

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TEXAS DEMOCRATIC PARTY; §
BOYD L. RICHIE, in his capacity as §
Chairman of the Texas Democratic Party; §
HARRIS COUNTY DEMOCRATIC §
PARTY; GERALD BIRNBERG, in his §
capacity as Chairman of the Harris §
County Democratic Party; J. §
GOODWILLE PIERRE; ALEXANDRA §
GIBBS; JEFFREY T. §
VANSCHOONHOVEN; BONI SUE §
LESZCZUK; and ERIC J. GALLOWAY §

Plaintiffs,

vs.

LEO VASQUEZ, in his capacity as §
Harris County Tax Assessor Collector §
and Harris County Voter Registrar §

Defendant.

Cause No. 4:08-CV-03332

PROPOSED PROTECTIVE ORDER

Federal and state law requires the disclosure of voter registration records to the interested public. *See e.g.*, 42 U.S.C. 1973gg-6(i) and Tex. Elec. Code § 1.012. The public is permitted to inspect the records without cost at reasonable times and the public is allowed to obtain copies of these public records upon the payment of reasonable expenses. Plaintiffs have requested review of Harris

County voter registration records under these laws and have also requested review of the records because they are relevant to claims made in this lawsuit.

To expedite the production and review of the voter registration information (“materials”), to reduce the expense associated with allowing inspection of these materials, to adequately protect that portion of the materials that the parties are entitled and/or obligated to keep confidential, to ensure that only such materials that the parties are entitled and/or obligated to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c), it is hereby ORDERED THAT:

DEFINITIONS

1. The term “PROTECTED INFORMATION” shall mean and include only that portion of the materials referenced in Tex. Elec. Code § 13.004 namely, an individual’s social security number, drivers license number, personal identification number issued by the Texas Department of Public Safety, indication that an applicant is interested in working as an election judge, and the residence address of an individual if that person is a state or federal judge.
2. The term “materials” shall include all that information contained within that certain Harris County Voter Registration Database and shall include but not be limited to: voter registration database screens; voter registration applications; deputy voter registrar records; voter history; correspondence; notice letters; provisional ballot

affidavits; data tracking, internal memoranda or notations, and any other material that identifies particular citizens and relates to voter registration; whether in machine readable or human readable form.

3. For purposes of this Order, the term “document” is used in the broadest possible sense and includes, without limitation, all originals and copies, duplicates, drafts, and recordings of any written, printed, graphic or otherwise recorded or tangible matter, however produced or reproduced, and all “writings” and “recordings” as defined in Fed. R. Evid. 1001(1) of any nature, whether on paper, magnetic tape or other information storage means, including film, computer memory devices, and electronic mail (e-mail).

4. The term “ELIGIBLE PERSON” or “ELIGIBLE PERSONS” shall only include United States citizens and permanent residents. The term ELIGIBLE PERSONS shall mean any counsel of record in this case or any other such person designated by Plaintiffs’ counsel, in writing, in advance of any disclosure provided and Plaintiffs’ counsel can designate no more than three ELIGIBLE PERSONS who are not counsel of record.

RULES GOVERNING DISCLOSURE OF PROTECTED INFORMATION

5. The Defendant Leo Vasquez, Harris County Voter Registrar shall disclose any materials, including PROTECTED INFORMATION, in its original retained form, to ELIGIBLE PERSONS during regular business hours. Counsel shall agree to time and

locations of such review that are extensive enough to permit a thorough review of the materials. The review of such materials shall not be limited except as required herein.

6. Any ELIGIBLE PERSON on behalf of the Defendant may be present during all or part of the materials review though such person is prohibited from interfering with the review for any reason other than requiring the compliance with the terms herein.

7. Any ELIGIBLE PERSON on behalf of Plaintiffs who desires a copy of any page, document, screen or record must provide the proper printer, paper, toner and supplies to produce such a copy. An exact duplicate of the copy shall be made, at the Plaintiffs' expense, for retention by the Defendant. Any copies produced shall have redacted all PROTECTED INFORMATION.

8. Any ELIGIBLE PERSON permitted review of the materials containing CONFIDENTIAL INFORMATION is prohibited from taking any note, record or memory from the review that records or retains PROTECTED INFORMATION.

9. In the event PROTECTED INFORMATION is inadvertently retained by any ELIGIBLE PERSON such PROTECTED INFORMATION shall not be disclosed by the receiving party to anyone other than those persons as specifically identified in this Order and, in any event, shall not be used for any purpose, unless and until such designation is removed either by agreement of the parties, or by order of the Court. Any such written record retained that inadvertently includes PROTECTED INFORMATION shall be immediately destroyed and a written record of the destruction of such record shall be provided to counsel.

10. If PROTECTED INFORMATION is inadvertently retained or disclosed to any person other than a person authorized by this Order, the party's counsel responsible for the unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized disclosure to the attention of the other parties and, without prejudice to any rights and remedies of the other parties, make every effort to obtain return of all copies of the PROTECTED INFORMATION and to prevent further disclosure by the party and by the person(s) receiving the unauthorized disclosure

11. If a party, through inadvertence, produces any PROTECTED INFORMATION without labeling or marking or otherwise designating it as such in accordance with this Order, the designating party may give written notice to the receiving party that the document or thing produced is deemed PROTECTED INFORMATION, and that the document or thing produced should be treated as such in accordance with that designation under this Order. The receiving party must treat the materials as confidential, once the designating party so notifies the receiving party. If the receiving party has disclosed the materials before receiving the designation, the receiving party must notify the designating party in writing of each such disclosure. Counsel for the parties shall agree on a mutually acceptable manner of redacting those materials inadvertently produced that contains PROTECTED INFORMATION and destroying any un-redacted copies.

12. The restrictions and obligations set forth herein shall not apply to any information that: (a) the parties agree on or the Court rules should not be designated PROTECTED INFORMATION; (b) the parties agree, or the Court rules, is already

public knowledge; (c) the parties agree, or the Court rules, has become public knowledge other than as a result of disclosure by the receiving party, its employees, or its agents in violation of this Order; or (d) has come or shall come into the receiving party's legitimate knowledge independently of the production by the designating party.

13. Nothing in this Order shall bar counsel from rendering advice to their clients with respect to this litigation and, in the course thereof, relying upon any information designated as PROTECTED INFORMATION, provided that the contents of the information shall not be disclosed.

14. Nothing herein shall be construed to prevent disclosure of PROTECTED INFORMATION if such disclosure is required by law or by order of the Court.

15. The restrictions and obligations herein shall not be deemed to prohibit discussions of any PROTECTED INFORMATION with anyone if that person already has or obtains legitimate possession thereof.

16. In the event that anyone shall violate or threaten to violate the terms of this Order, the Court shall be immediately notified at which time that Court will enter any relief it deems necessary. The Court may, at its option, schedule a hearing to consider any such person in violation of the Court's order. The Court may, after hearing the evidence, find a person or persons in contempt of court. Criminal and Civil penalties may be assessed. Sanctions including attorneys fees and costs may be awarded. Any such person who reviews PROTECTED INFORMATION pursuant to the terms of this ORDER is subject to the jurisdiction and orders of this Court.

17. The United States District Court for the Southern District of Texas, Houston Division, is responsible for the interpretation and enforcement of this Protective Order. All disputes concerning information designated “PROTECTED INFORMATION” or “EYES ONLY” produced under the protection of this Order shall be resolved by the United States District Court for the Southern District of Texas, Houston Division.

18. This Order may be modified by agreement of the parties, subject to approval by the Court.

19. The Court may modify the terms and conditions of this Order for good cause, or in the interest of justice, or on its own order at any time in these proceedings.

SIGNED this _____ day of _____, 2009.

GRAY H. MILLER
United States District Judge

ATTACHMENT "A"

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, declare and say that:

1. I am employed as _____ by _____.
2. I have read the Protective Order entered in Cause No. 4:08-CV-3332 — Texas Democratic Party, et al. vs. Leo Vasquez; In the United States District Court for the Southern District of Texas, Houston Division, and have received a copy of the Protective Order.
3. I am an ELIGIBLE PERSON as defined in Paragraph 4 of the Protective Order, in that I am a United States citizen or permanent resident.
4. I promise that I will comply with all the terms of the Protective Order in my efforts to assist counsel in the litigation of this matter.
5. I promise that I will not retain, record or memorize any PROTECTED INFORMATION that I am permitted to review.
6. I promise that I will not disclose or discuss such PROTECTED INFORMATION with anyone, in the event the PROTECTED INFORMATION is inadvertently retained by me.
7. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Southern

District of Texas with respect to enforcement of the Protective Order and that such enforcement proceedings can be civil or criminal in nature.

8. I understand that any disclosure or use of PROTECTED INFORMATION in any manner contrary to the provisions of the Protective Order may subject me to sanctions, fine, imprisonment or any combination thereof for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____

Respectfully submitted,
TEXAS DEMOCRATIC PARTY and
BOYD L. RICHIE, in his capacity as
Chairman of the Texas Democratic Party

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2009 I electronically filed the foregoing document with the Clerk of the United States District Court, Southern District of Texas, Houston Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

F. Clinton Gambil, II
Senior Assistant City Attorney
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Houston, TX 77002
(Attorneys for Defendant)

/s/ Chad W. Dunn
Chad W. Dunn