

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, et al.,

Plaintiffs,

v.

PATRICK LLOYD MCCRORY, in his
official capacity as the Governor of North
Carolina, et al.,

Defendants.

Civil Action No. 1:13-CV-658

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et
al.,

Defendants.

Civil Action No. 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA; et
al.,

Defendants.

Civil Action No. 1:13-CV-861

**REVISED CONSENT PROTECTIVE ORDER GOVERNING CONFIDENTIAL
DOCUMENTS AND INFORMATION**

The parties acknowledge that in the course of discovery or otherwise as necessary to litigate these cases, they will be required to provide each other with sensitive, private, personal, or confidential information. The parties have agreed that such information shall not be disclosed or used except as appropriate and relevant in connection with this litigation.

For good cause shown, the Court hereby enters the following ORDER governing confidential information and documents:

(1) Except to the extent such information is a public record under relevant law, the following is designated as “Confidential Information”:

- (a) The identity and race or ethnicity of a person who holds a U.S. passport, U.S. military identification card, and U.S. veterans identification card;
- (b) The Social Security number, driver’s license number, special identification card number, passport number, military identification card number, veterans identification card number, or tribal enrollment card number of an individual;
- (c) The month and day of birth of an individual;
- (d) The home address, telephone number, or email address provided by an individual;
- (e) The digitized signature of an individual;
- (f) The maiden name of an individual’s mother;

(g) The identity of any person who has submitted comments to the Department of Justice or had any other communication with employees of the Department of Justice during the administrative review of any matter related to this litigation;

(h) All parts of (1) the North Carolina statewide voter registration database and (2) Department of Motor Vehicles database that are not otherwise available for public inspection and copying pursuant to federal or North Carolina law; and

(i) Any other document or information that is private or confidential pursuant to federal law, including the Voting Rights Act, 42 U.S.C. §§ 1973 to 1973aa-6, the Civil Rights Act of 1960, 42 U.S.C. §§ 1974-74e, the Freedom of Information Act, 5 U.S.C. § 552, Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. §§ 51.1-.67, the Federal Rules of Evidence, or any other state or federal law, that a party in good faith designates as “Confidential Information.”

(1.1) Information that is required to be made available for public inspection and copying pursuant to federal or North Carolina law shall not be considered “Confidential Information.”

(1.2) Confidential Information, including information ordinarily exempted from public disclosure pursuant to federal or North Carolina law, including but not limited to the Privacy Act of 1974, 5 U.S.C. § 552a, the Driver’s Privacy Protection Act, 18 U.S.C. §§ 2721-25, and North Carolina General Statute § 20-43.1, may be produced within the context of this litigation and as described in this Consent Protective Order, notwithstanding any other provision of law to the contrary. The Court specifically finds

that said Confidential Information is 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 Consent Protective Order provide adequate safeguards with respect to the use of such information.

(1.3) The information identified in paragraphs (1)(a)-(h) of this Consent Protective Order is automatically deemed to be “Confidential Information” without further designation or action by any party or non-party. A party may designate information or documents described in paragraph (1)(i) of this Consent Protective Order as “Confidential Information” 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 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 Consent Protective Order shall give prompt notice thereof, at the deposition or within seven (7) days after receipt of the deposition transcript, in accordance with the provisions and restrictions of this Consent Protective Order. Unless otherwise designated at or during the deposition, all deposition testimony shall be treated as if designated “Confidential Information” until the expiration of such seven (7) day period.

(2) Confidential Information requested by a party, or otherwise produced in this litigation by a party or non-party, whether said information is 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 witness, 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.

(2.1) Notwithstanding the foregoing, a producing party may designate Confidential Information as “Highly Confidential” and thereby restrict its availability to only (a) attorneys-of record, their associates, staff, and assistants working on this litigation, (b) experts and experts’ staff, and (c) the Court. “Highly Confidential Information” includes only personally identifiable data or information found in federal or state databases that is protected from public disclosure by federal or state law. If a receiving party disagrees with a designation of Confidential Information as “Highly Confidential,” or disputes the limitations on access to be accorded such information under this paragraph, the objecting party will provide to the producing party written notice of the objection and specifically identify the information or restriction on access objected to and will use good faith efforts to attempt to resolve the dispute without intervention by the Court. If after reasonable efforts the parties are unable to resolve the dispute, either party may seek Court intervention by filing an appropriate pleading with the Court under seal in accordance with Federal Rule of Civil Procedure 5.2.

(3) A party, upon providing Confidential Information or documents pursuant to this 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.

(4) The parties agree that they shall designate as Confidential Information or Highly Confidential 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.

(5) Documents, ESI, and other things containing Confidential Information or Highly Confidential Information shall, when filed with the Court, be redacted to exclude the Confidential Information, consistent with the court’s supplemental protective order (Exhibit 1). 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. For filings with the court, the parties will comply fully with Federal Rule of Civil Procedure 5.2, the applicable local rules, and the Court’s supplement order governing filings made under seal.

(6) This Consent 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.

(7) The inadvertent or unintentional disclosure of Confidential Information shall not be construed to be a waiver, in whole or in part, of any party's claims of confidentiality, either as to the specific confidential information or as to related information and documents.

(8) Except as otherwise prohibited by federal law (including but not limited to the Federal Records Act, 44 U.S.C. § 3301 *et seq.*) or the law of North Carolina, at the conclusion of the litigation and the termination of any associated appeal rights, all documents containing "Confidential Information" shall be returned to the party who produced them or securely destroyed by the party who received them within 90 days after the conclusion of all proceedings, including any settlement, trial, or appeal, unless otherwise agreed by the parties or ordered by the Court.

IT IS SO ORDERED.

Date: January 3, 2014

THE HONORABLE JOI ELIZABETH PEAKE
UNITED STATES MAGISTRATE JUDGE

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SUPPLEMENTAL PROTECTIVE ORDER

The parties have entered into a stipulated protective order pursuant to Federal Rule of Civil Procedure 26(c) concerning the handling and use of documents and depositions in this case. See Fed. R. Civ. P. 29. In approving the stipulated protective order, the Court orders the parties to follow these additional procedures:

- (1) TO THE EXTENT THE STIPULATED PROTECTIVE ORDER IS INCONSISTENT WITH THIS ORDER, THE TERMS OF THIS ORDER SHALL TAKE PRECEDENCE.**

By approving this Order and accepting the stipulation, the Court is not ruling on whether any document or information is, in fact, entitled to protection under Rule 26(c). Rather, the Court approves the protective order in order to minimize discovery problems and to promote and expedite unrestricted discovery without Court intervention. Cf. Longman v. Food Lion, Inc., 186 F.R.D. 331, 333 (M.D.N.C. 1999) (noting that, in a case involving “hundreds of documents containing confidential business information,” a blanket protective order was “essential to the efficient functioning of the discovery process”). However, the stipulated protective order is limited by the concerns set out in Haas v. Golding Transport, Inc., No. 1:09CV116, 2010 WL 1257990 (M.D.N.C. March 26, 2010). Therefore, the Court enters this Supplemental Protective Order to address those concerns. To the extent any of the terms of the stipulated protective order are inconsistent with this Supplemental Protective Order, this Supplemental Protective Order controls.

(2) PLEADINGS, MOTIONS, BRIEFS, OR EXHIBITS MAY NOT BE FILED UNDER SEAL WITHOUT SEPARATE COURT APPROVAL.

Regardless of any provision contained in the stipulated protective order, the parties may not file any pleading, motion, brief or exhibit under seal without obtaining separate approval from the Court. Thus, a party seeking to file any document under seal must file a separate motion and obtain permission of the Court to file the document under seal. Any request to file a document under seal must meet the requirements of Federal Rule of Civil Procedure 26(c) and must meet the stringent requirements for sealing set out by the Fourth Circuit, as applicable. See Stone v. University of Md. Medical System Corp., 855 F.2d 178 (4th Cir. 1988) (setting out the standard for sealing documents protected by the common law right of access based on a weighing of “competing interests,” as well as the higher standard for sealing documents protected by the First Amendment based on a showing that the restriction is “narrowly tailored” and serves a “compelling interest”); Rushford v. The New Yorker Magazine, Inc., 846 F.2d 249 (4th Cir. 1988) (discussing the applicability of the First Amendment protection to documents filed in connection with motions for summary judgment); Virginia Dep’t of State Police v. Washington Post, 386 F.3d 567, 576 (4th Cir. 2004) (noting that on a motion to seal, the court “must determine the source of the right of access with respect to each document, . . . [and] must then weigh the appropriate competing interests under the following procedure: it must give the public notice of the request to seal and a reasonable opportunity to challenge the request; it must consider less drastic alternatives to sealing; and if it decides to seal it must state the reasons (and specific supporting findings) for its decision and the reasons for rejecting alternatives to sealing” (internal citations omitted)).

The parties are directed to keep to a minimum the amount of material that they would seek to file under seal. In this regard, the parties are directed to exclude confidential information from court filings unless directly relevant to the issue to be considered. If it is necessary to file information that has been designated as confidential by another party, the filing party should request that the confidentiality designation be eliminated by the supplier of the information. If that request is refused, the filing party may file a motion to seal. In that instance, the motion to seal must set out why it is necessary to file the confidential information, and must detail the efforts made to request that the confidentiality designation be eliminated. In response, the party asserting the confidentiality designation shall have the burden of making the requisite showing under the standards set out above.

If a party files a motion seeking to file a document under seal, a redacted copy of the document for which sealing is sought must be filed on the public record. In the redacted document, the omitted material must be generally identified. For example, if only a page, sentence, or word of a deposition, brief, or other material contains confidential information, then only that page, sentence or word should be redacted from the item filed in the public record of the Court, with an appropriate explanation at the place of withdrawal in the document. The original, unredacted document may be filed under seal as an exhibit to the motion to file under seal. For ease of court review, a party shall submit a judge's copy of the complete unredacted document, with the redacted part clearly marked thereon by highlighting.

(3) EVIDENCE OR TESTIMONY INTRODUCED IN COURT MAY ONLY BE SEALED BY SEPARATE COURT ORDER ON MOTION OF A PARTY.

To the extent that any party would seek to seal or otherwise restrict access to an exhibit or other document introduced during a hearing, trial, or other court proceedings, the party must make a separate motion in that regard for consideration by the court conducting the proceedings, supported by sufficient justification therefor. Likewise, to the extent any party would seek to seal any portion of a transcript of a court proceeding, the party must file a separate motion to seal for consideration by the court that conducted such proceeding.

(4) SEALING DOCUMENTS OR RESTRICTING ACCESS IN PROCEEDINGS BEFORE ANY OTHER COURT, INCLUDING ON APPEAL, MUST BE ADDRESSED BY THE PARTIES UNDER THE RULES OF THAT COURT.

To the extent the parties may later proceed before any other court, including in any appeals in the present case, the parties must follow the rules of that court with respect to any issues of sealing or restricting access to documents.

(5) THE STIPULATED PROTECTIVE ORDER, AS LIMITED AND MODIFIED BY THIS SUPPLEMENTAL PROTECTIVE ORDER, MAY NOT BE MODIFIED BY THE PARTIES WITHOUT LEAVE OF COURT.

Orders in this case, including the stipulated protective order, may not be modified solely by agreement of the parties, and may only be modified with leave of Court on a motion of the parties.

(6) ALL DOCUMENTS, SEALED OR OTHERWISE, FILED WITH THE COURT SHALL BE DISPOSED OF PURSUANT TO LOCAL RULE 79.4.

Local Rule 79.4 provides for disposition of documents filed with the Court, and will continue to control unless otherwise ordered by the Court at the conclusion of the case.

IT IS THEREFORE ORDERED that the stipulated protective order is LIMITED and MODIFIED as set out herein.

IT IS FURTHER ORDERED that any document or item submitted to the Court in violation of this Order is subject to being stricken.