

I. Background

Plaintiffs filed a Petition for Declaratory Relief on July 20, 2017 (amended on September 20 and September 21, 2017), seeking an injunction prohibiting Defendants from disclosing sensitive voter data to the Presidential Advisory Commission on Election Integrity (the “Commission”). Plaintiffs applied for a temporary restraining order (“TRO”) on September 20, 2017. Three days prior to the TRO hearing, Defendants filed a Plea to the Jurisdiction (“PTJ”), seeking dismissal of the case. The District Court granted the TRO on October 3, 2017, prohibiting Defendants from turning over enumerated categories of sensitive voter data, and setting a hearing on Plaintiffs’ Application for Temporary Injunction.

Defendants then filed a Petition for Writ of Mandamus with the Court of Appeals for the Third Judicial District. Defendants requested that the Court of Appeals order the District Court to rule on Defendants’ PTJ prior to holding a temporary injunction hearing and stay all proceedings in the District Court while it considered the petition. The Court of Appeals took the petition under advisement and issued the stay order, *In re Pablos*, No. 03-17-00662-CV, 2017 WL 4583237, at *1 (Tex. App. Oct. 12, 2017), but in response to Plaintiffs’ request, the Court of Appeals also extended the TRO indefinitely, *In re Pablos*, No. 03-17-00662-CV, 2017 WL 4583238, at *1 (Tex. App. Oct. 13, 2017).

On January 3, 2018 – with Defendants’ petition still pending and the TRO still in place – President Trump terminated the Commission. As the *Washington Post* reported, Texas officials never turned over the requested voter data to the Commission, consistent with the TRO Plaintiffs secured. Decl. of Maximillian L. Feldman, Ex. A. On February 2, 2018, the Court of Appeals denied Defendants’ Petition for Writ of Mandamus on the merits and vacated its stay order. *In re Pablos*, No. 03-17-00662-CV, 2018 WL 699335, at *1 (Tex. App. Feb. 2, 2018). Notwithstanding the Commission’s termination, Defendants have not yet acknowledged that the Commission’s request is null and void.

II. Plaintiffs’ Non-Suit is Without Prejudice

In light of the termination of the Commission, and the effective withdrawal of the Commission’s request for the voter data at issue here, Plaintiffs give notice that they are non-suiting all claims against Defendants. This non-suit is without prejudice. Plaintiffs’ expressly reserve all rights to reinstate their claims against Defendants, including by amending their Petition for Declaratory Judgment, should another federal or other entity initiate a request similar to that of the Commission. Plaintiffs also note that it would be in the public interest for Defendants to timely notify Plaintiffs regarding any further attempts by the federal government to access the sensitive voter data at issue in this case, so that the scope of Defendants’ obligations with respect to that data can be determined by the courts.

III. Costs Should Not be Taxed Against Plaintiffs

Under Rule 162, “[a]ny dismissal...which terminates the case shall authorize the clerk to tax court costs against dismissing party unless otherwise ordered by the court.” Tex. R. Civ. P. 162. While the general rule is that costs should be taxed against the non-suiting party, under Rule 141, “the trial court may for good cause stated on the record otherwise tax costs,” *City of Houston v. Woods*, 138 S.W.3d 574, 581 (Tex. App. 2004), and here, the Defendants have agreed that they will not seek costs given the circumstances of this dismissal.

Even without Defendants’ agreement not to seek costs, the record here makes plain that there is good cause for the Court to order the parties to bear their own costs. Plaintiffs secured a TRO from the Court, prohibiting Defendants from turning over sensitive voter data to the Commission while it was still in existence; they obtained an indefinite extension of that TRO from the Court of Appeals; and they won a denial of Defendants’ Petition for Writ of Mandamus on the merits. More importantly, because Plaintiffs’ lawsuit prevented Defendants from turning over the voter data prior to the Commission’s termination, Plaintiffs effectively prevailed in their litigation.

Plaintiffs therefore respectfully request that the Court issue an order that, for good cause shown, the parties should bear their own costs.

Date: March 22, 2018

Respectfully submitted,

LAW OFFICE OF CHARLES MCGARRY

/s/ Charles W. McGarry

Charles W. McGarry, Esq.

Texas Bar No. 13610650

701 Commerce Street, Suite 400

Dallas, Texas 75202

(214) 748-0800

(214) 748-9449 fax

cmcgarry@ix.netcom.com

Myrna Pérez, Esq.

Maximillian Feldman, Esq.

Brennan Center for Justice

120 Broadway, Suite 1750

New York, NY 10271

(646) 292-8310 phone

(212) 463-7308 fax

myrna.perez@nyu.edu

max.feldman@nyu.edu

(Admitted pro hac vice)

Daniel T. Donovan, Esq.

Susan M. Davies, Esq.

Kirkland & Ellis LLP

655 Fifteenth Street, N.W.

Washington, DC 20005

(202) 879-5000 phone

(202) 879-5200 fax

daniel.donovan@kirkland.com

susan.davies@kirkland.com

(Pro hac vice applications forthcoming)

Michael A. Glick, Esq.

Kirkland & Ellis LLP

655 Fifteenth Street, N.W.

Washington, DC 20005

(202) 879-5000 phone
(202) 879-5200 fax
michael.glick@kirkland.com

J. Keith Kobyłka, Esq.
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
(212) 446-4800 phone
(212) 446-4900 fax
keith.kobyłka@kirkland.com

(Admitted pro hac vice)

ATTORNEYS FOR REAL PARTIES IN
INTEREST

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this instrument was delivered to the following party on this 22nd day of March, 2018, in accordance with the Texas Rules of Civil Procedure:

Esteban S.M. Soto
Assistant Attorney General
General Litigation Division
Office of the Attorney General
300 West 15th Street
Austin, TX 78701
Phone: 512-475-4054
Fax: 512-320-3667
Esteban.Soto@aog.texas.gov

/s/ Charles W. McGarry
Charles W. McGarry

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

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

v.

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

98TH JUDICIAL DISTRICT

DECLARATION OF MAXIMILLIAN L. FELDMAN

I, MAXIMILLIAN L. FELDMAN hereby declare the following under penalty of perjury:

1. I am a lawyer at the Brennan Center for Justice at New York University School of Law. I represent Plaintiffs in the above-captioned action, and I submit this declaration in support of Plaintiffs' Notice of Non-Suit Without Prejudice.
2. Attached hereto as Exhibit A is a true and correct copy of an article entitled "Trump voting commission bought Texas election data flagging Hispanic voters" that I downloaded from the *Washington Post* website.

EXECUTED this 22nd day of March, 2018 in New York, NY.



Maximillian L. Feldman

Unofficial Copy Travis Co. District Clerk Vella L. Price

EXHIBIT A

Unofficial copy Travis Co. District Clerk Velva L. Price

Public Safety

Trump voting commission bought Texas election data flagging Hispanic voters

By **Spencer S. Hsu** and **John Wagner** January 22

President Trump's voting commission asked every state and the District for detailed voter registration data, but in Texas's case it took an additional step: It asked to see Texas records that identify all voters with Hispanic surnames, newly released documents show.

In buying nearly 50 million records from the state with the nation's second-largest Hispanic population, a researcher for the Presidential Advisory Commission on Election Integrity checked a box on two Texas public voter data request forms explicitly asking for the "Hispanic surname flag notation," to be included in information sent to the voting commission, according to copies of the signed and notarized state forms.

White House and Texas officials said the state's voter data was never delivered because a lawsuit brought by Texas voting rights advocates after the request last year temporarily stopped any data handoff.

The voting commission was disbanded Jan. 2 after Trump cited a host of ongoing state and federal lawsuits and resistance from state officials over the sweeping pursuit, in the name of investigating alleged voter fraud, of information about more than 150 million voters across the country. The voting panel said it would [destroy all voter data](#) it had gathered, without detailing any data purchases.

Civil and voting rights groups, in particular have said the nationwide initiative could establish a pretext to target African American and Latino voters. State officials criticized the project for its potential effect on Americans' privacy, state oversight on elections and voter participation.

Texas since 1982 has identified voters with a Hispanic name to mail bilingual election notices in Spanish and English as required by state and federal laws, said Sam Taylor, spokesman for Texas Secretary of State Rolando Pablos (R). Names are selected from the U.S. Census Bureau's list of most common surnames by race and Hispanic origin, Taylor said.

Trump [created the voting commission](#) after [repeatedly suggesting](#) that millions of illegal voters cost him the popular vote in the 2016 presidential election. Studies and state officials from both parties have found [no evidence of widespread voting fraud](#).

On the forms sent to Texas by the voting panel, commission policy adviser Ronald Williams II checked a box to flag Hispanic names and signed a notarized form required as part of the overall process to get voter records released.

The commission paid Texas officials about \$3,500 on Sept. 22 for 49.6 million records that were to include lists of voters who were active, those with canceled registrations, and those with an outdated or incorrect address on file; and a list of those who voted in the past six general elections from 2006 through 2016. The flags for the Hispanic surnames would be in the lists.

The voting commission vice chairman, Kansas Secretary of State Kris W. Kobach (R) who launched the drive to collect data from every state, said “at no time did the commission request any state to flag surnames by ethnicity or race. It’s a complete surprise to me.”

Told of documents showing the Texas purchase, Kobach said, “Mr. Williams did not ask any member of the commission whether he should check that box or not, so it certainly wasn’t a committee decision.”

Such “information does not, did not advance the commission’s inquiry in any way, and this is the first I’ve heard the Texas files included that,” Kobach said Friday.

Kobach said: “I don’t know what sort of data analysis you would do even remotely relevant to it, but also having just one state” would be “useless. It just doesn’t make any sense.”

Calls to several phone numbers associated with Williams went unanswered or had been disconnected.

One voting commission member, Maine Secretary of State Matthew Dunlap (D), who has sued the voting panel to disclose records that he says were not provided to him, said the selection of Hispanic names appeared improper and could explain why the voting panel has sought to act in secret.

“I find it shocking that they would flag voter names by ethnicity or race, to discover what, we don’t know,” said Dunlap, who said none of the purchases of state data were disclosed.

“Somebody affirmatively checked that box,” he said of the surname flagging. “Right now on its face, in my view, it looks bad, and it looks bad to a lot of people,” Dunlap said.

His lawyers with American Oversight, a liberal watchdog group, filed a Texas public records request Friday for communications between state voting officials and the now-defunct voting commission.

The voting commission was chaired by Vice President Pence. A White House official, who spoke on the condition of anonymity because the defunct voting panel is no longer under its purview, said that given the option in Texas, the voting commission asked to identify Hispanic surnames to resolve data discrepancies or confusion caused by the traditional Spanish naming convention that uses the surnames of both parents.

“There was never a request made to flag people based on their ethnicity,” the White House official said Friday. “That was never asked for, nor is that what this [Texas] response is saying, though I can see why some could read it that way.”

Former Justice Department attorney J. Christian Adams, who was a voting commission member, called the request for the flagged surname data “a tempest in a teapot” driven not by foul plots but the bureaucracy of how Texas slices voter information.

In Texas, state law provides for public access to voting records, and it receives about 400 requests a year from individuals or groups, including candidates, academics, political committees and voter and civil rights groups, Taylor at the Texas secretary of state’s office said. About 1 in 8 requests between January 2015 and July 2017 asked to flag Hispanic surnames, according to [state data released](#) to Texas Monthly magazine.

Nearly a quarter of Texas’s 15.1 million-plus registered voters have Hispanic surnames, or almost 3.6 million people, Taylor said.

Records of the Texas data purchase were disclosed after Sen. Claire McCaskill (D-Mo.) on Nov. 13 requested information about interactions between the U.S. General Services Administration and the voting commission.

The GSA was the federal agency tasked by the White House to support the operations of the voting panel.

GSA Associate Administrator P. Brennan Hart III produced a [70-page response](#) on Dec. 19, saying five staffers and an estimated \$359,000 were committed to a two-year effort, including a request for \$215,000 as of Sept. 30.

The records were posted on the [website](#) of the Senate Homeland Security and Governmental Affairs Committee, where McCaskill is the ranking Democrat. McCaskill spokesman Drew Pusateri said McCaskill is “continuing to review them” but declined to comment further.

The documents appear to show for the first time that the voting commission paid for the processing and release of records from 10 states in September. Earlier, voting rights groups had identified 20 states that turned over information voluntarily.

The voting commission faces lawsuits by at least 10 voting and public accountability groups, seeking information on what other data the panel may have assembled, if any analysis was done and whether information has been shared outside the White House.

Dunlap said the purchase of voting records was “never discussed at any commission meeting at any level.”

“It’s all speculation because they haven’t disclosed anything, but if they are breaking things down along racial and ethnic lines,” Dunlap said, it indicates “why they are guarding this information like hungry dogs cornered in a trap.”

Read more:

[Trump's argument in record-keeping case: 'Courts cannot review the president's compliance with the Presidential Records Act'](#)


[Benghazi juror: Prosecutors overplayed emotional appeal, lacked proof Abu Khattala killed Americans](#)

[Hundreds apply to carry loaded concealed handguns in D.C. after law change, Most don't live there.](#)

[Supreme Court rules for police officers in D.C. house party case that involved mystery hostess called 'Peaches'](#)

 **198 Comments**

Spencer S. Hsu is an investigative reporter, two-time Pulitzer finalist and national Emmy Award nominee. Hsu has covered homeland security, immigration, Virginia politics and Congress.

John Wagner is a national political reporter covering the White House. He previously covered the 2016 presidential election, focusing on the Democratic campaigns of Hillary Clinton, Bernie Sanders and Martin O'Malley. He also chronicled Maryland government for more than a decade.  Follow @WPJohnWagner

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deborah lowry 1 month ago (Edited)

Kobach has no credibility; he is a liar and a racist and everybody knows it.

Like  Link  Report 



grandmadebby 1 month ago

Surnames don't necessarily identify ethnicity. Both of our middle-eastern-last-name granddaughters

Surnames don't necessarily identify ethnicity. Both of our middle eastern last name granddaughters married Hispanic men, so voting records would classify them as Hispanic (but not middle-eastern if they want to flag those!). All involved are American citizens by birth, as are all the in-laws. Last names do not dependably reveal ethnicity, and tell nothing about a person's citizenship!

If those Republicans are worried about Hispanic hyphenated last names, what about the many women who keep a maiden name professionally, use a married name for personal matters, or hyphenate both?

Like  Link  Report 



deborah lowry 1 month ago

They're fine with denying the vote to Latinos, Middle Eastern people, AND women.

Like  1 Link  Report 



jrumwp 1 month ago

This GOP Commission to create Voter Fraud was a farce from its inception. Glad it's all airing out.

Like  2 Link  Report 



zorroplata 1 month ago

To identify Hispanic surnames to resolve data discrepancies or confusion caused by the traditional Spanish naming convention that uses the surnames of both parents. The study was headed by Mr. Smith and Mr. Jones.

Like  1 Link  Report 



longtimeteacher 1 month ago

One way to get and keep control of a democracy is to gain access to voter records and use that access for nefarious purposes. The republicans are following the 1930's Germany playbook. Is anyone not worried about the impact of this behavior? This is not Russians, this is our elected officials sworn to uphold our Constitution.

Like  4 Link  Report 



iphimedia 1 month ago

So the "unnamed White House source" (what a coward) made Kobach out to be a liar; he said they never asked for ethnic-breakdown information at all and the source said they did it--but for totally legit reasons, bro!

Like  1 Link  Report 



wal parnel 1 month ago

Clear civil rights issue, discrimination against America citizens. Those responsible needs to be prosecuted, all of them.

Like  3 Link  Report 



deplorable tears taste so sweet 1 month ago

<i>The voting panel said it would destroy all voter data it had gathered, without detailing any data purchases.</i>

Uh huh. Pull the other one.

Like 8 Link Report



retired fed 1 month ago *(Edited)*

Many years ago my employer, eager to show its Hispanic employment outreach, asked the HR office to count all the Hispanic names on the payroll. The clerk assigned had no particular knowledge and included all the Italians and two Portuguese as well as a lot of the women whose first names ended in vowels. The clerk explained that was because the Hispanic women were marrying Anglo men.

Like Link Report



ed chrolavicius 1 month ago

Shrunk party of old white 1950's era GOP romanticists cannot picture Hispanics living behind pristine white picket fenced homes with 2 cars in the driveway, and successful children with terrific educations.....it blows their brains out.

Like 7 Link Report



benedict donald 1 month ago

Hard to blow out anything that operates in a vacuum

Like Link Report

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