

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

Plaintiffs, pursuant to the January 8, 2008 Standard Protective Order (“Protective Order”) entered in this case, hereby certify as follows:

1. Paragraph 1 of the Preamble to the Protective Order in this case states as follows: “1. Documents or information containing confidential proprietary and business information and/or trade secrets (‘Confidential Information’) that bear significantly on the parties’ claims or defenses is likely to be disclosed or produced during the course of discovery in this litigation[.]”

2. The Protective Order further provides that “Documents 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 ¶1
3. The Protective Order also provides for a certification procedure in the event that a party wishes to challenge the confidential designation of documents produced by an opposing party. *See* Protective Order ¶3. That certification process as set forth in the Protective Order states that: “At 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. If the parties are unable to agree as to whether the confidential designation of discovery material is appropriate, the party or parties receiving the Protected Documents shall certify to the Court that the parties cannot reach an agreement as to the confidential nature of all or a portion of the Protected Documents.” Protective Order ¶3.
4. On April 18, 2008, counsel for the plaintiffs wrote to counsel for the defendants challenging the defendants’ confidentiality designations of

documents produced by defendants in this litigation. A copy of that April 18 letter is attached as Exhibit A.

5. Counsel for the defendants did not respond to the April 18 letter.
6. Counsel for the plaintiff also has inquired of defendants' counsel regarding the confidentiality designations in an email on May 19, 2008. Counsel for defendants has advised counsel for plaintiffs that counsel for defendants will respond to that email by May 21, 2008.
7. Because the Protective Order provides that the party "disclosing or producing the Protected Documents shall have ten (10) days from the date of certification to file a motion for protective order with regard to any Protected Documents in dispute" (Protective Order ¶3), and the trial in this case is scheduled to begin eight days from today (*i.e.*, May 28, 2008), plaintiffs are filing this certification now to ensure that this issue is resolved before the start of trial.

Dated: May 20, 2008

Respectfully submitted,



ERIC M. ALBRITTON
Texas Bar Number 00790215
ALBRITTON LAW FIRM
P.O. Box 2649
Longview, TX 75606
Telephone: (903) 757-8449
Facsimile: (903) 758-7397
ema@emafirm.com

OTIS W. CARROLL
Bar Number 038 957 00
Ireland, Carroll & Kelley, P.C.
6101 South Broadway, Suite 500
Tyler, TX 75703
Telephone: (903) 561-1600
Facsimile: (903) 581-1071
otiscarroll@icklaw.com

Of Counsel

J. GERALD HEBERT
Attorney at Law
J. GERALD HEBERT, P.C.
5019 Waple Lane
Alexandria, VA 22304
Telephone: (703) 628-4673
Facsimile: (703) 567-5876
ghebert@campaignlegalcenter.org

BRUCE V. SPIVA
KATHLEEN R. HARTNETT
SPIVA & HARTNETT LLP
1776 Massachusetts Avenue, N.W.,
Suite 600
Washington, D.C. 20036
Telephone: (202) 785-0601
Facsimile: (202) 785-0697
bspiva@spivahartnett.com
khartnett@spivahartnett.com

ART BRENDER
Attorney at Law
600 Eighth Avenue
Ft. Worth, TX 76104
Telephone: (817) 334-0171
brenderlawfirm@artbrender.com

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Plaintiffs' Notice Of Certification Regarding Confidentiality was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email and/or fax, on this 20th day of May, 2008.

A handwritten signature in black ink, appearing to read "Eric M. Albritton", written over a horizontal line.

Eric M. Albritton