

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

DR. DOROTHY NAIRNE, et al.

Plaintiffs,

v.

R. KYLE ARDOIN, in his official capacity as
Secretary of State of Louisiana,

Defendant.

CIVIL ACTION NO. 3:22-cv-00178
SDD-SDJ

Chief Judge Shelly D. Dick

Magistrate Judge Scott D. Johnson

JOINT REQUEST FOR A STATUS CONFERENCE

On August 21, 2023, counsel for all of the parties to this action met and conferred regarding Plaintiff NAACP Louisiana State Conference's request for a protective order precluding discovery of personally identifiable information of its members. The parties discussed a number of options for resolving the discovery dispute Plaintiff's request but were unable to come to an agreement. The parties believe that it would be helpful to have the Court's assistance and guidance in their effort to reach an agreement and obviate the need for the Court to resolve the dispute. Accordingly, the parties jointly request a status conference to address the NAACP's request for a protective order.

In support of this request, the parties provide the following summary of their positions and the status of their discussions.

1. The Louisiana NAACP considers the identities of its members and their addresses to be privileged. As such, the Louisiana NAACP will not produce that information absent a court order. Defendants' position is that Plaintiffs have placed this information about its members at issue in this case by asserting associational standing and introducing evidence concerning them in their discovery responses, and that Defendants are therefore

entitled to seek relevant information regarding those members.

2. The Louisiana NAACP will not agree to Defendant Ardoin's proposal to produce the member identities and addresses under a designation of CONFIDENTIAL or ATTORNEYS EYES ONLY, with a corresponding stipulation that any such information must be filed with the Court under seal.
3. Each of the parties has proposed a resolution, but they have not been able to reach an agreement.

- a. The Legislative Intervenors submit the following statement:

Legislative Intervenors offered to stipulate that they would not seek any discovery about the identity of the Louisiana NAACP's members if the Louisiana NAACP would stipulate that it would not seek to submit any further evidence regarding its membership other than what is already stated in their interrogatory responses. Legislative Intervenors do so without admitting that any information the Louisiana NAACP presents is factually accurate or waiving any argument that the information contained in the interrogatory responses does not establish the Louisiana NAACP's standing in this case. The Louisiana NAACP does not agree. Rather, the Louisiana NAACP seeks to admit further evidence about its membership that it claims is "substantially similar" to what is in its interrogatory responses without revealing the specific personal information of its members. First, it is unclear what the Louisiana NAACP believes to be "substantially similar." Second, the Louisiana NAACP cannot use any first amendment privilege as both a sword and a shield. They cannot put forth some information about their membership, and deny Legislative Intervenors the ability to conduct discovery about their membership including testing the veracity of the evidence that is submitted, which requires discovery about individual members to ensure that any general statements about them are in fact accurate. This is important,

given that in asserting associational standing, the Louisiana NAACP is asserting claims for the individual injury of particular members in particular districts. By opening that door, Legislative Intervenors must be entitled to conduct discovery about the individual members on their purported Section 2 injury.

b. The Louisiana NAACP submits the following statement:

The Louisiana NAACP offered to stipulate that while it is entitled offer non-privileged evidence about its membership similar to what was provided in its response to the Secretary of State's interrogatory, it would not seek to rely on any personal information of its members that is protected by the First Amendment. The NAACP believes Defendants may take discovery concerning any non-protected information regarding its members but are not entitled to discovery of the protected information. Defendants disagree and seek member names and addresses, as well as birth dates and voting choices, information that the NAACP generally does not have and that could only be obtained by questioning individual members. Plaintiff rejects the Intervenors' sword and shield analogy. Plaintiffs have not sought to selectively waive the protections of the First Amendment; rather, it seeks to establish standing through purely non-protected information concerning their members, for example by identifying the Louisiana House and/or Senate districts they reside in, which is not protected, without revealing their names or addresses, which could expose them to harassment or retribution and is therefore protected by the First Amendment.

The parties propose holding the conference on any time on Friday, August 25, or at another time convenient to the Court.

DATED: August 23, 2023

Respectfully submitted,

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