UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JARROD STRINGER, et al., Plaintiffs,	§	
v.	§	C.A. 5:16-cv-00257-OLG
CARLOS H. CASCOS, IN HIS OFFICIAL CAPACITY AS THE TEXAS SECRETARY OF STATE and STEVEN C. McCRAW, IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE TEXAS DEPARTMENT OF PUBLIC SAFETY, Defendants.	§	

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER

Plaintiffs respectfully request that the Court deny Defendants' Motion for Protective Order (Motion) for the reasons set forth below.

As a preliminary matter, while Defendants assert that Plaintiffs' 30(b)(6) notices to the Secretary of State (SOS) and the Department of Public Safety (DPS) violate Federal Rule of Civil Procedure 30(d)(3) as well as Rule 26(c), Defendants do not—and indeed, cannot—specifically allege that the noticed depositions are "in bad faith" or otherwise requested "in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party," as required by the rules. Consideration of the Motion should thus be limited to arguments arising from Rule 26, which fail for the myriad reasons that follow.

I. Plaintiffs' 30(b)(6) Topics are Relevant and Proportional

Rule 26 permits discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case" without regard to whether that information is ultimately admissible. Fed. R. Civ. P. 26(b)(1). As Defendants' own case law confirms,"[r]elevance is still to be 'construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on' any party's claim or defense." *XTO*

Energy, Inc. v. ATD, LLC, No. CIV 14-1021, 2016 WL 1730171, at *17 (D.N.M. Apr. 1, 2016) (alternations in original; citation omitted).[1]

Here, as Exhibit 1 and 2 to the Motion make clear, Plaintiffs seek information related to their claims that DPS and SOS are violating the "motor voter" provisions of the National Voter Registration Act (NVRA), as well as the Equal Protection Clause of the Fourteenth Amendment, by failing to register voters who renew and/or update their driver's licenses online with DPS, thereby subjecting those voters to different treatment than similarly situated voters who renew and/or update their driver's licenses with DPS in person. Defendants' motor voter policies and practices for in-person and online transactions are obviously relevant to Plaintiffs' claims and requested remedies, yet Defendants resist exploring these issues in deposition because these topics are allegedly "not proportional" to the overall litigation.[2] *See* Mot. at 5-9.

This court has been clear: "[T]he amendments to Rule 26 do not alter the burdens imposed on the party resisting discovery." *Beneplace, Inc. v. Pitney Bowes, Inc.*, No. 15-CV-065, 2016 WL 880204, at *3 (W.D. Tex. Mar. 7, 2016).[3] Defendants must show why the requested discovery is irrelevant, overly broad, or unduly burdensome or otherwise objectionable, through particular and supported objections. *Clockwork IP LLC v. Parr Mgmt. LLC*, No. 14-CV-03879,

[1] Given the broad scope of allowable discovery, the court in *XTO Energy* only limited discovery in that case as it pertained to an unenforceable third-party subpoena or information that was demonstrably outside of the plaintiffs' control — two situations that are not present in the instant litigation. *See id*. at *23 & *26.

[2] Defendants argue that the successful objections in the case *Sanders v. Howmedica Osteonics Corp.* mirror Defendants' objections in their Motion for Protective Order. 2016 WL 1337559 (M.D. Ala. Apr. 5, 2016); Mot. at 4. However, *Sanders* is wholly distinguishable from this case. In *Sanders*, the court denied the plaintiff's Motion to Compel because the plaintiff requested non-relevant, additional information that her own expert witnesses did not need in order to testify on the "nature of the alleged defect" at issue in the case. 2016 WL 1337559, at *2 (M.D. Ala. Apr. 5, 2016). Furthermore, the court in *Sanders* noted that the plaintiff "undercut" her claims that the additional information was relevant because she filed her Motion to Compel for this information "many months" after making expert disclosures and tendering her expert witnesses for depositions. *Id*. In direct contrast, the Parties in this case are just beginning discovery, Plaintiffs' expert witness disclosure deadline has not passed, and Plaintiffs have only received initial disclosures and responses to Plaintiffs' first requests for production from Defendants. Plaintiffs are conducting 30(b)(6) depositions, along with requesting to stipulate facts, before conducting substantial discovery in order to more efficiently seek information that Plaintiffs claim is relevant to the root issues of this case as the discovery period progresses.

[3] Notably, after refusing to limit the scope of discovery in any significant way, U.S. Magistrate Judge Mark Lane assessed fees and costs against the party resisting discovery of clearly relevant information. *Id*. at *11.

2016 WL 3350703, at *3 (N.D. Tex. Mar. 21, 2016) (granting motion to compel); *Gondola v. USMD PPM, LLC*, No. 15-CV-411, 2016 WL 3031852, at *4 (N.D. Tex. May 27, 2016) (overruling 28 out of 38 objections, sustaining 9 only in part, and requiring a more limited scope only for social media documents); *Mir v. L-3 Commc'ns Integrated Sys., L.P.*, No. 3:15-CV-2766-B, 2016 WL 4427488, at *10 (N.D. Tex. Aug. 22, 2016).

Rule 26(b)(1) sets forth specific factors that go to proportionality: (1) the importance of the issues at stake in the action; (2) the amount in controversy; (3) the parties' relative access to relevant information; (4) the parties' resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden of the proposed discovery outweighs its likely benefit.

Consideration of these factors demonstrates that the topics Plaintiffs seek to explore in deposition are proportional. ***First***, the case concerns issues of the utmost importance — the Plaintiffs' right to vote, a "fundamental political right, because preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). ***Second***, Defendants have exclusive access to the information sought, which concerns topics like internal voter registration policies and procedures and protocol for DPS transactions. ***Third***, as noted above, the deposition topics go to the heart of this litigation, including claims that Defendants violate the NVRA by failing to register voters who renew licenses and/or update information online, and that Defendants' differential treatment of voters who interact with DPS online is unconstitutional. ***Finally***, there is minimal burden on allowing Plaintiffs to explore these issues with designated representatives of Defendants who are already being deposed. Any conceivable burden on Defendants cannot outweigh the benefit to Plaintiffs by allowing full and thorough explanation of these topics. Indeed, as Defendants themselves have admitted, given some of the technical issues implicated in the case, depositions of agency experts is likely the most efficient way for Plaintiffs to obtain this information.

II. Defendants' Objections to 30(b)(6) Notices are Improper

Rather than engage with the specific proportionality factors, Defendants offer conclusory statements, including that information sought concerning online renewal transactions and in-person transactions are "not related" to Plaintiffs' claims, but amounts to an "impermissible fishing expedition," *see* Mot. at 5-9, and that "[p]reparing SOS's 30(b)(6) witness to address [certain] topics is duplicative, unduly burdensome, and does not provide the best evidence" because Plaintiffs seek similar information from DPS, *see* Mot. at 6. Not only are such broad objections improper, they are wholly without merit.

To start, Plaintiffs' allegations concern renewal ***and*** change-of-address transactions. Compl. ¶ 63-65.[4] Defendants have no ability to object to discovery based on their desire to narrow the scope of this litigation; instead, the scope of discovery is based on both parties' claims and defenses. The scope of information sought through the Releases is not overbroad in light of the claim and defense at issue Moreover, any limitation would be particularly improper at this early stage of the litigation, before the deadline for Plaintiffs to amend their pleadings and while a motion to dismiss remains pending. In addition, as a practical matter, the process for renewing one's driver's license and changing one's address is combined in a single procedure on the DPS website. Compl. ¶ 36. It is hard to imagine how Defendants could bear any significant burden by answering questions on driver's license renewals, given that the deponents will already be providing information about the intertwined process for change-of-address transactions.[5]

Nor can Defendants credibly object to information related to in-person driver's license transactions. Indeed, this information is central to Plaintiffs' proposed remedy: Plaintiffs ask that eligible voters who complete online transactions are registered to vote just like similarly situated

[4] Plaintiffs also provided pre-suit notice to Defendants regarding both online renewal and change-of-address applications, pursuant to 52 U.S.C. § 20510(b).

[5] These same arguments apply to Defendants' contention that the definition of "driver's license application" should be limited to only include Class C individual licenses.

voters who complete in-person transactions. Without information about in-person transactions, Plaintiffs cannot effectively demonstrate that the same simultaneous voter registration and seamless update of the registration rolls which occurs following in-person transactions is possible online. And, again, Defendants cannot argue that they would bear any significant burden by providing deponents with information about in-person transactions too. In a case arising under the NVRA, Plaintiffs simply ask that representatives for DPS and SOS have basic knowledge about processes central to implementing the NVRA.

Defendants also object to topics 3(a) and 6 of the 30(b)(6) notice as to SOS. But as the State's chief election officer, with an explicit statutory duty to supervise voter registration at DPS, bare interest by United States in prior litigation by private party did not warrant application of preclusion, *Scott v. Schedler*, 771 F.3d 831, 839 (5th Cir. 2014), the SOS cannot seriously maintain that "information about DPS" is categorically burdensome and "not . . . the best evidence." *See* Mot. at 6, ¶ 20. Nor can these topics be deemed duplicative, because Plaintiffs seek information from two separate entities that function independently from each other, with different policies, practices and procedures. For instance, in *Southwestern Bell Telephone, L.P.*, the court allowed the Chief Executive Officer of a small company "to be subject to two depositions where one is taken in a representative capacity and the other in an individual capacity," over objections that *those* depositions would be duplicative. 2009 WL 8541000 at *34 (W.D. Tex. Sept. 30, 2009). If two depositions of one person were not "duplicative," Defendants' objections cannot be sustained.

III. Defendants are Not Entitled to a Blanket Protective Order

To obtain a protective order, the party opposing disclosure must establish "good cause," *Southwestern Bell Telephone, L.P. v. UTEX Communications Corp.*, 2009 WL 8541000 at *2 (W.D. Tex. 2009), through "a particular and specific demonstration of fact as distinguished from

stereotyped and conclusory statements." *In re Terra Int'l, Inc.*, 134 F.3d 302, 306 (5th Cir.1998) (citation omitted). But, even though Plaintiffs agreed to "execute a protective order with Defendants to protect sensitive information, and invite[d] the State to send us a draft protective order for our consideration," Mot. Ex. 4 at 4, Defendants filed their Motion instead, seeking a blanket protective order based on broad and vague allegations. The Court should deny Defendants' improper request, and instead instruct Defendants to work with Plaintiffs to execute an agreement to duly protect confidential voter data and other sensitive information.

Dated: September 23, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September, 2016, a true and correct copy of the foregoing *Plaintiffs' Response to Defendants' Motion for Protective Order* was served upon counsel of record via the Court's ECF system.

/s/ Cassandra Champion
Cassandra Champion