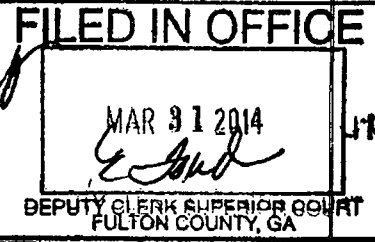


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IN THE SUPERIOR COURT OF FULTON COUNTY,
STATE OF GEORGIA



STACEY KALBERMAN,

Plaintiff,

vs.

GEORGIA GOVERNMENT TRANSPARENCY
AND CAMPAIGN FINANCE COMMISSION,
et al.,

Defendants.

Civil Action No. 2012CV216247

Honorable Ural D. Glanville

Motion to Quash Subpoena

O R D E R

The above-captioned matter is presently before the Court on the "Motion to Quash Subpoena" filed by the Honorable Nathan Deal, Governor of the State of Georgia.¹ (Doc. no. 133). Plaintiff opposes the instant motion. (Doc. no. 136). For the reasons set forth, *infra*, the instant motion is **GRANTED**. (Doc. no. 133).

I. BACKGROUND

The above-captioned case is scheduled for trial on Monday, March 31, 2014. Governor Deal contends that, on March 5, 2014, the Office of the Governor received a subpoena, calling for Governor Deal to testify in the trial scheduled in the above-captioned case. (Doc. no. 134, Gov. Deal Br., p. 1). Furthermore, Governor Deal argues that he has no personal knowledge of any relevant facts, and thus, his testimony would be immaterial. (*Id.* at 3). As such, Governor Deal maintains that the burden of calling him to testify outweighs the probative value of the testimony. (*Id.* at 3-5).

¹ Because the Clerk of the Court does not furnish copies of filings as directed by Uniform Superior Court Rule 6.1, the parties are **ORDERED** to submit copies of all future filings to the Chambers of the Judge assigned to the above-captioned case.

Finally, Governor Deal concludes that principles of separation of powers also warrant quashing the subpoena. (Id. at 5-6).

Plaintiff counters that Governor Deal has personal and first-hand knowledge of information needed to establish the elements of Plaintiff's claim. (Doc. no. 136, pp. 4-8). Plaintiff also argues that, despite Governor Deal's assertions concerning separation of powers, the fact that Governor Deal is the Governor of Georgia does not preclude his testimony in the above-captioned case. (Id. at 8). Plaintiff concludes that Governor Deal's "office does not place him above the law for purposes of relevant testimony at trial in this Court." (Id. at 4).

II. DISCUSSION OF LAW

As an initial matter, the Court will address the motion to quash based upon the nature and scope of the subject subpoena. O.C.G.A. § 9-11-43 provides, "In all trials[,] the testimony of witnesses shall be taken orally in open court unless otherwise provided by this [C]hapter or by statute." O.C.G.A. § 9-11-43(a). In this regard, O.C.G.A. § 24-13-22 provides, "At the request of any party, subpoenas for attendance at a hearing or trial shall be issued under the authority of the clerk of court in which the hearing or trial is held." O.C.G.A. § 24-13-22. However, upon written motion made promptly before the time specified in the subpoena for compliance therewith, the court may "[q]uash or modify the subpoena if it is unreasonable and oppressive." O.C.G.A. § 24-13-23(b). Although Georgia has recently adopted a new evidence

code, it remains clear that, when a motion to quash is filed, the serving-party has the initial burden of demonstrating that the sought-after evidence is relevant and then the burden shifts to the moving-party to establish that the subpoena is unreasonable and oppressive. E.g., Walker v. State, 323 Ga. App. 558, 568 (2013); Bazemore v. State, 244 Ga. App. 460, 463 (2000). Ultimately, the decision to quash a subpoena depends on the nature and scope of the request. Walker, 323 Ga. App. at 568.

Plaintiff submits,

Plaintiff is charged with proving that she was retaliated against for protected activity under the Georgia Whistleblower Act, and that includes establishing that she disclosed actual violations of law by the Governor. Governor Deal has personal and firsthand knowledge of his violations of Georgia campaign finance law. Additionally, evidence will show that the Governor's Office recruited [Plaintiff's] replacement even before the Commission constructively terminated [Plaintiff].

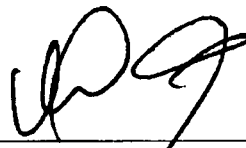
(Doc. no. 136, p. 1 (emphasis added)). Under Georgia's Whistleblower Statute, Plaintiff is required to prove that: (1) Plaintiff was a public employee; (2) Defendant Georgia Government Transparency and Campaign Finance Commission ("Commission") is a public employer; (3) Plaintiff disclosed violation of, or noncompliance with, a law, rule, or regulation to her supervisor or Defendant Commission; (4) Plaintiff's disclosure was not made with reckless disregard for its veracity; and (5) Defendant Commission retaliated against Plaintiff based upon the disclosure. O.C.G.A. § 45-1-4(d)(2); Colon v. Fulton County, 294 Ga. 93, 95 (2013). In this regard, Plaintiff need not prove or establish that Governor

Deal actually violated any campaign finance law. Rather, Plaintiff essentially must prove that she disclosed a purported violation to the Commission, resulting in retaliation. Indeed, it is unclear whether Governor Deal can offer any relevant testimony. As it relates to the issue of retaliation, it would appear that, as an employee of the Commission, the best source of any information or testimony concerning the basis of Plaintiff's purported termination would be the members of the Commission, not Governor Deal. Nothing in the record, save Plaintiff's assertions, suggests that Governor Deal was involved in the decisions related to Plaintiff's employment. Certainly, Governor Deal cannot be expected to testify in every purported employment matter involving the State of Georgia, even those purportedly related to an investigation into his campaign. Finally, the Court is left with one salient question. If Governor Deal's testimony is crucial to Plaintiff's case, why was Governor Deal not deposed or otherwise served with discovery requests prior to the eve of trial? Simply put, the Court finds that Plaintiff has failed to demonstrate that Governor Deal's testimony is relevant or that the sought-after information cannot be obtained from other, less burdensome sources. As such, the Court need not address Governor Deal's remaining arguments concerning separation of powers or the importance of the Governor's Office.

III. CONCLUSION

For the reasons stated, *supra*, the instant motion is **GRANTED**. (Doc. no. 133). Accordingly, the subject subpoena served upon Governor Deal is **HERBY QUASHED**. However, the Court may re-visit the instant motion and this Order based upon the issues and testimony proffered during the course of the trial in the above-captioned case.

SO ORDERED this 32nd day of March, 2014, at Atlanta, Georgia.



Ural D. Glanville, Judge
Fulton County Superior Court
Atlanta Judicial Circuit

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