

1998 WL 158948

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United States District Court, S.D. New York.

Marisol A., by her next friend, Rev. Dr. James Alexander Forbes, Jr., et al., Plaintiffs,

v.

Rudolph W. GIULIANI, Mayor of the City of New York, et al., Defendants.

No. 95 CIV. 10533(RJW). | April 1, 1998.

## Opinion

### MEMORANDUM AND ORDER

WARD, D.J.

\*1 State defendants having moved this Court for an order quashing the notice of deposition of George E. Pataki, Governor of the State of New York (“Governor Pataki”), and for a protective order precluding the deposition of Governor Pataki pursuant to Rule 26(c)(1), (3), (4) of the Federal Rules of Civil Procedure, and the Court having considered the submissions of the parties and the oral arguments of counsel finds that the following issues are properly subject to discovery except in the limited instances where they involve executive privilege:

(1) information of which Governor Pataki was made aware around the time of Elisa Izquierdo’s death regarding child welfare in New York City which potentially influenced his decision in December 1995 to direct the New York State Department of Social Services (“DSS”) to undertake an extensive review of the Child Welfare Administration, now the Administration for Children’s Services, that resulted in the April 1996 Report titled “A Review of Investigations, Assessment and Decision Making in Child Abuse and Maltreatment Reports Received by the Child Welfare Administration of New York City”; and

(2) information of which Governor Pataki was made aware which served to influence his decision to disband DSS and place its child welfare responsibilities in a new agency with a new Commissioner as of 1998–99.

Rule 30 of the Federal Rules of Civil Procedure provides for broad access to persons during the discovery process. Fed.R.Civ.P. 30(a). Parties, however, may be limited in their pursuit of depositions under Rule 26(c), which provides that courts can issue a protective order to prevent “undue burden” in the discovery process. Fed.R.Civ.P. 26(c). While granting a protective order and quashing a deposition is the exception rather than the rule, the burden a deposition would place on a high ranking government official is given special scrutiny.

To prevent Governor Pataki, a high ranking government official, from being unduly burdened, it is

ORDERED that State defendants designate witnesses with knowledge of the factual information furnished to Governor Pataki on which his decisions were based within five [5] business days of the date of this Memorandum and Order and that the depositions of these witnesses be conducted within ten [10] business days thereafter, and it is further

ORDERED that in the event State defendants are unwilling or unable to comply with the foregoing direction that Governor Pataki either furnish an affidavit concerning the issues identified above by April 15, 1998 or appear for an oral deposition at a time and place convenient to his schedule but in no event later than April 30, 1998.