

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-CV-2321-JLK-KMT

COMMON CAUSE OF COLORADO,
on behalf of itself and its members;
MI FAMILIA VOTA EDUCATION FUND; and
SERVICE EMPLOYEES INTERNATIONAL UNION,
on behalf of itself and its members,

Plaintiffs,

v.

BERNIE BUESCHER, in his official capacity as Secretary of State
for the State of Colorado,

Defendant.

**STIPULATION REGARDING USE OF TECHNICAL AND SECURITY DATA
PRODUCED BY THE SECRETARY OF STATE**

Plaintiffs, Common Cause of Colorado, Mi Familia Vota Education Fund, and Service Employees International Union, and Defendant Colorado Secretary of State, (“the Secretary”), by and through his attorneys, the Colorado Attorney General’s Office, and undersigned counsel, hereby stipulate and agree as follows:

1. The parties acknowledge that in the course of this litigation, that the Secretary will provide Plaintiffs with records and information that involve certain technical and security aspects of Colorado’s statewide voter registration database (“SCORE”). The parties agree that the public release of information that could pose a security risk to the integrity of the SCORE database itself should be avoided. At the

same time, the Secretary has indicated that the specific designation of all of the documents that could potentially be designated as confidential technical or security material would be unwieldy and that the burden of so doing would outweigh the potential benefits. Therefore, in lieu of a formal stipulated protective order governing confidential technical or security material, the parties have agreed, pursuant to the terms of this Stipulation, to take reasonable measures and exercise due diligence to maintain as confidential and not publicly disclose any and all documents, data and information that are either specifically designated by the Secretary as “CONFIDENTIAL-TECHNICAL OR SECURITY MATERIAL” or that Plaintiffs reasonably and in good faith believe could contain “CONFIDENTIAL-TECHNICAL OR SECURITY MATERIAL.”

2. Documents, data, and information may be designated or treated as “CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL” if they contain information that if publicly disclosed, could pose a security risk to the integrity of the SCORE system. The type of material that may be properly designated or treated as “CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL,” if its disclosure could pose a security risk to the integrity of the SCORE system, includes: SCORE’s technical make-up, certain diagrams, certain plans, certain software, certain firmware, certain hardware, passwords, password rotation schedules, logins and/or user names, IP addresses for the system or system components, source code, detailed network diagrams operating system version levels, specific configuration details, system

security information, system security testing, system security plans, and system security procedures.

3. The parties agree that the Secretary shall designate as “CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL” only those documents which he believes in good faith to contain information, the public disclosure of which could pose a security risk to the integrity of the SCORE system. If Plaintiffs wish to publicly disclose documents or information about which they are in doubt as to whether it contains “CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL,” Plaintiffs shall inform the Secretary of this fact and of the document or data at issue. The Secretary will review the document or information and determine, within 3 business days, whether the document should be designated as “CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL.” If the Secretary does not elect to make such designation within 3 business days, Plaintiffs may publicly disclose the document or information without further action.

4. The parties agree that if and when disputes arise regarding the designation of any material as “CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL,” such disputes shall be resolved, if possible, by agreement of the parties to this action. If the parties are unable to agree to a resolution, they may submit the material to the Court for an *in camera* review and determination of whether the designation is appropriate. The parties may also submit information to the Court explaining their position, which may include affidavits as the parties deem appropriate. However, in the

absence of a ruling of the Court to the contrary, the Secretary's designation of "CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL" shall stand.

5. The parties may disclose "CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL" in whole or in part, for the purposes of this litigation only, and only to those listed below:

- a. The parties and representatives of the parties in this lawsuit;
- b. counsel who represent the parties in this litigation, and the personnel who are directly employed by the attorney for the purpose of assisting with, or working on, this action;
- c. any person who is to testify as a witness either at a deposition or court proceeding in this action for the purpose of assisting in his/her preparation and any other person to whom the dissemination of the document is deemed necessary by any party in preparation for any proceeding before the Court;
- d. expert witnesses and consultants retained and identified by the parties in this lawsuit;
- e. the Court and its officers, including stenographic reporters engaged in such proceedings as are necessarily incidental to the preparation or trial of this lawsuit; and

6. Such information shall not be disclosed to the persons referenced in subparagraphs (c) and (d) until such persons have been provided with a copy of this Stipulation and have agreed in writing to be bound thereto by execution of a written agreement to that effect. At a minimum, the written agreement must include a statement that the person has been provided a copy of this Stipulation, agrees to be bound by it, and agrees that this Court shall have personal jurisdiction over such person regardless of the individual's domicile for the purposes of enforcing this

Stipulation. All such agreements shall be retained by Counsel disclosing the information and shall be subject to *in camera* review by the Court if good cause for review is demonstrated by opposing counsel. Plaintiffs shall provide the Secretary with a copy of the written agreements upon request by the Secretary.

7. The parties and counsel agree that this Court shall retain jurisdiction over them and any person to whom such “CONFIDENTIAL—TECHNICAL OR SECURITY MATERIAL” is disclosed to the extent necessary to enforce the terms of this Stipulation.

8. This Stipulation shall not prohibit or restrain any party from performing the necessary tasks to prepare for trial or otherwise pursue or defend this action; however, any re-disclosure or communication of such information covered by this Stipulation, except as specifically allowed by this Stipulation for the purposes of this litigation only, is strictly prohibited.

9. The object of this Stipulation is that no such information be disclosed to individuals not identified herein or be used for any purpose other than in relation to this litigation, including in connection with any other issue, dispute, litigation, or charge against any of the parties whether currently pending or contemplated in the future.

10. Counsel to the parties agree to advise, instruct and supervise all associates, staff, employees of counsel, as well as the parties themselves, their

employees, associates and staff to keep such identifiable information confidential as required by this Stipulation.

11. This Stipulation shall not terminate at the conclusion of the litigation and shall continue forward unless modified by the Court or the parties.

Respectfully submitted, this 13th day of August, 2009.

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