

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

WILLIAM WHITFORD, *et. al.*,

Plaintiffs,

v.

15-cv-421-bbc

GERALD NICHOL, *et. al.*,

Defendants.

**STIPULATION REGARDING 30(B)(6) DEPOSITIONS OF THE LEGISLATIVE
TECHNOLOGY SERVICES BUREAU AND WISCONSIN STATE SENATE AND
ASSEMBLY**

Plaintiffs William Whitford, et al. (collectively, “Plaintiffs”), defendants Gerald Nichol, et al. (collectively, “Defendants”), and non-parties the Wisconsin State Senate (“Senate”) and Wisconsin State Assembly (“Assembly”) (collectively, “Legislature”) and the Legislative Technology Services Bureau (“LTSB”), by and through their respective undersigned counsel, hereby agree and stipulate as follows:

1. On February 12, the Plaintiffs served a notice of deposition of the Senate, Assembly, and LTSB. The Plaintiffs also served a subpoena pursuant to Fed. R. Civ. P. 30(b)(6) and 45 on the Senate, Assembly, and LTSB, requiring each of them to appear for a deposition and to produce certain materials identified in the subpoena.
2. A true and correct copy of the Notice of Deposition and Subpoena to each of the Senate, Assembly, and LTSB is attached to this Stipulation.
3. Generally, the subpoenas seek the production of information about documents Plaintiffs believe are contained on three computers issued to the offices of Senate Majority Leader Scott Fitzgerald and then-Speaker of the Assembly Jeff

Fitzgerald for use by their staff (Tad Ottman and Adam Foltz) and legislative consultant (Joe Handrick) for the purpose of legislative redistricting in 2011.

4. The Wisconsin Legislature owns the computers issued to the Senate, Assembly, and their respective members and members' staff. LTSB provides technical support to those computers pursuant to Wis. Stat. § 13.96. The information and records contained in those computers belong to the office to which they are issued. *See* Wis. Stat. §§ 19.33, 19.35(6).

5. The information and documents referred to in Topics 1–9 of the Plaintiffs' subpoenas, and the three computers identified in the Plaintiffs' subpoenas, were the subject of discovery in *Baldus, et al. v. Brennan, et al.*, case no. 11-cv-562, which was adjudicated in the U.S. District Court for the Eastern District of Wisconsin.

6. During post-trial discovery in the *Baldus* case, the Court issued an order requiring the LTSB to turn over to the *Baldus* plaintiffs and their counsel the internal hard disk drives and external hard disk drives from the three computers used by the Legislature and its consultants. Those hard disk drives, in turn, were provided to an independent computer forensic consultant, Mark Lanterman of Computer Forensic Services ("CFS"), who created an image of each hard disk drive that could be searched for continuing post-trial discovery in the *Baldus* case. After CFS created images of the hard disk drives, it returned the hard disk drives to counsel for the *Baldus* plaintiffs, who then returned them to counsel for the LTSB in March 2013.

7. Counsel for the Legislature and LTSB has informed counsel for the Plaintiffs that after the conclusion of the *Baldus* litigation in 2013, the three computers used for the 2011 legislative redistricting were released from the litigation hold placed on

them during the *Baldus* litigation, and that in accordance with the LTSB's standard procedures, the computers were decommissioned. The hard drives for the redistricting computers were ultimately destroyed along with other decommissioned hard drives in early 2015, before this action was filed.

8. As a result, the only known remaining copies of the hard disk drives from the three computers used by the Legislature and its consultant for the 2011 redistricting are the images of those hard disk drives in the custody of CFS.

9. Counsel for the Legislature and LTSB has informed the Plaintiffs' counsel that the Legislature objects to the subpoenas to the extent that they seek to take depositions of corporate representatives of the Senate and Assembly because those bodies are not subject to the 30(b)(6) deposition procedure, and further contends that the Senate and Assembly do not possess corporate knowledge of information known to individual members and their staff. The Senate and Assembly do not object to Plaintiffs obtaining the documents referenced in the subpoenas; over the Legislature's objection, the *Baldus* Court determined the Legislature did not possess a legislative privilege with respect to those documents.

10. Counsel for the Plaintiffs informed counsel for the Legislature and LTSB that they seek to take the 30(b)(6) depositions for the purpose of establishing the authenticity of certain files contained on the hard disk drives from the three computers used for legislative redistricting, and to obtain admissions regarding the authenticity of those files and their associated metadata.

11. Counsel for the Plaintiffs, Defendants, and non-parties Legislature and LTSB met and conferred on the Legislature's and LTSB's objections and the fact that the

hard drives associated with the three aforementioned redistricting computers had been decommissioned and destroyed. Given that the Plaintiffs, through their 30(b)(6) deposition subpoenas, seek to discover information about electronic documents and data on those hard drives, and that the only known copy of those hard drives resides with CFS, and considering the Legislature's objections to the application of Fed. R. Civ. P. 30(b)(6) to testimony from those bodies about those documents, counsel for the parties have resolved their disagreement by reaching this Stipulation.

12. Mark Lanterman of CFS will provide a declaration in accordance with 28 U.S.C. § 1746 establishing the chain of custody of the images of the hard disk drives from the three legislative redistricting computers, including the data on those images, from the time that CFS took possession of the hard disk drives in 2013 through the date of his declaration. The Plaintiffs will use their best efforts to provide the declaration no later than March 18, 2016, subject to Mr. Lanterman's availability and ability to produce the declaration by that date.

13. The Plaintiffs shall make Mr. Lanterman available for a deposition by counsel for the LTSB and/or the Defendants. If Mr. Lanterman is not available or able to produce his declaration by March 18, or if the respective schedules of counsel for the interested parties and non-parties do not permit for Mr. Lanterman to be deposed by the April 1, 2016 discovery cutoff, the undersigned counsel agree that Mr. Lanterman shall be made available for deposition after April 1, 2016.

14. Within three days of the completion of a deposition of Mr. Lanterman, counsel for Defendants shall inform the Plaintiffs' counsel if the Defendants will object

to the authenticity of the images of the hard disk drives in the custody of CFS, including the authenticity of any information, files, or data on those images.

15. The Plaintiffs shall provide to the Defendants any information, files, or data on the images of the hard disk drives that they intend to use at trial of this action.

16. Upon request, the Plaintiffs shall provide to the Defendants copies of the images of the hard disk drives currently in the custody of CFS.

17. The parties acknowledge that allowing for discovery of these documents does not waive the Defendants' right to raise evidentiary objections to the documents and that the Defendants' decision not to contest the authenticity of these documents does not waive any other evidentiary objections to the admission of these documents as evidence.

18. The Plaintiffs will withdraw their 30(b)(6) deposition subpoenas to the Senate and Assembly, and the Senate and Assembly shall not be required to respond to, or comply with, those subpoenas.

19. The LTSB shall present a witness for deposition on March 11, 2016, who will be prepared to testify about the topics listed in the subpoena, and who will produce documents relating to the decommissioning of the three redistricting computers.

So stipulated this 18th day of March, 2016

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