

No. 03-17-00662-CV

**IN THE COURT OF APPEALS
FOR THE THIRD JUDICIAL DISTRICT
AUSTIN, TEXAS**

**IN RE
ROLANDO PABLOS, SECRETARY OF STATE FOR THE STATE OF
TEXAS AND KEITH INGRAM, TEXAS ELECTIONS DIVISION OF THE
SECRETARY OF STATE,
*RELATORS,***

QRRQUKVKQP 'VQ'RGVKVKQP 'HQT'O CPF CO WU

Original Proceeding to Cause No. D-1-GN-17-003451
Pending in the 98th Judicial District Court
Travis County, Texas,
Honorable Timothy Sulak, Presiding

RECORD INDEX¹

- 1) Defendants' Answer and Affirmative Defenses.....Supp. Rec. 1-3
- 2) Supplement to Plaintiff's Application for Temporary Restraining Order...Supp. Rec. 4-19

CAUSE NO. D-1-GN-17-003451

LEAGUE OF WOMEN VOTERS OF
TEXAS, TEXAS STATE CONFERENCE
OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF
COLORED PEOPLE (NAACP) and
RUTHANN GEER,
Plaintiff

v.

ROLANDO PABLOS, Secretary of State
for the State of Texas, and KEITH
INGRAM, Director, Texas Elections
Division of the Secretary of State,
Defendant.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98TH JUDICIAL DISTRICT

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants, Rolando Pablos, Secretary of State for the State of Texas, and Keith Ingram, Director, Texas Elections Division of the Secretary of State (collectively, "Defendants"), file this Original Answer and Affirmative Defenses in the above numbered and entitled cause, and would respectfully show the Court the following:

GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedures, Defendants deny each and every allegation contained within Plaintiffs' Original Petition for Declaratory Relief and demand strict proof of all allegations, as required by law.

AFFIRMATIVE DEFENSES

1. Defendants assert the defense of sovereign immunity as to all of Plaintiffs' claims.
2. Defendants assert that the redundant remedies doctrine bars Plaintiffs' claims and requests for relief.

3. Defendants assert that this Court lacks jurisdiction over Plaintiffs' claims.
4. Defendants assert that Plaintiffs' claims should be dismissed to the extent they are moot or not ripe for adjudication.
5. Defendants reserve the right to raise additional affirmative defenses as they become apparent during the development of the case.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Court deny all relief that the Plaintiffs request; that Plaintiffs take nothing by way of this suit; that all court costs be taxed against Plaintiffs; and for such other and further relief to which they may be entitled.

Date: August 18, 2017

Respectful v. submitted.

KEN LAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

ANGELA V. COLMENERO
Chief, General Litigation Division

/s/ Esteban S.M. Soto
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing documents has been served on this the 18th day of August, 2017 on the following:

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ATTORNEYS FOR PLAINTIFFS

/s/ Esteban Soto
ESTEBAN SOTO

LEAGUE OF WOMEN VOTERS OF TEXAS.
TEXAS STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE
(NAACP) and RUTHANN GEER,

VS.

Defendants.

[illegible]

TRAVIS COUNTY, TEXAS

98th JUDICIAL DISTRICT

Plaintiffs, the League of Women Voters of Texas, the Texas State Conference of the National Association for the Advancement of Colored People, and Ruthann Geer, hereby file this Supplement to their pending Application for an Temporary Restraining Order and Temporary Injunction in the above-captioned action.

To their pending Application for an Temporary Restraining Order and Temporary Injunction, plaintiffs wish to add the attached sworn declaration of Joshua A. Geltzer, an expert in cybersecurity and counterterrorism law, policy and operations, and a Professor of Law at Georgetown University Law Center.

1

A. A temporary restraining order in favor of Plaintiffs and against the Defendants, and entry of a temporary injunction enjoining the Defendants, Secretary of State Rolando Pablos, and Keith Ingram, Director, Texas Elections Division, from providing the Voter List and any part thereof to the Commission, and to take all actions necessary to maintain the status quo ante pending a determination on the merits; and

B. Such other and further relief as the Court deems just in the premises.

Respectfully submitted,

LAW OFFICE OF CHARLES McGARRY

/s/ Charles W. McGarry

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pro hac vice forthcoming)

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*(Applications for admission pro hac vice
forthcoming)*

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this instrument was delivered to the following attorney of record on this 29th day of September, 2017, in accordance with the Texas Rules of Civil Procedure:

Esteban S.M. Soto
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General Litigation Division
Office of the Attorney General
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/s/ Charles W. McGarry
Charles W. McGarry

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

28th JUDICIAL DISTRICT

Defendants.

INJUNCTION

I, Joshua A. Geltzer, hereby declare the following to be true and correct to the best of my knowledge and belief:

1. I submit this declaration in support of the Court's Order and Temporary Injunction in this case.
2. I am an expert on cybersecurity and have been currently employed as the founding director of the Cybersecurity Advocacy and Protection at Georgetown University, a Professor of Law at Georgetown, and the President of New America.
3. Previously, I served in a series of positions related to national security. From 2015 to 2018, I served on the National Security Council. Before that, I served on the National Security Council and as Counsel for National Security at the Department of Justice. In all of these roles, my responsibilities included leadership in the protection of sensitive information, and the protection of sensitive information. A copy of my curriculum vitae is attached to this declaration.
4. In my opinion, Defendants' release of the information in this case would be highly prejudicial to the national security of the United States.

1. I submit this declaration in support of Plaintiffs' Application for a Temporary Restraining Order and Temporary Injunction in the above-captioned matter.
2. I am an expert on cybersecurity and counterterrorism law, policy, and operations. I am currently employed as the founding Executive Director of the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center. I also serve as a Visiting Professor of Law at Georgetown, and as a fellow in the International Security Program at New America.
3. Previously, I served in a series of positions in the United States Government focused on national security. From 2015 to 2017, I served as Senior Director for Counterterrorism at the National Security Council. Before that, I served as Deputy Legal Advisor to the National Security Council and as Counsel to the Assistant Attorney General for National Security at the Department of Justice. In each of these roles, and especially in the latter two, my responsibilities included legal and policy issues associated with cybersecurity and the protection of sensitive information on computer networks. A true and correct copy of my curriculum vitae is attached hereto as Exhibit A.
4. In my opinion, Defendants' release of data from the Texas statewide computerized voter registration files to the Presidential Advisory Commission on Election Integrity without

requiring from the Commission any commitments for keeping that data secure would leave Texas voters' private information particularly appealing and vulnerable to hackers, including those acting in association with foreign powers. This is so for at least three reasons.

5. First, voter data has been, and continues to be, a particular target for hackers, meaning that the sharing of such data inherently raises cybersecurity risks not necessarily associated with other information. This is a consensus view among those in the field of cybersecurity and national security. For example, former Secretary of Homeland Security Michael Chertoff recently articulated this widely held assessment. A true and correct copy of Secretary Chertoff's column, downloaded from the *Washington Post* website, is attached hereto as Exhibit B.
6. Second, the holdings of Federal Government entities can represent a particularly attractive target for hacking because hackers previously have demonstrated such entities' security measures to be inadequate. I know this based on my experience working on cybersecurity matters in the Federal Government as well as based on public reporting of incidents, including the Federal Government's own public pronouncements, such as its acknowledgement in June 2015 that the Office of Personnel Management (OPM) had been successfully targeted in a data breach affecting the records of millions of individuals. In the absence of public commitments by the Commission to protect data provided to it, hackers will see the transfer of data to the Commission as an invitation to continue to exploit weaknesses.
7. Third, the vastness of the Commission's request and the Commission's apparent intent to aggregate the data provided in response to it—that is, the effort to acquire a huge amount of sensitive data and hold it in a single, high-profile place—increases cyber threats to the data. The Commission is attempting to collect data from every state in the nation and then centralize the data in a single repository managed by the Executive Office of the President. This centralization of data increases the appeal—and therefore the risk—of hacking by reducing the burden on hackers who seek to penetrate voter data systems. This is true even if some or all the same information could, at least in theory, be acquired in some other manner or from some other source(s), because amassing all of it in a single, high-profile, purportedly authoritative place materially heightens the appeal and payoff associated with hacking that one storage location.
8. Defendants could and should demand that the Commission undertake certain basic steps in order to protect Texas voters' data if it is to be shared with the Commission. Those steps include encryption of the data while in transit and in storage; the requirement of multi-factor authentication to access the data; restriction of access to a clearly defined and minimally necessary list of authorized individuals with separate user accounts; credible and independent audits of the database; and air-gapping of the database. A true and correct copy of a recent column in which two coauthors and I outline these five steps, downloaded from the *Hill* website, is attached hereto as Exhibit C.

9. In my opinion, if Defendants do not require the Commission to institute adequate protective measures, release of the data to the Commission will immediately invite privacy and security violations for Texans' whose data is shared. If the security of that data is compromised, the injuries that could befall Texans range from unwanted commercial solicitation, to personalized harassment, to identity theft, to attempts by foreign powers to meddle in the administration of elections held in the United States.
10. I would do my best to make myself available to the Court and the parties in the case to elaborate on the opinions stated herein.

My name is Joshua A. Geltzer; my date of birth is February 7, 1983; my office address is 600 New Jersey Avenue NW, Washington, D.C., 20001; and I declare under penalty of perjury that the foregoing is true and correct.

Executed in Washington, D.C., on the 28th day of September, 2017

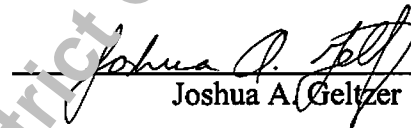

Joshua A. Geltzer

EXHIBIT A

Unofficial copy Travis Co. District Clerk Velda L. Price

JOSHUA A. GELTZER

2823 Q Street NW Washington, DC 20007 (917) 992-2600 JGeltzer@gmail.com

SELECTED EXPERIENCE

EXECUTIVE DIRECTOR AND VISITING PROFESSOR OF LAW, INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION, GEORGETOWN UNIVERSITY LAW CENTER 2017-present
Building new institute to promote constitutional values through impact litigation, public education, and scholarship.

SENIOR DIRECTOR FOR COUNTERTERRORISM, NATIONAL SECURITY COUNCIL 2015-2017
Coordinated development of U.S. counterterrorism policy and advised White House leadership on terrorist threats.

DEPUTY LEGAL ADVISER TO THE NATIONAL SECURITY COUNCIL February-October 2015
Counseled NSC leadership on legal issues regarding counterterrorism, intelligence collection and cyber matters.

COUNSEL TO THE ASS'T ATTORNEY GENERAL FOR NAT'L SECURITY, DEPARTMENT OF JUSTICE 2013-2015
Advised DOJ leadership on global counterterrorism issues, FISA matters, and national security-related litigation.

LAW CLERK TO JUSTICE STEPHEN BREYER, U.S. SUPREME COURT 2012-2013
Analyzed petitions for certiorari; prepared the Justice for oral argument; and drafted opinions and memorandums.

LAW CLERK TO CHIEF JUDGE ALEX KOZINSKI, NINTH CIRCUIT COURT OF APPEALS 2011-2012
Wrote bench memos to prepare the Judge for oral arguments and assisted him with drafting opinions and orders.

EDUCATION

YALE LAW SCHOOL, New Haven, CT

J.D., May 2011; Olin Fellow, Yale Law School Center for Studies in Law, Economics, & Public Policy

Activities: Yale Law Journal, Editor-in-Chief; research assistant to Professors Akhil Amar and Amy Chua

Experience: Summer Law Clerk, Office of the Legal Adviser, Department of State

Summer Associate, Covington & Burling LLP

Summer Law Clerk, Counterterrorism Section, Department of Justice

KING'S COLLEGE LONDON, London, UK (Marshall Scholarship)

Ph.D., War Studies, 2008; M.A., International Relations, 2006 (awarded with distinction)

Dissertation: *Al-Qaeda as Audience: Signalling in U.S. Counter-terrorist Policy & the al-Qaeda World-view*

Activities: King's Postgraduate Conference, Chair; European Foreign Policy Conference, Editorial Director

PRINCETON UNIVERSITY, Princeton, NJ

A.B., Woodrow Wilson School of Public and International Affairs, 2005. GPA: 3.97

Honors: Summa cum Laude; Phi Beta Kappa; Senior with the Highest Academic Standing Award

SELECTED PUBLICATIONS

- "Of Suspension, Due Process, and Guantanamo," *Journal of Constitutional Law*, Vol. 14, No. 3 (2012).
- "Reconstructing the Republic: The Great Transition of the 1860s," with Amar & Worth, in *Transitions: Legal Change, Legal Meanings*, Austin Sarat, ed. (University of Alabama Press: 2012).
- "Asymmetric Strategies as Strategies of the Strong," with Breen, *Parameters*, Vol. 41, No. 1 (2011).
- "Taking Hand-Offs or Going It Alone," *Studies in Conflict & Terrorism*, Vol. 34, No. 2 (2011).
- "Decisions Detained: The Courts' Embrace of Complexity in Guantánamo-Related Litigation," *Berkeley Journal of International Law*, Vol. 29, No. 1 (2010).
- *U.S. Counter-Terrorism Strategy & al-Qaeda: Signalling & the Terrorist World-View* (Routledge: 2009).
- "The Non-Kinetic Aspects of Kinetic Efforts," in *Influence Warfare: How Terrorists & Governments Fight to Shape Perceptions in a War of Ideas*, James Forest, ed. (Praeger Security International: 2009).

MEMBERSHIPS

- Term Member, Council on Foreign Relations
- Fellow, American Bar Foundation
- Advisory Committee Member, American Bar Association Standing Committee on Law and National Security

SKILLS AND INTERESTS

Play rock guitar and classical violin. Enjoy baseball, hockey, literature, new restaurants, and travel.

EXHIBIT B

Unofficial copy Travis Co. District Clerk Velda L. Price

Trump's voter data request poses an unnoticed danger

By Michael Chertoff July 5

Michael Chertoff, U.S. homeland security secretary from 2005 to 2009, is executive chairman of the Chertoff Group, a security and risk-management advisory firm.

The Trump administration's Presidential Advisory Commission on Election Integrity is asking states for voter-registration data from as far back as 2006. This would include names, dates of birth, voting histories, party registrations and the last four digits of voters' Social Security numbers. The request has engendered controversy, to put it mildly, including refusals by many states and a caustic presidential tweet.

But whatever the political, legal and constitutional issues raised by this data request, one issue has barely been part of the public discussion: national security. If this sensitive data is to be collected and aggregated by the federal government, then the administration should honor its own recent cybersecurity executive order and ensure that the data is not stolen by hackers or insiders.

We know that voting information has been the target of hackers. News reports indicate that election-related systems in as many as 39 states were penetrated, focusing on campaign finance, registration and even personal data of the type being sought by the election integrity commission. Ironically, although many of these individual databases are vulnerable, there is some protection in the fact that U.S. voting systems are distributed among thousands of jurisdictions. As data-security experts will tell you, widespread distribution of individual data elements in multiple separate repositories is one way to reduce the vulnerability of the overall database.

That's why the commission's call to assemble all this voter data in federal hands raises the question: What is the plan to protect it? We know that a database of personal information from all voting Americans would be attractive not only to adversaries seeking to affect voting but to criminals who could use the identifying information as a wedge into identity theft. We also know that foreign intelligence agencies seek large databases on Americans for intelligence and counterintelligence purposes. That is why the theft of more than 20 million personnel files from the U.S. Office of Personnel Management and the hacking of more than half a billion Yahoo accounts were such troubling incidents.

Congress and the states need to be advised on how any data would be housed and where. Would it be encrypted? Who would have administrative access to the data, and what restrictions would be placed on its use? Would those granted access be

subject to security background investigations, and would their behavior be supervised to prevent the kind of insider theft that we saw with Edward Snowden or others who have released or sold sensitive data? What kinds of audit procedures would be in place? Finally, can the security risk of assembling so much tempting data in one place be mitigated by reducing and anonymizing the individual voter information being sought?

In May, President Trump signed the executive order on cybersecurity to instill tough security in federal offices that handle critical government data. That order is a commendable initiative to hold officials accountable for safeguarding sensitive personal information, such as voter information. The president's election integrity commission should live up to the president's own directive.

Read more on this issue:

Michael Waldman: Commission on 'election integrity' could instead restrict voting

The Post's View: Trump launches his opening voter suppression salvo

The Post's View: Trump's commission on voter fraud is, well, fraudulent

Fareed Zakaria: America must defend itself against the real national security menace

EXHIBIT C

Unofficial copy Travis Co. District Clerk Velva L. Price



Trump's voter fraud commission must protect data from hacker

BY RAJESH DE, JOSHUA GELTZER AND MATTHEW OLSEN, OPINION CONTRIBUTORS - 08/24/17 05:00 PM EDT

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Just In...

Tech, Trump see rare consensus with GOP tax plan

TECHNOLOGY — 16M 23S AGO

Dem addiction to Trump attacks gives party cause for concern

CAMPAIGN — 16M 27S AGO

Anti-abortion groups fuming over GOP failure to defund Planned Parenthood

HEALTHCARE — 16M 31S AGO

Distrust of Senate grows within GOP

SENATE — 16M 35S AGO

Trump to rally manufacturers in tax speech Friday

FINANCE — 18M 4S AGO

Trump-Russia pundit mulling run for Illinois attorney general

BLOG BRIEFING ROOM
— 7H 8M AGO

Stephen King on Trump's tax plan: Trump 'couldn't give a s---' about working class

IN THE KNOW — 7H 8M AGO

NBA commissioner's 'expectation' is that players stand for anthem

BLOG BRIEFING ROOM
— 7H 27M AGO



© Getty Images

Many states have responded with alarm to the massive data call issued by the Presidential Advisory Commission on Election Integrity co-chaired by Vice President Mike Pence and Kansas Secretary of State Kris Kobach. State election officials have voiced concerns that the commission's real agenda is to generate support for election laws that suppress voter participation. Indeed, 21 states and the District of Columbia declined to provide any data in response to the commission's initial outreach, which a federal district judge made clear is merely a request, not a lawful demand.

Perhaps most colorfully, Mississippi's secretary of state responded to the request by saying that the commission "can go jump in the Gulf of Mexico and Mississippi is a great State to launch from." The commission's request for Social Security numbers was refused by none other than Secretary of State Kobach himself on Kansas's behalf. Even as many states reaffirm their refusals to provide any information, others are providing a considerable amount of data on their voters. And this raises an additional and significant concern about the commission's work: the lack of protection for this sensitive data.

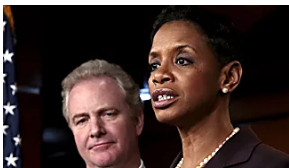
As former Homeland Security Secretary Michael Chertoff has rightly emphasized, the ingestion and aggregation of this massive amount of massively sensitive information poses its own form of threat. It provides a single, seductive target for the many actors we now know are keen to manipulate and undermine confidence in our elections, as well as to gather detailed information on Americans for espionage purposes.

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So, as states consider what information to provide to the commission, they owe it to their voters and the sanctity of the elections our country's laws entrust them to administer to consider how that information should be handled once provided. Indeed, some state laws impose rules and requirements for accessing sensitive electoral data. Beyond that, and regardless of any state's particular laws, respect for America's voters and elections requires sensible protection of the data.

The Trump administration must take seriously the responsibility of safeguarding of the data its commission is requesting. Unfortunately, the administration deliberately moved the commission's "administrative home" from the U.S. Department of Defense, which had already designed a website to receive the data requested, to the Executive Office of the President, raising concerns that the move was designed to cloak the commission's work from transparency laws, since the Freedom of Information Act applies to virtually all departments and agencies across the federal government but not to the Executive Office of the President.

The Defense Department, of course, has at its disposal the resources and expertise of the National Security Agency and U.S. military in protecting the transmission of sensitive data, in stark contrast to the limited capacity of the White House Executive Office. That puts an even higher burden on the states to demand that the commission at least take certain basic cybersecurity steps if those states are to comply — voluntarily — with the commission's unprecedented data request. We urge at least five such steps.

First, the information should be encrypted, while in transit to and within the commission as well as when stored by it. Encrypted data, even if stolen, needs to be decrypted, an often insurmountable challenge even for governments. That's why encryption has become the norm for many email providers, messaging apps and hardware such as cell phones and laptops.

Second, multi-factor authentication should be required to access the data. This, too, is becoming common practice: If you don't already require your email provider to confirm that you're really you when logging in for the first time from a new computer or device, you're significantly risking the security of your email while sparing yourself ten seconds of minor inconvenience. The same should be required to access this sensitive data.

Third, access to the data should be restricted to a clearly defined minimally necessary list of authorized individuals with separate user accounts on a strict need-to-know basis. This minimizes the inherent vulnerability associated with every additional user and puts on notice every user that the circle of potential culprits is small if information leaks out. And, while passwords aren't a sufficient defense on their own, they should be complex and unique for authorized users.

Fourth, credible and independent cybersecurity audits of the commission's database should be conducted on a periodic basis, which in turns requires that the database be designed so that every access to it can be traced in order to facilitate such audits. Many cyber intrusions and exfiltrations occur for months or even years before they're noticed; but periodic audits can identify breaches and stop the bleeding far more quickly.

Fifth, the database should be "air-gapped," meaning it should be held on a segmented network not connected to the internet. This helps to insulate and thus protect the database. It also means that, when the commission's work is done, the data held there can and should be deleted with accompanying certification by the commission's co-chairs.

From a cybersecurity standpoint, it's simply a bad idea to put all of this sensitive information in one place. But if the administration is committed to gathering this data, then failing to take the steps outlined above is indefensible. In an era when the commission's database is a prime target for adversaries foreign and domestic keen to sabotage and distort our democratic system, protecting America's elections demands protecting American voters.

Rajesh De served as general counsel of the [National Security Agency](#) during the Obama administration. He now leads the cybersecurity and data security practice and co-leads the national security practice at [Mayer Brown LLP](#), where he is a partner.

Joshua A. Geltzer served as senior director for counterterrorism and deputy legal advisor at the [National Security Council](#) during the Obama administration. He is now executive director and visiting professor of law at the [Institute for Constitutional Advocacy and Protection](#) at [Georgetown University](#).

Matthew G. Olsen served as director of the National Counterterrorism Center during the Obama administration. He is now an adjunct senior fellow at the [Center for a New American Security](#) and co-founder of technology firm [IronNet Cybersecurity](#).

The views expressed by contributors are their own and are not the views of The Hill.

TAGS MIKE PENCE VOTER FRAUD DONALD TRUMP KRIS KOBACH MICHAEL CHERTOFF STATES ADMINISTRATION WHITE HOUSE GOVERNMENT TECHNOLOGY CYBERSECURITY

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