

Amendment infringement. This prima facie showing requires the party asserting the privilege to demonstrate that enforcement of the discovery requests will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or “chilling” of, the members' associational rights. If the party asserting the privilege can make this prima facie showing, the evidentiary burden will then shift to the opposing party to demonstrate an interest in obtaining the disclosures it seeks which is sufficient to justify the deterrent effect on the free exercise of the constitutionally-protected right of association.

To implement this standard, a court must balance the burdens imposed on individuals and associations against the significance of the interest in disclosure. This balancing may take into account (1) the importance of the litigation; (2) the centrality of the information sought to the issues in the case; (3) the existence of less intrusive means of obtaining the information; and (4) the substantiality of the First Amendment interests at stake.

For reasons discussed at the previous hearings, this Court finds that the respondents have made out the requisite prima facie showing with respect to the two documents in question. The documents consist of e-mail communications between Tom Hofeller, an employee of the Republican National Committee, and Rich Heffley, a consultant to the Republican Party of Florida. The Florida court has determined that the Republican National Committee and the Republican Party of Florida comprise a single “association” for purposes of applying the associational privilege, and that the disclosure of internal communications within this association (or between members of the association and their paid consultants) would chill the exercise of First Amendment rights by members of that association. This Court finds that determination to be a reasonable construction of the privilege, and will not second-guess it.

This Court has now proceeded to the second part of the *Perry* analysis by applying the requisite balancing test to each of the documents that was submitted for *in camera* review. On the basis of that review, the Court finds the privilege applicable to all of the documents, except the two referenced above. As to those two documents, there is no real argument that the political strategies of the “association” are implicated in any meaningful fashion. The communications simply involve Mr. Hofeller thanking Mr. Heffley for his “efforts.” No “internal political strategies” would be revealed by disclosure of this document. On the other hand, the documents do arguably support plaintiff’s main contention in the underlying litigation, that Mr. Heffley made “efforts” on behalf of the respondents and other Republicans to improperly influence the redistricting process.

There is certainly a benign interpretation of the e-mail as well (as a matter of social convention, people are often “congratulated” for bringing about results they had little or nothing to do with), but plaintiffs are not bound to accept that explanation. The fact that the facial language of the e-mail so directly supports plaintiffs’ contentions in the underlying litigation is sufficient, in this Court’s opinion, when weighed against the negligible disclosure of protected internal strategies, to tip the balancing test heavily in favor of disclosure.

Accordingly, the Court hereby orders disclosure to plaintiffs of documents bearing Bates stamp numbers RNC 000063 and RNC 000662, no later than 10:00 a.m. on Wednesday, June 4, 2014. The parties should treat the documents consistently with the procedures set forth by the Florida Supreme Court for treatment of the documents produced by Data Targeting, Inc.

SO ORDERED.



Stuart G. Nash
Judge
Signed in chambers

Dated: June 3, 2014

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Docketed on: June ____, 2014