

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

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

vs.

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

Defendant.

**PLAINTIFFS' MOTION FOR ENTRY OF PROTECTIVE ORDER,
INCORPORATED MEMORANDUM OF LAW AND
REQUEST FOR HEARING UNDER N.D. FLA. LOC. R. 7.1(E)**

Plaintiffs file this motion for entry of a protective order to facilitate discovery in this expedited proceeding as well as to ensure the protection of personal information such as driver's license and social security numbers that are necessary to adjudicate Plaintiffs' claims. The more particular grounds in support of this motion are set forth in the following Memorandum of Law.

MEMORANDUM OF LAW

As detailed in the Complaint and pending Motion for Preliminary Injunction, Plaintiffs challenge a Florida statute, § 97.053(b), Fla. Stat. (“Subsection 6”), that acts as a bar to voter registration based upon the State’s inability to match driver’s license and/or Social Security numbers across different and error-laden databases. Plaintiffs specifically allege that Florida citizens have been and will be denied the right to register and vote due to such mis-matches or “false negatives.” Often, such false negatives are the result of data entry errors, including typos and the use of incorrect data fields, as well as errors in matching data across different (and unreliable) databases.

On October 1, 2007 this Court entered a Stipulated Scheduling Order that provides for, among other things, an October 31 deadline for the parties to complete document production, a November 7 deadline to complete depositions, and a hearing on Plaintiffs’ Motion for Preliminary Injunction during the first two weeks of December. In accordance with the Stipulated Scheduling Order, Plaintiffs have commenced discovery upon both the Secretary as well as a handful of county supervisors of elections and several depositions are scheduled for the next two weeks. As part of their targeted discovery efforts, Plaintiffs seek the names, driver’s license numbers and Social Security numbers of citizens whose voter registration applications were denied due to the State’s failure to match their information in accordance with Subsection 6.

Because the driver’s license and Social Security numbers are deemed confidential and exempt from disclosure under Florida’s public records law, *see* § 97.0585(1), Fla. Stat., Plaintiffs are informed that the Secretary opposes discovery of the driver’s license and/or Social Security numbers and that certain of the subpoenaed supervisors will not

produce that information absent court order. An exemption under the public records law, however, does not mean that such records are to be excluded from discovery in a civil action — particularly when those records are directly related to the central question at issue in such litigation. See *Department of Highway Safety and Motor Vehicles v. Krejci Company, Inc.*, 570 So. 2d 1322, 1323-24 (Fla. 2d DCA 1990); see also *Kerr v. United States District Court for the Northern District of California*, 511 F.2d 192 (9th Cir. 1975), *aff'd*, 426 U.S. 394 (1976) (noting that exceptions to disclosure in Freedom of Information Act are not intended to create evidentiary privileges for civil discovery, but rather are intended solely to permit withholding certain types of information from the public generally). Thus, such confidential records have been found “subject to discovery in a civil action in exceptional circumstances and where the trial court takes all precautions to ensure the confidentiality of the records.” *Krejci*, 570 So. 2d at 1324. In *Krejci*, defendant sought production of information that was deemed confidential and exempt under Chapter 119. Specifically, the defendant sought production of driver’s license information that would support its complete defense of the claims in that action. Because the information was essential to defendant’s case and because the records would be protected under seal, the Court allowed discovery of the exempt material. *Id.*

Just so here. As in *Krejci*, Plaintiffs seek discovery of confidential material that relates directly to the precise issue at the heart of their case -- the driver’s license and/or Social Security numbers of the applicants whose voter registrations were rejected by the State’s failure to match those numbers with the DHSMV and/or SSA databases. Without being able to review the confidential driver’s license and Social security numbers as reflected on the relevant documents (*e.g.*, registration applications, registration databases,

etc.), Plaintiffs will be unable to prove the nature and extent of the State's failure to match records. Even worse, Plaintiffs will be denied a key piece of evidence that could help them track down the cause or causes of the false negatives in order to correct the problem during the pendency of this action. Clearly then, as in *Krejci*, Plaintiffs are faced with the exceptional necessity and extraordinary circumstances requiring the protected disclosure of the confidential information.

The information Plaintiffs seek to obtain under the terms of the proposed protective order is narrowly tailored to their claims and to those eligible voters who have been adversely impacted by Subsection 6. The proposed attached Protective Order provides the means to appropriately ensure the confidentiality of the requested materials while facilitating the timely flow of discovery in this expedited proceeding. Absent entry of such an order, Plaintiffs will be unnecessarily and unjustifiably prejudiced in their efforts to take discovery and adjudicate their claims.

Because of the time constraints of the Stipulated Scheduling Order, pursuant to N.D. Fla. Loc. R. 7.1(E), Plaintiffs respectfully request that the Court waive the time requirements of N.D. Fla. Loc. R. 7.1 and grant a hearing at the Court's earliest convenience.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion and enter the proposed Protective Order attached as Exhibit A.

N.D. FLA. LOC. R. 7.1 CERTIFICATION

Pursuant to N.D. Fla. Loc. R. 7.1(B), undersigned counsel states that on October 11, 2007, he conferred with Andy Bardos, counsel for the Secretary, and the parties are not able to resolve by agreement the issues raised in the motion.

Dated: October 11, 2007.

GREENBERG TRAUIG, P.A.

s/Glenn T. Burhans, Jr.

GLENN T. BURHANS, JR.

FLA. BAR NO. 605867

101 EAST COLLEGE AVENUE

TALLAHASSEE, FLORIDA 32301

TEL. (850) 222-6891

FAX (850) 681-0207

**PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP**

ROBERT A. ATKINS

D. MARK CAVE

J. ADAM SKAGGS

1285 AVENUE OF THE AMERICAS

NEW YORK, NEW YORK 10019-6064

TEL. (212) 373-3000

FAX (212) 492-0289

**BRENNAN CENTER FOR JUSTICE AT
NYU SCHOOL OF LAW**

JUSTIN LEVITT

MYRNA PÉREZ

161 AVENUE OF THE AMERICAS, 12TH FLOOR

NEW YORK, NEW YORK 10013

TEL. (212) 998-6730

FAX (212) 995-4550

ADVANCEMENT PROJECT

ELIZABETH S. WESTFALL

JENNIFER MARANZANO

1730 M. STREET, NW, SUITE 910

WASHINGTON, DC 20036

TEL. (202) 728-9557

FAX (202) 728-9558

PROJECT VOTE
BRIAN W. MELLOR
196 ADAMS STREET
DORCHESTER, MA 02122
TEL. (617) 282-3666
FAX (617) 436-4878

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that a copy of the foregoing *Motion for Entry of Protective Order* was served via the Court's CM/ECF electronic filing system this day, October 11, 2007, upon the following counsel of record:

Peter Antonacci
Allen Winsor
Andy V. Bardos
GrayRobinson, P.A.
Post Office Box 11189
Tallahassee, Florida 32302-3189

Counsel for Defendant
Kurt Browning

GREENBERG TRAUIG, P.A.

s/Glenn T. Burhans, Jr.
GLENN T. BURHANS, JR.
FLA. BAR NO. 605867
101 EAST COLLEGE AVENUE
TALLAHASSEE, FLORIDA 32301
TEL. (850) 222-6891
FAX (850) 681-0207

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