up to five years in prison and fines of up to $250,000. *Id.*

B. The Obstacles Posed by the Regulation to the Accomplishment and Execution of the Purposes and Objectives of the NVRA

Having set forth the purposes and framework of the NVRA, the next step in the conflict preemption analysis is to determine whether the Regulation stands as an obstacle to the full effectuation and implementation of such Congressional

purposes. As the Court succinctly summarized, "The Regulation reduces Plaintiffs' participation in voter registration drives and places burdens on Plaintiffs' post-drive activities" in a number of ways. (Prelim. Inj. Ord. at 14.) Given this Court's specific factual findings in the Preliminary Injunction Order, in addition to other evidence of record, it is clear that the Regulation frustrates the NVRA's goals and purposes. Therefore, the Court should find that the Regulation is preempted by the NVRA.

As a general rule, the NVRA is principally concerned with increasing voter registration and enhancing voter participation among eligible citizens in federal elections, while maintaining sufficient controls to ensure that electoral integrity is not compromised and that voter registration rolls remain current and accurate. To that end, Congress established three additional modes of voter registration (mail registration, "motor voter" registration, and designated public agency registration) and required all states to establish procedures to implement and effectuate those modes of registration. With respect to mail registration, Congress specifically sanctioned the use of third-party voter registration drives so as to maximize voter registration outreach opportunities.

Having specifically found that "discriminatory" and "unfair" voter registration laws and procedures can "have a direct and damaging effect on voter

participation," particularly by racial minorities and other traditionally under-represented groups, *see* 42 U.S.C. § 1973gg(a), Congress eschewed overly restrictive regulations on the voter registration process. Accordingly, while it provides for, impliedly encourages, and protects third-party registration drives, Congress chose not to regulate such drives directly. *Wesley Foundation II*, 408 F.3d at 1353. By contrast, in Section 8 of the NVRA, Congress established quite an extensive array of regulations applicable to *the states*, the effect of which was to direct them to accept all timely submitted voter registration applications, from whatever source. *See* 42 U.S.C. §§ 1973gg-6.

Under the principles of ordinary statutory construction, Congress' choice to leave private voter registration drives essentially unregulated must be viewed as a deliberate one. *See, e.g., Country Best v. Christopher Ranch, LLC*, 361 F.3d 629, 632 (11th Cir. 2004) (Congress clearly knows how to insert limiting language into a statute if it intends for a right to be limited or restricted). This construction is all the more appropriate given Congress' specific findings regarding the damaging effect of unfair and discriminatory voter registration laws and procedures on traditionally disadvantaged groups. *Cf. GMAC v. Whisnant*, 387 F.2d 774, 777-78 (5th Cir. 1968) (every part of a statute should be viewed in connection with the whole, so as to harmonize all parts, if practicable, leaving no language as

meaningless, redundant, or mere surplusage). Thus, while Congress clearly relies on and authorizes the states to establish necessary and appropriate procedures to effectuate and implement the mandates of the NVRA, it expects them to do so in a way that maximizes voter registration and participation, while not sacrificing electoral integrity and accuracy and currency in the voter registration rolls. If a state's regulation does not do all of those things, it conflicts with and is therefore preempted by the NVRA.

In recent years, particularly since the 2000 and 2004 presidential elections, Georgia and other states have increasingly established barriers to the third-party voter registration process.[4] When states develop these restrictive regulations on third-party drives, they usually claim authority to do so under their traditional authority to regulate the elections process; however, they do not usually analyze sufficiently whether and to what extent the NVRA alters their traditional authority to regulate voter registration in federal elections.

[4]For a broader discussion and overview of the differing ways in which states have sought to impose restrictions on third-party voter drives, see Brennan Center for Justice, New York University School of Law, *Fact Sheet on New Efforts to Restrict Voter Registration Drives* (Aug. 28, 2006), available at <http://www.brennancenter.org/programs/dem_vr_havaregbarrier.html> (visited Oct. 3, 2006); Project Vote, *Restricting Voter Registration Drives* (2006), *available at* <http://projectvote.org/fileadmin/ProjectVote/pdfs/Project_Vote_Policy_Brief_5_Restricting_Voter_Registration_Drives_v21.pdf> (visited Oct. 3, 2006).

Federal courts have heretofore offered scant guidance and analysis regarding the extent to which the NVRA preempts state restrictions on private voter registration activity. The seminal case in this area is the *Wesley Foundation* case, which definitively establishes (1) the basic federal right of private entities to engage in organized voter registration activity; (2) the duty of states not to interfere unreasonably with that right; and (3) the responsibility of states to accept, use, and timely process all completed voter registration applications that they receive, regardless of how or by whom they are delivered.

In a very recent case, a federal district court in Ohio, applying the *Wesley Foundation* case, found that several of that state's new restrictions on third-party registration groups were preempted by the NVRA, either because they impermissibly regulated the method of delivery of applications by private groups or imposed undue burdens on private groups' right to conduct voter registration drives. *See Project Vote v. Blackwell*, No. 1:06-CV-1628-KMO, 2006 U.S. Dist. LEXIS 64354 (N.D. Ohio Sep. 8, 2006).

In the *Project Vote* case, the district court found that an Ohio regulation, if interpreted to require third-party voter registration groups to hand-deliver applications individually to the appropriate election office, would "clearly run afoul of the NVRA," because it would impermissibly regulate the manner in which

third parties could submit collected applications. *Project Vote*, 2006 U.S. Dist. LEXIS 64354, at *21 n.6. Similarly, in this case, Georgia's requirement that third-party registration groups accept completed applications only after they are sealed by the applicant would necessarily and impermissibly regulate the manner in which Plaintiffs and other third parties may submit such applications to election officials in Georgia (i.e., by requiring that they be submitted individually sealed, rather than bundled and unsealed).

The *Project Vote* court also invalidated Ohio's attempts to impose a series of pre-registration, training, and affirmation requirements upon third-party registration groups, on the grounds that such requirements "place an undue burden on third parties trying to conduct voter registration drives, and *are inconsistent with and undermine both the text and purpose of the NVRA*." *Id.* at *26 n.8 (emphasis added). As discussed throughout the main text of this Brief, the Regulation at issue in this case likewise undermines the text and purpose of the NVRA.

The *Project Vote* court emphasized that it was not holding that the NVRA preempted the field so as to invalidate *all* efforts by the states to regulate private voter registration activity. *Id.* Similarly, neither party in this case is claiming that *field preemption* applies. Rather, like the Ohio regulations invalidated by the

district court in *Project Vote*, Plaintiffs herein claim that the Georgia Regulation is preempted under a *conflict preemption* theory because it unduly burdens private voter registration groups' ability to conduct their drives and, thereby, "undermine[s] both the text and purpose of the NVRA." *Id.*

While the *Project Vote* court correctly applied the Eleventh Circuit's *Wesley Foundation* decision to enjoin the challenged rules in that case, it did so without a great deal of analysis or exposition of the conflict preemption issues. Because the challenged Regulation of the State Election Board in this case presents some of the same problems that the Ohio regulations did in the *Project Vote* case, this Court should reconsider its decision on the NVRA claim and find that the NVRA likewise preempts the Georgia Regulation — particularly given the *Project Vote* court's reliance on *Wesley Foundation*, which is binding precedent in this Circuit.

1. The Regulation Interferes With Plaintiffs' Right and Ability to Engage in Organized Voter Registration Activity and Thereby Interferes With the Full Implementation of the NVRA's Mail Registration Objectives and Reduces Voter Registration and Participation.

As the Court has found, the Regulation's sealing requirement interferes with Plaintiffs' ability to offer voter registration assistance to eligible citizens by prohibiting Plaintiffs from reviewing applications after collection for accuracy, completeness, and fraud. (Prelim. Inj. Ord. at 6.) This increases the likelihood

that otherwise eligible individuals will not become registered, contrary to the NVRA's goals of enhancing and increasing voter registration and civic participation. Likewise, prohibiting third parties from reviewing completed applications for possible fraud prior to submission increases the possibility that fraudulent applications will be submitted, which compromises electoral integrity and the accuracy and currency of voter registration rolls. In addition, "[b]ecause of the inability for some of the Plaintiffs to continue their internal quality control measures, including reviewing the applications gathered by the workers for fraud or incompleteness, the Regulation will interfere with these Plaintiffs' ability to obtain funding for their voter registration programs." (Prelim. Inj. Ord. at 7.)

As a practical matter, the sealing requirement also interferes with Plaintiffs' basic ability to collect and submit voter registration forms, as permitted by the NVRA, because it hinders Plaintiffs' ability to review the applicant's residential address information after the conclusion of the drive, to determine to which state or county election office the applicant's form should be sent. (Pltfs' Prop. Finding of Fact No. 33.)

In addition, "the Regulation impairs Plaintiffs' ability to maintain ongoing contact with the individuals they encounter during their voter registration drives because the Regulation makes it more difficult for Plaintiffs to obtain the contact

information for a registrant." (Prelim. Inj. Ord. at 7.) This, too, runs contrary to the NVRA's goals of maximizing voter participation by discouraging or imposing undue burdens on Plaintiffs' lawful get-out-the-vote activities.

The threat of stiff state civil penalties, criminal fines, and jail time that the Regulation imposes upon private entities for collecting unsealed completed applications and/or copying completed applications has an intimidating and coercive effect on private voter registration organizers and discourages them from offering voter registration assistance to eligible citizens. (Prelim. Inj. Ord. at 7-8, 14.) Obviously, discouraging private voter registration drives goes directly against Congress' wishes in Section 6 of the NVRA. Likewise, the Regulation implicates and likely is preempted by Section 12 of the NVRA, which imposes felony criminal penalties on state election officials' efforts to discourage third-party voter registration activities in favor of state-sanctioned modes of voter registration like deputy registrars. *See* 42 U.S.C. § 1973gg-10.

2. The Regulation Interferes With Plaintiffs' Rights, as Public Citizens, to Monitor Georgia's Compliance With its NVRA Obligations, Thereby Reducing Confidence in Electoral Integrity and in the Accuracy and Currency of Voter Registration Rolls.

Section 8(i) of the NVRA provides that voter registration records are to be maintained and made available for public inspection and copying for at least two years. The sealing requirement and copying ban — which both have the effect of shielding completed voter registration forms from public view — thus directly contravene Congress' public monitoring provisions in the NVRA. They also have the related effect of reducing public confidence in the integrity of the State's voter registration system. Likewise, reduced public monitoring of state and local election officials' compliance with their obligations under the NVRA (e.g., to add eligible voters to the rolls in a timely manner; not to purge valid voters from the rolls; and to offer voter registration at all public assistance agencies) could lead to inaccurate and non-current voter registration rolls and reduced voter registration, which would violate an express Congressional purpose in enacting the NVRA.[5]

[5]For a broader discussion and overview of the problems that many states have had with unauthorized purging of eligible voters from the voter registration rolls and failure to offer voter registration at public assistance agencies, *see* Laleh Ispahani & Nick Williams, *PURGED!: How a Patchwork of Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote* (2005), *available at* <http://www.demos.org/pub299.cfm> (visited Oct. 3, 2006); Brian Kavanagh et al., *Ten Years Later, A Promised Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2005* (2005), *available at*

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3. The Regulation Does Not Enhance any of Congress' Purposes in the NVRA.

As discussed above, the Regulation frustrates and obscures the realization of many of Congress' purposes in enacting the NVRA. At the same time, it does virtually nothing to enhance any of the NVRA's legislative priorities. By reducing private entities' ability to offer voter registration assistance during and after their voter registration drives; making it more difficult for them to obtain the necessary contact information to carry out voter education and get-out-the-vote programs; endangering their ability to receive the necessary funding to organize drives; and increasing the likelihood that errors on the face of voter registration applications will not be caught and corrected prior to submission of the forms to an election official, the Regulation certainly does not increase voter registration or enhance voter participation. Likewise, as the Eleventh Circuit noted with respect to Georgia's earlier restrictions on private voter registration activities, the Regulation does "little, if anything, to prevent fraud or assist in the assessment of voter eligibility," and thereby enhance electoral integrity and the accuracy and currency of voter registration rolls, because "the risk of exposure and fraud is equal . . . so long as third-party handling of any kind is allowed." *Wesley II*, 408 F.3d at 1355.

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<http://www.demos.org/pub634.cfm> (visited Oct. 3, 2006).

Because the Regulation "stands as an obstacle to the accomplishment and execution of" Congress' full purpose in enacting the NVRA and does not enhance or advance any congressional goal in the NVRA, this Court should hold that the NVRA preempts the Regulation.[6]

Although this Regulation should be preempted, Plaintiffs do not contend that states are completely without the authority to regulate the conduct of private entities engaged in voter registration activity. To the contrary, there remain a host of things that the state could permissibly do to regulate third-party drives without running afoul of the NVRA. For example, a state could impose civil penalties on groups that do not exercise due care to submit voter registration applications by the applicable voter registration deadline, since such a regulation would enhance the goals of increasing voter registration and voter participation and protecting the integrity of the electoral process. Likewise, a state might validly prohibit anyone

[6]In making the preemption determination, the State's asserted goals and purposes for enacting the Regulation are legally irrelevant and should not be considered. While a state's goals in enacting legislation are often legitimate and well-intended, "it is the effect of the state law that matters in determining preemption, not its purpose. Under the Supremacy Clause, state law that in effect substantially impedes or frustrates federal regulation . . . must yield, no matter how admirable or unrelated the purpose of that law." *Teper*, 82 F.3d at 995. In this case, however, the Court has already ruled that the State's asserted interests do not justify the Regulation's infringements of the Plaintiffs' constitutional rights. (Prelim. Inj. Ord. at 15-16.) Notably, in making that determination, the Court specifically relied on "the expressed policy of Congress to encourage voter registration drives, *see* 42 U.S.C. § 1973gg(b), and the traditional protection of participation in the political process required by the Constitution." (*Id.* at 16.) Thus, even if the State's interests are factored in, the Regulation still would not comport with the NVRA.

who is engaged in voter registration activity at a location open to and accessible by the public from refusing to accept and deliver valid voter registration applications from any other person.[7] Such a regulation would enhance voter registration and participation and also protect against voter intimidation — both of which comport with the NVRA's goals and purposes. Of course, states are free to establish criminal and civil penalties for voter registration fraud, identity theft, intentional destruction of election documents, and other offenses (which Georgia already has done). Finally, states could establish a host of "voluntary compliance" standards to encourage the training of private voter registration drive participants, observance of specified security standards, delivery of applications on a specified schedule, etc. States could even establish voluntary certification programs to identify those private entities who have demonstrated proficiency and/or mastery of certain state-developed standards. All of these things (and perhaps many others) the states could do without violating the NVRA.

[7]Because such a regulation would have First Amendment associational implications, the state and/or a reviewing court would have to determine whether, under the standard set forth in *Anderson v. Celebreeze*, 460 U.S. 780, 789-90 (1982), and its progeny, the regulation would impose an undue burden on the constitutional rights of such private groups.

CONCLUSION

For the foregoing reasons, Plaintiffs pray that their motion to reconsider will be granted and that, upon reconsideration, the Court will find that the Regulation is preempted by the NVRA and that its prior finding of fact related to Plaintiffs' payment of registration workers by the application will be stricken.

Respectfully submitted this 11th day of October, 2006.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

s/ Bradley E. Heard, Esq.
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CERTIFICATE OF SERVICE

This will certify that I have this day electronically filed the within and foregoing **Plaintiffs' Motion for Partial Reconsideration, Amendment, and/or Correction of Preliminary Injunction Order** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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Dated this 11th day of October, 2006.

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