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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Leslie Feldman, et al., Plaintiffs, v. Arizona Secretary of State's Office, et al., Defendants.	No. CV-16-1065-PHX-DLR **INTERVENOR-DEFENDANT'S RESPONSE TO THE ORIGINAL PLAINTIFFS AND STATE DEFENDANTS' JOINT STIPULATION AND NOTICE TO PRODUCE STATEWIDE VOTER REGISTRATION DATABASE**

In response to Original Plaintiffs and State Defendants' Joint Stipulation and Notice to Produce Statewide Voter Registration Database Subject to Redaction of Sensitive Information ("Stipulation") (Dkt. 54), Intervenor-Defendant the Arizona Republican Party ("Intervenor-Defendant") files this Response to raise its concerns regarding this Stipulation with the Court. The Stipulation does not seek the Court's required approval of the proposed data protections, does not adequately incorporate the Intervenor-Defendant or Intervenor-Plaintiff Bernie 2016, Inc., and does not appear to

provide sufficient protections for the privileged and confidential information contained in the Statewide Voter Registration Database ("Database"). Intervenor-Defendant has a significant stake in this determination, as the Database contains sensitive, personal information on all voters, including those registered as affiliated with other state parties. Intervenor-Defendant, therefore, requests both that it receive this production as a party to the matter, and that substantial protections on this information—beyond those in the Stipulation's terms— are incorporated to protect the privacy of its members.

I. The Stipulation Is Not Final Until Approved by the Court.

Even though parties in a matter may stipulate to certain discovery terms, the stipulation first must be granted by the court to become effective. *See* LRCiv. 7.1(b)(2), (3) (explaining that when requesting specific relief or a stipulation in a civil case, a separate proposed order must be lodged with the Clerk of the Court). Similarly, a protective order requires Court approval, to prevent the public disclosure of litigation documents and information produced during discovery. *See* Fed. R. Civ. P. 26(c)(1).

Although the Original Plaintiffs and the State Defendants have stipulated to the general terms regarding the production of the Database, the protections involved still requires this Court's approval. The Stipulation, however, does not request any such evaluation or Court order. In addition, it does not provide a mechanism for the Court's approval of the future protective order, to be negotiated by the Original Plaintiffs and State Defendants in accordance with Paragraph 5 of the Stipulation. (Dkt. 54 at 3.)

Before any production can begin, this Court must review and grant the proposed Stipulation and enter a protective order to ensure the sensitive information within the Database is actually protected. Intervenor-Defendant simply asks that no action be taken regarding the production until the Court grants or denies both these orders.

II. Intervenors Are Not Subject to the Stipulation, But Should Receive the Information and Follow the Stipulation's Restrictions.

As currently drafted, neither the Intervenor-Defendant nor Intervenor-Plaintiff Bernie 2016, Inc. is named as a party to the Stipulation. (Dkt. 54.) Instead, Paragraph 5 of

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the Stipulation's terms states that the Original Plaintiffs and State Defendants simply agree to negotiate a protective order regarding the production of the Statewide Voter Registration Database "with all other parties to the litigation." (Dkt. 54 at 3.) This promise of future inclusion is helpful, but insufficient. The Intervenors are now parties to this action. They are entitled to this discovery production just as the signers of the Stipulation are and should be required to comply with the Stipulation's terms to protect the Database's confidential information.

As parties to this matter, both the Intervenor-Defendant and Intervenor-Plaintiff are entitled to the same production of the Statewide Voter Registration Database under Fed. R. Civ. P. 26 as the original parties. The Database information will be necessary for the Intervenor-Defendant to refute the Plaintiffs' and Intervenor-Plaintiff's allegations regarding the placement of polling locations, and it would be inappropriate to allow the original parties to use this information, but not the Intervenors. However, there is as yet no provision for the production of the Database to either Intervenor.

In addition, even if the parties to the Stipulation agree to provide the Database production to the Intervenors, there is no section requiring compliance with the confidentiality terms of the Stipulation or the future protective order. The sensitive nature of this information demands that any party who receives the Database production must be subject to both the Stipulation and protective order, and must abide by the restrictions and protections created by these documents. It is irrelevant whether the Original Plaintiff and State Defendants maintain the confidentiality of the Database information if any other party who receives it has no such confidentiality requirements. Therefore, the Intervenor-Defendant asks that, if the Court grants the Stipulation and/or future protective order, it explicitly require that (a) the Database production be distributed to any intervening parties and (b) the production to any party is governed by the terms of the Stipulation and protective order.

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III. The Stipulation Does Not Appropriately Protect Sensitive Information in the Database.

The Statewide Voter Registration Database contains substantial amounts of private, detailed data about millions of Arizonans. It includes names, addresses, telephone numbers, occupations, party affiliations, voters' year of birth, and voting history. *See* A.R.S. § 16-168(C). Much of this information is exempt and barred from public disclosure under either A.R.S. § 16-168(F) or the Arizona Address Confidentiality Program pursuant to A.R.S. § 16-153 and A.R.S. §§ 41-161, *et seq*. This information, if distributed to non-parties or deployed for purposes other than this litigation, could be used to harass or intimidate voters based on party affiliation or voting history. Public disclosure would also jeopardize the safety of Arizonans enrolled in the Arizona Address Confidentiality Program, including public officials, law enforcement officers, and individuals protected by orders of protection or injunctions against harassment. The sensitive nature of the information and the significant, related statutory requirements for privacy both demand strict protections on the use of the Database production as disclosed in this matter.

Intervenor-Defendant, however, does not believe the existing restrictions in the Stipulation are sufficient to provide the necessary level of protection for the information. In addition to the Stipulation's terms, any protective order should specify that the production is solely to be used for this case and for no other purpose. This will prevent the inadvertent or intentional misuse of the data. The production should also be for attorneys' and experts' eyes only, to minimize the number of individuals reviewing the data to ensure the information remains as confidential as possible. By including these additional restrictions in its protective order, the Court would properly balance the legitimate need for this information to prosecute and defend this case with Arizona voters' right to privacy.

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IV. Conclusion

Even if entered by this Court, the Original Plaintiffs and State Defendants' Stipulation does not appropriately cover all the parties to this action, nor does it include sufficient protections for the sensitive data within the Statewide Voter Registration Database. Intervenor-Defendant therefore respectfully requests this Court incorporate these additional provisions into an official Protective Order regarding the Statewide Voter Registration Database.

DATED this 16th day of May, 2016.

Respectfully submitted,

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By: */s/ Sara J. Agne*

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2016, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a notice of electronic filing to the EM/ECF registrants.

/s/ Margie Johnson

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