

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WILLIAM WHITFORD, et al.

Plaintiffs,

v.

Case No. 3:15-CV-00421-jdp

BEVERLY R. GILL, et al.,

Defendants;

and

THE WISCONSIN STATE ASSEMBLY,

Intervenor-Defendant.

DECLARATION OF JOSHUA P. ACKERMAN

I, Joshua Phares Ackerman, hereby declare as follows:

1. I am over eighteen years of age and am competent to testify as to the matters set forth in this declaration based upon my own personal knowledge.

2. I am an attorney at Bartlit Beck LLP, counsel for Speaker Robin J. Vos.

3. On May 9, 2019, Ruth Greenwood, counsel for the Plaintiffs, informed the Speaker's counsel via email that the Plaintiffs oppose this motion.

4. On May 10, 2019, Brian Keenan, counsel for the Wisconsin Election Commission Defendants, informed me via email that the Wisconsin Election Commission Defendants take no position on this motion.

5. Attached as Exhibit A is a true and correct copy of a letter dated May 9, 2019, from Ruth Greenwood to, among others, Kevin St. John, Adam Mortara, Taylor Meehan, and me.

6. Attached as Exhibit B is a true and correct copy of a subpoena directed at Robin J. Vos, sent on May 9, 2019, from Ruth Greenwood to, among others, Kevin St. John, Adam Mortara, Taylor Meehan, and me.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 10, 2019 in Chicago, Illinois.



Joshua P. Ackerman

Exhibit A



May 9, 2019

Kevin St. John
Bell Giftos St. John LLC
5325 Wall Street, Suite 2200
Madison, WI 53718-7980
kstjohn@bellgiftos.com

Adam K. Mortara
Joshua P. Ackerman
Taylor A.R. Meehan
Bartlit Beck LLP
54 W. Hubbard Street
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adam.mortara@bartlitbeck.com
joshua.ackerman@bartlitbeck.com
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By U.S. Mail and Email

Re: Plaintiffs Non-Party Subpoena for Wisconsin Speaker Robin Vos
***Whitford v. Gill*, No. 3:15-cv-0421 (W.D. Wis.)**

Counsel,

On February 13, 2019 we wrote to Attorney St. John and requested that he accept service of a subpoena for deposition and production of documents by Wisconsin State Assembly Speaker Robin Vos. By phone call, and then letter, on February 20, 2019 Attorney St. John acknowledged that he represents Speaker Vos, but he refused to accept service of the subpoena. Speaker Vos's office at the Wisconsin State Capitol also refused to accept service of the subpoena when service was attempted on March 18, 2019.

As you are aware, the Plaintiffs subsequently moved to compel Speaker Vos's deposition and production of documents. With that motion, we filed a copy of the subpoena to Speaker Vos for which both Attorney St. John and Speaker Vos's office had refused to accept service. Last Friday, May 3, the District Court granted Plaintiffs' motion to compel Speaker Vos's deposition, and further granted Plaintiffs' motion to compel Speaker Vos to produce documents identified in categories 1-3, 6-9, and 15. Since Attorney St. John has acknowledged that he represents Speaker Vos, we assume that he now will agree to accept service of the subpoena with which Speaker Vos is under a federal court's order to comply. If Attorneys Mortara, Ackerman, and Meehan also represent Speaker Vos, we similarly assume that they will accept service of the subpoena.

Accordingly, we enclose a subpoena for Speaker Vos to appear for a deposition and to produce documents. The enclosed subpoena is revised from the subpoena attached to Plaintiffs' motion to compel in two ways: 1) the date for the deposition has been changed to May 29, 2019; and 2) it includes only those production requests to which the Court has ordered Speaker Vos to respond, with each of the previously numbered document categories (1-3, 6-9, and 15) identified in its equivalent but renumbered category. Please inform us immediately if you will not accept service so that we may take up that issue with the District Court, or if Speaker Vos has separate counsel to whom we should direct our request for acceptance of service of the subpoena.

Absent an order from the District Court or another court with appellate jurisdiction, the District Court's May 3 Order remains in effect. We expect Speaker Vos to produce responsive documents no later than May 22, and we intend to conduct the deposition on May 29, 2019. Absent court order, Speaker Vos's failure to produce responsive documents by May 22, and to appear at the May 29, 2019 deposition, will constitute contempt of court.

Sincerely,



Ruth M. Greenwood
73 W Monroe St. Suite 302
Chicago IL 60615
rgreenwood@campaignlegal.org
(202) 560-0590

Encl.

Cc. (all by email, w/encl.)

Peter G. Earle
Mark P. Gaber
Annabelle E. Harless
J. Gerald Hebert
Clayton P. Kowski
Brian P. Keenan
Karla Z. Keckhaver
Douglas M. Poland
Alison E. Stites

Exhibit B

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

WILLIAM WHITFORD, et al.

Plaintiff

v.

BEVERLY R. GILL, et al.

Defendant

Civil Action No. 15-cv-421-jdp

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: ROBIN J. VOS

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (Rathje Woodward LLC, 10 E Doty St, Suite 507, Madison WI 53703) and Date and Time (Wednesday, May 29, 2019 at 9:00AM)

The deposition will be recorded by this method: videographic and stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See Exhibit A

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: May 9, 2019

CLERK OF COURT

OR

Handwritten signature of the attorney

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Plaintiffs, William Whitford, et al.

Ruth M. Greenwood, 73 W Monroe St, Suite 302, Chicago IL 60603, rgreenwood@campaignlegalcenter.org, (312) 561 5508

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 15-cv-421-jdp

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT A

DOCUMENTS TO BE PRODUCED BY ROBIN J. VOS

On or before May 22, 2019, please produce the following documents, communications, electronically stored information, objects and/or materials (collectively “documents” or “materials”) that are in your actual or constructive possession, custody, or control, and permit the inspection, copying, testing and/or sampling of the materials, that were created or used during the period June 1, 2010 to September 30, 2018:

1. All documents, including but not limited to email, concerning any analyses, data, plans, procedures, memos and/or reports used by state legislative staff, state legislators, and/or any consultants or experts in the planning, development, negotiation, drawing, revision, or redrawing of the maps codified in 2011 Wisconsin Act 43 or any other potential state assembly plan that was not adopted.
2. All documents, including but not limited to email, concerning the objectives and/or motives relied on by – or available to – state lawmakers, their staff and/or any consultants or experts in the planning, development, negotiation, drawing, revision, or redrawing of the maps codified in 2011 Wisconsin Act 43 or any other potential state assembly plan that was not adopted.
3. All documents, including but not limited to email, concerning the objective facts that legislative staff and/or any experts or consultants references, used or relied upon – or had available to them – in the planning, development negotiation, drawing, revision, or redrawing of the maps codified in 2011 Wisconsin Act 43 or any other potential state assembly plan that was not adopted.
4. Copies of any and all documents prepared by or transmitted by the Republican National Committee, that relate or refer to legislative redistricting, including but not limited to the document attached hereto as Exhibit 1.
5. Copies of any and all communications, including email, that relate or refer to legislative redistricting, reflecting or referring to any of the following people or email addresses:
 - a. Tom Hofeller, thofeller@rnchq.org
 - b. Dale Oldham, doldham@rnchq.org
 - c. Mike Wild, mwild@rnchq.org
 - d. John Phillippe, jphillippe@rnchq.org
 - e. Leslie Rutledge, lrutledge@rnchq.org
6. Any and all materials reflecting or relating or referring to the April 2010 Republican National Committee’s GOP Redistricting Conference, including any and all notes, summaries, minutes, agendas, papers, documents, data, computer files, CDs, training materials, or any other written or electronic material prepared for, distributed at, created at, or otherwise related to that conference.
7. Any and all documents reflecting or relating or referring to the Redistricting Majority Project, commonly referred to as “REDMAP.”

8. Any and all documents relating or referring to communications the Republican Party of Wisconsin has had with any current or former Republican Wisconsin State Assembly member or candidate about the impact Act 43 would have on Assembly elections across the State of Wisconsin as a whole or in particular Assembly districts from 2010 to the present.

Redistricting Essentials

CONSOLIDATING THE RESULT OF THE 2010 ELECTION

November 12, 2010

Exhibit 1

I. Timeline:

- a. On November 12th, there are only 78 days until the 2010 Decennial Census data becomes available and the redistricting begins.
- b. **Now that we had a spectacular election outcome, it's time to make sure the Democrats cannot take it away from us in 2011 and 2012**

II. Technology/Data:

- a. You must have identified all the political data you need to draw the lines and to prevail in any litigation.
- b. You need to identify the source of all required data and make provisions to collect what additional data is required. Primary elections will be required in some states for Voting Rights Act issues. Particular emphasis should be placed on elections involving minority versus non-minority contests – even including county and local elections were appropriate. This underscores the need for a legal strategy (see below).
- c. **You need to complete work on your election history precinct-level database as quickly as possible and be prepared to incorporate the results of the 2010 election into your redistricting database.**
- d. All the stakeholders in your state need to identify what software system they will use and what hardware is required to host it. Will public funds be available? Will other resources be required from GOP sources?

III. Legal Preparations:

- a. Most states will have litigation of some type.
- b. Litigation is expensive. Will litigation be paid for using public or private sources, or both?
- c. Litigation could even start right now, directly after the elections. Is funding available?
- d. **You should already have a legal strategy and access to experienced redistricting counsel.**
- e. Your redistricting legal record has already begun. Avoid misstatements in public or emails: (Keep it simple, such as “We want a FAIR process that follows all the requirements of the law.”)

IV. Training:

- a. The RNC can train you on the use of Maptitude for Redistricting, but you will need to pay the travel expenses to come to Washington, DC.
- b. CD's with the training materials from the April 2010 RNC's GOP Redistricting Conference are available on request.
- c. **If you have questions, please call us at the RNC. That's what we're here for.**

Tom Hofeller	Redistricting Coordinator	(202) 863-8816 or (703) 623-0764	thofeller@rnchq.org
Dale Oldham	Redistricting Counsel	(202) 863-8323 or (803) 237-0586	doldham@rnchq.org
Mike Wild	Redistricting Deputy	(202) 863-8783 or (202) 309-1529	mwild@rnchq.org
John Phillippe	Chief Counsel	(202) 863-8638 or (202) 863-8702	jphillippe@rnchq.org
Leslie Rutledge	Associate Counsel	(202) 863-8638 or (202) 863-5109	lrutledge@rnchq.org

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