

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

FLORIDA STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
(NAACP), as an organization and representative
of its members, *et al.*,

Civil No. 4:07cv402 SPM/WCS

Plaintiffs,

vs.

KURT S. BROWNING, in his official capacity as
Secretary of State for the State of Florida,

Defendant.

PROTECTIVE ORDER

THIS CAUSE comes before the Court on the Plaintiffs' Motion for Entry of Protective Order, filed October 11, 2007. The Court is fully advised of the premises and determines that there is good cause for the Motion and entering this Protective Order.

WHEREAS, discovery and other proceedings in this action may require the production or disclosure of confidential personal information of residents of the State of Florida, including without limitation driver's license and Social Security numbers;

WHEREAS, such information may be exempted from disclosure under Florida's Public Records Law (Ch. 119, Florida Statute), including without limitation driver's license and Social Security numbers;

WHEREAS, such information, including without limitation driver's license and Social Security numbers, is relevant to the adjudication of this matter and shall be produced in un-redacted form under the terms of this Protective Order;

WHEREAS, the Court finds it in the interests of justice, the parties and any third-parties from whom discovery may be sought to expedite the flow of said discovery material, facilitate the prompt resolution of any disputes of confidentiality, and adequately protect material entitled to be kept confidential;

Accordingly, it is

ORDERED AND ADJUDGED that Plaintiffs' Motion is **GRANTED**, and

IT IS FURTHER ORDERED THAT discovery in this case shall be governed by this Protective Order as follows:

1. Definitions of terms used in this Protective Order ("Protective Order") are:
 - (a) "Proceeding" means the matter captioned *Florida State Conference of the NAACP, et al. v. Browning*, N.D. Fla. Case No. 4:07-cv-402-SPM/WCS.
 - (b) "Confidential" refers to confidential personal information of Florida residents, including without limitation driver's license and Social Security numbers.
 - (c) "Document" refers to any book, pamphlet, periodical, letter, report, memorandum, notation, message, telegram, cable, record, study, working paper, file, chart, graph, photograph, film, index, tape, correspondence, record of purchase or sale, contract, agreement, lease, invoice, e-mail, electronic or other transcriptions or taping of telephone or personal conversations or conferences, or any and all other written, printed, typed, punched, taped, filmed, or graphic matter, or tangible thing, however produced or reproduced.

2. A party (including any non-party to the Proceeding) producing documents in connection with this Proceeding, may designate such documents as “Confidential” by stamping or typing the designation on the face of the documents produced. If a party inadvertently produces documents that bear an improper designation, the producing party may redesignate such documents by providing written notice to the receiving party within seven days of discovering the inadvertent production. Upon receiving such written notice, the receiving party shall treat the documents according to the new designation.

3. Deposition testimony or other testimony may be designated “Confidential” either before the testimony is given, at the time the testimony is given, or within thirty days of receipt of the transcript. The transcript of the designated testimony shall be bound in a separate volume and marked by the court reporter with the appropriate legend as directed by the designating party.

4. Documents designated “Confidential” shall not be disclosed or used for any purpose other than the defense, prosecution, or settlement of this Proceeding.

5. “Confidential” documents may be seen only by:

- (a) this Court and its personnel;
- (b) each party’s attorneys and the staff of those attorneys;
- (c) independent experts and consultants, including experts or consultants who are not retained or are not expected to testify (pursuant to Paragraph 6 of this Protective Order);
- (d) court reporters, videographers, commercial copy services, translators, demonstrative exhibit preparers, trial consultants, and data and computer support organizations hired by and assisting the attorneys for any party;
- (e) any person from whom testimony is taken, where such person was an author or a recipient of the designated document or where counsel for the designating party has, either before or during the deposition, approved the disclosure of such documents to that

person, except that such person may not retain any such documents; and

- (f) the individual parties and officers, directors and employees (and former officers, directors and employees) of any party. Neither the “Confidential” documents nor the information contained therein shall be disclosed to any other persons. “Confidential” documents may be shown only to the above-described people or entities when disclosure of the documents is necessary for purposes of this Proceeding and the disclosing party has obtained written agreement, in the form attached hereto as EXHIBIT A for individuals and EXHIBIT B for organizations, by the person or entity receiving the disclosure to be bound by this Protective Order and to consent to the jurisdiction of the United States District Court for the Northern District of Florida for purposes of enforcing this Protective Order. The people listed in Paragraph 5(b) shall be bound by the terms of this Protective Order by counsel’s signature on this Stipulation and Protective Order.

6. “Confidential” documents may only be shown to experts and consultants when disclosure of the documents is necessary for purposes of this Proceeding and the disclosing party has obtained written agreement, in the form attached hereto as EXHIBIT A for individuals and EXHIBIT B for organizations, by the person or entity receiving the disclosure to be bound by this Protective Order and to consent to the jurisdiction of the United States District Court for the Northern District of Florida for purposes of enforcing this Protective Order. If an expert or consultant will be shown “Confidential” documents, and if the disclosure of the identity of the expert or consultant is required by court rule or is otherwise required by the Court, the disclosing party shall provide, to all parties, a copy of the expert’s or consultant’s signed written agreement in the form attached hereto as EXHIBIT A for individuals and EXHIBIT B for organizations. For all other experts or

consultants to whom “confidential” documents will be shown, the disclosing party shall submit the written agreement, in the form attached hereto as EXHIBIT A for individuals and EXHIBIT B for organizations, to a mutually agreed upon neutral third party. The neutral third party shall retain the written agreement in confidence from all other parties for the duration of the litigation. Upon final adjudication of this Proceeding in the trial court, the neutral third party shall provide copies of all written agreements to any party upon request.

7. Nothing herein shall impose any restrictions on the use or disclosure by a party of documents or portions of documents obtained by such party independent of discovery from a party in this action, whether or not such documents or portions of documents are also obtained through discovery in this action, or from disclosing its own “Confidential” documents or portions of documents as it deems appropriate. Nor shall this Protective Order restrict the use or disclosure of documents or portions of documents that: (a) are in the public domain at the time of the use or disclosure; (b) become part of the public domain after the time of the use or disclosure, through no fault of the receiving party; (c) were received from a third party who was under no obligation of confidentiality to the party that produced the documents; or (d) are derived or obtained independently of the use or disclosure. The receiving party shall have the burden of proving that the use or disclosure satisfies one or more of these criteria.

8. If any party or individual who has received documents designated as “Confidential” is served with a subpoena or other judicial process demanding the production or disclosure of such documents, the receiving party or individual: (a) shall provide all parties to this Proceeding with a copy of such subpoena or other judicial process within ten days following receipt thereof; (b) shall inform the subpoenaing party that the requested documents are governed by the terms of the Protective Order in this case; and (c) shall not disclose or produce “Confidential” documents unless (i) the subpoenaed party receives written permission from the designating party, or (ii) the

designating party fails to file a motion to protect disclosure of such documents within 14 days.

9. If “Confidential” documents produced in accordance with this Protective Order are disclosed to any person other than in the manner authorized by this Protective Order, the party responsible for the disclosure shall immediately bring all pertinent facts related to such disclosure to the attention of all counsel of record and, without prejudice to other rights and remedies of the party that produced the documents, shall make every possible effort to prevent any further disclosure by it or by the person(s) who received such documents.

10. This Protective Order shall not restrict disclosure of “Confidential” documents to this Court, its personnel, or any appellate court or federal district court in accordance with this paragraph. All materials filed with this Court that include documents designated “Confidential,” or information taken from such documents, shall be filed with personal confidential information of Florida voters redacted. If, however, the personal information is relevant and necessary evidence and therefore cannot be redacted, the parties agree they will seek to file all such documents under seal pursuant to a stipulation between the parties in accord with Local Rule 5(g). All unredacted “Confidential” materials shall be filed in sealed envelopes or other appropriately sealed containers on which shall be recorded the title of this action, the general nature of the contents of such sealed envelope or other container, and a statement substantially in the following form:

FILED UNDER SEAL: This envelope, filed in this case by [party], contains confidential documents covered by a judicial Protective Order. This envelope is not to be opened by, nor the contents hereof revealed to, anyone except the Court and thereafter resealed.

11. This Protective Order shall be without prejudice to the right of any party to this action to bring before the Court at any time the question of whether any particular

information is or is not “Confidential.” This includes the ability to question whether a document filed under seal was appropriately designated “Confidential.” Whenever a party to the Proceeding objects to the designation of documents as “Confidential,” and if agreement by the parties cannot be reached as to categorization, the objecting party may apply to the Court for an order redesignating such documents, and, if applicable, unsealing such documents. The designating party shall have the burden of sustaining the designation.

12. Upon final adjudication of this Proceeding, unless otherwise agreed to in writing by an attorney for the producing party, any party that has received documents designated as “Confidential” shall destroy such documents, including all copies, summaries or compilations of such documents.

13. The terms of this Protective Order shall survive and remain in full force and effect after the termination of the Proceeding.

DONE AND ORDERED in Chambers at Gainesville, Florida, this ____ day of October, 2007.

STEPHAN P. MICKLE
UNITED STATES DISTRICT JUDGE

Copies to Counsel of Record.

Exhibit A

AGREEMENT TO BE BOUND BY TERMS OF PROTECTIVE ORDER

The undersigned has read the foregoing Stipulated Protective Order (the “Protective Order”) signed by the Parties thereto and entered by this Court in *Florida State Conference of the NAACP, et al. v. Browning*, Case No. 4:07-cv-402-SPM/WCS, in the United States District Court for the Northern District of Florida. I understand its contents, and hereby undertake and agree to abide by its terms including, without limitation, those terms regarding the use of any document designated “Confidential” (as defined in the Protective Order), and any information contained therein. The undersigned agrees to submit to the jurisdiction of the United States District Court for the Northern District of Florida for the purpose of enforcing the terms and conditions of the Protective Order.

Date

Name (Print or Type)

Signature

Company (if applicable)

Protective Order
Case No. 4:07-cv-402-SPM

Exhibit B

AGREEMENT TO BE BOUND BY TERMS OF PROTECTIVE ORDER

The undersigned, as an authorized representative of the organization specified below, has read the foregoing Stipulated Protective Order (the “Protective Order”) signed by the Parties thereto and entered by this Court in *Florida State Conference of the NAACP, et al. v. Browning*, Case No. 4:07-cv-402-SPM/WCS, in the United States District Court for the Northern District of Florida, understands its contents, and hereby undertakes and agrees that its terms including, without limitation, those terms regarding the use of any document designated “Confidential” (as defined in the Protective Order), and any information contained therein, apply to the organization and its employees, representatives, and agents, and that the company shall take responsibility for any violations of the Protective Order by any of its employees, representatives, and agents who receive such documents. The organization further agrees to submit to the jurisdiction of the United States District Court for the Northern District of Florida, for the purpose of enforcing the terms and conditions of the Protective Order.

Date

Name (Print or Type)

Signature

Company (Print or Type)

Protective Order
Case No. 4:07-cv-402-SPM