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U.S. DISTRICT COURT
N.D. OF ALABAMA

268) (emphasis added) (cleaned up). The court further "recognize[d] that claims of racial gerrymandering involve serious allegations," but also that "a categorical exception whenever a constitutional claim directly implicates the government's intent . . . would render the privilege 'of little value.'" *Id.* at 1188 (citing *Tenney*, 341 U.S. at 377). Accordingly, the court held that the legislators from whom discovery was sought were entitled to invoke the legislative privilege.

Recently, in *La Union*, the Fifth Circuit Court of Appeals held that the legislative privilege was unqualified in a challenge to certain amendments to the Texas Election Code brought pursuant to the Equal Protection Clause of the Fourteenth Amendment and the VRA. 68 F.4th 228, 240 (5th Cir. 2023). In particular, the court concluded that such a challenge did not pose "one of those 'extraordinary instances' in which the legislative privilege must 'yield[].'" *Id.* at 237 (first quoting *Vill. of Arlington Heights*, 429 U.S. at 268; and then quoting *Gillock*, 445 U.S. at 373). In short, the court concluded that "the qualifications do not subsume the rule[,] . . . even when constitutional rights are at stake." *Id.* at 238. Therefore, the court held that the legislative privilege applied even though the case before it was brought pursuant to the Fourteenth Amendment and the VRA. *Id.* at 240 n.88.[12]

A recent decision by the United States District Court for the Southern District of Mississippi cogently describes "the law of legislative privilege in [the Fifth] [C]ircuit after *La Union* . . . as follows":

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[12] Notably, the analysis set forth by the Fifth Circuit in *La Union* closely resembles the analysis set forth by the Eleventh Circuit in *Pernell* insofar as the Fifth Circuit similarly recognized that *Tenney* and *Gillock* "dr[ew] the line at civil actions." *La Union*, 68 F.4th at 238, 239 (citation omitted). Moreover, *La Union* closely tracks *Pernell* in that *La Union* also rejected the use of a multifactor balancing analysis to determine whether the privilege must yield. *See id.* Rightfully so because the use of such a balancing test, in practice, eviscerates the privilege. Under the test, the privilege is qualified or eliminated any time a federal judge decides that the legislation at issue touches on an "important federal interest"–a term undefined by any court that has adopted it. And a state legislator considering legislation on *any* topic–including redistricting–cannot know in advance whether the sources she considers will one day be disclosed. As a result, if a court adopts a balancing test to assess a legislator's invocation of privilege, the legislator is forced to assume that any information considered about any legislation could later be publicly revealed–and the legislative process is necessarily chilled.

> (1) The scope of the privilege is broad, including all documents that are part of the legislative process; (2) waiver occurs only when otherwise-privileged documents are publicly disclosed; and (3) the privilege yields only in extraordinary cases, such as federal criminal cases. . . . *La Union* indicates that a challenge to election laws under the Constitution and the Voting Rights Act does not rise to that level.

Mississippi State Conf. of NAACP v. State Bd. of Election Comm'rs, No. 3:22-CV-734-DPJ-HSO-LHS, 2023 WL 8360075, at *4 (S.D. Miss. Dec. 1, 2023). Indeed, *Mississippi State Conference of NAACP* itself involved a "legal challenge to the Mississippi Legislature's 2022 State Senate and State House redistricting plans" brought pursuant to "the Voting Rights Act and the Fourteenth Amendment to the United States Constitution." *Id.* at *1. Applying *La Union*, the district court held that because the requested documents "were created in the scope of the legislative process and were not disclosed publicly, and because this case does not meet the 'extraordinary instance' standard, they are protected from disclosure." *Id.* at *4.

Other district courts throughout the Nation have similarly rejected invitations to pierce the legislative privilege in reapportionment cases. *See, e.g.*, *Florida v. Byrd*, 674 F. Supp. 3d 1097, 1104 (N.D. Fla. 2023) ("acknowledg[ing] that allegations of racial gerrymandering are serious matters" but holding that "[p]laintiffs [did] not show[] that this is the extraordinary case in which legislative privilege must yield to federal interests); *Mi Familia Vota v. Hobbs*, No. CV-21-01423-PHX-DWL, 2023 WL 4595824, at *13 (D. Ariz. July 18, 2023) (declining to override invocation of legislative privilege in redistricting case even under the five-factor balancing test).[13]

[13] *See also Chen v. City of Houston*, 9 F. Supp. 2d 745, 762 (S.D. Tex. 1998), *aff'd*, 206 F.3d 502 (5th Cir. 2000) (upholding legislative immunity in voting rights case alleging that the City of Houston engaged in racial gerrymandering in developing its city council redistricting plan); *Simpson v. City of Hampton*, 166 F.R.D. 16, 18-19 (E.D. Va. 1996) (city council members' personal notes and files protected by legislative privilege in VRA case alleging discriminatory plan notwithstanding the fact that legislative intent was a relevant factor for a claim of intentional discrimination); *Hispanic Coal. on Reapportionment v. Legislative Reapportionment Comm'n*, 536 F. Supp 578, 582 n. 2 (E.D. Pa. 1982) (deposition of Chairman of the Legislative Reapportionment Commission made subject to a protective order by reason of legislative immunity).

It is also worth noting that a proper review of the legislative process, particularly with respect to redistricting legislation, bolsters the conclusion that the legislative privilege should not yield in cases lodging challenges against such legislation. The vitality of legislative debate is particularly important in the context of redistricting, which "is primarily a political and legislative process." *Gaffney v. Cummings*, 412 U.S. 735, 749 (1973) (citation omitted). Thus, in the redistricting context, the legislative privilege approaches its zenith. To hold otherwise would threaten the vibrancy of legislative fact-gathering, communication, and deliberation, all while undermining the presumption of good faith accorded to legislative acts. Furthermore, because redistricting legislation is inherently political, stripping legislators of this personal privilege would expose them to the chilling effect of being haled into court to be questioned over their political actions.

In sum, in this Circuit, the legislative privilege is absolute in civil cases. Therefore, the Court must quash the RSS subpoena.

E. PLAINTIFFS HAVE ACCESS TO ABUNDANT SOURCES OF NON-PRIVILEGED INFORMATION.

Notwithstanding the foregoing arguments, Plaintiffs may still attempt to establish discriminatory purpose and motive by seeking evidence that does not implicate protected legislative matters, *e.g.*, public statements made by elected officials, evidence of past and related discriminatory legislation, publicly available voting records, and the actual redistricting results themselves, etc. Indeed, Plaintiffs have made such detailed allegations in 59 paragraphs of their First Amended Complaint. (Doc. 329 ¶¶ 114-172, 178).

In *Village of Arlington Heights*, the Supreme Court suggested such permissible alternative sources of motive that did not violate legislative privilege, including (1) "the historical background of the decision . . . particularly if it reveals a series of official actions taken for invidious purposes";

(2) "the specific sequence of events leading up to the challenged decision"; (3) "[d]epartures from the normal procedural sequence"; (4) "[s]ubstantive departures [as when] factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached"; and (5) "[t]he legislative or administrative history . . . especially where there are contemporary statements by members of the decision making body, minutes of its meetings, or reports." *Vill. of Arlington Heights*, 429 U.S. at 267–68.

Plaintiffs also have unfettered access to the electronic records of the 2023 Special Session via the Alabama Legislative Website and the Department of Archives and History (ADAH), which are the primary repositories of any nonprivileged legislative materials. Entries of journals of both the House of Representatives and the Senate of the State of Alabama, as well as the transcripts reflecting the passage of SB5 during the 2023 Special Session, are all electronically available. Thus, Plaintiffs are free to avail (and have availed) themselves of the alternative, non-privileged sources of legislative information regarding SB5.

Finally, the Supreme Court has repeatedly warned about the limited usefulness of the statements by an individual legislator in discerning the corporate purpose of a legislative body. *See, e.g., N.L.R.B. v. SW Gen., Inc.*, 508 U.S. 288, 306 (2017) ("What Congress ultimately agrees on is the text that it enacts, not the preferences expressed by certain legislators." (citing *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998))); *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 385 (2012) ("[T]he views of a single legislator, even a bill's sponsor, are not controlling." (citing *Consumer Product Safety Comm'n. v. GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980))). In other words, is the juice worth the squeeze, *i.e.*, the potential damage to the institutional integrity of the legislature resulting from the abrogation of the legislative privilege? The answer is a resounding no, particularly given the fact that no federal court of appeals has abrogated the

legislative privilege in a redistricting case. Indeed, *Gillock* itself reasoned that comity with state governments was more important in civil than in criminal proceedings. *Gillock*, 445 U.S. at 373. In sum, as observed in *Pernell*, *Tenney* and its progeny have drawn the line at civil action and that line should remain.

IV. CONCLUSION

The United States Supreme Court has repeatedly held that "'reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than that of a federal court.'" *Growe v. Emison*, 507 U.S. 25, 34 (1993) (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)). When state legislatures carry out reapportionment, the ordinary legal framework for addressing legislative action should apply, including the long-standing application of legislative privilege where legislative acts and the motivation for those acts are implicated. The use of federal courts as an end-run around the legislative privilege recognized under state law undermines principles of comity and federalism. That would certainly be the result here if the RSS subpoena were allowed to stand. Accordingly, the Court should quash the RSS subpoena pursuant to Rule 45(d)(3)(A)(iii) of the Federal Rules of Civil Procedure because it inquires into legislative acts and/or the motivation for the actual performance of legislative acts shielded from discovery by the legislative privilege.

Respectfully submitted, this 26th April, 2024.

/s/ Christopher W. Weller
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As Attorneys for Members of the State of Alabama Senate Dan Roberts, Will Barfoot, and Former Senator Clay Scofield, and Members of the House of Representatives Jim Carns, Jamie Kiel, Arnold Mooney, Earnie Yarbrough, Mack Butler, and Rick Rehm

CERTIFICATE OF SERVICE

I certify that on the 26th day of April, 2024 I electronically filed the foregoing with the Clerk of the Court using the CM/CF system which will send notification of such filing to all counsel of record.

/s/Christopher W. Weller
Of Counsel

This job was printed by

Anne

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TIME: 9:38:51 AM

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U.S. DISTRICT COURT
N.D. OF ALABAMA

EXHIBIT A

APRIL 3, 2024 SUBPOENA

UNITED STATES DISTRICT COURT

for the

Northern District of Alabama

EVAN MILLIGAN, et al.,

Plaintiff

v.

WES ALLEN, et al.,

Defendant

Civil Action No. 2:21-cv1530-AMM

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Red State Strategies, LLC
c/o Registered Agent Christopher R. Brown P.O. Box 43564 Birmingham, AL 35243

(Name of person to whom this subpoena is directed)

☑ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A.

Place: See Attachment A

Date and Time: 04/19/2024

☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

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: 04/03/2024

CLERK OF COURT

OR /s/Nicki Lawsen

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, who issues or requests this subpoena, are:

Nicki Lawsen, Esq., 301 19th Street North, Birmingham, AL 35203, nlawsen@wigginschilds.com, 205-314-0500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises 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).

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.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

EVAN MILLIGAN, et al., *Plaintiffs*, v. WES ALLEN, et al., *Defendants*.	No. 2:21-cv-01530-AMM
MARCUS CASTER, et al., *Plaintiffs*, v. WES ALLEN, et al., *Defendants*.	No. 2:21-cv-01536-AMM

GENERAL INSTRUCTIONS

1. These requests require You to produce all documents that are in Your actual or constructive possession, custody, or control or in the possession, custody, or control of your attorneys, accountants, representatives, consultants, agents, or employees.

2. In construing these Requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms "and" and "or" either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside that scope. Words used in the masculine gender include the feminine, and words used in the singular include the plural. The past tense shall be construed to include the present and future tenses and vice versa. The terms "each," "every," "all," and "any" whether used separately or together, shall be interpreted to encompass all material, events, incidents, persons, or information responsive to the request in which those terms appear.

3. If any document that would be responsive to the requests below is not produced because of a claim of privilege or immunity, You shall serve upon the undersigned counsel a written list that identifies each such document and states the ground on which each such document is asserted to be privileged or immune from disclosure. Any attachment to an allegedly privileged or immune document shall be produced unless you contend that the attachment is also privileged or immune from disclosure.

4. Unless otherwise stated, information supplied in response to these requests for production of documents should be fully inclusive for the period from June 8, 2023 to the present unless otherwise notes.

5. You may produce legible, complete, and exact copies of the original documents, provided that the originals be made available for inspection upon request by the undersigned counsel. Any and all responsive documents or data stored in electronic format shall be produced in their original unaltered format unless otherwise agreed to by the parties.

6. Pursuant to Rule 45 (e)(1)(A) of the Federal rules, the documents produced must be produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this set of document requests, whether used separately or together, shall be interpreted to encompass all material, events, incidents, persons, or information responsive to the request in which those terms appear.

7. If there is any question as to the meaning of any part of these requests, or an issue as to whether production of responsive documents would impose an undue burden on You, the undersigned counsel for plaintiffs should be contacted promptly.

DEFINITIONS

1. "You" or "Your" means Chris Brown and the Red State Strategies, including, but not limited to any and all of Red State Strategies' employees, representatives, agents, consultants, or other individuals that are acting on your behalf.

2. "Document" has the same meaning and scope as used in Federal Rule of Civil Procedure 34 and the phrase "writings and recordings" as defined in Federal Rule of Evidence 1001, and includes, but is not limited to, any computer discs, tapes, printouts, emails, and databases, and any handwritten, typewritten, printed, electronically-recorded, electronically stored information, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

3. The term "electronically stored information" means electronic information that is stored in a medium from which it can be retrieved and examined. It includes, but is not limited to, all electronic files that can be retrieved from electronic storage.

4. "Electronic file" includes, but is not limited to, the following: electronic documents: e-mail messages and files: deleted files: temporary files: and metadata.

5. "Electronic information system" refers to a computer system or network that contains electronic files and electronic storage.

6. "Electronic storage" refers to electronic files contained on magnetic, optical, or other storage media, such as hard drives, flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, smart flash drives, DVDs, CDs, tapes, cartridges, floppy diskettes, smart cards, integrated-circuit cards (e.g., SIM cards).

7. "Person(s)" shall refer not only to natural persons, but also without limitation to firms, partnerships, corporations, associations, unincorporated associations, organizations, businesses, trusts, government entities, and or any other type of legal entities.

8. The term "relating" or "relate" or "related" means concerning, referring, regarding, describing, evidencing, including or constituting, either directly or indirectly.

9. The term "show" or "showing" means displaying, identifying, evidencing, proving, either directly or indirectly.

10. The terms "communication" and "communicated" mean the transmittal of information in the form of facts, ideas, inquiries, or otherwise, whether such information is transmitted orally or in writing or by any other method.

11. "Defendants" means Wes Allen, in his official capacity as Alabama Secretary of State, Steve Livingston and Chris Pringle, in their official capacities as Co-Chairs of the Alabama Permanent Legislative Committee on Reapportionment, and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on behalf of Defendants or subject to Defendants' control.

12. The term "location(s)" means any and all physical and virtual locations associated with an event, including but not limited to physical sites, electronic sites, addresses, and websites. If asked to identify a location, you should provide the address or other locating information with as much specificity as is available.

13. The term "the 2023 Plan" shall refer to Alabama's congressional map that was passed through both houses of the Legislature and signed into law by Governor Ivey on July 21, 2023.

REQUESTS FOR PRODUCTION

DOCUMENT REQUEST NO. 1: All communications between You and Defendants, including, but not limited to, correspondence, memoranda, electronically stored information, and documents, in your custody, possession, or control, that relate to any of Your or Defendants' efforts to research, analyze, promote, publicize, or support the enactment of the 2023 Plan or any alternative or predecessor plan developed in June or July of 2023.

DOCUMENT REQUEST NO. 2: All documents or communications between You and Defendants, or other members of the Alabama Legislature, or any staff in the offices of the Secretary of State, the Governor of Alabama, or the Attorney General, or their predecessors in office, that relate to this litigation without limitation on time.

DOCUMENT REQUEST NO. 3: All documents or communications between You and Defendants, or other members of the Alabama Legislature, or any staff in the offices of the Secretary of State, the Governor of Alabama, or the Attorney General, or their predecessors in office, regarding the researching, creation, intent, purpose, planning, passage, or implementation of the 2023 Plan or any alternative or predecessor plan developed in June or July of 2023.

DOCUMENT REQUEST NO. 4: All documents that relate to any studies, analyses, briefings, research, or reports generated or undertaken by You on the subject of the 2023 Plan, or any alternative or predecessor plan developed in June or July of 2023.

DOCUMENT REQUEST NO. 5: All documents or communications relating to Your position in support or opposition to, or role in the debate, discussions, negotiations, drafting, or enactment of the 2023 Plan or any alternative or predecessor plan developed in June or July of 2023.

DATED this April 3, 2024.

Respectfully submitted.

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** Admitted Pro Hac Vice*

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N.D. OF ALABAMA

EXHIBIT B

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

SENATOR DAN ROBERTS
ALABAMA SENATE DISTRICT 15

From: Daniel Roberts
To: Chris Brown
Cc: Bert Jordan; Othni Lathram; Jim Entrekin
Subject: Re: Milligan Subpoena
Date: Saturday, April 13, 2024 1:15:56 AM
Attachments: Red State Strategies Doc - Apr 5 2024.pdf

You don't often get email from robtel@bellsouth.net. Learn why this is important

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,
Senator Dan Roberts

On Apr 6, 2024, at 8:34 PM, Chris Brown <cb@redstate-strategies.com> wrote:

Dear Dan:

This letter is to advise you that Red State Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as

Milligan v. Allen
, No.
2:21-c-v1530-AMM (N.D. Ala.).
This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections.
The subpoena directs production of certain materials that may have been generated as a result of your engagement of RedState.
A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan.

However, Request No.
2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena.
However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19.
Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena.
Our prompt response will allow me to make proper filings to protect confidentiality, and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Esq., Wallace, Jordan, Ratliff & Brandt, LLC

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

SENATOR WILL BARFOOT
ALABAMA SENATE DISTRICT 25

From: Will Barfoot
To: Chris Brown
Cc: Bert Jordan; Othni Lathram; Jim Entrekin; cwb@barfootschoettker.com
Subject: Re: Milligan Subpoena
Date: Friday, April 12, 2024 10:50:34 AM
Attachments: Outlook-i53eda1b.png

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,
Will Barfoot

Barfoot & Schoettker
Attorneys & Counselors

Will Barfoot
334 | 834 | 3444 barfootschoettker.com

From: Chris Brown <cb@redstate-strategies.com>
Sent: Saturday, April 6, 2024 8:40 PM
To: Will Barfoot <cwb@barfootschoettker.com>
Cc: Bert Jordan <bjordan@wallacejordan.com>

Subject: Milligan Subpoena

Dear Will:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-c-v1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of Red State Strategies. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan. However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

FORMER SENATOR CLAY SCOFIELD
ALABAMA SENATE DISTRICT 9

From: Chris Brown <cb@redstate-strategies.com>
Date: April 15, 2024 at 12:55:24 PM CDT
To: mnbelect@bellsouth.net
Cc: Bert Jordan <bjordan@wallacejordan.com>
Subject: Milligan Subpoena

Dear Mack:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-c-v1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case, and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of RedState. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan. However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

From: Yahoo Account Service
To: Jim Entrekin
Subject: Fw: Response
Date: Thursday, April 18, 2024 1:07:55 PM

[clay_scofield@earthlink.net appears similar to someone who previously sent you email, but may not be that person. Learn why this could be a risk at https://aka.ms/LearnAboutSenderIdentification]

-----Forwarded Message-----
From: Yahoo Account Service <clay_scofield@earthlink.net>
Sent: Apr 16, 2024 12:52 PM
To: <cb@redstate-strategies.com>
Cc: <bjordan@wallacejordan.com>
Subject: Response

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them with my attorney for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

REPRESENTATIVE JIM CARNS
ALABAMA HOUSE DISTRICT 48

From: Chris Brown <cb@redstate-strategies.com>
Date: April 6, 2024 at 8:42:51 PM CDT
To: Jim Carns <jwcarns@gmail.com>
Cc: Bert Jordan <bjordan@wallacejordan.com>
Subject: Milligan Subpoena

Dear Jim:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-c-v1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of Red State Strategies. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan. However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

From: Jim Carns
To: Chris Brown
Cc: Othni Lathram; Jim Entrekin
Subject: Milligan Subpoena
Date: Thursday, April 18, 2024 1:02:50 PM

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,

Representative Carns

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

REPRESENTATIVE JAMIE KIEL
ALABAMA HOUSE DISTRICT 18

From: Jamie Kiel
To: Chris Brown
Cc: Bert Jordan; Othni Lathram; Jim Entrekin
Subject: Re: Milligan Subpoena
Date: Monday, April 15, 2024 8:16:40 PM

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,
Representative Kiel

> On Apr 15, 2024, at 12:52 PM, Chris Brown <cb@redstate-strategies.com> wrote:
>
> Dear Jamie:
>
> This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-c-v1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case, and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of RedState. A copy of the subpoena is attached for your reference.
>
> The focus of the subpoena is communications related to the 2023 Congressional

district plan.
However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

<Red State Strategies Doc - Apr 5 2024.pdf>

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

REPRESENTATIVE ARNOLD MOONEY
ALABAMA HOUSE DISTRICT 43

From: Arnold Mooney
To: Chris Brown
Cc: Bert Jordan; Jim Entrekin; Othni Lathram
Subject: Re: Milligan Subpoena
Date: Tuesday, April 16, 2024 8:33:32 PM
Attachments: ATT00001.htm
Red State Strategies Doc - Apr 5 2024.pdf

Dear Chris -

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thank you for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Best regards,

Arnold

Arnold Mooney
Alabama House District 43
Chair Shelby County House Delegation
Alabama State Chair for ALEC
(205) 222-8721

> On Apr 15, 2024, at 12:56 PM, Chris Brown <cb@redstate-strategies.com> wrote:

Dear Arnold:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-c-v1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of RedState. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan.
However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

205.222.8721

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

REPRESENTATIVE ERNIE YARBROUGH
ALABAMA HOUSE DISTRICT 7

From: Ernie Yarbrough
To: Bert Jordan
Cc: Chris Brown; Shep Shepherd; Jim Entrekin; Othni Lathram
Subject: Re: Milligan v. Allen 21cv1530 - subpoena response - assertions of legislative privilege
Date: Monday, April 22, 2024 9:03:50 AM

Dear Chris and Bert:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,

Representative Yarbrough

On Mon, Apr 15, 2024 at 4:53 PM Bert Jordan <bjordan@wallacejordan.com> wrote:

> Dear Representative Yarbrough:
>
> This follows up on the email from Chris Brown to you today.
>
> On April 6, RedState Strategies, LLC was served with the attached subpoena seeking its communications with legislators about the 2023 Congressional redistricting arising out of the case now known as Milligan v. Allen, No. 21cv1530, and about the litigation itself. A

response or objection to the court is required by April 19.

Some of the documents responsive to the subpoena involve communications between RedState's president Chris Brown and you. However, given your relationship with RedState, and the work its president Chris Brown does for you, those documents are likely protected from disclosure by a privilege known as "legislative privilege." I have attached a log of those documents as well as a copy of each of them.

There is an additional set of materials received by RedState from a third party and responsive to the subpoena. These materials were used in part in formulating opinions that RedState communicated to you. However, these materials themselves were not transmitted to you.

Also attached is a log of these items that would be used to assert that these items are not subject to disclosure. They are titled "Domnanovich – Privilege Log – Text Messages" and "Domnanovich – Privilege Log – Emails."

If you think you need the underlying materials, please advise.

If you wish to treat these materials as protected from disclosure by the legislative privilege, you must indicate that to the court.

However, if you want RedState to assert for you that the documents are properly exempt from disclosure due to your legislative privilege, I need you to so indicate. (If I as attorney for RedState also make the filing in your name, I will need an engagement agreement from you). If not, someone will need to assert to the privilege for you in a separate filing with the court.

It may be possible that the Legislative Services Agency will be in a position to address the subpoena in your name.

At least one other legislator who is a RedState client has LSA attorneys reviewing the RedState response, and considering how to respond for legislators.

Please advise if you wish the privilege to be asserted by RedState to be in your name.

Best regards,

Bert Jordan

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

REPRESENTATIVE MACK BUTLER
ALABAMA HOUSE DISTRICT 28

From: Chris Brown <cb@redstate-strategies.com>
Date: April 6, 2024 at 8:42:09 PM CDT
To: clay_scofield@earthlink.net
Cc: Bert Jordan <bjordan@wallacejordan.com>
Subject: Milligan Subpoena

Dear Clay:

This letter is to advise you that RedState Strategies, LLC received the attached Subpoena to Produce Documents, etc. on Friday, April 5, in the case known as *Milligan v. Allen*, No. 2:21-c-v1530-AMM (N.D. Ala.). This case is known as the Congressional redistricting case and involved review of districts drawn by the legislature in 2021, and 2023, and resulted in a "court-drawn" district map that has been used in the 2024 elections. The subpoena directs production of certain materials that may have been generated as a result of your engagement of Red State Strategies. A copy of the subpoena is attached for your reference.

The focus of the subpoena is communications related to the 2023 Congressional district plan. However, Request No. 2 does not have a limit as to time if the communications "relate to this litigation," i.e., the claims made by Milligan, or the defenses made by the State.

The subpoena also seeks Red State Strategies documents or records that may not have been delivered to you but related to the 2023 Congressional district plan.

From my initial review of my record of communications, there are items responsive to the subpoena. However, it seems substantially possible that these materials are not relevant, or subject to privilege from production on the ground that they are part of your legislative privilege honored by the courts, including the federal courts.

The subpoena directs a response and production by April 19. Please let me know as soon as possible if you may seek to invoke the legislative privilege for any communications provided to you from Red State Strategies, or sent by you to Red State Strategies, and subject to the directions in this subpoena. Our prompt response will allow me to make proper filings to protect confidentiality and honor my duties to the court allowing issuance of the subpoena.

Yours very truly,

Chris Brown, President
Red State Strategies, LLC

CC: Albert L. Jordan, Wallace, Jordan, Ratliff and Brandt, LLC.

From: Mack Butler
To: Chris Brown; Bert Jordan; Jim Entrekin; Othni Lathram
Subject: Legislative privilege
Date: Wednesday, April 17, 2024 12:49:24 PM

Dear Chris:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,
Representative
Mack N. Butler

LEGISLATIVE PRIVILEGE CORRESPONDENCE BETWEEN

RSS PRESIDENT CHRIS BROWN

&

REPRESENTATIVE RICK REHM
ALABAMA HOUSE DISTRICT 85

From: rjr1966@aol.com
To: Bert Jordan
Cc: Chris Brown; Shep Shepherd; Jim Entrekin; Othni Lathram
Subject: Re: Milligan v. Allen 21cv1530 - subpoena response - assertions of legislative privilege
Date: Wednesday, April 17, 2024 4:48:45 PM
Attachments: Rehm - Privilege Log.pdf
Rehm - Text Messages.pdf
Domnanovich - Privilege Log - Text Messages.pdf
Domnanovich - Privilege Log - Emails.pdf

You don't often get email from rjr1966@aol.com. Learn why this is important

Dear Chris and Bert:

I received your previous correspondence informing me of the subpoena you received in the Milligan v. Allen case (No. 2:21-c-v1530-AMM (N.D. Ala.)). Thank you for affording me the opportunity to reiterate that I do in fact wish to maintain and continue to invoke legislative privilege over all applicable interactions, communications, conversations, work product, documents, and records you have or are privy to as a result of your engagement with me in furtherance of my legislative-related activities. This includes not only all privileged documents or records that you have in your possession or control and which are potentially subject to the aforementioned subpoena, but also extends to any and all other requests for such privileged information, including oral or written testimony, arising out of this or any other matter.

When possible, and at the appropriate time, please provide me with an advance copy of your itemized and descriptive index of records (either all or just those you intend to produce as nonprivileged) so that I can have a chance to review them, along with our legislative legal staff, for any potential recommendations or requests regarding legislative records that we would consider to be privileged.

Thanks for all the work you do and assistance you provide to me and others in our legislative capacities, it is much appreciated.

Sincerely,

Rick Rehm
Representative
Alabama House District 85

On Wednesday, April 17, 2024 at 10:45:56 AM CDT, Bert Jordan <bjordan@wallacejordan.com> wrote:

Dear Representative Rehm:

This follows up on the email from Chris Brown to you today.

On April 6, RedState Strategies, LLC was served with a subpoena seeking its communications with legislators about the 2023 Congressional redistricting arising out of the case now known as Milligan v. Allen, No. 21cv1530, and about the litigation itself. Chris Brown's email provided you a copy of the subpoena A response or objection to the court was required by April 19, and has been extended by agreement to April 26.

Some of the documents responsive to the subpoena involve communications between RedState's president Chris Brown and you. However, given your relationship with RedState, and the work its president Chris Brown does for you, those documents are likely protected from disclosure by a privilege known as "legislative privilege." I have attached a log of those documents as well as a copy of each of them. There are only a few electronic communications with you.

There is an additional set of materials received by RedState from a third party and responsive to the subpoena. These materials were used in part in formulating opinions that RedState communicated to you. However, these materials themselves were not transmitted to you.

Also attached is a log of these items that would be used to assert that these items are not subject to disclosure. They are titled "Domnanovich – Privilege Log – Text Messages" and "Domnanovich – Privilege Log – Emails."

If you think you need the underlying materials, please advise.

If you wish to treat these materials as protected from disclosure by the legislative privilege, you must indicate that to the court by filing in your own name with an attorney of your choosing.

However, if you want RedState to assert for you that the documents are properly exempt from disclosure due to your legislative privilege, I need you to so indicate. (If I as attorney for RedState also make the filing in your name, I will need an engagement agreement from you). If not, someone will need to assert to the privilege for you in a separate filing with the court.

It may be possible that the Legislative Services Agency will be in a position to address the subpoena in your name.

Other legislators who are RedState clients have LSA attorneys reviewing the RedState response, and considering how to respond for legislators.

Please advise if you wish the privilege to be asserted by RedState to be in your name.

Best regards,

Bert Jordan

Attorney for RedState Strategies, LLC

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