

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

FLORIDA STATE CONFERENCE
OF BRANCHES AND YOUTH
UNITS OF THE NAACP, COMMON
CAUSE, and DISABILITY RIGHTS
FLORIDA, et al.,

Plaintiffs,

v.

LAUREL M. LEE,

in her official capacity as
Florida Secretary of State, et
al.,

Defendants,

REPUBLICAN NATIONAL
COMMITTEE and NATIONAL
REPUBLICAN SENATORIAL
COMMITTEE,

Intervenor-Defendants.

Case 4:21-cv-00187-MW-MAF

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PLAINTIFFS' MOTION FOR LEAVE TO TAKE FED. R. CIV. P. 30(b)(6) DEPOSITION OF NON-PARTY HERITAGE ACTION FOR AMERICA AFTER THE CLOSE OF FACT DISCOVERY

Plaintiffs Florida State Conference and Youth Units of the NAACP, Common Cause, and Disability Rights Florida (together, "Plaintiffs"), by and through their undersigned counsel, hereby seek leave to take the Fed. R. Civ. P. 30(b)(6) deposition of non-party Heritage Action for America ("Heritage Action") after the October 22, 2021 close of fact discovery, should Heritage Action decide to comply, or a court order that Heritage Action must comply, with Plaintiffs' 30(b)(6) deposition subpoena.

1. In its July 23, 2021 Scheduling Order (ECF No. 165), the Court designated October 22, 2021 as the end of fact discovery.
2. On August 5, 2021, Plaintiffs issued a subpoena to Heritage Action requesting documents. Exhibit A.
3. On September 7, 2021, Heritage Action objected to Plaintiffs' request for the production of documents. Exhibit B.
4. On September 22, 2021, Plaintiffs filed a Motion to Compel Heritage Action to Comply with the subpoena in the Northern District of Florida. ECF No. 231.

5. On September 24, 2021, the Court denied Plaintiffs' Motion to Compel without prejudice to refile in the appropriate district. ECF No. 234.
6. On September 27, 2021, Plaintiffs filed, in the Southern District of Florida ("Southern District") (Case No. 9:21-mc-81824-DMM), a Motion to Compel Heritage Action to comply with Plaintiffs' subpoena. Exhibit C.
7. On October 6, 2021, Plaintiffs issued a subpoena to depose a designee of Heritage Action pursuant to Fed. R. Civ. P. 30(b)(6). Exhibit D.
8. On October 19, 2021, Heritage Action filed a Motion to Quash Plaintiffs' subpoena to depose a corporate designee of Heritage Action in the Southern District. Exhibit E.
9. On October 19, 2021, the Southern District granted Plaintiffs' Motion to Compel compliance with Plaintiffs' subpoena for documents from The Heritage Foundation and Heritage Action. Exhibit F.
10. On October 20, 2021, Plaintiffs' counsel emailed Heritage Action's counsel to see if the parties may be able to resolve the disagreement. On October 21, 2021, Heritage Action's counsel

informed Plaintiffs' counsel that "Heritage Action is not willing to reconsider its position on the 30(b)(6) deposition at this time."

Exhibit G.

11. On October 20, 2021, Plaintiffs sent an email to counsel of record in this Action regarding their intention to seek the Court's leave to take Heritage Action's deposition after the close of fact discovery. Secretary Lee opposes "any and all extensions of the discovery deadlines." No other parties communicated an intent to oppose this motion. Exhibit H.

12. On October 22, 2021, the Southern District denied Heritage Action's Motion to Quash Plaintiff's deposition subpoena without prejudice because "the deposition is not set to take place in" the Southern District. Exhibit I.

13. To date, Heritage Action has not produced any documents to Plaintiffs.

14. To date, Heritage Action has not agreed to comply with Plaintiffs' deposition subpoena.

Plaintiffs, therefore, request leave from this Court to take the deposition of Heritage Action after the close of fact discovery on October 22,

2021, should Heritage Action decide to comply, or a court order that Heritage Action must comply, with Plaintiffs' 30(b)(6) deposition subpoena.

MEMORANDUM IN SUPPORT OF REQUEST FOR LEAVE

Courts may, for good cause, grant parties an extension of time to complete discovery. *See* Fed. R. Civ. P. 6(b); *see also* ECF No. 165, at 1 n.1 (court will consider extension of deadlines for “compelling good cause”). Here, good cause exists for a modest discovery extension to take Heritage Action's 30(b)(6) deposition, should Heritage Action decide to comply, or a court order that Heritage Action must comply, with Plaintiffs' 30(b)(6) deposition subpoena. Throughout discovery, Plaintiffs have diligently sought relevant information from both parties and non-parties. However, Heritage Action has refused to comply with Plaintiffs' subpoenas and rebuffed Plaintiffs' offers to negotiate the scope of those discovery requests. Heritage Action's lack of cooperation has made it impossible for Plaintiffs to complete taking discovery from it before the October 22, 2021 discovery cutoff.

Plaintiffs served Heritage Action with a document subpoena more than two months ago, on August 6, 2021. Plaintiffs issued a subpoena for a deposition pursuant to Fed. R. Civ. P. 30(b)(6) on October 6, 2021—more than two weeks before the close of fact discovery. The deposition subpoena

noticed a prospective date of October 20, 2021, although Plaintiffs were willing to discuss a mutually-agreed upon deposition date with Heritage Action.

Heritage Action refused to comply with both Plaintiffs' subpoena for documents and Plaintiffs' subpoena for deposition. Rather than negotiate with Plaintiffs' regarding the scope of the requests and timing for compliance, Heritage Action chose to object to and move to quash Plaintiffs' requests. As a result, Plaintiffs moved to compel compliance with its document subpoena in the Southern District at the beginning of this month. The Southern District granted this motion three days ago. On the same day, Heritage Action filed a motion to quash Plaintiffs' deposition subpoena, largely recycling the same arguments it lodged in opposition to Plaintiffs' document subpoena. This morning, the Southern District denied Heritage Action's Motion to Quash Plaintiffs' deposition subpoena without prejudice, because Heritage Action's corporate designee would be deposed by remote means, presumably from Washington, D.C., and therefore, "the deposition is not set to take place in" the Southern District. Ex. I, at 2.

Given the delay Plaintiffs have encountered in obtaining discovery from Heritage Action, Plaintiffs ask the Court for leave to take the 30(b)(6) deposition of a Heritage Action designee after the close of fact discovery,

should Heritage Action decide to comply, or a court order that Heritage Action must comply, with Plaintiffs' 30(b)(6) deposition subpoena.

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Dated: October 22, 2021

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* Motion for admission *pro hac vice*
forthcoming

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(B)

Pursuant to Northern District of Florida Local Rule 7.1(B), counsel for Plaintiffs and Defendants conferred via email regarding this motion. Secretary Lee “opposes any and all extensions of the discovery deadline.” No other party has communicated an intent to oppose this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to all counsel of record through the Court’s CM/ECF system on October 22, 2021. Non-parties Heritage Foundation and Heritage Action for America were served by email.

s/ Michael A. Fletcher II

Counsel for Plaintiffs

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