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DATE FILED: November 2, 2016 4:28 PM

People v. Dear, 15CR5795

**Response to Third-Party Plaintiffs'
Gag Order Position Paper**

Exhibit B

DISTRICT COURT, DENVER COUNTY, COLORADO		DATE FILED: October 14, 2016 2:20 PM CASE NUMBER: 2016CV31798
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202		
Plaintiff(s) SAMANTHA WAGNER et al. v. Defendant(s) PLANNED PARENTHOOD FEDERATION OF AM INC et al.		<div style="text-align: center;">△ COURT USE ONLY △</div>
		Case Number: 2016CV31798 Division: 376 Courtroom:
PROTECTIVE ORDER		

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 10/14/2016



ELIZABETH ANNE STARRS
District Court Judge

DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	
Plaintiff(s): SAMANTHA WAGNER, ASHLEY STEWART, and A.S., a Minor Child Acting Through Her Mother and Next Best Friend, Ashley Stewart, MANDY DAVIS and AMMAR LASKARWALA v. Defendant(s): PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.; ROCKY MOUNTAIN PLANNED PARENTHOOD, INC., a/k/a PLANNED PARENTHOOD OF THE ROCKY MOUNTAINS, INC.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	Case Number: 16CV31798 Courtroom 376
PROTECTIVE ORDER	

This matter comes before the Court on the parties' Stipulated Motion for Protective Order. In this action, the parties already have or will seek Confidential Information, as defined in paragraph 1 below. The parties may seek Confidential Information informally or during discovery, and there will be questioning concerning Confidential Information in the course of depositions, during hearings, and at trial. The parties assert the disclosure of such information outside the scope of this litigation could adversely affect one or more of the parties or Defendant-employee witnesses with respect to their privacy or business interests. In addition, documents and information in this case may be received from or be subject to court orders entered in *People of the State of Colorado v. Robert Lewis Dear, Jr.*, District Court, El Paso County Colorado, Case No. 15CR5795, the on-going prosecution of Robert Lewis Dear, Jr. for the shootings that occurred on November 27, 2015 alleged in the Second

Amended Complaint ("Dear Prosecution"), and the parties intend to treat any such information or documents as subject to this Protective Order.

Because there is good cause for the entry of a protective order, the Court enters this Protective Order for the purpose of preventing the disclosure and use of Confidential Information, except as set forth herein.

IT IS ORDERED:

Pursuant to C.R.C.P. 26(c), the Court hereby enters the following Protective Order:

1. This Protective Order shall apply to any documents, pleadings, materials, and information, including without limitation, documents produced, answers to interrogatories, responses to requests for admission, deposition or trial testimony, exhibits thereto, any copies thereof or other information disclosed pursuant to the disclosure or discovery obligations created by the Colorado Rules of Civil Procedure or derived therefrom and which have been designated by counsel for any party as "CONFIDENTIAL" ("Confidential Information"), pursuant to paragraph 3 below.

2. As used in this Protective Order, "document" is defined as provided in C.R.C.P. 34(a). A draft or non-identical copy, including an electronic copy thereof, is a separate document within the meaning of this term.

3. Confidential Information shall not be disclosed or used for any purpose except the preparation and trial of this case. Information designated by counsel for any party as "CONFIDENTIAL" shall be information that is, in the good faith of the party designating such information or documents as "CONFIDENTIAL", confidential and implicates common law or statutory privacy interests, proprietary, trade secret or operational practice information, non-public information relating to the Dear Prosecution, or is otherwise entitled to protection under

C.R.C.P. 26(c). By entering into this stipulated Protective Order, no party admits, concedes, or waives the right to contest the privacy, confidentiality, proprietary, trade secret or the non-public relationship to the Dear Prosecution of information designated by another party as "CONFIDENTIAL."

4. Confidential Information shall not, without the consent of the party producing it or further Order of the Court, be disclosed to anyone, *except that such information may be disclosed* to the following (all of which are collectively referred to herein as "Qualified Recipients"):

- (a) attorneys actively working on this case;
- (b) persons regularly employed or associated with the attorneys actively working on this case whose assistance is required by said attorneys in the preparation for deposition, trial, at trial, or at other proceedings in this case;
- (c) the parties, including their agents;
- (d) expert witnesses and consultants retained in connection with this proceeding, to the extent such disclosure is necessary for preparation, trial or other proceedings in this case;
- (e) the Court and its employees ("Court Personnel");
- (f) stenographic reporters who are engaged in proceedings necessarily incident to the conduct of this action;
- (g) deponents, witnesses, or potential witnesses;
- (h) jurors during the trial of this case; and
- (i) any other person by written mutual agreement of the parties, or by order of the Court.

5. Prior to disclosing any Confidential Information to any Qualified Recipient listed in subparagraphs d and g of the foregoing paragraph (that is, other than counsel, persons employed by counsel, Court Personnel, stenographic reporters, and jurors as listed in subparagraphs a, b, c, e, f, h, and i of paragraph 4 above), counsel shall provide such Qualified

Recipient with a copy of this Protective Order and obtain from such person a written acknowledgment in the form attached as Exhibit I hereto that he or she has read this Protective Order and agrees to be bound by its provisions. The dissemination of Confidential Information to a Qualified Recipient shall be for the sole purpose of actions required for such person to perform his or her assigned task or fulfill his or her role in connection with this litigation. All such acknowledgments shall be retained by counsel and shall be subject to *in camera* review by the Court if good cause for review is demonstrated by opposing counsel.

6. Qualified Recipients shall hold Confidential Information in confidence and shall not divulge such information, either verbally, electronically, or in writing, to any other person, entity, or government agency, other than other Qualified Recipients, outside this litigation for any other purpose and shall take steps to ensure the Confidential Information is not inadvertently disclosed.

7. Counsel for a party receiving Confidential Information shall: discuss and explain the terms and obligations of this Protective Order to Qualified Recipients at the time Confidential Information is disclosed; obtain and retain the original acknowledgments signed by Qualified Recipients of such Confidential Information, and maintain a list of all Qualified Recipients to whom any Confidential Information is disclosed.

8. No copies of Confidential Information shall be made except by or on behalf of counsel or Qualified Recipients in this litigation, and such copies shall be made and used solely for purposes of this litigation and pursuant to this Protective Order.

9. Documents shall be designated as CONFIDENTIAL by placing or affixing on each page or the cover page of a document designated by counsel for any of the parties the word "CONFIDENTIAL" in a manner that will not interfere with the legibility of any such document.

Material produced in a computer-stored or electronically stored format may be designated as CONFIDENTIAL by giving written notice to all counsel of record that the contents are CONFIDENTIAL

10. In the case of depositions or other pretrial testimony and all exhibits thereto, materials may be designated CONFIDENTIAL a) by a statement on the record, by counsel, at the time of such disclosure, but such designation shall be reasonably limited to only that portion of the testimony or that exhibit that actually contains CONFIDENTIAL material, or b) by written notice, sent by counsel to all parties within fourteen (14) days after receiving a copy of the transcript thereof or exhibit thereto, during which 14-day period all such deposition or other pretrial testimony and exhibits thereto shall be treated as CONFIDENTIAL.

11. This Protective Order does not prohibit the use of Confidential Information and documents designated as "CONFIDENTIAL" as evidence at trial or in pre-trial proceedings. If Confidential Information is included in any papers to be filed with the Court or offered into evidence at trial, the parties are authorized and directed to file such papers pursuant to C.R.C.P. 121, Section 1-5 by designating the papers as "Suppressed" in the "Security Note" section of the ICCES filing screen or any similar procedure the Court may require. In the event Confidential Information is used in any court filing or proceeding in this action, including but not limited to its use at trial, the Confidential Information shall not lose its confidential status as between the parties through such use unless and until further order of this Court.

12. A party may object to the designation or continued designation of particular documents designated as CONFIDENTIAL by another party at any time by giving written notice by mail or e-mail to the party designating the disputed information as CONFIDENTIAL. The written notice shall identify the specific document(s) to which the objection is made and the

reasons therefor. If the parties cannot resolve the objection in good faith within fourteen (14) calendar days after the time the notice is mailed or e-mailed, it shall be the obligation of the party designating the information as CONFIDENTIAL to file a motion requesting that the Court determine whether the disputed information should be subject to the terms of this Protective Order. If such a motion is timely filed, the disputed information shall continue to be treated as CONFIDENTIAL under the terms of this Protective Order until the Court rules on such motion. If the designating party fails to file such a motion within the prescribed time, the disputed documents shall lose their designation as CONFIDENTIAL and shall not thereafter be treated as CONFIDENTIAL in accordance with this Protective Order. In connection with a motion filed under this provision, the party designating the information as CONFIDENTIAL shall bear the burden of establishing that good cause exists for the disputed information to be treated as CONFIDENTIAL.

13. Within sixty (60) days following the conclusion of this case, including all appeals, unless other arrangements are agreed upon, each document and all copies thereof which have been designated as CONFIDENTIAL shall be returned to the producing party that designated it CONFIDENTIAL. Alternatively, the receiving party may elect to destroy all CONFIDENTIAL documents and all copies thereof. When a receiving party elects to destroy all CONFIDENTIAL documents, the receiving party shall provide all parties with written certification of the destruction of the CONFIDENTIAL documents and all copies thereof, except that counsel receiving CONFIDENTIAL documents may retain one copy of the CONFIDENTIAL documents for purposes of record-keeping only. The conclusion of this case, including all final appeals, shall not relieve counsel or Qualified Recipients obligated hereunder from their responsibility to maintain the confidentiality of Confidential Information pursuant to this Protective Order. Such

prohibition on disclosure shall survive the conclusion of this case. However, a party may object to the continuing designation of particular documents designated as CONFIDENTIAL by another party as set forth in paragraphs 12 and 16 of this Protective Order. In connection with any motion in this action or in any independent action to interpret and/or enforce the terms of this Protective Order ("Proceeding"), the parties agree to request that the Proceeding be heard and/or assigned to Judge Elizabeth A. Starrs, to the extent practicable.

14. Through the agreement to and entry of this Protective Order, the parties adopt no position with respect to the authenticity or admissibility of any specific document produced and/or made subject to this Protective Order. Each party reserves all rights to object to the admission at trial of any document or information derived exclusively from any such document.

15. Notwithstanding the designation and protection of any document as "CONFIDENTIAL," such document shall not be deemed confidential and shall not be subject to this Order, if the content and/or substance thereof :

(a) is, at the time of disclosure, in the public domain by publication or otherwise and is not otherwise protected from disclosure as a result; or

(b) becomes at any time, through no act or failure to act on the part of the recipient party, part of the public domain by publication or otherwise; or

(c) is already in the possession of a party at the time of disclosure by the other party and was acquired *other than* directly or indirectly from the disclosing party and marked by such disclosing party as CONFIDENTIAL; or

(d) is made available to a party by a third-party who obtained the same by legal means and without any obligation of confidence to any other party claiming its confidential nature; or

(e) may lawfully be obtained by the party through other legal means, or which a party has a right to access independent of this litigation

16. This Protective Order shall not preclude any party from seeking additional, continuing, or less protection with respect to the confidentiality of any document as that party

deems appropriate or from filing a motion as to the manner in which CONFIDENTIAL information shall be treated at trial. Nor shall any party be precluded from seeking an order from the Court permitting the disclosure or use of certain documents otherwise covered by this Protective Order. Confidential Information shall remain "CONFIDENTIAL" until further order of this Court.

17. For the privacy of certain witnesses, and particularly patients, their companions, and employees of the Defendant entities, the Court orders that the names, addresses and phone numbers of individuals present at the clinic, or employed by the Defendant entities, on November 27, 2015, shall be Confidential Information as described in this Protective Order with access limited to Qualified Recipients. The privacy of the witnesses and victims, and their right to be treated with fairness, respect, and dignity, free from harassment or intimidation, outweighs the need for such information by non-Qualified Recipients. References to these individuals in public filings shall be restricted to first and last initials only, unless the parties stipulate to another identification system.

18. By entering this order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case, or as part of an investigation by a governmental agency, including but not limited to the Dear Prosecution. Any person, Qualified Recipient, or party subject to this Order that receives a written request, subpoena, or court order seeking disclosure of another party's "CONFIDENTIAL" document(s), shall promptly (no more than five (5) business days after receipt, and in any event prior to the response or return date on such written request, subpoena, or court order) notify counsel for the producing party of the request, subpoena, or court order and shall provide a copy of the same.

19. Nothing herein shall affect any confidentiality obligations to which the parties may be subject pursuant to agreements independent of this litigation or imposed by law, including but not limited to the Dear Prosecution, nor shall anything herein constitute an agreement that such obligations will relieve any party of the obligation to produce documents or other discovery materials.

SO ORDERED this ____ day of October, 2016.

BY THE COURT:

District Court Judge

EXHIBIT 1

ACKNOWLEDGEMENT REGARDING PROTECTIVE ORDER

I, _____, do hereby acknowledge that I have received and read a copy of the Protective Order that was made an Order of the Court, in connection with *Samantha Wagner, Ashley Stewart, and A. S., a Minor Child Acting Through Her Mother and Next Best Friend, Ashley Stewart, Mandy Davis and Ammar Laskarwala v. Planned Parenthood Federation of America, Inc. and Rocky Mountain Planned Parenthood, Inc., a/k/a Planned Parenthood of the Rocky Mountains, Inc.*, pending in the Denver District Court as Case Number 16CV31798 ("the Lawsuit"). I hereby acknowledge and agree to be bound by the terms and conditions of the Protective Order. I understand that during my participation in the handling and development of this case, I may have occasion to read or hear of documents that are designated "CONFIDENTIAL." I agree to use any such CONFIDENTIAL documents solely in connection with my participation in this case and for no other purpose and not to disseminate or divulge the information in any way to any other person or entity for any purpose as set out in the Protective Order. I agree not to reproduce CONFIDENTIAL documents except for my own personal use in connection with this case and to return all copies of CONFIDENTIAL documents upon request to the counsel or party that provided them to me. I understand that the terms of and my obligations under the Protective Order shall survive and continue after the termination and conclusion of the Lawsuit. I hereby submit to the jurisdiction of the Denver District Court for the limited purpose of enforcing said Protective Order and this Acknowledgement by contempt proceedings or other appropriate judicial remedies.

I am employed by _____. My title is _____.

Dated this ____ day of _____, 2016/7.

I declare under penalty of perjury that the foregoing is true and correct.

Signature