

**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 TO COMPEL PRODUCTION OF DOCUMENTS
BY NON-PARTY SUPERVISORS OF ELECTIONS AND
REQUEST FOR HEARING UNDER N.D. FLA. LOC. R. 7.1(E)**

Plaintiffs file this motion to compel the production of documents containing un-redacted confidential information that is exempt from disclosure under Chapter 119. *See* § 97.0585, Fla. Stat. The information sought is subject of, and protected by, this Court's Protective Order, dated October 23, 2007. *See* Ex. A. Neither the Secretary nor the six non-party Supervisors of Elections subpoenaed in this action have objected to the production of such un-redacted documents -- save for expressing confidentiality concerns that are now moot due to the entry of the Protective Order. One Supervisor (for Orange County) has indicated that, in addition to the Protective Order and because of the strictures of Chapter 119, he requires an order compelling the production of said un-redacted documents.

Plaintiffs initially attempted to comply with the Supervisor's request by including such language in a draft protective order; however, the Secretary objected to such language and refused to consent to the proposed protective order as drafted. The language compelling production by the Supervisors was removed and the parties submitted a draft that was adopted, with some amendments, by the Court on October 23.

In subsequent discussion with counsel for the Orange County Supervisor, it was learned that he specifically requested the Secretary's counsel to include language compelling the production of un-redacted documents. In fact, the Supervisor's Counsel provided language that he "requested [the Secretary's counsel] to include in the prior [draft] Protective Order **to ensure we were being compelled to produce.**" *See* Ex. B (emphasis added). Despite this, and Plaintiffs' specific request to include similar language to facilitate the discovery process, the Secretary continued to object to language compelling production by the Supervisor, *see* Ex. C, thus requiring the instant motion.¹

The Court has already recognized that the material sought "may be relevant to the adjudication of this matter and/or reasonably calculated to lead to the discovery of admissible evidence in this matter" and, in doing so, made the material subject to the Court's protection. *See* Protective Order, Ex. A.² Thus, the exempted material will be

¹ Indeed, in discussing drafts of the proposed protected order, the Secretary's counsel specifically represented to the undersigned that they would confer with the Orange County Supervisor's counsel to craft language that would satisfy Orange county's concern about producing un-redacted confidential documents. Ex. C (at p. 3 of 6). It is thus unfathomable as to why counsel refused to include such language, let alone fail to advise counsel or this Court that Orange County had, indeed, provided the very language that would have made this motion unnecessary.

² *See Department of Highway Safety and Motor Vehicles v. Krejci Company, Inc.*, 570 So. 2d 1322, 1323-24 (Fla. 2d DCA 1990) (exemption under the public records law does not mean that such records are to be excluded from discovery in a civil action —

adequately protected. Moreover, counsel is advised that the un-redacted material will be produced in accordance with the Protective Order upon issuance of an order compelling production. Accordingly, Plaintiffs seek an order compelling production of the un-redacted documents for the purposes of use in this litigation only. A proposed order is attached as Ex. D.

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 Order Compelling Production attached as Exhibit D.

particularly when those records are directly related to the central question at issue in such litigation); *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.

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

Pursuant to N.D. Fla. Loc. R. 7.1(B), undersigned counsel states that on October 30, 2007, he conferred with Allen Winsor, counsel for the Secretary, and the parties are not able to resolve by agreement the issues raised in the motion.

Dated: October 30, 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

LAUREN M. ROTHENBERG

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 to Compel* was served via the Court's CM/ECF electronic filing system this day, October 30, 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

TAL 451437869v1 10/30/2007