

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT BUTWIN JR. and JANET SCHMIDT,

Plaintiffs,

v.

JOHN DOE 1 and JOHN DOE 2,

Defendants.

Civil Case No.
2:25-cv-02208

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO
SERVE THIRD PARTY SUBPOENAS PRIOR TO A RULE 26(f) CONFERENCE**

Plaintiffs allege that Defendants sent Plaintiffs letters that included egregious violations of Section 11(b) of the Voting Rights Act and the Ku Klux Klan Act, namely specific threats directed at prospective voters for exercising the right to vote. Defendants acted anonymously and in violation of Plaintiffs' civil rights. Plaintiffs seek leave to serve immediate and limited discovery on certain entities and individuals so that Plaintiffs may learn Defendants' identities and serve the Complaint.

As set forth in the Complaint, Plaintiffs informed various law enforcement entities and individuals, including police officers from two separate police departments and individuals with the United States Postal Inspection Service, regarding the Letter they received. Plaintiffs seek to serve subpoenas upon these individuals and entities to ascertain the Defendants' identities and contact information. Without this information, Plaintiffs will have extraordinary difficulty serving the Defendants with the Complaint.

According to the federal rules,

A party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.

Fed. R. Civ. P. 26(d)(1). Courts have allowed similar discovery in cases involving John Doe defendants. *See, e.g. Malibu Media, LLC v. Doe*, 2012 U.S. Dist. LEXIS 77469, *1 (E.D. Pa., June 1, 2012) (“The Court concludes that there is good cause to allow some expedited discovery in this case, because, without it, Plaintiff will not be able to ascertain the identities of the Doe defendants or to effect service upon them.”).

According to the Third Circuit, the “[u]se of John Doe defendants is permissible in certain situations until reasonable discovery permits the true defendants to be identified.” *Blakeslee v. Clinton Cty.*, 336 F. App’x 248, 250 (3d Cir. 2009) (citing *Klingler v. Yamaha Motor Corp., U.S.A.*, 738 F. Supp. 898, 910 (E.D. Pa. 1990)). Plaintiffs now seek reasonable discovery regarding the Defendants’ identities.

1. Plaintiffs’ Complaint States Claims under the Voting Rights Act and the Ku Klux Klan Act.

In their Complaint, Plaintiffs allege that they each received a Letter sent by Defendants through the U.S. Postal Service to their homes. *See* ECF No. 1-1. The Letter graphically describes violence and ominous consequences for their support of a candidate and participation in the upcoming election. Included in the Letter were statements specifically threatening violence. “But more importantly, we know where you live, you are in the data base. In the dead of a cold winters [*sic*] night, this year, or next and beyond, there is no knowing what may happen. Your property, your family may be impacted, your cat may get shot. And more.” ECF No. 1-1 at 1. Plaintiffs allege that Defendants violated Section 11(b) of the Voting Rights Act which provides that “No person, whether acting under color of law or otherwise, shall intimidate,

threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote...” 52 U.S.C. § 10307(b). Plaintiffs also allege that Defendants violated the Ku Klux Klan Act, which provides:

[I]f two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3).

2. Plaintiffs Seek Clearly Identifiable and Specific Information through Discovery.

Plaintiffs seek information related to Defendants’ identities so that Plaintiffs may serve the Complaint upon them. Plaintiffs seek to serve subpoenas upon the following individuals and entities:

- A) **The Lower Merion Police Department and police officer Casey Healy:** As alleged in the Complaint, Plaintiff Schmidt filed a police report regarding Defendants’ Letter and provided a copy of the envelope she received. *See* ECF No. 1 at 6.
- B) **The United States Postal Inspection Service and U.S. Postal Inspectors Brian Bennett and George P. Clark:** As alleged in the Complaint, Plaintiff Schmidt notified the United States Postal Inspection Service of her receipt of the letter.

Plaintiff Schmidt also met with Mr. Bennett and Mr. Clark and provided them with the original letter and envelope. *See* ECF No. 1 at 6.¹

C) **The Tredyffrin Township Police Department:** As alleged in the Complaint, Plaintiff Butwin spoke with an officer at the Tredyffrin Township Police Department regarding Defendants' letter. *See* ECF No. 1 at 6.

D) **Commissioner of the Pennsylvania State Police, Custodian of Records.**

3. The Third-Party Subpoenas Seek Highly Relevant Information.

The Plaintiffs are taking extraordinary steps to ascertain the identities of Defendants, including offering a significant monetary reward for information leading to the identification of any individual who sent the Letter. Plaintiffs are in the process of publicizing that reward. Yet, the law enforcement entities that investigated the incident have highly relevant information, some of which is unavailable to Plaintiffs in any other way. For example, because the United States Postal Inspection Service has the original Letter sent to Plaintiff Schmidt, only the United States Postal Inspection Service will have information regarding any identifying physical attributes of the Letter.

Without obtaining Defendants' identities, the Plaintiffs will have extraordinary difficulty serving the Complaint and pursuing the vindication of the various violations of their civil rights.

CONCLUSION

For the foregoing reasons, this Court should grant leave to the Plaintiffs to issue Rule 45 subpoenas on the following entities and individuals:

1) Lower Merion Police Department;

¹ The Complaint contains a scrivener's error wherein the United States Postal Inspection Service is referred to as the "United States Postal Service Investigations." The correct title is that listed in this Motion, the United States Postal Inspection Service.

- 2) Police officer Casey Healy;
- 3) United States Postal Inspection Service;
- 4) U.S. Postal Inspector Brian Bennett;
- 5) U.S. Postal Inspector George P. Clark;
- 6) Commissioner of the Pennsylvania State Police, Custodian of Records.

Dated: May 2, 2025

Respectfully submitted,

For the Plaintiffs
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**Motions for Pro Hac Admission forthcoming*