

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN)
ROBINSON, EDDIE JACKSON,)
and THE TEXAS DEMOCRATIC PARTY,)

Plaintiffs,)

v.)

Civil Action No. 2:06-CV-385(TJW)

STATE OF TEXAS, a State of)
the United States; GREG ABBOTT,)
Attorney General of the State of Texas;)
and PHIL WILSON, Secretary of)
State for the State of Texas,)

Defendants.)

PLAINTIFFS' NOTICE OF CERTIFICATION
REGARDING CONFIDENTIALITY

EXHIBIT A

LAW OFFICES OF
J. Gerald Hebert, P.C.

J. Gerald Hebert
Attorney at Law

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April 18, 2008

Via email transmission

Ms. Kathy Wilson
Office of the Texas Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Re: *Willie Ray, et al. v. State of Texas, et al.*

Dear Ms. Wilson:

This letter pertains to your designation as “Confidential” all of the documents that Defendants have produced and copied for Plaintiffs to date in the above-referenced case.

In Mr. Eccles’ letter of April 4, 2008, he stated the following: “All of the documents produced to you under your request for additional disclosure, within the numbered range of D-1 to D-2726, are subject to the Court’s Standard Protective Order.” For the reasons set forth below, this designation is not appropriate for the documents that have been produced.

The Standard Protective Order in this case states: “[d]ocuments or discovery responses containing Confidential Information disclosed or produced by any party in this litigation are referred to as ‘Protected Documents.’ Except as otherwise indicated below, all documents or discovery responses designated by the producing party as ‘Confidential’ and which are disclosed or produced to the attorney’s for the other parties to this litigation are Protected Documents and are entitled to confidential treatment as described below.” Protective Order at 2. The order defines “Confidential Information” as “[d]ocuments or information containing confidential proprietary and business information and/or trade secrets (‘Confidential Information’) that bear significantly on the parties’ claims or defenses....” *Id.* at 1. The Standard Protective Order also expressly exempts the following documents from being designated as Confidential: “(a) advertising materials, (b) materials that on their face show that they have been published to the general public, or (c) documents that have submitted to any governmental entity without request for confidential treatment.” *Id.* at 2.

We see no basis for Defendants to claim that any of the documents that they have produced contain “confidential proprietary and business information and/or trade secrets[.]” All of the documents produced from the State’s investigative files are from

closed cases and include only non-privileged information, underscoring the non-confidentiality of the documents. Indeed, many of the documents that you have produced are “materials that on their face show that they have been published to the general public.” These include the following:

1. Letters sent by the Secretary of State each year to voters requesting mail-in ballots.
2. Transcripts of public trials held in cases where the Attorney General prosecuted an alleged violation of the Election Code.
3. Ballot envelopes, voting records, and Secretary of State instructions to voters for mail in voting.
4. Pleadings filed in federal and state court.
5. Documents in your closed Escapees files.
6. Newspaper clippings
7. The Attorney General’s publicly disclosed Powerpoint which is part of the public record in this case.

Furthermore, it is likely that all of the documents in the investigative files for cases that the State has prosecuted were turned over to counsel for the persons charged with an Election Code violation, and that such files were then used by both the state and defense counsel in state court proceedings. For example, investigative reports, copies of the indictments, voting records, and witness interviews/statements would have been turned over to defense counsel in these prosecutions and none of those documents would have been subject to any kind of protective order. Because those documents were used in state court cases, because they were provided to legal counsel for use in defense of such proceedings, and because those cases are now closed, it is our position that the investigative file documents you have produced are not Confidential Information under the Protective Order.

The Protective Order provides that “[a]t any time after the delivery of Protected Documents, counsel for the party or parties receiving the Protected Documents may challenge the Confidential designation of all or any portion thereof by providing written notice thereof to counsel for the party disclosing or producing the Protected Documents.” Protective Order at 2. Please consider this letter as notice of Plaintiffs’ challenge to Defendants’ confidentiality designations.

Sincerely,

/s/ J. Gerald Hebert
J. Gerald Hebert

cc all counsel