IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JARROD STRINGER, ET AL., *Plaintiffs,* V. 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.*	§ § § § § § § § § § § §	NO. 5:16-CV-00257

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

Defendants, Carlos H. Cascos, in his official capacity as Texas Secretary of State, and Steven C. McCraw, in his official capacity as Director of the Texas Department of Public Safety, ("Defendants") submit this reply in support of their motion for protective order (Doc. 24). That motion seeks protection from several topics identified for depositions of the Texas Office of the Secretary of State ("SOS") and Texas Department of Public Safety ("DPS") under Federal Rule of Civil Procedure 30(b)(6). Plaintiffs filed a response in opposition to Defendants' motion on September 23, 2016 (Doc. 25), and Defendants address the points raised in that response as follows:

I. Relevance

Under Federal Rule of Evidence 401, "[e]vidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; *and*, the fact is of consequence in determining the action." Plaintiffs claim to have changed the addresses on their Texas driver licenses online. Plaintiffs do not claim to have renewed their driver licenses, either online or in person at a DPS location. Thus, discovery related to driver license renewals is not relevant to Plaintiffs' claims.

That is, information about renewing driver licenses is not "of consequence in determining" whether Plaintiffs' rights were violated when they changed the addresses on their driver licenses online.

Yet, Plaintiff's insist that their "allegations concern renewal ***and*** change-of address transactions," Response in Opposition to Protective Order at 4. As a consequence, Plaintiffs claim that it is incumbent upon the Defendants to prepare institutional witnesses to testify about both of these topics. But merely claiming that the law is being violated—without claiming that such violation impacts a particular Plaintiff in a lawsuit—does not meet the threshold requirement of Article III standing. *See, e.g.,* Reply in Support of Motion to Dismiss at 5-6 (citing, *inter alia*, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016), *as revised* (May 24, 2016) (collecting cases)). Obviously, Plaintiffs cannot obtain discovery with respect to claims they lack standing to assert. While Plaintiffs make oblique references to the Rules' broad allowance for discovery, they cannot show that irrelevant information—which includes information about legal harms that the Plaintiffs do not even claim they have suffered—falls within this ambit. Thus, information about driver license renewals is not a proper topic for a deposition in this cause of action.

Similarly, Plaintiffs claim to have changed their addresses online; they do not claim to have changed their addresses in person at a DPS location. Thus, for the same reasons renewals are not a proper deposition topic, neither are changes of address made in person at a DPS location. This is because discovery about changes of address initiated in person at DPS locations will not assist in determining whether the Plaintiffs' rights were violated when they initiated such changes online. *E.g.,* FED. R. CIV. P. 401. It is not the Defendants who wish to "limit the scope of this case," as Plaintiffs assert at page 4 of their response to the motion for protective order. Rather, it is Plaintiffs who lack standing to inquire into matters outside the scope the harm they claim to have suffered.

In an attempt to save their impermissible fishing expedition, Plaintiffs offer a poorly-considered reference to the Equal Protection Clause of the United States Constitution. They assert

that Defendants are "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." Response to Motion for Protective Order at 2. But the Equal Protection Clause is only implicated where a plaintiff alleges that she was treated differently from someone who is similarly situated to her in all relevant respects. *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992); *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). Plaintiffs have not alleged the existence of other individuals who changed their addresses online, did not mail in a signed voter registration form, but had their voter registration information updated. Instead, they simply claim that the way the Defendants processed their online changes of address violated the NVRA. As a result, while Plaintiffs may properly obtain discovery about online changes of address, this does not give them carte blanche to inquire into the inner workings of all Defendants' voter registration processes and procedures. This includes in person changes of address.

Finally, Plaintiffs claim that Defendants cannot "credibly object to information related to in-person driver's license transactions," because "this information is central to Plaintiffs' proposed remedy." Response to Motion for Protective Order at 4. To repeat this assertion is to demonstrate its frivolity—the proper scope of discovery is limited by the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and applicable local rules and case law. It is ***not*** defined by a particular litigant's desired relief.

II. Proportionality

Given the millions of registered voters and licensed drivers in Texas, discovery in this action is likely to be significant even without including information about transactions that are irrelevant to Plaintiffs' claims. This further emphasizes that, even if information about renewals or in-person address changes were relevant to Plaintiffs claims, it is not proportional to the harm the four Plaintiffs here claim to have suffered.

Plaintiffs are also mistaken that they may properly to depose *both* DPS and SOS 30(b)(6) representatives about the very same topics. Courts must limit the frequency or extent of discovery if they determine that: "(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1)." FED. R. CIV. P. 26(b)(2)(C). Here, DPS is the "more convenient, less burdensome," source from which to obtain information about DPS policies and procedures. *Id.* It is therefore wholly proper to require that Plaintiffs obtain any discovery ultimately permitted about DPS from DPS, and not SOS. Similarly, under the rules, any discovery ultimately permitted about SOS should be had from SOS, and not DPS. This is even more so given the incredibly large amount of information Plaintiffs have requested.

III. Scope of Protective Order

Defendants do not seek a "blanket protective order," as Plaintiffs assert. Indeed, Defendants have always made clear that they will prepare institutional witnesses to testify under Rule 30(b)(6) as to those deposition topics not objected to, and on topics with respect to which the Court overrules their objections, if any. They simply seek a protective order to avoid irrelevant, burdensome, and non-proportional discovery, as set forth in their Motion for Protective Order.

Plaintiffs' professed willingness to "work with" Defendants "to execute an agreement to duly protect confidential voter data and other sensitive information," Response in Opposition to Motion for Protective Order at 6, is encouraging. But the parties clearly have wildly different views of what discovery is relevant and proportional to the Plaintiffs' claims in this case. As a result, until the Court determines what information is subject to discovery, it is not practicable to enter into an agreement governing how such information may and may not be used.

Finally, Defendants note that the Court's ruling on the proper scope of depositions under Rule 30(b)(6) will inform the proper scope of discovery in this entire case. Indeed, the deposition topics the Court deems relevant and proportional as to institutional deponents naturally informs the relevant topics for discovery from those institutions themselves. Defendants will use the Court's ruling on their Motion for Protective Order as a guide for responding to Plaintiffs' other discovery requests, unless otherwise ordered by the Court.

Dated this 5th day of October, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this the 5th day of October, 2016 a true and correct copy of the foregoing was filed electronically with the Court and delivered via the CM/ECF system to all counsel of record.

/s/Anne Marie Mackin
Assistant Attorney General