

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>KIM M. YORK, et al.,</b>	)	
	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 03-99-P-H</b>
	)	
<b>TOWN OF LIMINGTON, MAINE,)</b>	)	
	)	
<b>Defendant</b>	)	

**MEMORANDUM DECISION AND ORDER ON PLAINTIFFS’  
MOTION TO AMEND SCHEDULING ORDER AND  
DEFENDANT’S MOTION FOR PROTECTIVE ORDER**

Plaintiffs Kim M. York, Michael D. York, Sr. and Burning Rose Land Development, LLC (collectively, “Plaintiffs”) move to amend the court’s proposed scheduling order to permit the taking of more than the allotted five depositions on the basis of a professed need to inquire into the intent and motives of those who proposed and approved a challenged town ordinance. *See* Plaintiffs’ Objection To Proposed Scheduling Order (“Plaintiffs’ Motion”) (Docket No. 6). The defendant Town of Limington, Maine (“Town”) not only objects to the Plaintiffs’ Motion but also moves for a protective order pursuant to Federal Rule of Civil Procedure 26(c) to prohibit that line of inquiry. *See* Defendant’s Response to Plaintiffs’ Objection to Proposed Scheduling Order and Defendant’s Request for Discovery Dispute Conference (“Defendant’s Motion”) (Docket No. 8).<sup>1</sup> For the reasons that follow, the Plaintiffs’ Motion is denied and the Defendant’s Motion granted.

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<sup>1</sup> Technically, the Town requests a hearing or teleconference to consider whether it might be permitted to file a motion for the protective order it seeks. *See* Defendant’s Motion at 4-5. However, inasmuch as (i) the nature of the order sought is clear, (ii) the Town has offered substantive arguments in favor of that order and (iii) the Plaintiffs have been afforded a meaningful opportunity to *(continued on next page)*

Rule 26(c) provides, in relevant part, that “for good cause shown, . . . on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including an order “that certain matters not be inquired into[.]” Fed. R. Civ. P. 26(c). The Town persuasively argues that any inquiry into the motivation or intent of those who drafted, debated or voted on the ordinance in question would constitute an exercise in futility (and hence an “undue” burden) inasmuch as no such evidence ultimately matters in this case. *See generally* Defendant’s Motion.

The Plaintiffs rejoin that motive and intent are relevant – indeed central – to their claim that the ordinance in question constitutes an impermissible bill of attainder. *See* Plaintiffs’ Response at 2-3; *see also* Complaint for Declaratory and Injunctive Relief (“Complaint”) (Docket No. 1) ¶¶ 20-24. This is true so far as it goes, but it does not go far enough. Legislative motive or intent are relevant to bill-of-attainder analysis – but only to the extent revealed by the legislative record. *See, e.g., Ernst & Young v. Depositors Econ. Prot. Corp.*, 862 F. Supp. 709, 716-17 (D.R.I. 1994), *aff’d*, 45 F.3d 530 (1st Cir. 1995) (observing that factors relevant to bill-of-attainder analysis include “whether the legislative record evinces a congressional intent to punish”; noting that although plaintiff sought discovery “to prove the legislature’s nefarious purposes, there is really nothing to discover on this issue. Legislative history may not be created ex post facto.”); *see also, e.g., Continental Can Co. v. Chicago Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund*, 916 F.2d 1154, 1157 (7th Cir. 1990) (“Authors’ private meanings – meanings subjectively held but not communicated – do not influence the readers’ beliefs. . . . That is why statements after enactment do

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respond to those substantive arguments, *see* Plaintiffs’ Response to Request for Protective Order (“Plaintiffs’ Response”) (Docket No. 9), no useful purpose would be served in scheduling the requested hearing or teleconference. Accordingly, I treat the Town’s request as a motion for a protective order.

not count; the legislative history of a bill is valuable only to the extent it shows genesis and evolution, making ‘subsequent legislative history’ an oxymoron.”).

The Plaintiffs cite two cases for the proposition that discovery is permitted when motive or intent forms an element of a plaintiff’s claim. *See* Plaintiffs’ Response at 2 (citing *Gary v. United States*, No. 3:97-CV-658, 1998 WL 834853 (E.D. Tenn. Sept. 4, 1998), and *Casarez v. Val Verde County*, 967 F. Supp. 917 (W.D. Tex. 1997)). However, both are too far afield to help the Plaintiffs. *Gary* concerns the discoverability of an Internal Revenue Service (“IRS”) revenue officer’s personnel file in an action to recover damages for an alleged unlawful levy by the IRS, while *Casarez* notes that certain evidence (to wit, depositions of absentee voters) would have been relevant to a challenge to the propriety of the casting of those absentee votes.

Inasmuch as the Plaintiffs object to the scheduling order’s five-deposition limit primarily on the ground that they wish to explore the intent and motivation of those proposing and approving the contested ordinance, arguing that such testimony would be relevant to their bill-of-attainder claim, and such testimony is not in fact relevant to that claim, I deny their motion to amend the scheduling order and grant the Town’s motion for a protective order barring any deposition discovery pertaining to the intent or motive of individuals, groups, Town officers, Town boards or the legislative body relating to the enactment of the Growth Management Ordinance.

**SO ORDERED.**

Dated this 14th day of August, 2003.

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David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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V.

**Defendant**

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