

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

STEPHEN ELLIOTT and FW)
PUBLISHING, INC.,)

Petitioners,)

v.)

No. 22-0011-I

WILLIAM LEE, in his official capacity as)
Governor of Tennessee, and JUAN)
WILLIAMS, in his official capacity as)
Commissioner of the Tennessee Department)
of Human Resources,)

Respondents.)

DECLARATION OF BRANDON O. GIBSON

**EXHIBIT TWO TO
RESPONSE TO PETITION FOR ACCESS TO PUBLIC RECORDS**

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DECLARATION OF BRANDON O. GIBSON

I, Brandon O. Gibson, have personal knowledge of the following matters, would so testify in open court if called to do so, and am competent to render the following:

1. My name is Brandon O. Gibson. I am over 21 years of age and I am a resident of Crockett County, Tennessee.
2. I am an attorney licensed to practice law in Tennessee and have been licensed since 2000.
3. I am currently the Chief Operating Office (“COO”) for the State of Tennessee. I was appointed by Governor Lee to this position on May 20, 2020. As COO, I manage the operations of the State’s twenty-three departments, driving cross-department collaboration to best serve Tennessee citizens.

4. Prior to my appointment as COO, I served as Governor's Lee's Senior Advisor. I was appointed to this position in January 2019.

5. Before joining Governor Lee's cabinet in January 2019, I served as a Judge on the Tennessee Court of Appeals. I was appointed to that court in 2013 by then-Governor Bill Haslam. Prior to my appointment, I was in private practice and a partner at Pentecost & Glenn, PLLC, where I primarily handled employment and civil rights defense cases.

6. On March 12, 2020, pursuant to Tenn. Code Ann. § 58-2-107(a)(2), Governor Lee declared a state of emergency as a result of the COVID-19 pandemic. At that time, I was serving as Governor Lee's Senior Advisor and was focused primarily on criminal justice and rural issues. However, after the Governor declared a state of emergency, my priorities changed, and I began to focus more on advising and assisting the Governor in responding to the pandemic.

7. As the pandemic was starting to spread across the state, it quickly became apparent that no one state agency currently had the capability or capacity to respond to this crisis fully and effectively. Accordingly, the Governor decided to establish the COVID-19 Unified Command Group ("UCG") to streamline coordination across the Tennessee Emergency Management Agency, Tennessee Department of Health and Tennessee Department of Military to work simultaneously in addressing the health, economic and supply crises engendered by the pandemic.

8. For the next 12-14 months, virtually all operational aspects of the State's response to the COVID-19 pandemic and strategic planning were conducted through UCG. Additionally, after I was appointed COO in May 2020, coordinating the efforts between and among the state agencies in responding to the pandemic became one of my core responsibilities.

9. And while a state-declared state of emergency currently does not exist, COVID-19 does and the need to address and respond to issues raised by COVID-19 by state officials also still

exists. Over time, state agencies, such as the Department of Health and TEMA, have been able to develop their own structures and to increase their capacity to the point where they have absorbed many of the tasks and responsibilities previously handled by UCG in dealing with COVID-19. But the coordination and collaboration between and among state agencies, the Governor's office and other partners (e.g., local governments, private businesses) that was established by the UCG still exists and is ongoing. As part of my duties and responsibilities as COO, I conduct regular meetings with the Department of Health, TEMA, Department of Military and relevant state agencies to address ongoing issues with COVID-19, as well as any new issues that arise.

10. In the early months of the pandemic, the core members of UCG were regularly meeting with the Governor. As his Senior Advisor, I participated in almost all of those meetings. During those meetings with the Governor, UCG would provide detailed updates and make recommendations, and we would discuss plans and strategies for responding to the pandemic, such as testing strategies, coordination among the county and metropolitan health departments, procurement strategies, outreach and public messaging planning, contact tracing strategies, mitigation measures, hospital and nursing home support.

11. In those very early meetings where we were trying to figure out how best to respond to the pandemic, we quickly realized that we needed expert assistance. In particular, we needed someone who was able to provide us with the best information possible on a real time basis, and who was experienced in advising government officials with respect to strategic management. At that time, McKinsey Consulting was—and still is—one of the most respected strategic management consulting firms in the world and it had the resources and capability to meet our needs. Accordingly, on April 13, 2020, the State entered into a contract with McKinsey Consulting, Inc.

12. The McKinsey documents that were withheld and/or redacted in response to a public records request were an integral part of the deliberative process by which we were making emergency management decisions and disclosure of these documents would have chilled that deliberative process. The withheld and redacted documents represent some of the analytical tools we used in responding to the COVID-19 pandemic. If we had known, however, that these analytical tools would be disclosed to the public, we would have been much less likely to seek expert assistance from organizations like McKinsey, and certainly not on the record.

13. Indeed, in working with McKinsey, we were deep into our decision-making process and the assistance and information provided by McKinsey was relevant—and in some instances critical—to decisions that were being made. The assistance and information that McKinsey provided allowed us to become better educated and to reach a higher level of strategic planning, and better assist the Governor in making the best decisions in responding to the COVID-19 pandemic.

14. In my opinion, disclosure of the withheld and redacted documents would also expose the Governor's and other state officials' decision-making process in such a way as to discourage open communications among governmental officials and, further, memorializing such information in writing, thereby undermining the development and implementation of strategies and plans in responding to the ongoing COVID-19 pandemic, as well as future emergencies.

Pursuant to Rule 7, Tenn. R. Civ. P., I declare under penalty of perjury that the foregoing is true and correct.



BRANDON O. GIBSON

Dated: Jan. 24, 2022