

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY,)
et al.,)

Plaintiffs,)

v.)

No. 1:05-CV-00634 SEB-VSS

TODD ROKITA, *et al.*,)

Defendants.)

WILLIAM CRAWFORD, *et al.*,)

Plaintiffs,)

v.)

MARION COUNTY ELECTION BOARD,)

Defendant,)

and)

STATE OF INDIANA,)

Intervenor.)

AGREED MOTION FOR PROTECTIVE ORDER

Defendants Todd Rokita, J. Bradley King, and Kristi Robertson, by counsel, Attorney General Steve Carter and Deputy Attorney General Doug Webber, and Plaintiffs Indiana Democratic Party and Marion County Democratic Central Committee, by counsel, Geoffrey Lohman, respectfully request that the Court approve a protective order for the database materials subpoenaed by Plaintiffs in the above case for the following reasons:

1. Plaintiffs' subpoena dated July 18, 2005, orders non-party Indiana Bureau of Motor Vehicles, and its commissioner Joel Silverman, to produce an "Electronic database or other electronic file containing the name, address, age, gender, and/or license type of every individual who currently possesses a valid Indiana driver's license or photographic identification card issued by the Indiana Bureau of Motor Vehicles." Plaintiffs' Subpoena, Item 2.

2. Defendants, in cooperation with non-party Indiana Bureau of Motor Vehicles, have prepared the information requested in a 2-compact disc format and are prepared to provide the discs to Plaintiffs, subject to a protective order.

3. Indiana Code § 9-14-3.5-10 provides that the State may furnish personal information contained in motor vehicle records to a public or private entity seeking such disclosure for any one of fourteen statutorily expressed purposes. The applicable subsection in the above proceedings is subsection 4, which states: "For use in connection with a civil, a criminal, an administrative, or an arbitration proceeding in a court or government agency or before a self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution of enforcement of judgments and orders, or under an order of a court." Ind. Code § 9-14-3.5-10(4).

4. Plaintiffs shall not disclose or distribute to third parties personal information (as defined in Ind. Code § 9-14-3.5-5) about a person obtained by the State in connection with an individual record (as defined in Ind. Code § 9-14-3.5-3) or a motor vehicle record (as defined in Ind. Code § 9-14-3.5-4). Hence, Plaintiffs are authorized recipients of personal information, pursuant to Ind. Code § 9-14-3.5-13(a), but in accordance with Ind. Code § 9-14-3.5-10(4) the information shall only be used for purposes of the voter identification litigation and not for personal, political, or any other use.

5. Defendants are willing to provide the requested personal information maintained by the Indiana Bureau of Motor Vehicles subject to the Plaintiffs' agreement to not distribute this information and thereby comply with Ind. Code §§ 9-14-3.5-3, 4, 5, 10(4), and 13(a). The aforementioned statutes exist to protect the privacy of Indiana citizens.

6. Federal Rule of Civil Procedure 26(c)(7) authorizes the Court to issue a protective order to protect trade secrets as well as "other confidential research, development, or commercial information." In the trade secrets context, *Citizens First Nat'l Bank of Princeton v. Cincinnati Ins. Co.*, 178 F.3d 943 (7th Cir. 1999), the Seventh Circuit Court of Appeals stated that in order for an agreed-upon protective order to maintain efficacy, the granting trial judge must "(1) satisf[y] himself that the parties know what a trade secret is and are acting in good faith in deciding which parts of the record are trade secrets and (2) makes explicit that either party and any interested member of the public can challenge the secreting of particular documents." *Id.* at 946. Here, both parties are apprised of the statutory restrictions on use and distribution applicable to the personal information being provided from the Indiana BMV database and urge the Court to extend the same restrictions to the subject matter of the protective order. This protective order will not in any manner jeopardize or restrict the access the public currently enjoys to the BMV database information.

WHEREFORE, Defendants hereby respectfully move the Court to grant a protective order, so that no parties beyond the scope of this litigation shall have access to the information without following the currently mandated procedures of the Indiana Bureau of Motor Vehicles and Indiana statutory law.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Attorney No. 4150-64

By: s/Doug Webber
Doug Webber
Deputy Attorney General
Attorney No. 1015-49

Office of the Attorney General
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
(317) 232-6224
(317)232-7979 fax
dwebber@atg.state.in.us

By: s/Geoffrey S. Lohman
Geoffrey S. Lohman
Attorney for Indiana Democratic Party
and Marion County Democratic Central
Committee

Fillenwarth Dennerline Groth & Towe
1213 N. Arlington Ave., Suite 204
Indianapolis, IN 46219
(317) 353-9363
(317) 351-7232 fax

