

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MISSISSIPPI  
SOUTHERN DISTRICT–SOUTHERN DIVISION

PAM TOUCHARD

PLAINTIFF

VS

CAUSE NO.: 1:21-CV-00168-TBM-RPM

GEORGE COUNTY MISSISSIPPI SCHOOL DISTRICT,  
AND JOHN DOES 1-10

DEFENDANTS

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**DEFENDANT’S MOTION FOR PROTECTIVE ORDER–EXTRAORDINARY RELIEF**

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Comes Now, Defendant George County Mississippi School District (“the School District”) and files this Motion for Protective Order–Extraordinary Relief. In furtherance thereof, the School District states unto the Court the following:

**INTRODUCTION**

1. The present motion is submitted due to a highly unusual situation which has presented itself as a result of recent local elections. Undersigned counsel has not located any federal authority bearing even a substantial similarity to the present context or facts. This is, apparently, a unique situation. The relief sought is therefore equally unique.

2. The School District recognizes protective orders are ordinarily utilized and applied to matters of discovery. However, protection is sought to protect privilege and prevent discovery disputes in the future. If protection is not provided, the School District will have no adequate remedy.

**FACTS**

3. Plaintiff Touchard has sued the George County School District, alleging retaliation for the exercise of her First Amendment free speech rights. The governing body of the School District is the School Board.

4. Members of the School Board, former, current and future, are and will continue to be in receipt of information which is privileged. As the defendant, the Board does and will continue to have discussions with counsel regarding the present litigation, will continue to request and will continue to receive privileged legal advice, litigation plans and other matters of a privileged nature.

5. Unquestionably, such communications between counsel and client are privileged, under the attorney-client privilege and attorney work-product doctrine. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981).

6. Two new Board members were elected in the November, 2022, election, Maria Clanton and Matthew Smith. They are due to take up their duties in January, 2023. Neither is individually named in the present suit, but both will be de facto parties as members of the Board of the defendant School District.

7. The School District requests a protective order be entered to preclude the presence of either Ms. Clanton or Mr. Smith during executive session meetings at which the present litigation is discussed.

8. Before proceeding, the School District wishes to assure both the Court and the subjects of this Motion that it does not ascribe any ill intent to either individual. It does not presume either individual would intentionally work to harm the School District, or compromise its position. This motion is pursued solely for the protection of all involved.

#### **ATTORNEY-CLIENT PRIVILEGE**

9. The attorney–client privilege is the oldest of the privileges for confidential communications known to the common law. *Upjohn*, 449 U.S. at 389. Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public

interests in the observance of law and administration of justice. *Id.* It protects both information received from the client, and information provided to the client. *Id.* at 390.

10. This privilege, however, can be waived, whether intentionally or unintentionally.

11. The Fifth Circuit has discussed the effect of both intentional and inadvertent disclosure of privileged information to a third party. One of the significant considerations in analyzing waiver of privilege is the steps taken to protect privileged information from disclosure. *Allread v. City of Grenada*, 988 F.2d 1425, 1434 (5th Cir. 1993). Where a party has been careless, privilege will be deemed waived. *Id.*

#### **MARIA CLANTON**

12. Maria Clanton is identified as a plaintiff's witness in Plaintiff's initial disclosures. See Plaintiff's Supplemental Disclosures, Witness "ee," attached hereto as Exhibit "1." As an identified Plaintiff's witness, Ms. Clanton is—willingly or not—in a position contrary to the School District for purposes of this litigation. Her presence during executive session meetings at which privileged information is discussed places the Board in the position of involuntary and compelled disclosure of privileged information to an individual the Plaintiff believes aids her cause.

13. It would result for all practical purposes to provide a direct pipeline to the Plaintiff of privileged discussions held by the defendant, as if Plaintiff herself or her attorney were sitting in on the discussions. The School District cannot prevent Plaintiff from interactions with a person she believes has facts relevant to her case. At the same time, Ms. Clanton will be a member of the Board, a member of the defendant governing body, and this will necessarily involve exposure to privileged information if she is present during litigation discussions.

14. Again, the School District does not have any present reason to believe Ms. Clanton would actively work to harm the Defendant's position in this suit, but accidents happen. Laymen say things without realizing it is privileged, or recognize too late that it is privileged, at which point the damage has been done and cannot be undone.

15. Per the Fifth Circuit, the School District does have a duty to take all reasonable steps to prevent disclosure of privileged information. In the unique context of this particular suit, the only reasonable step the School District can take is to prevent Ms. Clanton from obtaining privileged information in the first place. This protects the School District's privilege, and protects Ms. Clanton from being placed in a position of having to choose between loyalties, or accidental or inadvertent disclosure of privileged information. Simply put, if Ms. Clanton does not have privileged information, she cannot disclose it, unintentionally or otherwise.

**MATTHEW SMITH**

16. Dr. Smith<sup>1</sup> is not identified as a Plaintiff's witness. However, he is known to be a personal friend of Plaintiff.

17. The reasons discussed above for excusing Ms. Clanton from executive sessions in which the present litigation is discussed apply with equal force to Dr. Smith. The School District cannot prevent friends from interacting, and the present litigation in which both sides of the friendship are involved in some fashion is a natural topic of conversation.

18. Again, the best way to prevent disclosure of privileged information, inadvertent or otherwise, is to prevent its dissemination in the first place. As with Ms. Clanton, Dr. Smith cannot accidentally breach the School District's privilege if he does not have privileged information.

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<sup>1</sup>Dr. Smith is a local veterinarian.

**CONCLUSION**

For the forging reasons, the School District requests the Court enter an order of protection excusing Ms. Clanton and Dr. Smith from executive session meetings during which the present litigation is discussed. The School District is not seeking to preclude either Ms. Clanton or Dr. Smith from fully participating as members of the Board in matters other than the present litigation.

Respectfully submitted, this the 9<sup>th</sup> day of December, 2022.

GEORGE COUNTY MISSISSIPPI SCHOOL  
DISTRICT

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**CERTIFICATE OF SERVICE**

I, Allison P. Fry, hereby certify I have forwarded a copy of the forgoing pleading to all counsel of record registered with the Electronic Court Filing System to receive such notices in this case.

/s/ Allison P. Fry  
ALLISON P. FRY, MSB 100725