

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.

1:13-CV-658

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

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et al.,

Defendants.

1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA; et al.,

Defendants.

1:13-CV-861

**SECOND SUPPLEMENTAL PROTECTIVE ORDER**

The parties acknowledge the need to protect sensitive, private, personal, or confidential information, including but not limited to information concerning North Carolina voters, including whether those voters have been issued a United States passport, military identification card, or Veterans Identification Card. All parties have previously agreed that such information shall not be disclosed or used except as appropriate and relevant in connection with this litigation. *See* Revised Consent Protective Order Governing Confidential Documents and Information (“Consent Protective Order”), ECF No. 36, Civil Action No. 13-cv-861. This order provides for procedures to facilitate the disclosure and comparison of certain information that is “Confidential” and “Highly Confidential,” as defined in the Consent Protective Order, from databases and records maintained by Defendants and by the United States. These procedures are also necessary to provide additional protections governing use, access, and storage of the relevant data and data comparisons.

Having considered the Motion to Enter a Second Supplemental Protective Order, and for good cause shown, it is hereby **ORDERED** that:

(1) The United States has developed a matching process (“proposed matching process”) to compare data in the North Carolina State Election Information Management System and the North Carolina State Automated Driver License System (collectively, the “North Carolina databases”) to relevant databases maintained by the following federal agencies: the Department of Defense, the Department of State, and the Department of Veterans Affairs (collectively, the “federal databases”). As used herein, the output of any such database comparison between the North Carolina databases and between the North

Carolina databases and federal databases will be referred to as the “matching process responses.”

(2) On August 21, 2014, the United States provided the proposed matching process to the parties. The parties will continue to discuss whether it is possible to develop a single, common matching process. In September 2014, counsel for the United States shall distribute a matching process to the federal agencies. The federal agencies will thereafter perform database comparisons using the matching process, and will disclose to counsel for all parties the matching process responses of those comparisons.

(3) Certain information contained in the federal databases is subject to limitations on disclosure, such as those set out in the Privacy Act of 1974, 5 U.S.C. § 552a, Confidentiality of Certain Medical Records, 38 U.S.C. § 7332,<sup>1</sup> and the Health Insurance Portability and Accountability Act Privacy Rule, 45 C.F.R. §§ 160.101-.552, 164.102-.106, 164.500-.534. It is the position of the United States that, because of applicable laws and regulations relating to national security and privacy interests, among other considerations and legal objections, no party or counsel in this litigation, including the U.S. Department of Justice, may access the content of the federal databases, and the federal databases will not be produced in this litigation. It is the position of the Defendants that they expressly reserve their right to object to the introduction into evidence of the matching process responses and any expert opinion based on the matching process responses which might be offered by the United States or

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<sup>1</sup> Information protected under 38 U.S.C. § 7332 can only be disclosed after a “John/Jane Doe” motion is filed and there is an *in camera* review of the information by the court to specifically weigh, on a record-by-record basis, the public interest in the information and the need for disclosure against the injury to the individual, to the physician-patient relationship, and to the treatment services. 38 U.S.C. § 7332(b)(2)(D); 38 C.F.R. § 1.490.

any private plaintiff. Defendants also expressly reserve their right to seek the production of the federal databases used by the United States in its proposed matching process referenced above.

(4) Any matching process responses produced pursuant to this order or any future agreement or order shall be designated as “Highly Confidential Information” pursuant to Paragraph 2.1 of the Consent Protective Order. Any matching process responses, any copies thereof, and any information contained therein, produced pursuant to this order or any future agreement or order, shall be distributed to, and used by, only those individuals listed in Paragraph 2.1 of the Consent Protective Order and shall not be disclosed, in any manner whatsoever, to anyone for any other purpose without modification of this Order approved by the Court; except that, for the purposes of the information listed in this Second Supplemental Protective Order, the individuals listed in Paragraph 2.1 of the Consent Protective Order shall be construed to include litigation support personnel at the State Board of Elections and the General Assembly.

(5) Any matching process responses, any copies thereof, and any information contained therein, produced pursuant to this order or any future agreement or order, shall not be published or disseminated to the public in any form, including the internet.

(6) Any matching process responses, any copies thereof, and any information contained therein, produced pursuant to this order or any future agreement or order must be stored at all times in a secure, locked facility maintained by the parties’ attorneys or the parties’ experts. Any such information must be encrypted and password protected prior to transfer between parties or between attorneys, their associates, staff, and experts. The

parties' attorneys and the parties' experts will protect the matching process responses, any copies thereof, and any information contained therein in a manner that ensures that unauthorized persons cannot retrieve, alter, or delete any such information by means of computer, remote terminal, or otherwise.

(7) Any person listed in Paragraph 2.1 of the Consent Protective Order, with the exception of the Court, who is to review any matching process responses produced pursuant to this order or any future agreement or order must sign the Acknowledgment of Protective Order and Second Supplemental Protective Order attached hereto before he or she is given access to such data.

(8) Any documents or court filings in which individual records within the matching process responses are discussed shall be redacted or filed under seal and in a manner consistent with Paragraph 5 of the Consent Protective Order, and the Court's supplemental order governing filings under seal. *See* Supplemental Protective Order, ECF No. 37, 13-cv-861.

(9) Inadvertent or unintentional disclosure of any portion of the matching process responses produced pursuant to this order or any future agreement or order shall not be construed as a waiver, in whole or in part, of the claim that such information is Highly Confidential. If such disclosure is made, the parties and all individuals to whom the disclosure was made shall treat the record, document, or information contained therein as subject to the Consent Protective Order and this Second Supplemental Protective Order from the date of its designation as Highly Confidential.

(10) Any inadvertent, unintentional, or otherwise unauthorized access, use, storage, disposal, disclosure, or loss of any portion of the matching process responses produced pursuant to this order or any future agreement or order, any copies thereof, or the information contained therein is to be reported promptly to the counsel for the United States and counsel for the Defendants. Such report should include the facts and circumstances of the incident including contact information; a description of the incident including approximate time and location; a description of the safeguards in use at the time of the incident (*e.g.*, password protection or encryption); whether any external individuals or organizations (*e.g.*, law enforcement or press) have been contacted or have contacted the party; whether any other reports have been filed, including with local police; and any other pertinent information. The parties shall limit disclosure of the fact that an incident has occurred only to those with the need to know.

(11) Subject to the provisions of Paragraph 2.1 of the Consent Protective Order, nothing in this Discovery Order and Supplemental Protective Order affects the right of the parties' counsel to discuss with their clients and expert witnesses any information contained in the matching process responses produced pursuant to this order or any future agreement or order.

(12) Pursuant to Paragraph 8 of the Consent Protective Order, at the conclusion of the litigation and the termination of any associated appeal rights, the matching process responses produced pursuant to this order or any future agreement or order shall be returned to the party who produced them or securely destroyed by the party who received them within thirty days of that date, except as otherwise provided or required by federal or

state law or unless otherwise agreed by the parties. Each party shall provide the federal agencies, through counsel for the United States, with certification of compliance with Paragraph 8 of the Consent Protective Order within ten days of the time specified in this paragraph of the Consent Protective Order.

IT IS SO ORDERED.

This, the 25th day of September, 2014.

/s/ Joi Elizabeth Peake  
United States Magistrate Judge