

**FILED**

Marilyn Burgess  
District Clerk

JAN - 3 2023

Time:

4:00 PM

By

Angellia Dozier

Deputy

p-11  
ConFX

CAUSE NO. 2022-79328

ERIN ELIZABETH LUNCEFORD,

*Contestant,*

v.

TAMIKA "TAMI" CRAFT,

*Contestee.*

IN THE DISTRICT COURT

164<sup>th</sup> JUDICIAL COURT

HARRIS COUNTY, TEXAS

**CONFIDENTIALITY AND PROTECTIVE ORDER REGARDING PRODUCTION OF  
CONFIDENTIAL INFORMATION**

Before the Court is the joint motion of the Contestee and non-party Harris County for the Entry of a Confidentiality and Protective Order ("Protective Order"). Based on the Contestee's and non-party Harris County's submissions and the record in this matter, the Court finds that disclosure and discovery activity in this action are likely to involve production of confidential, sensitive, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted.

After careful consideration, it is **ORDERED** that the motion is **GRANTED**, and the Court **ORDERS** the following:

**1. Confidential Information**

"Confidential Information" means any information of any type, kind, or character that is designated as "Confidential" by a producing party or nonparty, whether it be a document, information contained in a document, information disclosed during discovery, or otherwise.

**2. Qualified Persons**

"Qualified Persons" means:

- a. retained counsel for the parties in this litigation and their respective staff (e.g., the term "staff" includes third parties previously identified in writing to all parties, non-

party Harris County, and this Court, to whom it is reasonably necessary to disclose the information for this litigation. Should any party or non-party Harris County object in writing within three (3) business days of the receipt of the identification of any staff, then that third party is not permitted to be treated as a Qualified Person unless and until the Court permits such participation by written order. All staff must sign, prior to any disclosure of Confidential Information to such person, a copy of Exhibit A agreeing to be bound by the terms of this Protective Order prior to the staff accessing Confidential Information;

- b. experts (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, prior to any disclosure of Confidential Information to such person, have signed a copy of Exhibit A agreeing to be bound by the terms of this Protective Order prior to the expert or consultant accessing Confidential Information. For those experts who are not independent experts (including experts who are members of the Harris County Republican Party or Harris County Democratic Party or are otherwise affiliated with Contestant or Contestee), then the procedures identified in subparagraph (a) above regarding the identification of staff must be followed;
- c. the Harris County Attorney's Office and Harris County Elections Administrator's Office;
- d. this Court and its staff;
- e. court reporters and their staff;

- f. professional vendors to whom disclosure is reasonably necessary for this litigation and who, except for copy vendors, have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and
- g. the author or recipient of a document containing Confidential Information or a custodian or other person who otherwise possessed preexisting knowledge of the information.

### 3. Designation Criteria

#### a. *Confidential Information.*

- i. Confidential Information is information concerning Texas residents that is sensitive, private, personal, or confidential, including, but not limited to, social security numbers, driver's license numbers, personal identification numbers issued by the Department of Public Safety, dates of birth, and other similar personally identifiable information restricted from public access pursuant to Section 13.004(c) of the Texas Election Code or the Texas Public Information Act, Chapter 552 of the Texas Government Code.

b. *Nonconfidential Information.* Confidential Information shall not include information that either:

- i. is in the public domain at the time of disclosure, as evidenced by a written document;
- ii. becomes part of the public domain through no fault of the recipient, as evidenced by a written document;
- iii. the receiving party can show by written document was in its rightful and lawful possession at the time of disclosure; or

- iv. lawfully comes into the recipient's possession subsequent to the time of disclosure from another source without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

#### **4. Use of Confidential Information**

All Confidential Information provided by any party or nonparty producing party in the course of this litigation shall be used by Qualified Persons solely for the purpose of preparation, trial, and appeal of this litigation and for no other purpose and shall not be disclosed except in accordance with the terms of this Order.

#### **5. Marking of Documents**

Documents provided in this litigation may be designated by the producing person or by any party as Confidential Information by marking each page of the documents so designated with a stamp indicating that the information is "Confidential." The designation should be made in a fashion or form that is conspicuous yet allows the Confidential Information to remain legible. In lieu of marking the original of a document, if the original is not provided, the designating party may mark the copies that are provided. Originals shall be preserved for inspection.

#### **6. Disclosure at Depositions**

Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a nonparty may be designated by any party as Confidential Information by indicating on the record at the deposition that the testimony is "Confidential" and is subject to the provisions of this Order.

Any party or producing person also may designate information disclosed at a deposition as Confidential Information by notifying all parties in writing not later than 14 days of receipt of the

final transcript of the specific pages and lines of the transcript that should be treated as Confidential Information thereafter, or within 7 days of the close of fact discovery in this action, whichever is earlier. Each party shall attach a copy of each such written notice to the face of the transcript and each copy of the transcript in that party's possession, custody, or control. All deposition transcripts shall be treated as Confidential Information for a period of 14 days after initial receipt of the transcript, or for 7 days following the close of fact discovery in this action, whichever is earlier.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as Confidential Information with blank, consecutively numbered pages being provided in a non-designated main transcript. The separate transcript containing Confidential Information shall have page numbers that correspond to the blank pages in the main transcript.

Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Confidential Information pursuant to this Protective Order, but such right of exclusion shall be applicable only during periods of examination or testimony during which Confidential Information is being used or discussed.

#### **7. Disclosure to Qualified Persons**

##### *a. To Whom.*

i. *Confidential Information:* Unless otherwise ordered by the Court or permitted in writing by the designating party or nonparty, Confidential Information shall not be disclosed to anyone other than Qualified Persons defined by Section 2 of this Order.

b. *Retention of Copies During This Litigation.* Any Confidential Information produced in this litigation that is provided to Qualified Persons shall be maintained only at the

office of such Qualified Person and only necessary working copies of any such documents shall be made. To the extent Confidential Information is stored electronically by a Qualified Person, it must be stored in a manner consistent with the restrictions on access imposed by this Order.

*c. Disclosure to Nonqualified Persons.*

- i. All Qualified Persons shall refrain from making extrajudicial statements to the media or other nonqualified persons if the Qualified Person knows or reasonably should have known that the statement is derived from Confidential Information under this Order. This does not prohibit Qualified Persons from stating without elaboration or characterization information that is contained in the public record or nonconfidential under Section 3 of this Order.

**8. Unintentional Disclosures**

Documents unintentionally produced without designation as Confidential Information later may be designated and shall be treated as Confidential Information from the date written notice of the designation is provided to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential Information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

**9. Documents Made Available for Inspection Prior to Designation**

In the event documents are produced for inspection prior to designation, the documents shall be viewed only by counsel to the parties during inspection. Confidential Information shall be marked prominently "Confidential" by the producing party.

#### **10. Consent to Disclosure and Use in Examination**

Nothing in this order shall prevent disclosure beyond the terms of this Order if each party designating the information as Confidential Information consents to such disclosure or if the Court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in this order prevent any counsel of record from utilizing Confidential Information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the Confidential Information, irrespective of which party produced such information.

#### **11. Challenging the Designation**

a. *Confidential Information.* A party shall not be obligated to challenge the propriety of a designation of Confidential Information at the time such designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Confidential Information, the parties shall first try to resolve the dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who designated the document or information as Confidential Information. The designating party shall then have 14 days to move the Court for an order preserving the designated status of the disputed information. The disputed information shall remain Confidential Information unless the Court orders otherwise. Failure to move for an order shall constitute a termination of the status of such item as Confidential Information.

b. *Qualified Persons.* In the event that any party in good faith disagrees with the disclosure of particular Confidential Information to any person, it must object within five business

days after notification of the proposed disclosure of Confidential Information to that person. The parties shall first try to resolve the dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party shall have 21 days from the date it learns of the disclosure or planned disclosure of Confidential Information to the disputed person to move the Court for an order denying the disputed person (a) status as a Qualified Person, or (b) access to particular Confidential Information. The objecting party shall demonstrate that disclosure to the disputed person would expose the objecting party to a substantial risk of harm. Upon the timely filing of such a motion, no disclosure of Confidential Information shall be made to the disputed person unless the Court enters an order preserving Qualified Person status or allowing the disclosure.

#### **12. Manner of Use in Proceedings**

In the event a party wishes to use any Confidential Information in affidavits, declarations, briefs, memoranda of law, or other papers filed in this litigation, the party shall do one of the following: (1) with the consent of the producing party, file only a redacted copy of the information; (2) where appropriate (e.g., in connection with discovery and evidentiary motions) provide the information solely for in camera review; or (3) file such information under seal with the Court consistent with the sealing requirements of the Court.

Nothing in this Order shall limit the parties' rights or ability to offer evidence at a hearing or trial. The manner of using any Confidential Information at a hearing or trial and the status of Confidential Information resulting from any such use will be determined by the Court.

#### **13. Filing Under Seal**

The Clerk of this Court is directed to maintain under seal all documents, transcripts of deposition testimony, answers to interrogatories, admissions, and other papers filed under seal in



this litigation that have been designated, in whole or in part, as Confidential Information by any party to this litigation consistent with the sealing requirements of the Court.

#### **14. Return of Documents**

Not later than 30 days after conclusion of this litigation and any appeal related to it, and to the extent consistent with any obligation to maintain records consistent with any law or court order, any Confidential Information, all reproductions of such information, and any notes, summaries, or descriptions of such information in the possession of any of the persons specified in paragraph 2 (except subparagraph 2(c)) shall be returned to the producing party or destroyed, except as this Court may otherwise order or to the extent such information has been used as evidence at any trial or hearing. Compliance with this requirement shall be confirmed to the producing party or nonparty in writing on or before the 30th day after the conclusion of this litigation and any appeal related to it. Notwithstanding this obligation to return or destroy information, counsel may retain attorney work product, including document indices, so long as that work product does not duplicate verbatim substantial portions of the text of any Confidential Information.

#### **15. Ongoing Obligations**

Insofar as the provisions of this Protective Order, or any other protective orders entered in this litigation, restrict the communication and use of the information protected by it, such provisions shall continue to be binding after the conclusion of this litigation, except that (a) there shall be no restriction on documents that are used as exhibits in open court unless such exhibits were filed under seal, and (b) a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of this, or any other, protective order.

#### **16. Duty to Ensure Compliance**

Parties or counsel for parties and producing nonparties shall ensure that their respective experts, vendors, consultants, and persons signing the Protective Order at the request of such parties or counsel, shall ensure that these Qualified Persons have read the Protective Order and understand its terms.

**17. Waiver**

Pursuant to applicable law, nothing in this Protective Order constitutes an admission by any party that Confidential Information disclosed in this case is relevant or admissible. Each party maintains its right to object to the use or admissibility of all Confidential Information pursuant to applicable law and rules.

**18. Modification and Exceptions**

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this Court modifying this Protective Order.

It is SO ORDERED this 2<sup>nd</sup> day of January, 2023

David Perpin  
Presiding Judge

Exhibit A

CAUSE NO. 2022-79328

ERIN ELIZABETH LUNCEFORD,	§	IN THE DISTRICT COURT
	§	
<i>Contestant,</i>	§	
	§	
v.	§	164 <sup>th</sup> JUDICIAL COURT
	§	
TAMIKA "TAMI" CRAFT,	§	
	§	
<i>Contestee.</i>	§	HARRIS COUNTY, TEXAS

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Agreed Confidentiality and Protective Order Regarding Production of Confidential Information that was issued by the 164<sup>th</sup> Judicial District Court of Harris County, Texas in the case of Erin Elizabeth Lunceford v. Tamika "Tami" Craft, 2022-79328. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the 164<sup>th</sup> Judicial District Court of Harris County, Texas for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

Printed name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Date: \_\_\_\_\_