

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF FLORIDA,)

Plaintiff)

v.)

THE UNITED STATES OF AMERICA and)
ERIC H. HOLDER, Jr., in his official capacity as)
Attorney General of the United States,)

Defendants,)

FLORIDA STATE CONFERENCE OF THE)
NAACP, *et al.*,)

Defendant-Intervenors,)

KENNETH SULLIVAN, *et al.*,)

Defendant-Intervenors,)

and)

NATIONAL COUNCIL OF LA RAZA, and)
LEAGUE OF WOMEN VOTERS OF FLORIDA,)

Defendants-Intervenors.)

NO. 1:11-CV-01428
(CKK-MG-ESH)
THREE JUDGE COURT

**JOINT MOTION FOR A STIPULATED PROTECTIVE ORDER GOVERNING
CONFIDENTIAL INFORMATION AND DOCUMENTS**

The Parties jointly move the Court to enter the accompanying Stipulated Protective Order Governing Confidential Information and Documents. This protective order specifies the conditions under which private, sensitive, and/or legally confidential documents and information in possession of the parties must be exchanged, used, and protected in this litigation, and

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authorizes the Parties to disclose that information in response to discovery requests. This protective order is justified by Rule 26(c) of the Federal Rules of Civil Procedure and relevant case law and is necessary in order for the parties to obtain relevant and essential discovery.

Prompt entry of this order authorizing the Parties to disclose such records is necessary for the conduct of discovery in this action. The Parties, therefore, respectfully request that the attached Stipulated Protective Order Governing Confidential Information and Documents be adopted and ordered by the Court.

Date: December 22, 2011

Respectfully submitted,

For the Plaintiffs:

/s/ Daniel E. Nordby
WILLIAM S. CONSOVOY
J. MICHAEL CONNOLLY
Wiley Rein LLP
1776 K St., NW
Washington, DC 20006
wconsovoy@wileyrein.com
mconnolly@wileyrein.com
DANIEL E. NORDBY
ASHLEY E. DAVIS
Florida Department of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, FL 32399-0250
daniel.nordby@dos.myflorida.com
ashley.davis@dos.myflorida.com

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For the Defendants:

RONALD C. MACHEN JR.
United States Attorney
District of Columbia

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s Elise Sandra Shore
T. CHRISTIAN HERREN, JR.
JOHN ALBERT RUSS IV
ELISE SANDRA SHORE
CATHERINE MEZA
ERNEST A. MCFARLAND
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 305-0070
Facsimile: (202) 307-3961

For the Defendant-Intervenors:

NCLR Intervenors

/s/ Daniel T. O'Connor

Jon Greenbaum (D.C. Bar No. 489887)
Mark A. Posner (D.C. Bar No. 457833)
Lawyers' Committee for Civil Rights Under
Law

1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005
(202) 662-8389 (phone)
(202) 628-2858 (fax)

mposner@lawyerscommittee.org

Daniel C. Schwartz (D.C. Bar No. 017749)

Rodney F. Page (D.C. Bar No. 037994)

Alec W. Farr (D.C. Bar No. 440046)

Daniel T. O'Connor (D.C. Bar No. 975165)

Ian L. Barlow (D.C. Bar No. 998500)

Bryan Cave LLP

1155 F Street, NW, Suite 700

Washington, D.C. 20004

(202) 508-6000 (phone)

(202) 508-6200 (fax)

dcschwartz@bryancave.com

Wendy Weiser (*Pro Hac Vice*)

Lee Rowland (*Pro Hac Vice*)

The Brennan Center for Justice at

NYU Law School

161 Avenue of the Americas, Floor 12

New York, NY 10013-1205

(646) 292-8310 (phone)

(212) 463-7308 (fax)

lee.rowland@nyu.edu

NAACP Intervenors

/s/ Ryan Haygood

John Payton (D.C. Bar No. 282699)

Director-Counsel

Debo P. Adegbile

Associate Director-Counsel

Ryan P. Haygood (*Pro Hac Vice*)

Dale E. Ho (*Pro Hac Vice*)

Natasha M. Korgaonkar (*Pro Hac Vice*)

NAACP Legal Defense and

Educational Fund, Inc.

99 Hudson Street, Suite 1600

New York, New York 10013

(212) 965-2200

dho@naacpldf.org

Sullivan Intervenors

/s/ Estelle H. Rogers

Arthur B. Spitzer (D.C. Bar No. 235960)

American Civil Liberties Union of the

Nation's Capital

1400 20th Street, N.W., Suite 119

Washington, D.C. 20036

(202) 457-0800

art@aclu-nca.org

M. Laughlin McDonald (*Pro Hac Vice*)

American Civil Liberties Union Foundation,

Inc.

230 Peachtree Street, NW

Suite 1440

Atlanta, GA 30303-1227

(404) 523-2721

lmcdonald@aclu.org

Randall C. Marshall (D.C. Bar No. 181765)

American Civil Liberties Union

Foundation of Florida, Inc.

4500 Biscayne Blvd Suite 340

Miami, FL 33137

(786) 363-2700 (phone)

(786) 363-1108 (fax)

rmarshall@aclufl.org

Estelle H. Rogers (D.C. Bar No. 219410)

Project Vote

737 1/2 8th St., SE

Washington, DC 20003

(202) 546-4173, ext. 310 (phone)

(202) 452-1868 (fax)

erogers@projectvote.org

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ERIC H. HOLDER, Jr., in his official capacity as)	
Attorney General of the United States,)	
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FLORIDA STATE CONFERENCE OF THE)	NO. 1:11-CV-01428
NAACP, <i>et al.</i> ,)	(CKK-MG-ESH)
)	THREE JUDGE COURT
Defendant-Intervenors,)	
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KENNETH SULLIVAN, <i>et al.</i> ,)	
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Defendant-Intervenors,)	
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NATIONAL COUNCIL OF LA RAZA, and)	
LEAGUE OF WOMEN VOTERS OF FLORIDA,)	
)	
Defendants-Intervenors.)	

**STIPULATED PROTECTIVE ORDER GOVERNING CONFIDENTIAL
INFORMATION AND DOCUMENTS**

THIS MATTER is before the Court upon the joint motion of the Parties for entry of a protective order. The State of Florida filed a declaratory judgment action against Defendants United States of America and Eric H. Holder, Jr., in his official capacity as Attorney General of the United States, seeking judicial preclearance of four sets of voting changes under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c. This Order permits the Parties to meet their

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disclosure and discovery obligations by disclosing information that is reasonably calculated to fulfill discovery obligations.

Having reviewed the Parties' joint motion and for good cause shown, the Court hereby enters the following ORDER governing confidential information and documents and authorizes the release of the information among the Parties without obtaining prior written consent of the individuals to whom the records pertain. Such disclosure is subject to the following conditions:

- (1) The following is designated as "Confidential Information and Documents"
 - a. The Social Security number, driver's license, or state personal identification card/voter identification number of an individual;
 - b. The month and day of birth of an individual;
 - c. The home or mobile telephone number, personal e-mail address, or home address provided for an individual;
 - d. All that part of the Florida Voter Registration System database and any other database produced by the State of Florida that is not otherwise available for public inspection and copying pursuant to federal or Florida law;
 - e. Any other document or information not otherwise discoverable under the Florida Public Records Act, the Florida Election Code, the federal Freedom of Information Act, or any other state or federal law, that a party in good faith designates as "Confidential Information and Documents," subject to challenge or objection by any other party.
- (2) Information that is required to be made available for public inspection and copying pursuant to federal or Florida laws shall not be considered "Confidential Information and Documents."

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- (3) Confidential Information and Documents, including information ordinarily exempted from public disclosure pursuant to applicable Florida or federal confidentiality statutes, including but not limited to the Privacy Act of 1974 as amended, 5 U.S.C. § 552a, *et seq.*, may be produced within the context of this litigation and as described in this Stipulated Protective Order, notwithstanding any other provision of law to the contrary. The Court specifically finds that said Confidential Information and Documents are potentially relevant to the claims and defenses in this litigation and therefore necessary to be disclosed among the parties, and that the terms of this Stipulated Protective Order provide adequate safeguards with respect to the use of such information.
- (4) The information and documents identified in paragraph (1)(a) – (d) of this Stipulated Protective Order are automatically deemed to be “Confidential Information and Documents” without further designation or action by any party or non-party. A party may designate information or documents described in paragraph (1)(e) of this Stipulated Protective Order as “Confidential Information and Documents” by stamping or otherwise clearly marking the material prior to production as “CONFIDENTIAL.” Where such material is not reduced to documentary, tangible, or physical form, or where it cannot be conveniently labeled, the producing party shall designate the Confidential Information and Documents described in paragraph (1)(e) by informing the receiving party in writing of the appropriate designation of such material. In the case of deposition testimony, a party seeking to invoke the protection of this Stipulated Protective Order for material described in paragraph (1)(e) shall give prompt notice thereof, at the deposition or within fourteen (14) days

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after receipt of the deposition transcript, in accordance with the provisions and restrictions of this Stipulated Protective Order. Unless otherwise designated at or during the deposition, all deposition testimony shall be treated as if designated “Confidential Information and Documents” until the expiration of such fourteen (14) day period.

- (5) The failure to designate records or information as provided in paragraph 1 of this Order shall not constitute a waiver of a Party’s later designation of such records or information as subject to the provisions of this Order or a waiver of the United States’ assertion that such information or records are subject to the Privacy Act.
- (6) Except as otherwise ordered by this Court, Confidential Information and Documents requested by a party, or otherwise produced in this litigation by a party or non-party, whether said information be solicited from documents or by the direct testimony of any person, shall be used solely for the purposes of the captioned lawsuit, including trial preparation, and shall not, without prior written consent of the individual or entity producing the information, be made available to any person other than the Court and its personnel; the parties, their counsel, or individuals working on behalf of the parties or their counsel, such as professional staff, expert witnesses, and consultants; court reporters, videographers, or other professionals responsible for recording or transcribing testimony in this action; and witnesses or potential witnesses who have been identified in initial disclosures or otherwise specifically noticed for deposition.

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(7) Counsel may provide, disclose, discuss, or otherwise communicate about Confidential Information and Documents, in any form, only to Qualified Persons, defined as follows:

- a. Counsel of record, members, and legal staff of the law firm(s) and public interest groups representing Plaintiffs or Defendant-Intervenors in this litigation;
- b. Court personnel, including certified court reporters;
- c. U.S. Department of Justice employees; and
- d. Experts and consultants retained for this litigation, but only upon the following terms and conditions: (i.) Every expert or consultant must execute a certificate of compliance with this Protective Order, in connection with receiving Personally Identifiable Information (the certificate is an attachment to this Order); (ii.) Upon request, counsel shall provide a copy of the certificate of compliance executed by any expert identified under Rule 26 of the Federal Rules of Civil Procedure, provided that the request is after that identification has occurred; and (iii.) Certificates for consulting experts are not subject to production to the other party, but upon request may be produced to the Court for an in camera confirmation of compliance with this paragraph.

(8) All experts to whom documents or information subject to this order are disclosed shall be informed of and shall agree to the terms of this Stipulated Protective Order and shall not otherwise disclose the documents or information subject to this Stipulated Protective Order to the public or to any person or entity. The parties'

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- counsel will retain copies of the acknowledgment forms signed by these experts until such time as this litigation, including all appeals, is concluded. Should counsel wish to disclose information or documents subject to this Stipulated Protective Order to any persons other than those indicated in Paragraph 7 above, counsel must obtain the producing party's consent. If a party does not consent to disclosure, then counsel may, on motion, seek modification of this Stipulated Protective Order from the Court.
- (9) A party, upon the providing of Confidential Information and Documents and pursuant to this Stipulated Protective Order, does not waive any objection to the admissibility of said information or documents or any portion thereof at trial on the grounds of relevance, privilege, prejudice or competency.
- (10) The parties agree that they shall designate as "Confidential Information and Documents" only such documents, electronically stored information ("ESI"), and other things that truly contain private and highly sensitive information relating to a party or to non-parties. The parties agree that if and when disputes arise to the applicability of this Order to any information produced by a party, such disputes shall be resolved, if possible, by agreement of the parties of this action.
- (11) Documents, ESI, and other things containing Confidential Information and Documents shall, when filed with the Court, be redacted to exclude the Confidential Information and Documents, where feasible. In such case, the filing party shall retain the unredacted copies of such documents and make them available to the parties, counsel, and the Court upon request. Where redaction of Confidential Information and Documents is unfeasible or impractical, the filing party shall submit and file the document under seal to be maintained by the Court and its clerks under seal, and such

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- confidential materials so filed shall not be made available to anyone other than the Court and its clerks. All confidential material used pursuant to this section shall be submitted to the Court under seal stating “CONFIDENTIAL MATERIAL SUBMITTED UNDER SEAL PURSUANT TO THE STIPULATED PROTECTIVE ORDER DATED ____”. In connection with all filings, the parties are admonished to comply fully with Fed. R. Civ. P. 5.2 and Local Rule 5.4(f).
- (12) This Stipulated Protective Order shall govern all pretrial proceedings, but shall be subject to modification either before, during, or after the trial upon the merits, upon consent of the parties, or upon application and showing of good cause by any of the parties. Any confidential record that is admitted into evidence shall not lose its confidential designation under this agreement unless expressly ordered by the Court.
- (13) The inadvertent or unintentional disclosure of Confidential Information and Documents shall not be construed to be a waiver, in whole or in part, of the Parties’ claims of confidentiality, either as to the specific confidential information and documents or as to related information and documents.
- (14) Nothing in this Order constitutes any decision by the Court concerning discovery disputes, the admission into evidence of any specific document, or liability for payment of any costs of production or reproduction.
- (15) At the conclusion of the litigation and the termination of any associated appeals, the parties shall either (a) continue to maintain the confidentiality of all documents containing “Confidential Information and Documents” and abide by the terms of this Protective Order indefinitely, (b) return those confidential documents to the party who produced them, or (c) shall securely destroy those confidential documents who

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received them, within sixty (60) days after the conclusion of all proceedings,
including any settlement, trial, or appeal, unless otherwise agreed by the parties.

STIPULATED TO BY

For the Plaintiffs:

/s/ Daniel E. Nordby
William S. Consvoy
J. Michael Connolly
Wiley Rein LLP
1776 K St., NW
Washington, DC 20006
wconsvoy@wileyrein.com
mconnolly@wileyrein.com

Daniel E. Nordby
Ashley E. Davis
Florida Department of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, FL 32399-0250
daniel.nordby@dos.myflorida.com
ashley.davis@dos.myflorida.com

For the Defendants:

RONALD C. MACHEN JR.
United States Attorney
District of Columbia

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s/ Elise Sandra Shore
T. CHRISTIAN HERREN, JR.
JOHN ALBERT RUSS IV
ELISE SANDRA SHORE
CATHERINE MEZA
ERNEST A. MCFARLAND
Civil Rights Division

U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 305-0070
Facsimile: (202) 307-3961

For the Defendant-intervenors:

NCLR Intervenors
/s/ Daniel T. O'Connor
Jon Greenbaum (D.C. Bar No. 489887)
Mark A. Posner (D.C. Bar No. 457833)
Lawyers' Committee for Civil Rights Under
Law
1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005
(202) 662-8389 (phone)

- 9 -

(202) 628-2858 (fax)
mposner@lawyerscommittee.org
Daniel C. Schwartz (D.C. Bar No. 017749)
Rodney F. Page (D.C. Bar No. 037994)
Alec W. Farr (D.C. Bar No. 440046)
Daniel T. O'Connor (D.C. Bar No. 975165)
Ian L. Barlow (D.C. Bar No. 998500)
Bryan Cave LLP
1155 F Street, NW, Suite 700
Washington, D.C. 20004
(202) 508-6000 (phone)
(202) 508-6200 (fax)
dcschwartz@bryancave.com
Wendy Weiser (*Pro Hac Vice*)
Lee Rowland (*Pro Hac Vice*)
The Brennan Center for Justice at
NYU Law School
161 Avenue of the Americas, Floor 12
New York, NY 10013-1205
(646) 292-8310 (phone)
(212) 463-7308 (fax)
lee.rowland@nyu.edu

NAACP Intervenors

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John Payton (D.C. Bar No. 282699)
Director-Counsel
Debo P. Adegbile
Associate Director-Counsel
Ryan P. Haygood (*Pro Hac Vice*)
Dale E. Ho (*Pro Hac Vice*)
Natasha M. Korgaonkar (*Pro Hac Vice*)
NAACP Legal Defense and
Educational Fund, Inc.
99 Hudson Street, Suite 1600
New York, New York 10013
(212) 965-2200
dho@naacpldf.org

Sullivan Intervenors

/s/ Estelle H. Rogers

Arthur B. Spitzer (D.C. Bar No. 235960)
American Civil Liberties Union of the
Nation's Capital
1400 20th Street, N.W., Suite 119
Washington, D.C. 20036

(202) 457-0800
art@aclu-nca.org
M. Laughlin McDonald (*Pro Hac Vice*)
American Civil Liberties Union Foundation,
Inc.
230 Peachtree Street, NW
Suite 1440
Atlanta, GA 30303-1227
(404) 523-2721
lmcdonald@aclu.org
Randall C. Marshall (D.C. Bar No. 181765)
American Civil Liberties Union
Foundation of Florida, Inc.
4500 Biscayne Blvd Suite 340
Miami, FL 33137
(786) 363-2700 (phone)
(786) 363-1108 (fax)
rmarshall@aclufl.org
Estelle H. Rogers (D.C. Bar No. 219410)
Project Vote
737 1/2 8th St., SE
Washington, DC 20003
(202) 546-4173, ext. 310 (phone)
(202) 452-1868 (fax)
erogers@projectvote.org

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IT IS SO ORDERED this _____ day of December, 2011

MERRICK B. GARLAND
UNITED STATES CIRCUIT JUDGE

ELLEN S. HUEVELLE
UNITED STATES DISTRICT JUDGE

COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

ACKNOWLEDGMENT OF STIPULATED PROTECTIVE ORDER

I have read and do understand the Stipulated Protective Order Governing Confidential Information and Documents entered in this action on _____ 20__, and I hereby agree to be bound by it. Specifically, I agree that I will not disclose any documents or information collectively referred to as “Confidential Information and Documents” to any person, except as authorized by the Court.

I further agree that I will take appropriate steps to maintain the confidentiality of the confidential documents and Personally Identifiable Information and any documents that quote or paraphrase or describe any part of the confidential documents or Confidential Information and Documents. I hereby confirm that my duties under this Acknowledgment shall survive the termination of this case and are binding upon me for all time. I hereby consent to the personal jurisdiction of the United States District Court for the District of Columbia in the above-captioned case for the purpose of enforcing the aforementioned Order.

Date: _____ 20__

[Signature]

[Print full name]