

MEMORANDUM OF UNDERSTANDING

The following memorandum of understanding ("MOU") is entered into by and between the United States Department of Justice ("DOJ") and Secretary of State Phil Wilson, acting in his official capacity as the Secretary of State ("SOS") of the State of Texas.

WHEREAS, in the absence of this MOU, DOJ would, pursuant to 42 U.S.C. §§ 1974b and 1974d, seek to compel the production of the current Texas voter registration list, including, *inter alia*, voters' driver license numbers, social security numbers, and other personal information, from the SOS in order to assess compliance by the State of Texas with the procedures for voter registration at motor vehicle licensing and other state agencies, as well as the list maintenance provisions of the National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg *et seq.*; and

WHEREAS, Texas law, specifically TEX. ELEC. CODE §§ 13.004(c); 18.066(b), provides that information, including social security numbers and driver license numbers, furnished on a voter registration application is confidential and is not subject to public disclosure under the Texas Public Information Act, TEX. GOVT. CODE chapter 552; and

WHEREAS, the SOS has an interest, duty and desire to ensure compliance with these and other statutory provisions that are intended to protect the privacy of Texas residents; and

WHEREAS, DOJ and SOS acknowledge that DOJ is entitled to receive and that SOS is required to provide the requested information under the relevant statutes and pursuant to the Supremacy Clause of the United States Constitution; and

WHEREAS, neither DOJ nor the SOS consider DOJ's request under 42 U.S.C. § 1974b to be a request for public information for purposes of the Texas Public Information Act; and

WHEREAS, neither DOJ nor the SOS consider SOS's compliance with this request to be a release of public information to a member of the public for purposes of Tex. Elec. Code § 13.004(c), Tex. Elec. Code § 18.066(b) or the Texas Public Information Act; and

WHEREAS DOJ and SOS are desirous of resolving this matter without the need for litigation which, in the absence of this MOU, both DOJ and the SOS believe would be imminent;

ACCORDINGLY, DOJ and SOS have engaged in good faith negotiations and have agreed to the terms of this Memorandum of Understanding, as follows:

1. SOS shall immediately make available to DOJ the full statewide voter registration list including, where available, the following information: each registered voters' full name, address, full date of birth, social security number, driver license number, race, voter status (*i.e.*, active or inactive), and voting history. SOS shall produce such data in electronic format on a CD-ROM or DVD formatted in consultation and full agreement with DOJ.

2. DOJ shall use the voter registration list information to assess the State's compliance with the federal voting laws, including, but not limited to, the NVRA.

3. Pursuant to 42 U.S.C. § 1974c, unless otherwise ordered by a court of the United States, neither the Attorney General, nor any employee of DOJ, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to 42 U.S.C. § 1974, or any reproduction or copy, except to Congress and any committee thereof, or in the presentation of any case or proceeding before any court or grand jury; provided, however, that in the event that DOJ receives a request to provide or disclose this information to anyone outside of DOJ, then DOJ will make reasonable efforts to inform the SOS of this request, and provide SOS with the opportunity to take whatever action SOS considers necessary to ensure that this information remains confidential and is not disclosed to the public.

4. The DOJ shall retain exclusive possession and control over any and all voter registration records and information during the term of its use of the information, and shall then destroy the records and information pursuant to appropriate and approved DOJ procedures for destruction of sensitive data.

IN WITNESS WHEREOF, the parties have executed this MOU as of the date set forth below. Each party represents that its respective signatory is duly authorized to execute this MOU on its behalf.

FOR THE OFFICE OF THE TEXAS SECRETARY OF STATE

Phil Wilson

Date: 5/7/08

By: The Honorable Phil Wilson
Title: Texas' Secretary of State

FOR THE DEPARTMENT OF JUSTICE:

Christopher Coates

Date: 5/13/08

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