

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.

**BRIEF IN SUPPORT OF SPEAKER ROBIN J. VOS'S
EMERGENCY MOTION TO STAY ENFORCEMENT
OF THIS COURT'S MAY 3, 2019 ORDER**

On May 3, 2019, this Court issued an order granting in part the Plaintiffs' motion to compel Speaker Vos to sit for a deposition and to produce certain categories of documents. ECF No. 275 (the "May 3, 2019 Order").

Speaker Vos respectfully requests that the Court stay enforcement of its May 3, 2019 Order while the Speaker seeks mandamus relief from the Court of Appeals for the Seventh Circuit and, if necessary, relief from the Supreme Court.

An emergency stay is necessary while the Speaker seeks relief from this Court's order because the Plaintiffs have threatened to seek contempt

sanctions against him in less than two weeks, even though trial is more than two months away. Specifically, Plaintiffs stated that, in their view, “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.” May 9, 2019 Letter from R. Greenwood to K. St. John, A. Mortara, et al. (attached as Exhibit A to Ackerman Declaration). (On May 9, 2019, counsel for Plaintiffs advised that they oppose this motion for stay. *See* Ackerman Declaration ¶ 3.)

Speaker Vos is entitled to a stay while he seeks relief. A stay of an order pending review of a mandamus petition is appropriate when: (1) the stay applicant has made a strong showing of likely success on the merits; (2) the applicant will be irreparably injured absent the stay; (3) the other parties will not suffer prejudice as a result of the stay; and (4) the public interest favors a stay. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Each of these elements is present here.

First, for the reasons stated in Speaker Vos’s Opposition to the Plaintiffs’ Motion to Compel, ECF No. 264, in the mandamus petition the Speaker is filing on May 10, 2019 in the Seventh Circuit, and in Judge Griesbach’s dissent, Speaker Vos believes this Court erred in granting the Plaintiffs’ motion to compel Speaker Vos’s deposition and production of related documents.

Second, Speaker Vos will be irreparably injured absent a stay: he will either have to face contempt proceedings or submit to discovery despite his

claims of legislative immunity. Neither of these harms can be undone. And both are particularly unwarranted given the well-established doctrine that legislators possess legislative privilege and immunity and that the Supreme Court may imminently hold that the Plaintiffs' claims are nonjusticiable.

Third, a stay will not cause Plaintiffs prejudice. This matter is not set to go to trial until mid-July. There will be ample time, if necessary, for the Plaintiffs to depose the Speaker after he has had an opportunity to seek relief from the May 3, 2019 Order. The Wisconsin Election Commission Defendants did not take a position on the Plaintiffs' motion to compel, ECF No. 263, or on this motion, *see* Ackerman Declaration ¶ 4, and will suffer no prejudice.

Fourth, the public interest favors a stay. The Speaker should not be distracted from his duties to the people of Wisconsin by being required to testify until he has had an opportunity to fully litigate his claims of legislative privilege. The purpose of legislative privilege is "to enable and encourage a representative of the public to discharge his public trust with firmness and success," and thus serves a public, not private interest. *Tenney v. Brandhove*, 341 U.S. 367, 373–74 (1951) (internal quotation omitted). Further, because this Court's May 3, 2019 Order implicates important federalism concerns by ordering a high-ranking state official to sit for a deposition despite enjoying legislative immunity and privilege, comity considerations strongly favor a stay.

For the foregoing reasons, Speaker Vos respectfully requests that this Court stay its May 3, 2019 Order until he has had an opportunity to seek relief from the Seventh Circuit and, if necessary, the Supreme Court.

May 10, 2019

BARTLIT BECK LLP

/s/ Adam K. Mortara
Adam K. Mortara, SBN 1038391
Joshua P. Ackerman
Taylor A. R. Meehan
54 W. Hubbard Street
Chicago, IL 60654
Ph. 312-494-4400
Fax 312-494-4440
adam.mortara@bartlitbeck.com
joshua.ackerman@bartlitbeck.com
taylor.meehan@bartlitbeck.com

BELL GIFTOS ST. JOHN LLC

/s/ Kevin St. John
Kevin St. John, SBN 1054815
5325 Wall Street, Suite 2200
Madison, WI 53718-7980
Ph. 608-216-7990
Fax 608-216-7999
kstjohn@bellgiftos.com

Attorneys for Speaker Robin J. Vos