

# GEORGIA SECRETARY OF STATE CATHY COX: THE NEW FACE OF SOUTHERN RESISTANCE

by Bradley E. Heard

---

Copyright © 2006 Bradley E. Heard. All Rights Reserved.

*Permission to Republish:* This article may be freely republished, distributed, and/or posted, electronically or in print, provided that it is reproduced **in its entirety**, along with the included copyright notice and author credits. Although not required, the author requests that you send him a note if you decide to use this article. Please include your name, email address, telephone number, and a link to the article and/or website. To obtain permission to publish only portions of the article or for other questions, please contact the author at [bheard1@earthlink.net](mailto:bheard1@earthlink.net) or (404) 344-9255.

---

**ATLANTA, GA — January 31, 2006.** Every year, on the federal holiday celebrating the birth of Dr. Martin Luther King, Jr., I try to tune into the annual television coverage of the King Day Ecumenical Service at Atlanta’s historic Ebenezer Baptist Church. This year, as in years past, I saw the usual parade of Georgia public officials in the audience. Among those officials was Georgia’s Secretary of State, Cathy Cox — smiling and swaying, singing *Lift Ev’ry Voice and Sing* (the “Negro National Anthem”) by memory.

That’s not so surprising. After all, Secretary Cox is a statewide elected public official, and a Democrat. African-Americans are a very important constituency to any Southern Democrat.

What might be surprising to many black Georgians, though, is what Secretary Cox did two days later, when the cameras *weren’t* rolling. That Wednesday, in an obscure conference room on the second floor of a little-known state education building, Secretary Cox cast the *tie-breaking vote* on the Republican-controlled State Election Board that she chairs, to ask the Legislature to appropriate a whopping *\$2.5 million* of taxpayer funds so that the State of Georgia could continue to defend its recently-enacted Voter ID law — a law that a federal judge recently equated to a Jim Crow-era poll tax.

Confused? Perplexed? Don’t be. This is the way of the *New Southern Resistance* movement. And Cathy Cox is the face of that new movement.

In the *New Southern Resistance* movement, a politician says one thing in public, to placate her political base, and then says something else behind closed doors, to curry favor with the power brokers and the swing constituencies. But the goal always remains the same: preserve the status quo, extol the notion of “States’ Rights,” and resist the “outside agitating” influence of federal laws that seek to secure the rights of the least, the last, and the lost in society. And by all means, protect yourself!

And so it has been for Ms. Cox during her two terms as Secretary of State. She has seemingly mastered the art of saying one thing to groups interested in preserving and protecting the voting rights of Georgia’s most disadvantaged citizens (such as the League of Women Voters, the Georgia Coalition for the People’s Agenda, AARP, and Concerned Black Clergy), while steadily taking official actions that completely forswear her public statements to those groups.

## ***Double-Talk on Voter ID***

A perfect example of this pattern is Secretary Cox's handling of the Voter ID issue. A few days ago, the Republican-controlled Legislature passed a re-tweaked version of the Voter ID law that a federal court had enjoined last October. The judge ruled that the earlier version of that law likely violated several provisions of the U.S. Constitution and the federal Voting Rights Act. In statement after statement, when the Voter ID bill was being debated in the Legislature last year, Secretary Cox expressed fierce opposition to the measure. In a five-page letter, she urged Republican Governor Sonny Perdue to veto the bill, stating that it was unconstitutional, illegal, and unnecessary, and that it imposed a significant burden on the fundamental right of many of Georgia's citizens to vote. She predicted that the passage of the bill would spur untold legal challenges and would bring "unnecessary cost and embarrassment to our state." She was right, of course.

Given her stated opposition to the Voter ID law, why on earth would Secretary Cox cast the decisive vote to request \$2.5 million of Georgians' hard-earned money to defend the law? The answer is simple: she gains political favor with the "old guard" and the swing voters by doing so. At the same time, she is able to rely on her previous public statements in opposition to the bill as political cover with her base. State Senator Gloria Butler (D-DeKalb Co.) characterized Secretary Cox's recent vote as a "betrayal . . . against every poor, minority, and elderly voter in the state." Senator Butler is right.

Certainly it is true that, as Secretary of State and the chief election official responsible for enforcing Georgia's election laws, Ms. Cox was required to defend the law (at least officially) during the initial court challenge. That initial challenge has already cost taxpayers \$186,500 in legal fees, not including the fees that the state will owe to the prevailing plaintiffs. Now that the law has been ruled by a court of competent jurisdiction to be presumptively unconstitutional, as Secretary Cox herself argued that it was, there was absolutely no need for her to defend the law any further. But Secretary Cox chose to do so anyhow — and that is a choice that should concern many who consider her to be their friend and political ally.

## ***Opposition to Private Voter Registration Groups***

The Voter ID case is hardly the first time that Secretary Cox has found herself on the wrong side of voting rights issues. During her two terms as Georgia's chief election official, Ms. Cox has frequently and zealously supported and defended statewide voting practices that federal courts have declared to be illegal or unconstitutional. Many of these practices were created solely by her office, and they often have the effect of disenfranchising eligible voters even before they can get on the voter rolls.

I have come to know Secretary Cox's *modus operandi* all too well during the course of my representation of a small African-American non-profit charitable foundation in a voting rights case against her office. That case arose out of Secretary Cox's rejection of several voter registration applications that the foundation had collected during a voter registration drive in predominantly African-American South DeKalb County. Secretary Cox contended that my client did not collect the applications in accordance with her office's restrictive procedures, which essentially prohibited private, non-deputized individuals from collecting and submitting applications.

In July 2004, a federal judge issued an injunction against Secretary Cox, ruling that her policies violated the National Voter Registration Act of 1993 (NVRA). The judge ordered Secretary Cox's office immediately to begin accepting voter registration applications submitted by private voter registration volunteers. True to form, instead of modifying her office's procedures to comply with the judge's order, Secretary Cox appealed the ruling. The trial judge's decision was unanimously upheld in May 2005 by a three-judge panel of the U.S. Court of Appeals for the Eleventh Circuit. Still, Secretary Cox was not satisfied. She appealed the ruling *again*, this time to the entire Eleventh Circuit appellate court. Once again, her appeal was resoundingly rejected. Four federal judges have now ruled that Secretary Cox's policy of not allowing private groups to assist with registering voters was illegal, and eleven other federal judges have refused to reconsider her appeal on that issue. Yet, Secretary Cox continues to this day to contest this issue in the courts — at taxpayer expense — all the while assuring her supporters that she is merely “protecting the process.” Call it Southern Resistance with a smile.

### ***Contempt for the Federal Courts***

In protest of the federal courts' orders in the NVRA voter registration case, Secretary Cox persuaded the State Election Board to enact draconian new regulations that would effectively prohibit private groups from being able to offer effective voter registration assistance in the poor, minority, and elderly communities that they primarily serve. The new regulations impose three new changes:

- First, the regulations require voter registration applications to be sealed before being handed to private volunteers. This makes it all but impossible for voting rights groups to maintain contact with the people they assist with voter registration. Studies show that following up with newly-registered voters, to encourage them to vote and remind them of the importance of voting, significantly increases the likelihood that they will actually show up to the polls on election day. That, after all, is the ultimate goal of any effective civic participation campaign.
- Next, the regulations prohibit the photocopying of completed voter registration forms. This means that neither the applicants nor the registration drive organizers will have a way of verifying that the applications they completed and submitted were actually received and processed by election officials. (That's kind of like asking someone to cast a ballot on some mysterious Diebold electronic voting machine, without giving them a verifiable paper receipt. But wait... Secretary Cox was in favor of that too, wasn't she?)
- Finally, the regulations impose a 72-hour deadline on private groups to return applications, whereas the NVRA gives other state agencies like motor vehicle bureaus a 10-day window to return the same types of applications. This quick turn-around period creates a heavy disincentive for private groups to conduct voter registration drives, particularly when they are short-staffed, or if they don't meet daily. But, maybe that's the point of these regulations.

Again, Secretary Cox will reassuringly tell her supporters that these measures are needed to “protect the process” against voter registration fraud, untimely submission of applications, or poorly trained volunteers. However, much like the Republican legislators in the Voter ID debate, Ms. Cox has very little evidence of *actual* voter registration fraud to back

up her claims. The relatively small number of fraudulent or late-submitted applications that are invariably received from a few unscrupulous or negligent third parties pales in comparison to the number of legitimate applications that derive from reputable and conscientious third-party voter registration groups.

Also, like her Republican friends in the Legislature, Secretary Cox flatly refuses to consider less intrusive and more effective means of guarding against voter registration fraud and inefficiency by third party registration organizations. Instead of imposing a bunch of new restrictions on well-intentioned, civic minded voter registration volunteers, why not assist them in their worthy activity by providing training and information to them? To guard against fraud and ensure accountability, why not require volunteers who collect and submit applications to identify themselves and provide appropriate contact information to applicants and election officials? And instead of hamstringing private voter registration groups with a 72-hour turn-around deadline, why not give them the same 10-day window that is given to other designated voter registration agencies? Wouldn't the \$2.5 million in taxpayer funds that Secretary Cox has requested from the Legislature to defend an admittedly unconstitutional and discriminatory Voter ID law be better spent on funding these reform initiatives?

### ***A Call to Conscience***

Secretary Cox's fervor in defending Georgia's election laws and her own unsavory election policies at all costs — even after they have been specifically ruled to be in violation of federal law — goes well beyond the duty of an executive branch official to enforce and faithfully execute the laws. It reflects a degree of stubbornness and insensitivity to the plight of disadvantaged citizens that is frankly startling for a public official who professes to be a friend to such communities. After all, one of Secretary Cox's duties as an elected state official is to support the Constitution of the United States, which recognizes that federal law is the supreme law of the land, even when state laws and regulations run contrary to it. This concept is particularly apposite in the area of federal voting rights, and many people have fought, marched, lobbied, suffered, and died to make sure that those rights are secured.

Equally as troubling is Secretary Cox's pattern of double-talk around these issues. While she has maintained a very frequent and welcome presence among minority and women's groups, civil rights groups, retiree groups, and the like, her actual record has been woefully inadequate when it comes to securing, protecting, and enhancing the franchise rights of Georgia's most vulnerable citizens.

Those who consider themselves friends of Secretary Cox should urge her to defect from the ranks of the New Southern Resistance movement. And Secretary Cox should learn to stop talking out of both sides of her mouth when it comes to her support of voting rights.

---

***About the Author: Bradley E. Heard** is an attorney in private practice in Atlanta, Georgia. He holds a B.A. in Political Science from Morehouse College in Atlanta, where he graduated magna cum laude and Phi Beta Kappa. Mr. Heard earned his J.D. from the Yale Law School in New Haven, Connecticut, where he served as managing editor of the Yale Law & Policy Review. The opinions reflected in this article are solely those of the author and do not necessarily reflect those of his clients, his law firm, or any other entity with which he is affiliated.*