

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM WHITFORD, et al.,

Plaintiffs,

v.

No. 15-cv-421-jdp

BEVERLY R. GILL, et al.,

Defendants;

and

THE WISCONSIN STATE ASSEMBLY,

Intervenor-Defendant.

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**STIPULATED MOTION TO ENTER PROTECTIVE ORDER**

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In accordance with Federal Rule of Civil Procedure 26(c), Plaintiffs William Whitford, et al., Defendants, Beverly R. Gill, et al., and Intervenor-Defendant, the Wisconsin State Assembly, stipulate to, and move the Court to enter, the proposed protective order attached to this motion as Exhibit 1 (“Proposed Protective Order”). In support of this motion, Plaintiffs state as follows:

1. The parties have served various discovery requests that call for the production of information and documents including confidential, personal, and/or other sensitive information that, if produced without protection from further disclosure, may cause unnecessary damage and injury to the parties or to others.

2. To facilitate discovery and the production of requested documents and information, without subjecting the parties producing documents and information in this action, or third parties, to the type of potential harm described in this motion, the parties stipulate to, and respectfully request that the Court enter, the Proposed Protective Order.

3. The Proposed Protective Order is based on the template prepared by the Western District of Wisconsin Bar Association, modified for the specific facts and legal issues in this action.

WHEREFORE, for the reasons stated above, Plaintiffs William Whitford, et al., Defendants, Beverly R. Gill, et al., and Intervenor-Defendant, the Wisconsin State Assembly, respectfully request that this Court enter the Proposed Protective Order.

Dated: March 29, 2019.

Respectfully submitted,

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**PROTECTIVE ORDER**

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At the request of Plaintiffs William Whitford, et al., Defendants Beverly R. Gill, et al., and Intervenor-Defendant the Wisconsin State Assembly, this Protective Order is entered to facilitate efficient discovery. It is not necessary for the parties or their attorneys to sign copies of this Protective Order for it to take effect or for the parties to be bound by its terms during the course of the proceeding. The Court expects the parties to meet and confer in good faith regarding any additional confidentiality provisions that may be appropriate beyond the standard terms provided here.

1. Documents or discovery responses containing Confidential information, as that term is defined below, are referred to as "Protected Documents." Except as otherwise indicated below, all information, materials, documents, electronically stored information, testimony, and discovery responses designated by the producing party's attorney as

“Confidential” are Protected Documents and are entitled to confidential treatment as described below. The designation of a document as “Confidential” is a good-faith certification by an attorney that the document contains material qualifying as “Confidential” as defined in this Order.

2. The designation of Protected Documents will be made by placing or affixing on the documents or materials the designation “Confidential” in a manner that will not interfere with legibility.

3. Information or documents that are available to the public may not be designated “Confidential” absent agreement or further Order of the Court.

3. *“Confidential.”* Confidential information consists of information in written, oral, electronic, graphic/pictorial, audiovisual, or other form, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise:

- a. which is designated as such in writing by the producing party; and
- b. which contains confidential personal, political, or financial information, including but not limited to sensitive non-public information, including posts or comments by a third party to a party’s private social media account, posts or comments by a third party to “closed” social media groups, and the identity or identifying information of a third party in posts or comments to a party’s private social media account or “closed” social media groups. Confidential information shall also include, to the extent it is non-public, the

identity of a party's political associates or members of political organizations and the political strategy of a party or third-party organization with which a party associates.

4. At any time after the delivery of Protected Documents, counsel for the party or parties receiving the Protected Documents may challenge the confidentiality designation of all or any portion thereof by providing written notice thereof to counsel for the party disclosing or producing the Protected Documents. If the parties are unable to agree as to whether the confidentiality designation of discovery material is appropriate, the party or parties receiving the Protected Documents may file a motion to remove the contested confidentiality designation on any Protected Document. The party or parties producing the Protected Documents shall have the burden of establishing that the disputed Protected Documents are entitled to Confidential treatment. All disputed Protected Documents are entitled to Confidential treatment pursuant to the terms of this Order until and unless the Court determines otherwise.

5. In the event a producing party elects to produce Protected Documents for inspection, the producing party has no obligation to mark documents with confidentiality designations in advance of the initial inspection. For purposes of this initial inspection, all documents produced will be considered as having been marked "Confidential" and will be treated as such by the inspecting party. Thereafter, on selection of specified documents for copying by the inspecting party, the producing party shall mark the copies of such documents as may contain protected subject matter with the appropriate confidentiality marking at the time the copies are produced to the inspecting party.

6. Protected Documents and any information contained therein shall be used solely for this litigation. Protected Documents and any information contained therein shall not be used or shown, disseminated, copied, or in any way communicated to anyone for any purpose whatsoever, except as provided for below.

7. “Confidential” information shall be disclosed only to the following persons:

- a. Outside counsel of record in this action for the party receiving the Confidential information;
- b. Employees of the party receiving the Confidential information on a need-to-know basis in connection with analyzing or providing input on matters relating to the above-captioned litigation;
- c. Employees of outside counsel assigned to and necessary to assist in the preparation and trial of this action;
- d. Outside independent experts retained to assist outside counsel in the preparation and trial of this action;
- e. Vendors (including graphics and jury consultants) retained by counsel as litigation support;
- f. Court reporters retained to transcribe testimony; and
- g. The Court and Court personnel.

8. This Order does not prevent a producing party from sharing its own Confidential information with any person or entity for any purpose.

9. Before any disclosure of Confidential information pursuant to paragraph 7(d) is made to any independent expert, the following must occur:

- a. The individual to whom disclosure is made must be given a copy of this Order, and the provisions of this Order must be explained to the individual to whom disclosure is to be made by an attorney; and
- b. The individual to whom disclosure is to be made must execute a written statement under oath, in the form attached hereto as Exhibit A, that he or she has received a copy of this Order, is familiar with the terms therein, and will abide by them.
- c. Each outside independent expert shall be identified to the other party prior to making any disclosure of Protected Documents at least five (5) business days prior to disclosure, including a copy of the individual's current curriculum vitae, current address and a description of all relationships between expert and either party during the previous four (4) years. If a producing party objects to disclosure of Protected Documents to the proposed expert, the producing party must notify the other parties in writing before the expiration of the five (5) business day period. All objections must be reasonable and made in good faith. The parties agree to promptly confer and use good faith to resolve any such objection. If the parties are unable to resolve the objection, the objecting party may file a motion for a protective order seeking to prevent the proposed disclosure with the Court within ten (10) business days of the identification of the proposed expert. If no written objection is made

within the five (5) business day period, or if no motion is filed within the ten (10) business day period, the proposed disclosure may proceed. But if a motion is filed, no disclosure shall occur until the objection is resolved by agreement or Court order.

10. Any document or thing containing or embodying Confidential information that is to be filed in this action shall be filed under seal in accordance with the procedures of this Court.

11. Deposition transcripts or portions thereof that contain protected information may be designated as Confidential. Confidentiality designations shall be made either on the record or by written notice to the other party within fifteen (15) business days of receipt of a copy of the transcript by the party whose Confidential material is involved. Unless otherwise agreed, deposition transcripts will be treated as Confidential during the fifteen (15) business day period following receipt of a copy of the transcript. Either party shall have the right to exclude from attendance at the deposition, during such time as the protected information is to be disclosed, every individual excluding the deponent, the Court Reporter, and those individuals authorized under this Protective Order to receive the protected information.

12. Inadvertent or unintentional production of documents or information containing Confidential information which are not designated as such shall not be deemed a waiver of a claim for confidential treatment. Material produced without designation of Confidential may be so designated after production or testimony if the producing party provides replacement materials bearing appropriate designations and

notifies the receiving party promptly after becoming aware of the failure of the producing party to timely make such designation. If discovery material is designated Confidential after production or testimony, the receiving party promptly shall instruct any person or entity to which it provided such discovery material other than those authorized to receive protected information so designated under this Order, including but not limited to its employees, agents, and third parties, to return the discovery material to the receiving party, and shall make reasonable efforts to collect any copies of such Confidential material. The receiving party shall affix the "Confidential" designation to any copies that have been provided to individuals authorized to receive protected information so designated under this Order or shall instruct authorized individuals who received such information to maintain the protected material as "Confidential."

13. Documents, things, or deposition testimony requested or obtained through subpoenas served by the parties in connection with this litigation may be designated by the subpoenaed party as Confidential information within the meaning of this Protective Order and, if so, the information so designated shall be governed by the terms of this Protective Order.

14. The production of privileged or work-product protected documents, electronically stored information or other information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

15. The term "copy" as used herein means any photographic, mechanical, or

computerized copy or reproduction of any document or thing, or any verbatim transcript, in whole or in part, of such document or thing.

16. Nothing in this Order shall be construed to affect the use of any document, material, or information at any trial or hearing. A party that intends to present or that anticipates that another party may present protected information at a hearing or trial shall bring that issue to the Court's and parties' attention by motion or in a pretrial memorandum without disclosing the protected information. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial or hearing.

17. After termination of this litigation, the provisions of this Order shall continue to be binding, except with respect to those documents and information that become a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Protected Documents for enforcement of the provisions of this Order following termination of this litigation.

18. Within ninety (90) days of the termination of this action, including any appeals, by dismissal, judgment, or settlement, counsel for the party or parties receiving Protected Documents shall return the Protected Documents to the counsel for the party or parties disclosing or producing the Protected Documents or destroy the Protected Documents. Each party shall provide a certification of such return or destruction within this ninety (90) day period. However, outside counsel shall be entitled to retain a set of documents filed with the Court, all correspondence and depositions, including exhibits, generated in connection with this action. Moreover, this destruction/return obligation

excludes outside counsel's email archives. The party or parties receiving the Protected Documents may keep their attorney work product which refers to, relates to, or incorporates any Protected Documents.

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**EXHIBIT A - ACKNOWLEDGEMENT**

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I, \_\_\_\_\_, have reviewed the Protective Order entered in the above case and am a person as defined in paragraph 7(d). I agree to abide by the terms contained in the Protective Order. I hereby submit to the jurisdiction of the above captioned court for enforcement of that Protective Order. I understand that all Protected Documents shall not be disclosed or used, pursuant to terms of this Protective Order, and that all such information must be returned to the producing party or destroyed following the resolution of this case.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_