

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

THE SOUTH CAROLINA STATE  
CONFERENCE OF THE NAACP, and

TAIWAN SCOTT, on behalf of himself and  
all other similarly situated persons,

Plaintiffs,

v.

THOMAS C. ALEXANDER, in his official  
capacity as President of the Senate; LUKE A.  
RANKIN, in his official capacity as Chairman  
of the Senate Judiciary Committee; JAMES H.  
LUCAS, in his official capacity as Speaker of  
the House of Representatives; CHRIS  
MURPHY, in his official capacity as Chairman  
of the House of Representatives Judiciary  
Committee; WALLACE H. JORDAN, in his  
official capacity as Chairman of the House of  
Representatives Elections Law Subcommittee;  
HOWARD KNAPP, in his official capacity as  
interim Executive Director of the South  
Carolina State Election Commission; JOHN  
WELLS, Chair, JOANNE DAY, CLIFFORD  
J. EDLER, LINDA MCCALL, and SCOTT  
MOSELEY, in their official capacities as  
members of the South Carolina Election  
Commission,

Defendants.

Civil Action No. 3:21-cv-03302-MBS-TJH-  
RMG

**RESPONSE IN OPPOSITION TO  
PLAINTIFFS' MOTION REGARDING  
"ONGOING NONCOMPLIANCE WITH  
THE COURT'S DISCOVERY ORDERS"**

Defendants James H. Lucas (in his official capacity as Speaker of the South Carolina House of Representatives), Chris Murphy (in his official capacity as Chairman of the South Carolina House of Representatives Judiciary Committee), and Wallace H. Jordan (in his official capacity as Chairman of the South Carolina House of Representatives Redistricting Ad Hoc Committee) (collectively, the "**House Defendants**"), by and through undersigned counsel, hereby file this

response in opposition to Plaintiffs’ Motion captioned “Motion Regarding Ongoing Noncompliance with the Court’s Discovery Orders” (ECF No. 247) (“**Motion**”).

### **RESPONSE TO INTRODUCTION**

In yet another discovery-related motion, Plaintiffs bring another “sideshow” in front of the Panel despite the Panel very recently voicing concerns about the efficacy of such disputes. (*See* Tr. from Apr. 12, 2022 Hearing at 14:16-17, attached as *Exhibit A* (“[W]e’re spending a lot of time on what I regard as kind of sideshow issues.”). Even more concerning is the fact that Plaintiffs’ lead discovery team *continues* to make misrepresentations to the Panel despite repeated warnings about such conduct by House Defendants’ counsel, which the Panel has now observed first-hand on two separate occasions. (*See, e.g., Ex. A* at 59:6-60:9 (a member of the Panel appearing to recognize that Plaintiffs’ discovery counsel was misquoting Jennifer Hollingsworth during the April 12, 2022 telephonic hearing on two other discovery-related motions filed by Plaintiffs); Tr. from Apr. 26, 2022 telephonic status conference, attached as *Exhibit B* at 13:16-14:10 (Plaintiffs’ discovery counsel representing to the Panel that an issue related to the adequacy of Plaintiff SC NAACP’s email collection was “[n]ews to [him]” that was “[n]ot previously raised [and] not met and conferred on,” despite the fact that (as counsel for House Defendants promptly pointed out to the Panel) the issue had already been raised and that “a number of the folks on [Plaintiffs’] side [were] well aware of the issue”);<sup>1</sup> *see also* ECF No. 198-5 (counsel for House

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<sup>1</sup> While counsel for House Defendants did not point this out to the Panel at the April 26, 2022 status conference (as we were not expecting the response outlined above), we feel required to note that on April 18, 2022, House Defendants sent a four-page letter to *all* of Plaintiffs’ counsel of record, which raised detailed concerns about this very issue. (*See* House Defendants’ Apr. 18, 2022 Discovery Letter, attached as *Exhibit C*). Indeed, Plaintiffs’ spokesperson who represented that this issue was “news” to him was one of the lawyers who received this letter. Moreover, this issue was also discussed during the Parties’ March 14, 2022 meet and confer. At least five of Plaintiffs’ counsel were present during that meet and confer, including two attorneys from

Defendants admonishing Plaintiffs' discovery counsel about repeated misrepresentations and mischaracterizations contained in self-serving "summaries" that Plaintiffs' discovery counsel continued to draft and send after the conclusion of the Parties' meet and confers, which ultimately resulted in counsel for House Defendants retaining a court reporter for an April 14, 2022 meet and confer)).

Plaintiffs' most recent misrepresentation stems from a statement from House Defendants' counsel during the April 26, 2022 telephonic status conference, where counsel stated that House Defendants would produce the documents at issue in this Motion "*well before any deposition takes place that might be affected by those productions* and well before the discovery deadline." (*See Ex. B* at 18:13-15) (emphasis added). Just hours after that status conference, House Defendants' counsel reiterated this commitment during a meet and confer discussion with Plaintiffs' counsel,<sup>2</sup> and it was clear that Plaintiffs' local counsel understood House Defendants' representation regarding when these communications would be produced. Three days later, Plaintiffs filed their Motion with representations that stand in stark contrast from the commitment actually made by House Defendants' counsel. (*See* ECF No. 247 at 2 ("Notwithstanding defense counsel's representation at the April 26 hearing that such materials had been collected, *and despite counsel having committed to produce them 'well before' depositions recommenced*, that deadline has passed.") (emphasis added); *see also* ECF No. 247 at 7 ("At the April 26, 2022 status conference, House Defendants acknowledged that they have not produced documents that the Court ordered

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Plaintiffs' lead discovery team—both of whom were from the same law firm as their discovery spokesperson at the April 26, 2022 status conference.

<sup>2</sup> Two lawyers from Plaintiffs' lead discovery team attended this meet and confer.

produced on April 13 *and committed to the Court that they would produce documents subject to the Court's Orders before relevant depositions take place.*") (emphasis added)).

Simply put, the only "inexcusable," "gravely serious" issue before the Panel, (*see* ECF No. 247 at 8), is whether House Defendants should continue to have to contend with such misrepresentations and omissions in the midst of their trial preparation. Such conduct is not only wasteful of the Parties' time, but is also wasteful of this Panel's time.<sup>3</sup> House Defendants respectfully submit that the Panel should hold Plaintiffs' discovery counsel to task for their conduct in a way that deters them from continuing to misquote, misrepresent, or otherwise mischaracterize the representations of House Defendants' counsel.

## ARGUMENT

### **I. House Defendants Have Complied With This Court's Orders.**

House Defendants first note that they are confounded as to how Plaintiffs' counsel may in good faith represent to the Panel that House Defendants have failed to comply with *multiple* court orders, especially after Judge Gergel recently commended House Defendants' production efforts related to the Panel's February 10, 2022 Order. (*See Ex. A* at 37:7-9 ("Y'all's response to our [February 10, 2022] order was *excellent*. I mean, *I've got to say, y'all really jumped at it. And we appreciate that.*") (emphasis added)). That notwithstanding, it bears repeating that House Defendants' counsel represented that House Defendants would produce the documents at issue in this Motion "*well before any deposition takes place that might be affected by those productions and well before the discovery deadline.*" (*Ex. B* at 18:13-15). That is exactly what House

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<sup>3</sup> An additional example of Plaintiffs' written bluster is the unsupported accusation that "the dearth of substantive communications conducted on official government email accounts about the revised maps appears to reflect a concerted effort to evade discovery of [House Defendants'] true process and motive . . ." (ECF No. 247 at 3).

Defendants have done.<sup>4</sup>

On April 30, 2022, House Defendants produced personal email correspondence and text messages from Chairmen Wallace Jordan and Chris Murphy, as well as Representatives Justin Bamberg, Beth Bernstein, Neal Collins, and Weston Newton. (*See* Apr. 30, 2022 Prod. Ltr., attached as *Exhibit D* (“The production is being made pursuant to the Panel’s April 13, 2022 Order (ECF No. 222) directing the production of communications such as personal email accounts and text messages.”)).<sup>5</sup> This production is consistent with counsel’s representation that House Defendants would produce these communications “well before any deposition takes place that might be affected by those productions,” as (of the aforementioned individuals) only Speaker Lucas, Chairman Murphy, and Representative Collins are being deposed this week. In addition,

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<sup>4</sup> The April 19, 2022 deadline for completion noted in the Panel’s April 13, 2022 Order (ECF No. 221 at 3) is no longer the operative deadline for compliance, as first a member of the Panel extended that deadline for completion during a discussion with the Parties related to settlement discussions, and then Plaintiffs’ local counsel further agreed to an extension of the deadline for production. In addition, as detailed in the body of this Motion, we respectfully submit that during the April 26, 2022 status conference, the Panel agreed to move this deadline as discussed above.

<sup>5</sup> House Defendants produced no responsive personal communications from Speaker Lucas because no such communications exist. Furthermore, House Defendants collected personal communications from Representative Jason Elliott on April 30, 2022, but are still in the process of preparing those for production. Responsive personal communications from Representative Elliott will be produced as soon as possible this week, but the timing of that production will not prejudice Plaintiffs because they have not scheduled a deposition for Representative Elliott. As to Representative Pat Henegan, House Defendants are engaged in discussions with Plaintiffs’ local counsel concerning whether Plaintiffs require a production from her due to the fact that the only responsive documents she has located relate to scheduling issues and she has been distracted in recent weeks based on a close relative’s serious health issues. Nevertheless, as discussed with Plaintiff’s local Representative Henegan completed an initial review of her communications earlier this month, recently completed a supplemental review at the request of counsel and will produce any arguably responsive documents at the request of Plaintiff’s local counsel. As noted in discussions with Plaintiff’s local counsel, the only responsive documents she has identified related to the scheduling of public hearings and/or meetings of the Ad Hoc redistricting committee. As noted earlier, Plaintiffs’ Motion completely ignores the fact of the ongoing settlement discussions between the Parties and the effect of those discussions on discovery.

House Defendants are in possession of certifications from all of these individuals as required by the Panel's April 13, 2022 Order. (*See* ECF Nos. 221, 221-1). Accordingly, because House Defendants are in compliance with this Court's Orders, Plaintiffs are not entitled to an Order under Federal Rule of Civil Procedure 37(b).

## **II. Plaintiffs Have Not Been Prejudiced.**

Without any real substance or concrete evidence, Plaintiffs baldly assert that the timing of House Defendants' production has prejudiced Plaintiffs in several respects. Plaintiffs first argue that they "had to proceed with a deposition [of Thomas Hauger] without these materials," (ECF No. 247 at 2), yet they provide no evidence of actual prejudice.<sup>6</sup> Indeed, notwithstanding that the communications at issue are irrelevant to Mr. Hauger's deposition, Plaintiffs never asked Mr. Hauger about these materials. (*See also Ex. A* at 57:25-59:5 (a member of the Panel instructing Plaintiffs to take depositions and actually ask the witnesses questions related to the discovery Plaintiffs seek)). Plaintiffs' cries of prejudice fall flat as the production was made more than two days prior to any arguably affected deposition, which is consistent with the agreement the Parties have been operating under.

Plaintiffs' also vaguely argue, again without any evidentiary support, that "[t]he ongoing failure to make this production has interfered with trial preparation; Plaintiffs had to prepare and serve their Local Rule 26.07 exhibit list last evening without having received the materials." *Id.* at 3.<sup>7</sup> This argument is curious, especially when considering that Local Rule 26.07 does not apply to

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<sup>6</sup> Plaintiffs' Motion also fails to inform the Panel that the only deposition that occurred last week was that of Mr. Hauger, who is not a legislator and was never a party to any of the communications at issue in Plaintiffs' Motion.

<sup>7</sup> The only party that has been prejudiced by an "ongoing failure" to produce documents is House Defendants. As discussed in detail in House Defendants' Second Motion to Compel Production of Documents (ECF No. 248), SC NAACP President Brenda Murphy has now sat for

an action like this one where the Parties are not submitting pretrial briefs. (*See* Local Civ. R. 26.07 (“ . . . unless otherwise ordered by the court, attorneys for each side shall meet at least seven (7) days *prior to the date set for submission for pretrial briefs* for the purpose of marking and exchanging all exhibits intended to be used at trial . . . ”) (emphasis added). Moreover, Plaintiffs’ 11:46 p.m. disclosure of a Local Rule 26.07 exhibit list, which occurred without any prior notice to House Defendants on the evening before this Motion was filed, calls into question Plaintiffs’ true motive behind the timing of that disclosure.<sup>8</sup>

Next, Plaintiffs argue that they have “had to take the depositions of five legislators and their staff, including Defendant Jordan, without these materials; at least some of these depositions may need to be reopened.” (ECF No. 247 at 3). Again, aside from speculative assertions, Plaintiffs have presented the Panel with no concrete evidence of prejudice, and their April 29, 2022 representation that they have “had to take the depositions of five legislators” is simply incorrect. To date, the only legislators Plaintiffs have directly deposed are Chairman Jordan and Representative Newton, both on April 13<sup>9</sup>—almost two weeks before the April 26, 2022 status

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deposition multiple times, yet Plaintiffs still have not produced communications from her personal email account.

<sup>8</sup> Prior to the filing of this Motion, House Defendants produced their own draft exhibit list to Plaintiffs on April 29, 2022, along with an email explaining their views as to the applicability of Local Rule 26.07. In that email, House Defendants also offered to engage in a meet and confer regarding these exhibit lists. To date, Plaintiffs’ counsel has failed to respond to that email or to seek to schedule the anticipated meet and confer, and Plaintiffs’ Motion fails to disclose the existence of this correspondence to the Panel. (*See* April 29, 2022 Email from M. Moore to L. Aden, attached as *Exhibit E*). Moreover, as noted in that correspondence, if the deadlines for Local Rule 26.07 are in place, Plaintiffs have failed to comply with Local Rule 26.07(C).

<sup>9</sup> These two depositions were the first depositions directly noticed by Plaintiffs in this case other than the depositions of House Defendants’ experts. After House Defendants noticed the depositions of Representatives John King and Wendy Brawley (both of whom were identified by Plaintiffs in their initial disclosures as persons who Plaintiffs believed would be in the possession of discoverable evidence), Plaintiffs cross-noticed those depositions. Representative Brawley was deposed on April 1, 2022, and Representative King was deposed on April 13, 2022. Neither of

conference.<sup>10</sup> Three others are scheduled to take place this week (Speaker Lucas on May 3; Chairman Murphy on May 4; and Representative Collins on May 4). Furthermore, as noted above, Plaintiffs have had these communications in their possession since Saturday, as evidenced by the fact that they provided several of them as possible exhibits for the deposition of Emma Dean earlier today. It is also telling that Plaintiffs have not cited to any deposition testimony that would demonstrate how they were prejudiced due to the timing of House Defendants' production.<sup>11</sup>

Lastly, Plaintiffs argue that “[i]t prejudices Plaintiffs’ ability to schedule and prepare for next week’s depositions, which include Speaker Lucas and Chairman Murphy, as well as their key staff. And being forced to litigate [sic] this issue for the third time prejudicially has taken away time that Plaintiffs would otherwise be using to prepare for trial.” *Id.* Given House Defendants’ April 30, 2022 production, this argument is at best moot. House Defendants’ April 30, 2022 production was consistent with counsel’s representation (i.e., that House Defendants would produce the documents “well before any deposition takes place that might be affected by those productions

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these representatives were on the Ad Hoc Redistricting Committee, and Plaintiffs have not sought any document collections or productions from either of them.

<sup>10</sup> Earlier today, Plaintiffs asked House Defendants to agree to reopen the depositions of Chairman Jordan and Representative Newton. House Defendants will agree to Plaintiffs’ request so long as Plaintiffs agree that their questioning will be limited to questions related to documents House Defendants’ produced after the conclusion of their April 13 depositions.

<sup>11</sup> In addition, Plaintiffs accusation that “House Defendants did not give any justification for their lack of compliance or self-serving timeline” is likewise misplaced. This statement completely ignores the fact that House Defendants have been working tirelessly through these discovery issues in good faith while simultaneously engaging in trial preparation and extensive efforts to settle this case, which the Parties are still attempting to do as of this filing. Put simply, Plaintiffs’ attempt to cast House Defendants in a dilatory light is nothing short of ridiculous.

and well before the discovery deadline.”).<sup>12</sup> Accordingly, the Panel should find that all of Plaintiffs’ claims related to prejudice are without merit.

**CONCLUSION**

Based on the foregoing, House Defendants respectfully submit that the Panel should deny Plaintiffs’ Motion and award House Defendants such other relief as the Court deems just and proper.

*[SIGNATURE PAGE FOLLOWS]*

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<sup>12</sup> On this issue, House Defendants submit that the production of Chairman Murphy’s and Representative Collins’s communications four days before their depositions gives Plaintiffs more than enough time to review and analyze the very small universe of documents in advance of those depositions.

Respectfully submitted,

/s/ Mark C. Moore

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May 2, 2022  
Columbia, South Carolina

*Attorneys for James H. Lucas, Chris Murphy, and  
Wallace H. Jordan*

# **Exhibit A**

**(Transcript of April 12, 2022 Telephonic Motion Hearing)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

SC STATE CONFERENCE OF THE	)	
NAACP & TAIWAN SCOTT,	)	
Plaintiffs,	)	April 12, 2022
	)	
-versus-	)	3:21-3302
	)	
THOMAS C. ALEXANDER, LUKE A.	)	Charleston, SC
RANKIN, JAMES H. LUCAS, CHRIS	)	
MURPHY, WALLACE H. JORDAN,	)	
HOWARD KNAPP, JOHN WELLS,	)	
JOANNE DAY, CLIFFORD J. ELDER,	)	
LINDA McCALL, SCOTT MOSELEY,	)	
Defendants.	)	

TRANSCRIPT OF TELEPHONIC MOTION HEARING

BEFORE THE HONORABLE RICHARD M. GERGEL  
UNITED STATES DISTRICT JUDGE  
THE HONORABLE MARGARET B. SEYMOUR  
SENIOR UNITED STATES DISTRICT JUDGE  
THE HONORABLE TOBY J. HEYTENS  
UNITED STATES APPELLATE JUDGE

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Proceedings reported by stenographic court reporter.  
Transcript produced with computer-aided transcription  
software.

1 Tuesday, April 12, 2022

2 (Court was called to order at 3:01 PM)

3 **JUDGE GERGEL:** This is Judge Gergel are my  
4 colleagues on the line?

5 **JUDGE HEYTENS:** This is Toby Heytens here as  
6 well.

7 **JUDGE GERGEL:** Judge Heytens sounds like we have  
8 everyone on the line.

9 **JUDGE HEYTENS:** This is Judge Heytens, Judge  
10 Gergel and Judge Seymour are also on the line.

11 We are on the record in the case of South  
12 Carolina State Conference of the NAACP vs. Alexander,  
13 Civil Action No. 21-3302 to address the parties' various  
14 motions to compel.

15 Could the counsel who will be speaking for the  
16 plaintiffs please identify themselves for the record?

17 **MR. HINDLEY:** Good afternoon, Your Honors. This  
18 is John Hindley of Arnold Porter on behalf of plaintiffs.

19 **JUDGE HEYTENS:** Good afternoon.

20 And could counsel who will be speaking this  
21 afternoon for the House Defendants please identify  
22 themselves?

23 **MS. HOLLINGSWORTH:** Good afternoon, Your Honor.  
24 This is Jennifer Hollingsworth on behalf of the House  
25 Defendants.

1           **JUDGE HEYTENS:** Great.

2           Please make sure to identify yourselves every  
3 time you speak to make things a little bit easier on the  
4 court reporter. And with that, I'm going to ask Judge  
5 Gergel to address the issues on the motions to compel.

6           Judge Gergel?

7           **JUDGE GERGEL:** Thank you, Judge Heytens.

8           Folks, first of all, thank you for your briefing  
9 on these issues. The panel has been through the various  
10 briefs and we don't really need an argument-by-argument  
11 objection because we have a good grasp of those. But  
12 there are areas of clarifications we need. And I'm going  
13 to raise questions, sort of have a list of questions that  
14 I feel like we need a better understanding.

15           And let me just, first, in regard to the  
16 defendant's motion to compel, that's Document No. 157,  
17 there are a series of motions relating to the production  
18 of issues concerning standing; and that is, whether the  
19 plaintiff Conference of the NAACP has members in the  
20 challenged districts.

21           Mr. Hindley, what have the plaintiffs actually  
22 produced to defendants to establish standing?

23           **MR. HINDLEY:** Thank you, Your Honor. So the  
24 issue of standing, as the Court made clear in its motion  
25 to dismiss, we plan on a group of that upstanding at

1 trial. But so far to date we have produced the deposition  
2 of President Murphy, who testified and affirmed the  
3 standing members in each challenged district. And the  
4 production we have made so far reveal emails and  
5 communications that would also substantiate plaintiff's  
6 standing.

7 **JUDGE GERGEL:** Have you produced the names of  
8 individuals who you claim reside in those districts?

9 **MR. HINDLEY:** No, Your Honor. And unless  
10 ordered by the Court, we don't plan to. Because we have  
11 the First Amendment right not to produce member names.  
12 And if need be, we can produce those names in camera. But  
13 at this time we have not produced the names of members in  
14 each challenged district.

15 **JUDGE GERGEL:** Well, let me just say this. You  
16 know, when you assert standing, I respect the issue of  
17 privacy. But there's got to be -- the defendants have a  
18 right to be satisfied and not to be just told for the  
19 first time at trial or to have some general certification.  
20 So the question is, what can we do or what would be a  
21 reasonable measure to protect the privacy of your members  
22 but at the same time to demonstrate standing? Would a  
23 provision of names subject to a confidentiality order with  
24 an attorneys' eyes only for attorneys be sufficient?

25 **MR. HINDLEY:** Plaintiffs would be happy to

1 propose an affidavit on behalf of President Murphy.

2 **JUDGE GERGEL:** With the names of the  
3 individuals? We don't need just a general certification.  
4 We need names of people so that you can demonstrate you  
5 actually have registered voters in the challenged  
6 districts.

7 **MR. HINDLEY:** We are open to an in camera  
8 review.

9 **JUDGE GERGEL:** I didn't ask in camera. The  
10 panel's not really set up to verify residence and  
11 registration and all that. And the defendants are  
12 entitled to that. I'm trying to find a balance. The  
13 panel is trying to find a balance between respecting the  
14 privacy of membership, not interfering with association  
15 rights, but at the same time for the plaintiff  
16 organization to establish its standing. So I'm asking you  
17 again, would a statement -- would the provision of the  
18 names for attorneys' eyes only, a confidentiality order,  
19 address your concerns about privacy?

20 **MR. HINDLEY:** Your Honor, unfortunately, I need  
21 to defer to general counsel for the NAACP so that we can  
22 have sign-off on whatever procedures we may have that  
23 would allow the balance of equities to ensure that we  
24 satisfy our standing requirements but ensure that --

25 **JUDGE GERGEL:** Well, is your counsel on the

1 telephone? I mean, we're here having an issue. We're  
2 trying to address the issue, Mr. Hindley. I don't want to  
3 give you a hard time. This shouldn't be that hard.

4 **MR. HINDLEY:** I think our counsel, Mr. Bryant,  
5 will jump in and address your concerns, Your Honor.

6 **JUDGE GERGEL:** Okay.

7 Mr. Bryant, you want to address this issue?

8 **MR. BRYANT:** Yes, Judge Gergel. Chris Bryant  
9 for plaintiffs. If the issue -- if it truly is -- so I  
10 just -- setting the stage, we have -- it has been  
11 represented to us that there may be a need to do some sort  
12 of additional discovery or potentially subject potential  
13 members or some set of members to fact depositions and  
14 things of that nature. Counsel for NAACP is going through  
15 the process right now of identifying individuals in  
16 each -- the process has been -- individuals have been  
17 identified. But the further processing, since it is our  
18 understanding we have not received representations  
19 otherwise, that individuals would be subject to not just  
20 inquiries into their residences but also potentially  
21 additional factual inquiries, looking for individuals who  
22 are, frankly, willing to sit for depositions. To the  
23 extent that the only thing that the Court is -- to the  
24 extent that the Court is requiring the production of at  
25 least, you know, at least one member in each district and

1 information to enable the person to ascertain, you know,  
2 whether that person is a voter, that is something that --  
3 and again, as Mr. Hindley I think said, counsel for --  
4 general counsel is not on the phone. But to the extent  
5 that that is the request, that is something that we can do  
6 and will do and also recognize we have that need. But to  
7 the extent that it's individuals who will then be subject  
8 to some other form of heightened, I guess, factual  
9 inquiry, that is -- that -- we need to figure something  
10 out for that.

11 **JUDGE GERGEL:** Well, let's --

12 Ms. Hollingsworth, what are the defendants  
13 seeking in standing beyond verifying that the organization  
14 actually has a member in each challenged district?

15 **MS. HOLLINGSWORTH:** Yes, Your Honor. This is  
16 Jennifer Hollingsworth. Our position on standing is it  
17 does go to the elements of standing, both that they have a  
18 registered voter in each of the challenged districts that  
19 have suffered the personal harms that underlie the  
20 allegations of the complaint. I don't believe there's  
21 been any discussion that we would be taking full-fledged  
22 discovery for all 29 of these individuals by any means.  
23 But we certainly -- the threshold inquiry that we have yet  
24 to have answered is are there registered voters, members  
25 of the organization in each of these 29 districts that

1 have suffered the harms that are underlying the complaint?

2 **MR. BRYANT:** Judge Gergel, Chris Bryant for  
3 plaintiffs. And I guess that is the -- this is sort of  
4 the crux of the holdup and the dispute between the parties  
5 on this issue. As Ms. Hollingsworth represented, she said  
6 that the threshold inquiry is whether there were 29  
7 individuals who lived in the district. And then the  
8 important distinction is and suffered the individual  
9 harms. It is plaintiff's -- underlying harms outlined in  
10 the complaint.

11 It's plaintiff's position and understanding of  
12 standing law in the area here that the simple fact of the  
13 matter that an individual resides in the district and is a  
14 registered voter would be sufficient to satisfy the  
15 inquiry regarding standing. And that the sort of -- the  
16 crux of the question is if each of these members are going  
17 to be subject to fact discovery of some kind about the  
18 impact of discrimination writ large and uninhabited --  
19 onward from the requirements of the law, there's sort of a  
20 heightened desire to protect --

21 **JUDGE GERGEL:** Why don't we do this. Why don't  
22 we go ahead and identify individuals. And if the  
23 defendants think there is a basis for organizational  
24 standing beyond simply establishing members in each  
25 district, we can brief that issue. But we need go ahead

1 and identify the registered voters that you claim are --  
2 have standing in each of the districts. And from that  
3 point, we can then address the next issue if anymore is  
4 necessary. How long would it take you simply to produce  
5 the names of individuals in the challenged districts?

6 **MR. BRYANT:** Judge, this is Chris Bryant  
7 speaking again on behalf of plaintiffs. And I may rely on  
8 my colleague, John Cusick, to correct me here. I believe  
9 that there are at least one or more individuals whose been  
10 identified in each district. And communications are  
11 ongoing regarding whether they would be subject -- willing  
12 to be subject to further communications. So I would think  
13 that -- today is Tuesday. I would think it may not be a  
14 24-hour thing. It may be a 24-hour thing. But it's one  
15 of those things that the membership list is such that, you  
16 know, even President Murphy does not have the entirety of  
17 the membership list. So 48 hours I would think would be  
18 sufficient.

19 **JUDGE GERGEL:** Ms. Hollingsworth, if you believe  
20 that -- that the -- that you're entitled to do more for  
21 organizational standing rather than just establishing  
22 standing in the membership in the entity, I think you're  
23 going to need to brief that issue. Let the other side  
24 quickly respond. And then the Court will address it  
25 whether any further discovery beyond that. I, frankly,

1 don't know the answer to that question. Normally, just  
2 simply establishing members in the district is normally  
3 what's required. If there's something more, I think  
4 you're going to need to establish that. I'm not saying  
5 that's not correct.

6 So if you want to depose people beyond getting  
7 the base information establishing that they are registered  
8 voters, and I think they can establish that on documents,  
9 I think you're going to need to move -- what kind of time  
10 would you need to make a decision whether you're going to  
11 move for the right to take their depositions to go beyond  
12 the issue of their membership and their residence in the  
13 challenged districts?

14 **MS. HOLLINGSWORTH:** Yes, Your Honor. This is  
15 Jennifer Hollingsworth. That is perfectly acceptable to  
16 us. And I would -- if we have -- we certainly would have  
17 it within the next 48 hours. And today is April 12th. If  
18 we could have at most three business days? So however  
19 that may fall, we can get three days to look it over,  
20 ascertain our position, and then we would present briefing  
21 to the Court if we want to request any additional  
22 discovery beyond the corroborating information of the  
23 residencies and the voting standards, that they're  
24 registered voters in these districts.

25 **JUDGE GERGEL:** And what I would want the

1 plaintiffs to do within -- and if y'all want to do it,  
2 some of my complex litigation, we -- we get like a  
3 letter -- a letter rather than a formal brief several  
4 pages long laying out the position. And we kind of  
5 exchange letters as a way of not just burdening everybody.

6 So why don't we say that three days after the  
7 plaintiffs provide the information, and they're going to  
8 do it -- we're going to do it attorneys' eyes only,  
9 Ms. Hollingsworth. Do you have any objection to that,  
10 confidentiality order, attorneys' eyes only?

11 **MS. HOLLINGSWORTH:** I do not. Yes, Your Honor,  
12 understood.

13 **JUDGE GERGEL:** Okay. And then what we're going  
14 to do is within three days after receipt, you're going to  
15 advise the Court whether you seek to depose. And you do  
16 these letters, you file them. We just don't need to be  
17 burdening, everybody's got a lot of work to do in this  
18 case. And then three business days after, the plaintiff's  
19 can reply. And then we'll decide. But we won't take  
20 anybody's deposition. But --

21 And let me give the plaintiffs a little  
22 unsolicited advice. If you've got more than one member,  
23 don't pick just one member. If you've got more, do a  
24 couple. Because there's always issues where you get  
25 surprised, they don't live there, they're not registered,

1 whatever. I'm thinking there's -- create for yourself a  
2 little margin of error there, if it's not too burdensome,  
3 as a way of -- I'm just trying to get beyond this issue,  
4 folks.

5 Can the parties confer about a confidentiality  
6 order with attorneys' eyes only? And if there's a  
7 problem, you can come back to us?

8 Mr. Bryant, can you do that?

9 **MR. BRYANT:** Yes, we can.

10 **JUDGE GERGEL:** Okay. And I want to encourage  
11 y'all, let's -- we're spending a lot of time on issues not  
12 related to the really heartland of this case. And if we  
13 can move beyond all this, I really want to encourage you  
14 to do it.

15 My panel, we don't know much about the facts of  
16 this case. We want to know more. And we're spending a  
17 lot of time on what I regard as kind of sideshow issues.  
18 And I don't want to diminish the importance of some of  
19 these issues, but they largely are not important. And the  
20 important issues we're really still left in the dark  
21 about. And that's where I want us to focus our attention  
22 if we can.

23 Okay. I think we've moved -- we've got  
24 satisfaction on the issue of standing. And hopefully,  
25 within a week or so, we will have that issue behind us.

1 Let me move to the issue of attorney/client waiver of the  
2 plaintiffs by this meeting of June 21st, 2021, of the  
3 NAACP.

4 Ms. Hollingsworth, is it my understanding -- is  
5 my understanding correct that this meeting occurred before  
6 the census data was released?

7 **MS. HOLLINGSWORTH:** Your Honor, this is Jennifer  
8 Hollingsworth. That document included with our motion was  
9 an exemplar of a meeting. What we have from discovery is  
10 there was a number of meetings and there were very regular  
11 meetings and videotapes of the meeting. It was a  
12 coalition led by the plaintiff association but that  
13 involved a number of other associations, organizations,  
14 and individuals interested in redistricting. And these  
15 were very regular meetings with a tone and tenor of  
16 assessing, planning, preparing, and then pursuing  
17 litigation both as to now --

18 **JUDGE GERGEL:** Who is present at these -- let me  
19 just say, I find the argument rather astounding, frankly.  
20 And there's no precedent in any of the cases you cited for  
21 it. Who are these people at the meetings? And first of  
22 all, tell me who the meeting people are.

23 **MS. HOLLINGSWORTH:** The meeting includes  
24 organizations both the national level organizations, such  
25 as the ACLU and NAACP; as well as South-Carolina-focused

1 organizations like the Progressive Network, League of  
2 Women Voters; then individuals such as members of the  
3 legislature, other elected officials. Mayor Benjamin, for  
4 example, frequented the meetings. So it's a wide variety  
5 of both individuals and organizations that --

6 **JUDGE GERGEL:** This sounds like core First  
7 Amendment. You know, this is like really core First  
8 Amendment. Can you cite me any case in litigation,  
9 anything like this where public discussion of issues that  
10 are of public interest would constitute attorney/client  
11 privilege? Can you cite me any cases?

12 **MS. HOLLINGSWORTH:** Your Honor, again, this is  
13 Jennifer Hollingsworth. Our issue here is it has to be  
14 one or the other. So the plaintiff's position is that  
15 these statements and the discussion of legal strategy was  
16 not privileged. But then if that's the case, then either  
17 representatives of these national organizations when we  
18 sought to obtain discoverable information from these  
19 organizations by way of subpoena, then we were told, no,  
20 these are their attorneys. You can't subpoena their  
21 attorneys for information. So we are in a position where  
22 we're not able to access information at all. So, again,  
23 for example --

24 **JUDGE GERGEL:** Why is it relevant? Here's the  
25 question, what is relevant -- what are you trying to get

1 here other than, frankly, just sort of giving the  
2 plaintiff lawyers a hard time, going to war against the  
3 lawyers, what is relevant about this? This is what we're  
4 all struggling with. Why is this relevant?

5 **MS. HOLLINGSWORTH:** Well, Your Honor, our  
6 position would be that this discovery is relevant to being  
7 able to ascertain the allegations being made in this  
8 complaint. The complaint is challenging these districts  
9 that were drawn. And we believe that there is evidence  
10 and information even from these meeting minutes suggesting  
11 that that wasn't necessarily a belief held by many people  
12 that these lines were drawn in a way that was racially  
13 discriminatory.

14 **JUDGE GERGEL:** Well, you can take their  
15 depositions. The question is the idea that a group of  
16 people aligned together in a legal case, these lawyers are  
17 all combined together, they're lawyers of record, they're  
18 having these public discussions on matters protected by  
19 the First Amendment. And I can't even figure what  
20 about -- I mean, you've been spending a lot of time,  
21 Ms. Hollingsworth, talking about the plaintiff's lawyers  
22 and not about the plan. If these lawyers, some of them  
23 don't think there is -- I mean, I don't understand. I  
24 don't see the point. The point is -- the case law tells  
25 us we focus like laser beams on these plans. That's what

1 we focus on. And you're asking us to spend all this time  
2 in which you're just basically arguing with the lawyers.

3 And let me say this, judges don't like this.  
4 They don't like all this fussing about the lawyers.

5 And I'm straining to figure out what is relevant  
6 about what you're trying to get? Are you suggesting if a  
7 Thurgood Marshall went to a meeting and spoke to a  
8 community meeting that the lawyers of the other side of  
9 the case can just take his file and look inside it? Is  
10 that really, really what you're arguing?

11 **MS. HOLLINGSWORTH:** And Your Honor, the issue of  
12 the specific meeting minutes was not -- that is not a  
13 laser focused point of the motion. What we are trying to  
14 ascertain and understand is the scope and breadth of this  
15 privilege that's being claimed. Because when you review  
16 --

17 **JUDGE GERGEL:** You're trying to get -- what is  
18 relevant you're trying to get? What are you trying to get  
19 at here? We're spending a lot of time nitpicking people.  
20 And I'm trying to figure out what's relevant about this to  
21 this case? It's not -- the rules aren't -- don't live in  
22 abstraction. They've got to be relevant to the case.  
23 What is it you're trying to get from these meetings?

24 **MS. HOLLINGSWORTH:** Well, Your Honor, so, for  
25 example, a very important area of inquiry in our discovery

1 is understanding more about the maps that were drawn and  
2 proposed by the plaintiff. And actually, it was the  
3 plaintiff and these other organizations, it was a  
4 coalition of multiple organizations, only one of whom is  
5 the plaintiff, the SC NAACP.

6 In the discovery responses, plaintiff has  
7 refused to provide us any information about the maps that  
8 they drew and the maps that they proposed. So in the  
9 complaint they describe to the Court that there's ways of  
10 drawing the map that aren't impacted by these  
11 considerations of race and that they did so and they  
12 submitted it. So we're trying to conduct discovery about  
13 their maps and understand their maps, much like the way  
14 that the maps that we've drawn are relevant to the  
15 discussion --

16 **JUDGE GERGEL:** But their maps aren't presented  
17 to the Court -- now, if they present a map to the Court --  
18 but you're spending all this time trying their maps.  
19 Their maps aren't the subject of this litigation. And can  
20 you draw maps differently? Sure. We're not trying  
21 everybody else's maps, Ms. Hollingsworth. We're trying to  
22 try the maps of the House plan, which may be perfectly  
23 fine. But you're spending all of your time on other  
24 things. And I'm just -- you know, and you want us to  
25 chase the rabbit of some earlier drafted plan. I don't

1 understand the relevance of it because they weren't  
2 adopted by the House. I mean, exactly what is the point?

3 **MS. HOLLINGSWORTH:** Your Honor, to the extent  
4 that there were maps or versions of maps drawn by the  
5 plaintiffs, or whoever it was that drew the plaintiff's  
6 maps, that are similar to the lines that are now being  
7 challenged in this litigation, I would submit that's  
8 highly relevant. Because how could it be that when the  
9 House drew a line that way that it was the outcome of  
10 intentional racial discrimination, but if the plaintiffs,  
11 SC NAACP, drew the line that way, it is not so? So --

12 **JUDGE GERGEL:** Well, that that -- you don't  
13 have -- if you think those maps are relevant, that's one  
14 issue. But to say they have an unqualified waiver of a  
15 privilege because they met together, I think you're going  
16 to really run head on into the First Amendment here.

17 So the question is, if it's narrower than that,  
18 let's talk about that issue. But making a claim that you  
19 just walk into their office and take their files because  
20 they spoke at a meeting seems very unimpressive. That's  
21 an unimpressive argument.

22 Now, if you think some earlier plans are  
23 potentially relevant to all of this -- and were they  
24 publicly disclosed?

25 **MS. HOLLINGSWORTH:** Yes, Your Honor. What we

1 know --

2 **JUDGE GERGEL:** Well, that's not subject to  
3 privilege. I mean, were they published this close at your  
4 Ad Hoc Committee or in some other public way beyond just  
5 the meeting -- these folks meeting together?

6 **MS. HOLLINGSWORTH:** Yes, Your Honor.  
7 Ultimately, there was -- the map was submitted to the Ad  
8 Hoc Committee. And then --

9 **JUDGE GERGEL:** So that's not privileged. You've  
10 got the maps. Why do we need to get into this head  
11 banging about waiving privilege? You've got the map.

12 **MS. HOLLINGSWORTH:** I understand, Your Honor.  
13 So what we were asking for in discovery is to be able to  
14 ascertain individuals involved in drawing the maps, for  
15 example, versions of the map, for example. And in  
16 response to all of those questions, we get a broad cloak  
17 of privilege protection.

18 **JUDGE GERGEL:** Well, you've got work product.  
19 You've got people messing around with plans who are just  
20 in their law offices and they're consultants doing it.  
21 But if they presented it publicly, fair game. Fair game.  
22 Go for it. But to sit there and, you know -- it just  
23 seems to me y'all are really chasing rabbits that are  
24 getting us away from the focus. We want to focus on the  
25 House plan.

1           And I started this conversation by saying we  
2 don't have very much information. We're spending a lot of  
3 time on things very unrelated to the case at hand. So if  
4 they've made it public, you have a right -- if they  
5 presented it -- do you have a copy of the map they  
6 presented to the Ad Hoc Committee?

7           **MS. HOLLINGSWORTH:** We have the version that was  
8 ultimately submitted, yes.

9           **JUDGE GERGEL:** Okay. Well, then, there you go.  
10 You've got it. And you want to see -- if you want to  
11 question could they have drawn it a different way, you  
12 don't need to -- going after somebody's attorney's  
13 privilege they met is just the wrong way of going after  
14 this. You know, it just doesn't make any sense to me.  
15 So, you know, if it's publicly disclosed beyond meeting --  
16 if you say a bunch of groups are working in coalition with  
17 each other, they are all counsel of record here and  
18 everything and they're meeting, we are not going to  
19 have -- you're not going to say, okay, now the privilege  
20 is waived. If there's something they publicly presented,  
21 you've got the map. You've got it. What else do you need  
22 from -- you're trying to get from having them waive their  
23 privilege?

24           **MS. HOLLINGSWORTH:** And Your Honor, to be --  
25 we're not trying to do some broad blanket waiver. We've

1     been --

2                   **JUDGE GERGEL:** Well, that's what you presented,  
3     Ms. Hollingsworth. You presented a broad blanket waiver.  
4     And I've been at the Bar 40 some odd years. I've never  
5     seen anything like this. I've never seen such an  
6     argument.

7                   **MS. HOLLINGSWORTH:** And Your Honor, we've  
8     reviewed the discovery as it's been coming in and these  
9     videos and meeting minutes. We believe when there are  
10    public presentations about the ways in which the strategy  
11    can be pursued and which districts are being challenged  
12    and why, and then back the underlying materials being  
13    withheld now on the basis of privilege, we believe that  
14    that is inconsistent with how you protect confidential  
15    information.

16                   **JUDGE GERGEL:** You presented to us the minutes.  
17    That's the forwarding your thing right now. And you're  
18    going to run flat into the First Amendment here. And I  
19    think it's a dead end for you.

20                   I want you to be able to robustly defend your  
21    plan. But chasing -- this is just chasing rabbits. It  
22    really is. And so, you know, what you've presented to us,  
23    I just -- I don't see any legal basis to waive privilege.  
24    And it would be unprecedented American law to do it in  
25    litigation such as this.

1           Let me move on to the -- there were a series of  
2 objections that defendants had. The plaintiffs were  
3 requested to provide information. And they -- the answer  
4 was, We're going to give you our expert reports.

5           I want to know from the plaintiffs, have you  
6 actually given them the expert reports?

7           **MR. HINDLEY:** Yes, the House Defendants have the  
8 plaintiff's expert reports at this point.

9           **JUDGE GERGEL:** Okay. And on some of these,  
10 like, they're asking on race predominance over traditional  
11 districting principles, you said expert report. Are you  
12 intending to offer any evidence, Mr. Hindley, beyond the  
13 expert report?

14           **MR. HINDLEY:** Yes, Your Honor. We hope that in  
15 the case not only in addition to the expert reports, we'll  
16 also provide hopefully communications that we will receive  
17 from the House Defendants as part of the discovery  
18 process.

19           **JUDGE GERGEL:** Well, don't you need to answer  
20 the discovery to say that? I mean, the defendants need --  
21 are entitled to notice. Simply saying I'm going to give  
22 you my expert report doesn't sound comprehensive to me if  
23 you're planning to use other evidence.

24           **MR. HINDLEY:** Your Honor, this is John Hindley  
25 for plaintiffs. I would ask -- during our meet and

1 confers, this wasn't an interrogatory that was discussed  
2 during our meet and confers. We're happy to meet and  
3 confer with --

4 **JUDGE GERGEL:** Well, no. I mean, I'm just  
5 saying these are the requests to produce. They said give  
6 us anything you've got on a variety of issues, 19 through  
7 21, and 42, and y'all answered, Expert report. Now, there  
8 are cases where the only evidence in the case is really  
9 going to come from an expert. And I think giving the  
10 expert report is just fine. But if you're providing -- if  
11 you're intending to use other evidence, you've got to  
12 answer the request to produce with other documents that  
13 you have that you intend to offer. I mean, I think the  
14 defendants are going to have a fair objection if you start  
15 showing up with stuff and they'll say, Where the Bates  
16 Stamp number? I mean, y'all have got to produce it. Do  
17 you hear what I'm saying, Mr. Hindley?

18 **MR. HINDLEY:** Yes, Your Honor. This is John  
19 Hindley for plaintiffs. I think your point kind of hits  
20 the nail on the coffin on our motion. We have not  
21 received documents or communications that would be  
22 responsive to the interrogatories and in the end would  
23 be --

24 **JUDGE GERGEL:** No, no, no. Don't give what  
25 about. I'm doing about theirs right now. Don't give me

1 about what they haven't done for you. They gave me that  
2 same response.

3 I want to talk about your -- if you're -- I  
4 think the plaintiffs need to go back. And where you said  
5 I'm giving you the expert report and that's basically all  
6 you're giving, you're going to run into this problem at  
7 trial of them objecting that they haven't received the  
8 evidence and they have outstanding discovery requesting  
9 it. Do you hear what I'm saying? You've got to --

10 **MR. HINDLEY:** Yes, Your Honor.

11 **JUDGE GERGEL:** They're entitled to having a full  
12 discovery. So I want y'all to go back over these and  
13 supplement your responses on these things like race  
14 predominance and racial polarized voting. If you've got  
15 other evidence, other documents, this is a request to  
16 produce, you need to supplement. And you need to do it  
17 promptly.

18 I think there's a little coyness to some of  
19 these plaintiff responses that aren't -- they are going to  
20 bite you in the rear end at some point if you don't give  
21 them the information.

22 **MR. HINDLEY:** Yes, Your Honor. We will -- we'll  
23 review our responses and we'll present those to House  
24 Defendants.

25 **JUDGE GERGEL:** Okay. There are also in requests

1 to produce 25 and 33, you said, Well, we -- the NAACP  
2 already gave this to the Ad Hoc Committee on  
3 Redistricting. I think that's fine. But if I were trying  
4 your case, I would want to have a Bates Stamp on anything  
5 I'm intending to offer. And just because you gave it to  
6 that committee, you don't want to dispute later on whether  
7 you actually gave it or not. I think you need to  
8 supplement and produce the documents over again. If they  
9 get it twice, so be it. But you've got a duty to make  
10 sure they got the documents. Okay?

11 **MR. HINDLEY:** Yes, Your Honor.

12 **JUDGE GERGEL:** Okay.

13 Let me turn to these requests to admit. Folks,  
14 a request to admit has a very limited purpose. It is to  
15 identify issues in which there's not really dispute and  
16 which narrow the -- which narrow the issues in the case.  
17 The requests to admit here are nothing -- are issues --  
18 first of all, there are not enough facts in them. So  
19 we're asking the Court to evaluate whether -- whether  
20 the -- a particular district race is a predominance. And  
21 we're supposed to deal with multiple factors. And we  
22 weigh them to determine whether race is or not a  
23 predominant issue. It's a multi-factorial issue.

24 Many of these requests to admit take one of  
25 those factors and say is it possible that if -- you know,

1 is it possible that you could have a non-compact district  
2 and still not have race? Well, the answer is it depends.  
3 It's not subject to a request to admit.

4 And I would say almost every request to admit  
5 that's objected to is infected with that problem. It  
6 doesn't narrow the question. It's a little bit of a  
7 gotcha. It's not enough information. And in my view,  
8 it's just a misuse of the requests to admit.

9 There's one case that talks about, you know, we  
10 don't want to be unduly burdensome. We don't want to go  
11 to the heartland of cases, the information that's in  
12 dispute. That's all these requests to admit are. And I  
13 don't think it's a proper use of the requests to admit.

14 The key issue, does it help narrow the issues?  
15 I can't see one of them that does. And so, you know, I  
16 think we need to move beyond that. You've got other  
17 methods of discovery that are more robust, more precise.  
18 You can cross-examine these experts. Just because it is  
19 not compact, does it tell you -- you can ask all those  
20 questions. They are more appropriate for the examination  
21 of experts than their requests to admit.

22 I'm going to tell you, you're kind of wearing us  
23 out on all this. It's not effective. And, you know, I  
24 think our view sort of is the requests to admit as  
25 answered are fine. There are better ways to get to this

1 information. And the questions are just -- can't be  
2 answered with a yes or no. Too many of them have just  
3 that very problem.

4 The plaintiff's privilege log. I have a  
5 communication from plaintiff's counsel they wanted for us  
6 to examine it in camera. Am I right about that?

7 **MR. HINDLEY:** This is John Hindley for  
8 plaintiff. That is correct.

9 **JUDGE GERGEL:** Okay.

10 Let me go back, Ms. Hollingsworth. Exactly what  
11 are you trying to get from these plaintiff's emails that  
12 you're objecting to? What do you think is in there that's  
13 relevant to the case?

14 **MS. HOLLINGSWORTH:** Well, Your Honor, this is  
15 Jennifer Hollingsworth. I'm not sure, Your Honor, because  
16 I don't know what it is that was being discussed or  
17 provided. And when you look at the privilege log, it's  
18 just exceedingly unclear how it's even privileged when it  
19 includes people that aren't parties, it's documents from  
20 many years ago.

21 **JUDGE GERGEL:** Again, why is all this relevant?  
22 I'm trying -- you know, y'all just like -- it's like  
23 disembodied from the case. Y'all are making all these  
24 objections. If it's relevant, fine. But just because,  
25 you know, you don't know what it is and you don't really

1 know why you want it doesn't -- I'm just struggling. What  
2 do you think is going to be in there that's relevant to  
3 the case?

4 **MS. HOLLINGSWORTH:** Your Honor, with respect,  
5 the privilege log is created by the plaintiffs when  
6 reviewing discovery. They've compiled discovery that  
7 presumably is responsive to what we've asked for. And  
8 then they put on the log because they believe it's  
9 privileged. I would submit the fact that it's even on the  
10 log is the indication that it's necessary --

11 **JUDGE GERGEL:** I think it's going to be very  
12 obvious for all of these logs, we can't figure it out in  
13 the abstraction. So I'm just going to direct the  
14 plaintiffs to produce their -- everything on their  
15 privilege log in camera. We'll do the same for the  
16 defendants. We can't figure it out. There's just no way.  
17 Y'all's descriptions are completely inadequate. We can't  
18 figure it out.

19 And I do -- I'm just trying to figure out what's  
20 even relevant that the plaintiff's would know that's  
21 particularly relevant to this case? But whatever it is,  
22 we'll look at it. And if it's not privileged, we're going  
23 to require it to be produced. And if it's privileged,  
24 we're going to protect it.

25 Let me now turn to the plaintiff's motion to

1 compel. And there's much in doubt, Mr. Hindley, about --  
2 first, about what you're seeking. Is there a class or  
3 group or pool of witnesses who you want their emails and  
4 private communications? Do we have an agreement who --  
5 what that list is? Who those people are?

6 **MR. HINDLEY:** Yes, Your Honor. This is John  
7 Hindley for plaintiffs. That would include the House  
8 Defendants, the members and members of the Ad Hoc  
9 Redistricting Committee.

10 **JUDGE GERGEL:** Okay. That's it?

11 **MR. HINDLEY:** And key staffers who were involved  
12 in drafting the maps as well.

13 **JUDGE GERGEL:** Okay. And who are they? I can  
14 identify the ad hoc. I know who the House Defendants are.  
15 Who are the key staffers?

16 **MR. HINDLEY:** That would include Ms. Emma Dean,  
17 Mr. Patrick Dennis. That would include Mr. Thomas Hauger.

18 **JUDGE GERGEL:** Anybody else?

19 **MR. HINDLEY:** Your Honor, I do have a couple  
20 additional names if that's okay with you.

21 **JUDGE GERGEL:** Well, I just want them identified  
22 because precision here is kind of important. But y'all --

23 **MR. HINDLEY:** Of course, Your Honor.

24 **JUDGE GERGEL:** There's somebody else on your  
25 team on the phone. There's 20 some odd people. Y'all

1 come up with that. And then there is a question, first of  
2 all, about the official email accounts of individual  
3 legislators. Have y'all worked that out, the members of  
4 the Ad Hoc Committee?

5 **MR. HINDLEY:** Yes, sir. This is John Hindley  
6 from plaintiffs. I believe we have. House Defendants  
7 informed us that they received consent from the members of  
8 the Ad Hoc Committee that there would be -- that counsel  
9 asserts their legislative emails for relevant documents  
10 communication.

11 **JUDGE GERGEL:** Okay. And then how about --  
12 you've been wanting the private emails; that is, where  
13 legislators were communicating on their private  
14 communication devices, emails, texts, instant messaging,  
15 whatever. Have y'all worked out anything on that?

16 **MR. HINDLEY:** No, Your Honor, we have not.

17 **JUDGE GERGEL:** Okay.

18 Ms. Hollingsworth, to the extent there is  
19 communications on private emails, why would the -- from  
20 these legislators or their staffs, why would that not be  
21 subject to discovery?

22 **MS. HOLLINGSWORTH:** Well, thank you, Your Honor.  
23 And this is Jennifer Hollingsworth. Understanding that  
24 before the Court is a motion to enforce the Court's order,  
25 not a motion to compel. I do want to make that point.

1           **JUDGE GERGEL:** Let's not get too efficient about  
2 this. The order would cover that. So let's just get  
3 on -- you know, I am -- having been a former private  
4 practitioner, I would not want anyone going through my law  
5 firm's emails. I'm very sympathetic to you on that. The  
6 question is isn't there a less intrusive way to identify  
7 potentially relevant documents? And if so, why wouldn't  
8 that be required to be produced?

9           **MS. HOLLINGSWORTH:** Understood, Your Honor. And  
10 I think I would certainly say that that's not at all been  
11 even a possibility in the discussions with plaintiffs. It  
12 has been -- we've made it very clear, as the Court knows,  
13 that requiring practicing lawyers --

14           **JUDGE GERGEL:** That's off the table. Don't even  
15 waste your breath on that. You sold me on that one.  
16 Okay? You're right. But why couldn't they do this. And  
17 Judge Seymour had suggested this to the panel. It's that  
18 you would go to the identified group of people we were  
19 talking about. You would have them sign a -- they would  
20 search their private communication devices, what they sent  
21 and received. And they would sign a certified statement  
22 under oath under penalty of perjury that it had all the  
23 reapportionment related communications. They would do  
24 their own search. We would rely on their certification to  
25 us. Obviously, if later documents came forward that they

1 hadn't disclosed, we'd have to deal with that. But  
2 wouldn't that be a less intrusive way to have those  
3 relevant documents produced?

4 **MS. HOLLINGSWORTH:** Yes, Your Honor. I would  
5 want to ask the Court, though, in terms of this scope of  
6 the individuals. I mean, certainly understand we have  
7 three named defendants that the staffers, we have searched  
8 their work emails and these are employees, Ms. Dean,  
9 Mr. Dennis and Mr. Hauger, and their emails have all been  
10 produced. So --

11 **JUDGE GERGEL:** Including their -- I don't know,  
12 were they doing any private communication? I mean, I  
13 haven't heard anything about that.

14 **MS. HOLLINGSWORTH:** No, there's been nothing.  
15 There's no indication -- there's nothing with personal  
16 emails. What we're dealing with are the legislators who  
17 have their business emails that at times they've used to  
18 receive information, at most just scheduling and  
19 procedural issues. But --

20 **JUDGE GERGEL:** I'm -- that's why I started this.  
21 I wanted to define who we're talking about. We're talking  
22 about the three named House party defendants and then the  
23 Ad Hoc Committee. That's a definable group. And it seems  
24 to me you could go to them and say, listen, we've got to  
25 produce relevant documents relating to reapportionment

1 that you may have either received or transmitted on any of  
2 your private communication devices. And then you're going  
3 to give that to us, the defense counsel. And you're going  
4 to sign a certification under oath for the Court. I'll be  
5 glad to attach it to an order that has the caption of the  
6 case and I hereby certify under penalty of perjury this is  
7 all I have. And it seems to me that's a much less  
8 intrusive, less troublesome way of producing the relevant  
9 information without the party -- the third parties  
10 rummaging through people's law firm accounts and so forth.

11 **MS. HOLLINGSWORTH:** Yes, Your Honor. I would  
12 ask -- well, a couple of things in response. One, is the  
13 relevance as it's defined in the Court's order, which, of  
14 course, is talking to, you know, evidence of intent and  
15 evidence related to --

16 **JUDGE GERGEL:** Well, listen, if it's related to  
17 reapportionment, y'all have been producing communications  
18 relating to reapportionment, I presume. Just produce the  
19 stuff. I don't want to get into this nuance about, well,  
20 does it reflect on intent? We'll deal with that later.  
21 What you don't think reflects on intent the plaintiff may  
22 have a different view, Ms. Hollingsworth.

23 **MS. HOLLINGSWORTH:** Absolutely.

24 **JUDGE GERGEL:** So I don't want to get unduly --  
25 I think it's just -- I haven't -- I'm not looking at their

1 interrogatories right now -- or requests to produce. Go  
2 look at them. If it would include -- those requests  
3 include information relevant to the reapportionment,  
4 you've got to produce it, not start saying only as it  
5 relates to intent.

6 **MS. HOLLINGSWORTH:** Understood.

7 **JUDGE GERGEL:** If you hear what I'm saying. I'm  
8 not looking at the -- I'm not trying to rewrite their  
9 discovery. Whatever their discovery says, you've got it.  
10 You're telling me you've produced it from the legislative  
11 official accounts. Just go do the same thing for their  
12 private accounts. Whatever the --

13 **MS. HOLLINGSWORTH:** Yes, Your Honor. I do  
14 have -- we did make it clear to the plaintiffs, although  
15 we accommodated their earlier requests with the Ad Hoc  
16 Committee members, those individuals are not parties. And  
17 we certainly can go and again ask their consent and ask  
18 them to do this but --

19 **JUDGE GERGEL:** I will -- if they don't want to  
20 comply, we're not going to -- they're going to get  
21 subpoenas. This is potentially relevant information.  
22 Let's get it over with so we can spend the time letting  
23 y'all defend your plan, Ms. Hollingsworth. All this sort  
24 of obstruction, you know, it's not getting us anywhere.  
25 We need to get on with whatever information they've got,

1 let's get it out there. And then let's, you know, give  
2 you guys a chance to defend your plan with the record.

3 **MS. HOLLINGSWORTH:** Yes, Your Honor. Again, I  
4 hear Your Honor. I don't think we've been obstructive. I  
5 think we've worked exceedingly hard and produced  
6 everything that --

7 **JUDGE GERGEL:** Y'all's response to our order was  
8 excellent. I mean, I've got to say, y'all really jumped  
9 at it. And we appreciate that.

10 But we've got to get on -- we've got to get  
11 beyond this. We've got to get the potential things in the  
12 private accounts. And then, you know, we'll -- and we'll  
13 have a fuller record. And if there's nothing to it, so be  
14 it. If there's something in there, fine. You know, we  
15 don't have any idea. But, you know, I'm not looking at  
16 their discovery and their interrogatories and requests to  
17 produce. Be guided by that and produce it. If they've  
18 asked for it, unless there's some reason to object, come  
19 back to us. But I think you need to go ahead and produce  
20 the information. You're telling me there's no -- race was  
21 not a predominant thing. That's your answer. You believe  
22 that. This evidence shouldn't hurt you.

23 **MS. HOLLINGSWORTH:** Yes, Your Honor. I will say  
24 to the -- to your point about being guided by their  
25 discovery, I think, again, an issue that's just simply

1 never been addressed by plaintiffs is we did object on the  
2 basis of breadth and scope.

3 **JUDGE GERGEL:** Well, we don't have time for  
4 this, frankly. Just produce it. This is major  
5 litigation. Breadth and scope is not going to be  
6 particularly compelling for either side right now. Y'all  
7 need to produce it. The problem is most of the relevant  
8 knowledge your clients have, not the plaintiffs. They  
9 don't know much. They're trying to discover it. That's  
10 what discovery is. The defendants have most of the  
11 relevant knowledge. And objecting to scope and breadth on  
12 a case like this is not going to be persuasive. Just  
13 produce it. Let's get it over with. Let's try the case  
14 in May with a full record.

15 **MS. HOLLINGSWORTH:** Yes, Your Honor.

16 **JUDGE GERGEL:** Okay. Now, let's turn to the  
17 House --

18 **MR. HINDLEY:** Your Honor, can I just --

19 **JUDGE GERGEL:** Yes.

20 **MR. HINDLEY:** Apologies. I just want to make  
21 one point before we move on --

22 **JUDGE GERGEL:** Can you identify yourself for the  
23 record, please?

24 **MR. HINDLEY:** Oh, apologies. This is John  
25 Hindley on behalf of the plaintiff. In response to

1 plaintiff's interrogatories, House Defendants identify a  
2 number of relevant individuals. We would hope the House  
3 Defendants will search the personal emails of those  
4 individuals that they have identified as relevant to the  
5 redistricting process.

6 **JUDGE GERGEL:** Well, who are -- that's what I  
7 started off, Mr. Hindley. I knew this was a little bit of  
8 a cat and mouse thing here. Who are these people? You've  
9 given me the three named defendants, the Ad Hoc Committee.  
10 Is there anybody else?

11 **MR. HINDLEY:** Well, in the broad response that  
12 House Defendants that they also include Mr. Hauger,  
13 Ms. Williamston, Mr. Degupe (phonetic) --

14 **JUDGE GERGEL:** Who are these people? We don't  
15 know who these people are.

16 **MR. HINDLEY:** These are staffers who work and  
17 who were involved in drafting the House maps. House  
18 Defendants identified them as relevant individuals. So I  
19 assume as part of the -- that they know how involved they  
20 were in the redistricting process.

21 **JUDGE GERGEL:** Well, I mean, we're now talking  
22 about getting their emails. Are you saying these people's  
23 emails have not been produced? Have you asked for them?  
24 I'm just confused. I was focused in on the legislators.  
25 These other people, the map makers, they don't have -- is

1 there a claim they have any kind of privilege? I thought  
2 we ordered they produce all the mapping information.

3 **MR. HINDLEY:** They produced the maps and files  
4 as of Friday. But we don't have the communications and  
5 their discussions on -- involving the redistricting  
6 process. And I just --

7 **JUDGE GERGEL:** What does that mean? I mean,  
8 they have not produced the communications between these  
9 mappers and third parties and the legislators? Is that  
10 what you're saying?

11 **MR. HINDLEY:** Yes, Your Honor. Because they  
12 produced a lot of communications to and from legislators  
13 but there's a lot of -- there's definitely communications  
14 among staffers that we still do not have related to  
15 redistricting. And I would ask --

16 **JUDGE GERGEL:** Give me an example of what you  
17 think is missing.

18 **MR. HINDLEY:** The Ms. Sarah Grace Williamson  
19 they have identified as someone who was involved in the  
20 redistricting process. I have not seen any document  
21 communication coming from her.

22 **JUDGE GERGEL:** Is she a lawyer? Mr. Hindley, is  
23 she a lawyer?

24 **MR. HINDLEY:** As far as they were employees in  
25 the map room during the redistricting process.

1           **JUDGE GERGEL:** Okay. And have you noticed their  
2 depositions?

3           **MR. HINDLEY:** No, we have not, Your Honor.

4           **JUDGE GERGEL:** Okay. I mean, it seems to me  
5 that to the extent you want their emails and they haven't  
6 produced them, that seems to be pretty core material. And  
7 you could ask an -- and if there's a problem you could  
8 move to compel if you've asked for that material. If you  
9 wanted you can take their deposition. We've made it clear  
10 you could depose these folks. I know there was some  
11 dispute about whether y'all had been given enough  
12 information about when the maps were generated and who  
13 produced them. Have you gotten that -- have y'all  
14 clarified that?

15           **MR. HINDLEY:** No, Your Honor. Just today we  
16 still don't know who the map maker is. And the  
17 communications --

18           **JUDGE GERGEL:** Well, the defendants say they've  
19 given you the information.

20           Ms. Hollingsworth, what's the story on that?

21           **MS. HOLLINGSWORTH:** Your Honor, Jennifer  
22 Hollingsworth. Quite frankly, it's just categorically  
23 incorrect. But all of the information from the map room  
24 was provided to plaintiffs. In that reply filing I think  
25 last week was the first time we got any word that the data

1 that we produced pursuant to the Court's order on  
2 February 15th that the ESI protocols that the plaintiffs  
3 had in the Joint 26(f) Report had an impact on how that  
4 data came across and they were unable to load it into the  
5 Maptitude software.

6 **JUDGE GERGEL:** Well, let me say, I get this  
7 problem in my criminal cases all the time. You know, the  
8 Government will give evidence and the defense lawyers have  
9 trouble downloading it and getting it. And what the  
10 lawyers do is they call each other and they help each  
11 other to make sure -- I figured that was the explanation,  
12 Ms. Hollingsworth. When you said we've given it to them,  
13 I believed you. But they don't know it. So rather than  
14 do this roundabout with the panel, why don't y'all just  
15 talk to each other and explain to them where it is.  
16 Wouldn't that be the easier way to do it?

17 **MS. HOLLINGSWORTH:** Your Honor, we gave it -- on  
18 Friday we hand delivered a thumb drive and said didn't  
19 know you had an issue. Here you go. We've done  
20 everything that we can. As soon as we found out there was  
21 an issue, we gave it to them and wrapped it up, Your  
22 Honor. So it's been done. If there are still issues,  
23 we're happy to help these folks --

24 **JUDGE GERGEL:** Ms. Hollingsworth, I don't think  
25 you're trying to hide the ball. I think -- Mr. Hindley,

1 you're hearing Ms. Hollingsworth. Y'all call her up if  
2 you've still got confusion and get it straight. You know,  
3 I just don't think this is something you need to be  
4 bringing in front of the panel. If you can't work it out,  
5 let us know. We will make sure. But when  
6 Ms. Hollingsworth said she gave it to y'all, it doesn't  
7 mean y'all know she did. It means you may not understand  
8 how you got it. Take a look at it. And if it's not  
9 worked out and she can't explain it to you, then come back  
10 us to. But we're trying to get beyond all this.

11 **MR. HINDLEY:** Thank you, Your Honor. This is  
12 John Hindley from plaintiff. We are in receipt of the  
13 thumb drive and we've uploaded it on our end and had our  
14 analysts look at it. They're going to look at them. But  
15 at the same time our analysts on our side said that  
16 there's no way of identifying who made these maps and when  
17 they were created. So we'd appreciate that information.

18 (Indiscernible crosstalk.)

19 **JUDGE GERGEL:** Here's what I'll say. I want  
20 y'all to confer about it. You may even get your tech  
21 people and their tech people to talk to each other. That  
22 might be an amazing thing to do so they could explain it.  
23 And it may be something that y'all -- I mean, listen, I'm  
24 usually the victim of not knowing what I have in  
25 technology. So it may be there and y'all don't appreciate

1 it. But work through this, folks. They're telling me  
2 they're not hiding it. You're entitled to the  
3 information. Let's figure a way to get it. Okay?

4 Let me turn to the House Defendants' privilege  
5 log. And I think I was just saying earlier, I don't know  
6 any way to sort through -- they are fairly nuanced issues  
7 about when lawyer staff members of legislators the matter  
8 is subject to the attorney/client privilege and what is  
9 not. The information we have, we can't sort it out. And  
10 we're just going to have y'all, both sides just give us  
11 your materials on your privilege log. It's not something  
12 we really want to do but we'll go through it. And we'll  
13 -- the things that don't appear privileged, we'll order  
14 you to produce it. And the things that appear privileged,  
15 we will -- you know, we will protect it.

16 How long will it take, first of all, from the  
17 plaintiffs, to get together your material on your  
18 privilege log and submit it to the Court?

19 **MR. HINDLEY:** Your Honor, I think we will be  
20 able to submit that within 24 hours.

21 **JUDGE GERGEL:** Okay.

22 How about the defendants? How long on the  
23 privilege log to submit it to the Court?

24 **MS. HOLLINGSWORTH:** Your Honor, we would -- I  
25 believe 24 hours should be fine.

1           **JUDGE GERGEL:** Okay. I want y'all to look  
2 again, both of you, at what you claim to be privileged.  
3 And if you on reflection don't think it is, go ahead and  
4 produce it. If it is privileged, submit it to us. Okay?

5           **MS. HOLLINGSWORTH:** Yes, Your Honor. This is  
6 Jennifer Hollingsworth. I also think that there's --  
7 there will be a range of documents that I would just  
8 submit that there may be also a range of documents that we  
9 may just agree with each other if we have the opportunity  
10 to talk and would agree to things that may fall clearly  
11 within the privilege and not --

12           **JUDGE GERGEL:** Yeah, anyway, harmless, correct?  
13 Without waiving the privilege. Y'all want 48 hours then  
14 so y'all can talk tomorrow about it?

15           **MS. HOLLINGSWORTH:** Yes, Your Honor, if that's  
16 okay with the Court.

17           **JUDGE GERGEL:** That would be fine. I'm really  
18 trying to get y'all beyond all this so we can get on with  
19 the merits.

20           I got this email yesterday about search terms.  
21 And the -- Ms. Hollingsworth, what's your complaint about  
22 the proposed search terms they want added?

23           **MS. HOLLINGSWORTH:** Your Honor, it's excessive  
24 and duplicative. It's words like a county name and the  
25 name of legislators. We have -- the Court has in the

1 footnotes of the briefing, we've implemented initially 18  
2 terms. We took what the plaintiffs asked and we created a  
3 list that captures all of those concepts but doesn't just  
4 bring in a bunch of needless, irrelevant material.

5 A sitting member of the House, their name, they  
6 are going to be on any email that they're on. The name  
7 Berkeley or just a county name, it doesn't connect it in  
8 any way. When we've done word -- and word terms, as  
9 you'll see, Your Honor, have truly captured just the  
10 widest net that we could possibly have captured. Our  
11 terms, Your Honor, are exceedingly broad and capture  
12 everything related to the process, not merely intent but  
13 everything related to the process. I would just submit --

14 **JUDGE GERGEL:** Let me ask you this. Is there a  
15 way to use terms, like, you could put Orangeburg and  
16 redistricting and have to have both of them in there or  
17 something like that so that we wouldn't get everything  
18 from Orangeburg County Water and Sewer District and so  
19 forth?

20 **MS. HOLLINGSWORTH:** Right.

21 **JUDGE GERGEL:** Is there a way to narrow it that  
22 way?

23 **MS. HOLLINGSWORTH:** So, Your Honor, what I would  
24 submit is we've already done that because we simply  
25 searched redistricting. So we've already done that by

1 using -- without just trying to have a single county  
2 named, we've done the part where we have redistricting and  
3 district. So the terms that we've already implemented and  
4 reviewed capture everything that you would conceivably get  
5 already.

6 **JUDGE GERGEL:** Did you say to me that you used  
7 the terms that the plaintiffs originally proposed to you?

8 **MS. HOLLINGSWORTH:** No, Your Honor. What I'm  
9 saying is the few that are left, which are only a name of  
10 a county and I believe the names of a few legislators in  
11 isolation, as the Court has pointed out, if we did  
12 something like Orangeburg and near the word district,  
13 we've already done the search just looking for district.  
14 So Orangeburg is already within the parameters of what we  
15 would have reviewed and produced for discovery.

16 **JUDGE GERGEL:** Before you did your word  
17 searches, did you consult with the plaintiffs about the  
18 scope of the words you were going to use?

19 **MS. HOLLINGSWORTH:** Not at the initial one, Your  
20 Honor, neither of us did. Our discovery requests to each  
21 other and our Joint 26(f) Report, we didn't have any  
22 preset terms. But then when we met in the consultations  
23 after, I think the plaintiff had nine terms for the  
24 associational plaintiffs. There were no search terms for  
25 Scott. We, the House Defendants, implemented initially 18

1 search term's and concepts that we did. And then when the  
2 plaintiffs proposed to us a list of 41 additional terms,  
3 we took that list and created what we believe is  
4 additional search terms of concepts that captured --

5 **JUDGE GERGEL:** You adopted the 41 recommended  
6 by -- requested by the plaintiffs?

7 **MS. HOLLINGSWORTH:** No, Your Honor, it wasn't  
8 all 41. The only ones we didn't adopt were the ones that  
9 were emailed to the Court, which was just a first name of  
10 a county and the name of a few legislators. We did all of  
11 the other terms including these national partisan groups.  
12 We did that search as well.

13 **JUDGE GERGEL:** Mr. Hindley, you know, we have  
14 this search term issue come up in a lot of our very  
15 complex litigation. And there is an art to this. It's as  
16 equally bad to under-request as to over-request. You know  
17 what I'm saying?

18 **MR. HINDLEY:** Yes, Your Honor.

19 **JUDGE GERGEL:** You know, you get eight million  
20 documents or you get four documents, right? And there's  
21 an art to it. I've never been asked to get into the  
22 precise search terms, I must confess. But it does strike  
23 me that if you have county names and nothing else, you  
24 really do invite a massive amount of documents irrelevant  
25 to the search.

1           **MR. HINDLEY:** And that's why --

2           (Indiscernible crosstalk.)

3           **JUDGE GERGEL:** I've been fuzzing about  
4 relevance. You're going to get everything from Anderson  
5 County? Good God. I mean, it would be massive.

6           **MR. HINDLEY:** This is John Hindley on behalf of  
7 plaintiffs. And that's why we asked to confer to narrow  
8 or have a different variation of these search terms.  
9 Because these county names are counties targeted -- as we  
10 alleged are targeted by districts. And these are names of  
11 representatives who were also targeted to the  
12 redistricting process.

13           **JUDGE GERGEL:** I recognize enough of them to  
14 figure out what you were up to. I'm just saying if you  
15 say Richland County, that's one of the state's largest  
16 counties. It has lots of things related -- unrelated to  
17 districting. Most of the material you would pick up on  
18 Richland would be nothing to do with redistricting.  
19 They've already got districting or redistricting  
20 questioned. Why adding the name of Richland does it not  
21 duplicate what they've already asked for?

22           **MR. HINDLEY:** Well, probably because we don't  
23 know what we don't know. And as part of the meet and  
24 confer process with defense, we asked them for a hit  
25 report. And just for Your Honor's knowledge, a hit report

1 identifies how many documents a particular search term  
2 identifies. And they have not shared that hit report.  
3 And that would have been a good basis for discussion on  
4 narrowing these search terms. But instead they just  
5 refused to acknowledge those --

6 (Indiscernible crosstalk.)

7 **JUDGE GERGEL:** Ms. Hollingsworth, I think you're  
8 going to get a massive response. Is there a way to do a  
9 hit report and give a report back to the plaintiffs on  
10 those terms?

11 **MS. HOLLINGSWORTH:** If that's what the Court  
12 would like us to do, certainly we can --

13 **JUDGE GERGEL:** I think it's going to produce  
14 what you think it's going to produce. Okay? Which is  
15 going to be massive irrelevant documents. But I think you  
16 should share that with them. I really don't like getting  
17 as granular as this in telling y'all how to do the search  
18 terms. From your -- the search terms y'all have  
19 exercised, what kind of document response did you get?

20 **MS. HOLLINGSWORTH:** Your Honor, we've  
21 produced -- I mean, we've produced thousands of emails and  
22 communications. I have -- let me put my hands on a list  
23 where we've broken it down by productions. It's been  
24 thousands. And in fact the most recent production, which  
25 was the production that included the additional search

1 terms and the additional custodians, I believe was another  
2 973 documents and emails. So we've done -- we've produced  
3 all of the emails from the redistricting portal itself.  
4 Then the emails from all of the custodians that we  
5 initially identified. And then this most recent  
6 production were the items that came off our privilege log,  
7 the additional custodians and additional search terms. So  
8 all of those search terms we've identified have been  
9 produced in discovery. And it's thousands of emails, Your  
10 Honor.

11 **JUDGE GERGEL:** Well, I think you do the hit  
12 report. And if the plaintiffs still want it, they can  
13 make another motion. I'm not much impressed -- I think  
14 this is one of those low-return-high-effort things. And  
15 again, I've tried to get the parties to focus on the  
16 merits here. And, you know, I'm not persuaded having  
17 those county names will not give you such a massive  
18 response, it'll be worthless. But if you would do the hit  
19 report, Ms. Hollingsworth? And if the plaintiffs still  
20 want it, they can come back to us, okay?

21 **MS. HOLLINGSWORTH:** Yes, Your Honor. I think  
22 the only thing I'm just not sure of, Your Honor, a hit  
23 report that shows X number of times the word Orangeburg  
24 appeared in our production and X number of times it  
25 appeared in documents that were non-responsive, just the

1 word Orangeburg -- it's the word Orangeburg isn't  
2 indicative of anything related to the redistricting  
3 process. So I think --

4 **JUDGE GERGEL:** What they think is you've got  
5 documents that you think refer to the Orangeburg  
6 districts, which I recall to be one of the cluster of  
7 districts, and they think it didn't get picked up  
8 elsewhere. I'm kind of like you. I think if you used  
9 these other terms most probably it's not correct and  
10 you're going to get everything about the Water and Sewer  
11 District in Orangeburg and school board and all that. But  
12 I think if you'll just do the hit report, I think you'll  
13 see that they may be -- the plaintiffs may be on a fool's  
14 error in chasing this stuff. So if it's not that  
15 burdensome to do a hit report, just do it.

16 **MS. HOLLINGSWORTH:** Yes, Your Honor.

17 **JUDGE GERGEL:** And I think the point will be  
18 made.

19 **MS. HOLLINGSWORTH:** Yes, Your Honor.

20 **JUDGE GERGEL:** There was also a confusion, the  
21 plaintiffs were complaining they had not gotten documents  
22 sent or received from third parties. And the defendants  
23 said they had produced it. Is that issue still unsettled?

24 **MR. HINDLEY:** Yes, Your Honor, because as part  
25 of our review of the production, we have not encountered

1 any communications with third parties. And that's why we  
2 are asking for personal emails and text messages of  
3 legislators and key staffers because there's a possibility  
4 that they're communicating with third parties through that  
5 avenue and not through the official state house email.

6 **JUDGE GERGEL:** Okay. Ms. Hollingsworth, you say  
7 they produced third parties. Are some of these documents  
8 from third parties?

9 **MS. HOLLINGSWORTH:** Absolutely, Your Honor. And  
10 I think part of the issue is I have a feeling plaintiffs  
11 mean something very specific when they say third parties.  
12 Because, of course, by virtue of producing the  
13 redistricting portal, they have got all of the documents  
14 and communications that came from any number of  
15 constituents and organizations and persons interested in  
16 the process. And all of those terms were applied to our  
17 custodian accounts as well. And then even in this most  
18 recent round of searches that we did for the plaintiffs,  
19 we included these partisan organizations that they asked  
20 for. We did the searches. There weren't documents, Your  
21 Honor. So I just don't know what it is that they claim  
22 they don't have because --

23 **JUDGE GERGEL:** Yeah. I mean, it's always this  
24 issue is one side thinks something exists and the other  
25 side says it doesn't exist. And we, as judges, sit there

1 and just say we don't have any way to figure out what --  
2 you know, who is correct in that. You can't require  
3 somebody to produce something that, you know, they say  
4 they don't have.

5 All I can say is if there have been such  
6 communications and you're going to go to the private  
7 emails and we're going to get that information, and if  
8 there's, you know, from that leads you to other  
9 information, the plaintiffs can pursue it.

10 Let me go back if I can to this pool of, you  
11 know, we're talking about the private emails. I need some  
12 help. I don't want to debate later about who is in the  
13 this pool, who is going to be required to produce their  
14 private emails. Mr. Hindley, who do you want beyond the  
15 three House named House Defendants and the Ad Hoc  
16 Committee? Anybody else for their private emails?

17 **MR. HINDLEY:** Yes. So understood we added to  
18 our first interrogatories, which include Mr. Thomas  
19 Hauger, Ms. Sarah Grace Williamson, Mr. Joey Deguit  
20 D-E-G-U-I-T.

21 **JUDGE GERGEL:** These are staffers?

22 **MR. HINDLEY:** They were staffers involved in the  
23 map room.

24 **JUDGE GERGEL:** But do you have reason to believe  
25 they were using their private emails? We're talking about

1 private emails now.

2 **MR. HINDLEY:** Many of these staffers we don't  
3 even have their state house emails.

4 **JUDGE GERGEL:** Okay. What about their -- how  
5 about the staff -- the mappers' state house emails,  
6 Ms. Hollingsworth?

7 **MS. HOLLINGSWORTH:** Your Honor, if I could? So  
8 Thomas Hauger is the GIS Director. He was -- supervised  
9 the map room. We have provided all of his documents and  
10 information and his custodial files. We've done all that.  
11 He's employed for the specific purpose of running the map  
12 room. And that's what he did and we provided all of his  
13 information.

14 The three individuals were interns that we  
15 identified in discovery. They were, as we call them, map  
16 room technician or clickers. Their sole responsibility  
17 was they just sat and they clicked the button at the  
18 direction of a legislator who was asking them to operate  
19 the software. They were short-term employees. They don't  
20 have emails. They didn't even speak. So there isn't  
21 anything, any information or discovery that these three  
22 interns would have. They clicked buttons at the direction  
23 of a legislator.

24 **JUDGE GERGEL:** What was your staff of people who  
25 weren't interns? Who was in the map room other than --

1 who was the person who was head of the map room?

2 **MS. HOLLINGSWORTH:** Mr. Hauger. This is  
3 Jennifer Hollingsworth. Thomas Hauger was the GIS  
4 Director that oversaw the map room. We've provided all of  
5 his document and information. Ms. Emma Dean, who is chief  
6 counsel to the House Judiciary Committee, she was the sort  
7 of lead attorney that oversaw the entire process. And she  
8 was the custodian of the most documents because that was  
9 what she did. And we produced nearly 2,000 records  
10 related to her. Then her sort of assistant counsel were  
11 Roland Franklin and Jimmy Hinson. Both of their files  
12 were pulled and produced. They are, again, staff  
13 employees, staff counsel to the House Judiciary Committee.  
14 And then Patrick Dennis, who is general counsel and Chief  
15 of Staff to the Speaker of the House. Again, an employee  
16 of the House and we provided all of his documents and  
17 information and communications in discovery.

18 **JUDGE GERGEL:** And that includes their  
19 legislative email?

20 **MS. HOLLINGSWORTH:** Yes, Your Honor. And they  
21 are employees, so that is their email. So, Your Honor,  
22 our position, of course, would be that to the extent we're  
23 dealing with personal emails, it only relates to  
24 legislators who, by the way, are the only people that  
25 could vote on, of course, the act at issue. And because

1 they are not full-time employees of the House, that is the  
2 reason why they would have had a non-house email where  
3 they may or may not -- and they will undertake as the  
4 Court's directed a search of what they have. So the  
5 suggestion that we should go outside of these legislators,  
6 I just don't understand.

7 **JUDGE GERGEL:** I hear you, Ms. Hollingsworth.

8 So, Mr. Hindley, help me with this. Do you have  
9 any indication -- I saw some of the evidence you pointed  
10 out that certain legislators were sending things to and  
11 from their law firms or their private emails. I get that.  
12 Do you have any evidence that any of these staff members  
13 were using private emails?

14 **MR. HINDLEY:** Well, Your Honor, I think it's  
15 important to take a step back and say we need to  
16 understand the subjective intent of the House when they  
17 passed these -- passed the House lines. And we don't know  
18 what don't know. And it's possible they could have been  
19 discussing the redistricting, both the legislators and the  
20 staff members, on the personal accounts and in text  
21 messages given that --

22 (Indiscernible crosstalk.)

23 **JUDGE GERGEL:** But, Mr. Hindley --

24 (Indiscernible crosstalk.)

25 **JUDGE GERGEL:** This is what they call a fishing

1 expedition. Here's what you need to do. Take their  
2 depositions and ask them, Did you communicate in private  
3 emails? If they did, request them. But simply asking  
4 these folks for their private emails when you don't have  
5 any evidence they were communicating privately just  
6 strikes me as overly intrusive. I mean, to the extent you  
7 have any indication like you pointed out that some of  
8 these legislators were communicating to and from their law  
9 firms, fair enough. Good point. But these staffers, just  
10 go take -- Mr. Hindley, let me ask you, how many  
11 depositions have the plaintiffs taken of these fact  
12 witnesses?

13 **MR. HINDLEY:** We've -- next week we're holding a  
14 number of depositions on a number of individuals. But  
15 we're only limited to 15. And I would want --

16 **JUDGE GERGEL:** Why are you limited to 15?

17 **MR. HINDLEY:** That's what the parties agreed on.

18 **JUDGE GERGEL:** Well, that's your agreement. I  
19 mean, fine. If that's what you want to do, that's your  
20 business. But, you know, just -- you know, people are  
21 going to do everything on discovery -- I mean, on paper  
22 discovery, go take people's depositions. Ask them  
23 questions. They won't say anything to you. It seems to  
24 me the art of discovery is, you know, is not all like the  
25 redcoats just marching down the center. You've got to be

1 a little creative. And, you know, I think you're close to  
2 exhausting your written discovery. Go get depositions.  
3 And if you learn stuff that you need more and you haven't  
4 captured it, that's when you come. But just sending  
5 everybody on a fishing expedition, I don't get it.

6 **MR. HINDLEY:** Well, Your Honor, I would just add  
7 that it was not a fishing expedition. They admitted in  
8 their filings and just now that members of the staff did  
9 use personal communications --

10 **JUDGE GERGEL:** I didn't hear them say that.

11 (Indiscernible crosstalk.)

12 **MR. HINDLEY:** They also said that --

13 (Indiscernible crosstalk.)

14 **JUDGE GERGEL:** I didn't hear that.

15 **MR. HINDLEY:** Ms. Hollingsworth just said that  
16 staffers used non-house emails because they were part-time  
17 employees for the redistricting process.

18 **MS. HOLLINGSWORTH:** I did not say that at all  
19 actually, Your Honor.

20 **JUDGE GERGEL:** I didn't hear you say it either,  
21 Ms. Hollingsworth.

22 If you think these clickers were getting private  
23 emails, go take their depositions. And if they say, yeah,  
24 I was using it, you got it. You'll get it. But I didn't  
25 hear her say that. She just said they were following the

1 instructions -- they were interns sitting there. And they  
2 said draw the map, put that precinct in, take that  
3 precinct out. I mean, suggesting that the interns are  
4 going to be the key to your case, I mean, you better have  
5 a better case than that.

6 **MR. HINDLEY:** Apologies, Your Honor. I misheard  
7 Ms. Hollingsworth.

8 **JUDGE GERGEL:** Yeah, I didn't hear her say  
9 anything like that.

10 Okay. I've kind of worked through the list that  
11 my colleagues and I had been concerned about.

12 Judge Seymour, do you have any additional  
13 questions?

14 **JUDGE SEYMOUR:** I do not have any additional  
15 questions. Thank you very much.

16 **JUDGE GERGEL:** Judge Heytens, do you have any  
17 additional questions?

18 **JUDGE HEYTENS:** I do not.

19 **JUDGE GERGEL:** Okay.

20 Folks, thank you for this. And please, y'all  
21 talk to each other. Show courtesy to each other. Work  
22 with each other. I think a lot of this could be worked  
23 out by y'all, you know, in a non-adversarial way working  
24 with each other. I don't know all of the counsel, but I  
25 do know many of you. And you are honorable, decent,

1 hardworking people. And I think if y'all just talk to  
2 each other, a lot of this conflict could be avoided.

3 Okay. Are there further matters to come before  
4 the Court at this point, Mr. Hindley?

5 **MR. HINDLEY:** No, Your Honor. We're all set on  
6 plaintiff's side.

7 **JUDGE GERGEL:** Okay.

8 And Ms. Hollingsworth?

9 **MS. HOLLINGSWORTH:** Your Honor, if I could have  
10 a question and then a request to clarify the timeframe?

11 **JUDGE GERGEL:** Yes, ma'am.

12 **MS. HOLLINGSWORTH:** In terms of for us to engage  
13 with both the party defendants and then reaching out to  
14 the Ad Hoc Committee members and asking them to undertake  
15 the search and the certification, what timing is the Court  
16 expecting of that? I mean, we've -- part of the issue  
17 here is written discovery. We've got about -- all  
18 discovery, I'm sorry, all discovery closes by next Friday.

19 **JUDGE GERGEL:** Well, we can extend it to comply  
20 with these instructions. But the Ad Hoc Committee, how  
21 much time do you need to get them to do their search?  
22 What do you think is reasonable, Ms. Hollingsworth?

23 **MS. HOLLINGSWORTH:** I would suggest maybe not  
24 everyone -- we might need a little bit of time because I  
25 don't want to make assumptions about the tech savvy

1 abilities of folks. So I want to make sure that I and we  
2 give them all the assistance they need to walk through the  
3 process. So I certainly think today I struggled with  
4 dates, Your Honor. Today's Tuesday. So if we could have  
5 a week?

6 **JUDGE GERGEL:** One week is fine. Okay. And  
7 what was your other question? That's for your Ad Hoc  
8 Committee and your House Defendants? What else?

9 **MS. HOLLINGSWORTH:** And Your Honor, my other  
10 question was simply, I know the Court has reviewed all of  
11 the motions. Is the Court going to just otherwise rule on  
12 the various issues?

13 **JUDGE GERGEL:** Yeah, we've got -- you know,  
14 we've -- we've -- you gave us enough information and we  
15 will address those in an order, yes.

16 **MS. HOLLINGSWORTH:** Thank you, Your Honor.

17 **JUDGE GERGEL:** Anything further?

18 (There was no response.)

19 **JUDGE GERGEL:** Okay, folks.

20 **MS. HOLLINGSWORTH:** Your Honor, sort of a  
21 housekeeping matter. We did wonder -- one of my  
22 colleagues is making me ask the question. But does the  
23 Court have an expectation whether or not the trial in May  
24 may be held in Columbia or will it be in Charleston or  
25 some other location?

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**JUDGE GERGEL:** It will be in Charleston.

**MS. HOLLINGSWORTH:** Okay. Thank you, Your Honor.

**JUDGE GERGEL:** Okay.

Very good, folks. With that, this hearing is adjourned. Thank you.

**MS. HOLLINGSWORTH:** Thank you.

**MR. BRYANT:** Thank you, Your Honor.

(WHEREUPON, court was adjourned at 4:23 PM)

\*\*\*

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/Karen E. Martin

4/15/2022

\_\_\_\_\_  
Karen E. Martin, RMR, CRR

\_\_\_\_\_  
Date

# **Exhibit B**

**(Transcript of April 26, 2022 Telephonic Status Conference)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

SC STATE CONFERENCE OF THE	)	
NAACP & TAIWAN SCOTT,	)	
Plaintiffs,	)	April 26, 2022
	)	
- versus -	)	3:21-3302
	)	
THOMAS C. ALEXANDER, LUKE A.	)	Charleston, SC
RANKIN, JAMES H. LUCAS, CHRIS	)	
MURPHY, WALLACE H. JORDAN,	)	
HOWARD KNAPP, JOHN WELLS,	)	
JOANNE DAY, CLIFFORD J. ELDER,	)	
LINDA McCALL, SCOTT MOSELEY,	)	
Defendants.	)	

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE

BEFORE THE HONORABLE RICHARD M. GERGEL  
UNITED STATES DISTRICT JUDGE  
THE HONORABLE MARGARET B. SEYMOUR  
SENIOR UNITED STATES DISTRICT JUDGE  
THE HONORABLE TOBY J. HEYTENS  
UNITED STATES APPELLATE JUDGE

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software.

Karen E. Martin, RMR, CRR  
US District Court  
District of South Carolina

1 Tuesday, April 26, 2022

2 (WHEREUPON, court was called to order at 1:00 PM)

3 JUDGE HEYTENS: Good afternoon. This is Judge  
4 Heytens. I'm going to ask if Judge Gergel and Judge  
5 Seymour are on the line?

6 JUDGE SEYMOUR: Yes, this is Judge Seymour. I'm  
7 on the line.

8 JUDGE GERGEL: Yes, I am on the line.

9 JUDGE HEYTENS: Good afternoon, everyone. As I  
10 said this is Judge Heytens. Judge Gergel and Judge  
11 Seymour are also on the line. We are on the record in the  
12 case of the SC NAACP vs. Alexander, Civil Action  
13 No. 21-3302 for a status conference.

14 I'd like to start with some very brief framing  
15 remarks before we move into the status conference itself.  
16 It seems very apparent to me that the parties very much  
17 want to avoid doing two different things in this case.  
18 One, it is apparent that the parties are not looking  
19 forward to trying this case. And second, it appears that  
20 they don't want to just pass a new map. If that is true,  
21 then as the panel has already said, we think that several  
22 things at minimum would have to happen to avoid either of  
23 those two things happening if there's a chance of doing  
24 that. The panel is of the view, as the panel's already  
25 said, that it would require the consent of the governor,

1 the attorney general, or both rather than simply a  
2 representation by the parties that those individuals don't  
3 oppose.

4 Second, as the panel has already explained, we  
5 think it would require more fulsome consent of both the  
6 House and the Senate than the letters that have currently  
7 been provided.

8 And then last but not least, as the panel  
9 indicated in its order, there would have to be a showing  
10 to permit the Court to make a finding that the settlement  
11 proposal itself complies with the equal protection clause.  
12 Because if this were to be a consent decree, the panel  
13 would have to make such a finding in order to enter it.

14 But as of now and pending any further  
15 developments, trial as the panel has indicated is still on  
16 for Monday the 16th of May.

17 Judge Seymour, do you have anything to add by  
18 way of framing us up?

19 **JUDGE SEYMOUR:** I don't have anything to add and  
20 I agree with you. Thank you.

21 **JUDGE HEYTENS:** Judge Gergel, do you have  
22 anything to add?

23 **JUDGE GERGEL:** I don't. I agree with what  
24 you've just said Judge Heytens.

25 **JUDGE HEYTENS:** Terrific. With that in mind,

1 I'm going to follow the course from our previous wannabes  
2 and turn it over to Judge Gergel for him to conduct the  
3 remainder of our conversation this afternoon.

4 **JUDGE GERGEL:** Very good. Good afternoon,  
5 everyone. In our -- I want to remind folks, and I think  
6 we did this fairly early on, we will have having a status  
7 conference in this case on the Friday before the Monday  
8 trial, that's May 13th. Since I know folks will probably  
9 be using a fair amount of technology, I urge y'all to come  
10 and we'll have the courtroom available for you to get  
11 everything up and running. My staff will be there to  
12 assist. Sometimes there are computer challenges when  
13 you're using the court system. And we'll work with you on  
14 that. But we'll do that at 10 a.m.

15 And I think last week we entered a text order  
16 extending discovery until Friday. That was -- that had  
17 been requested jointly when the parties -- counsel met  
18 with me, the House parties met with me and asked would it  
19 be okay to have another week.

20 Let me just ask Mr. Moore and Mr. Bryant, is  
21 that time sufficient? Do you need anymore time, another  
22 few days?

23 **MR. MOORE:** Judge, this is Mark Moore for the  
24 House Defendants. I believe that we would need at least  
25 another week to complete discovery. We have talked and we

1 have tentatively scheduled some depositions this week.  
2 But I think that we would need another week to conduct  
3 discovery.

4 And I would tell the Court that there are a  
5 couple discovery issues that have come up which we started  
6 working through. We paused that in order to take  
7 advantage of trying to resolve this case. And if at any  
8 point the Court is willing to hear us on that issue, we'd  
9 be glad to speak on it. But I would say that at a  
10 minimum, we would need an additional week for discovery.

11 **JUDGE GERGEL:** Okay. So you're asking --  
12 basically, we were having it through the 22nd. You're  
13 asking to go to the 29th?

14 **MR. MOORE:** Actually, Judge, I think it went  
15 through the 29th. If the discovery was originally  
16 scheduled to close --

17 **JUDGE GERGEL:** I've got you. You're absolutely  
18 right. Yes. So you're asking to go to the 6th?

19 **MR. MOORE:** That is my ask. And I don't know  
20 what my colleagues from the plaintiff's side, what their  
21 position is. I do think that they want additional time  
22 for discovery. We had both also talked about asking the  
23 Court for perhaps a brief -- you know, perhaps a move of  
24 the trial date into June. I don't know if the Court's  
25 willing to --

1           **JUDGE GERGEL:** We're not --

2           Judge Heytens, I don't think we're inclined to  
3 do that, are we?

4           **JUDGE HEYTENS:** I'm certainly not inclined to do  
5 it. And I understand my panelists are not inclined to do  
6 it either; is that correct?

7           **JUDGE SEYMOUR:** That's correct.

8           **JUDGE GERGEL:** That's correct.

9           So I think we're on May 16th. So, you know, the  
10 only challenge is there are certain dispositive motions  
11 that are due before then. But, folks, this case is not  
12 going away by dispositive motions. I mean, there are  
13 going to be factual issues that need to -- that, you know,  
14 we're going to need to try. So what do y'all propose in  
15 terms of dispositive motions, if you're going to move the  
16 thing to the 6th? Mr. Moore?

17           **MR. MOORE:** Judge, if you could give us until  
18 the 13th for dispositive motions? You know, I heard the  
19 panel early on back in December of last year when you told  
20 us that while we would -- we could file motions to dismiss  
21 and final motions for summary judgment that those would  
22 unlikely be granted. We would just need time to file them  
23 for purposes of the record. I understand that the Court  
24 may not be able to give us a decision. So the 13th or  
25 even the 12th is what I would propose.

1           **JUDGE GERGEL:** Yeah.

2           Mr. Bryant, what's the plaintiff's view?

3           **MR. BRYANT:** Judge, the plaintiffs would echo,  
4 you know, at least that week for additional discovery.  
5 I'm going to pass it to my colleague, John Freedman, to  
6 discuss some of the outstanding discovery issues.

7           **JUDGE GERGEL:** Okay. Well, we're not ready to  
8 go to the discovery --

9           **MR. BRYANT:** I'm sorry, Judge. Not the  
10 discovery issues themselves, but sort of the need for time  
11 and what has been scheduled.

12           **JUDGE GERGEL:** Very good.

13           Mr. Freedman?

14           **MR. FREEDMAN:** Thank you, Your Honor. John  
15 Freedman for the plaintiffs. So in terms of outstanding  
16 discovery from the plaintiff's end, when we suspended  
17 there were six depositions that we needed to take. We got  
18 dates from the defendant's for two of them. One Friday,  
19 one next Monday, and still waiting for dates of the last  
20 four. That includes senior -- named defendants or senior  
21 members of the House including Speaker Lucas. So those  
22 need to be done.

23           In addition, there was some outstanding  
24 discovery issues, the most important of which is  
25 defendant's compliance with Paragraph 4 of the April 13th

1 order in terms of the supplemental productions from  
2 personal emails, text messages. Assuming all that can get  
3 done between now and May 6th, May 6th sounds fine as a  
4 discovery cutoff.

5 I think as far as the dispositive motions  
6 deadline, I think it's safe to say the plaintiffs are not  
7 planning to file dispositive motions. We are  
8 contemplating filing certain in limine motions. And do  
9 believe that some adjustment on the schedule would be  
10 helpful recognizing the Court is going to need time to  
11 analyze those and rule on them at or before the start of  
12 the trial.

13 **JUDGE GERGEL:** Yeah. Mr. Freedman, I always try  
14 to remind lawyers when you have a panel -- a bench trial  
15 as a posed to a jury trial, motions in limine are not so  
16 critical, you know, I mean, frankly. But if you've got  
17 substantive motions in limine, what's the nature of those  
18 motions?

19 **MR. FREEDMAN:** They are largely by nature of  
20 preclusion, Your Honor, where the defendants didn't turn  
21 over certain information in discovery, or have not  
22 stipulated things in discovery, or if certain explanations  
23 for the map weren't contemporaneously raised in the  
24 legislative record. I hear what Your Honor's saying about  
25 the point of this with a bench trial. But I still think

1 in terms of framing trial presentation, getting some  
2 guidance from the Court --

3 **JUDGE GERGEL:** Yeah. I mean, if you've got  
4 motions in limine, you need to go ahead and give us --  
5 those that are ripe right now, just go ahead and file  
6 them. I mean, you know, if you pile everything on us at  
7 the last moment, you know, it's just very hard to process  
8 it in a way that makes any sense. So if you're going to  
9 make a motion in limine, you have motions in limine, I  
10 would say you do those by May 9. And if something arises  
11 after that, you can ask us, you know, if there's some good  
12 cause for not meeting that deadline.

13 And then for, you know, the motion for summary  
14 judgment, I think we've got to do that by the 11th. We've  
15 got to at least be able to look at it and have a response  
16 from opposing parties, you know. So I would say May 11th  
17 and just turn it around in 24 hours and May 12th for  
18 response.

19 And I say that, I understand why the defendants  
20 would want to make the motion. I think it's a legitimate  
21 kind of point. I just think we all know that there are  
22 material factual disputes that we need to resolve. But I  
23 want to -- I know I want to afford them the right to file  
24 it. And some of it may be actually something they're  
25 teeing up for basically argument in the case. And I think

1 it's legitimate to raise those things.

2 So we will do the motion in limine, anything by  
3 May 9. And the motion for summary judgment by 11. On the  
4 motion in limine, I want a response by the 10th.

5 Folks, don't overdo it. Don't over-nitpick this  
6 thing. We're three judges. We're not going to be blown  
7 away by something that arguably isn't admissible. You can  
8 just raise an objection to it. Don't spend a lot of time  
9 pouring over insignificant matters that you can raise  
10 objection to at trial.

11 The -- there was a mention of getting these four  
12 depositions scheduled within the time provided to the 6th.  
13 Mr. Moore, is there going to be any problem getting those  
14 other four depositions scheduled?

15 **MR. MOORE:** No, sir, Your Honor, there's not.  
16 There are also two other depositions that Mr. Freedman did  
17 not mention that we had noticed that we are tentatively  
18 scheduling this week.

19 **JUDGE GERGEL:** Okay. Okay. Now, Mr. Moore, you  
20 told me there are some discovery issues. What -- not  
21 getting into details, because we're not going to argue  
22 them, I'm going to make you to file something, tell me the  
23 nature of what the issue is.

24 **MR. MOORE:** Well, so from our perspective, there  
25 is an issue about the adequacy of the collection from the

1 Plaintiff South Carolina Conference -- South Carolina  
2 State Conference of the NAACP of the emails from various  
3 email boxes. That's the primary issue. That collection  
4 deficiency was discovered in a Rule 30(b)(6) deposition of  
5 President Murphy right before -- I guess at the end of --  
6 not at the end of last week but the end of the previous  
7 week.

8 **JUDGE GERGEL:** You said collection, there are  
9 emails that you think are relevant that haven't been  
10 produced?

11 **MR. MOORE:** That is correct, Your Honor.

12 **JUDGE GERGEL:** Okay.

13 And Mr. Freedman, who wants to respond? Without  
14 getting into a lot of detail, tell me is there an issue  
15 about that?

16 **MR. FREEDMAN:** So, Your Honor, John Freedman for  
17 the plaintiffs. News to me. Not previously raised, not  
18 met and conferred on. I'm happy to meet and confer with  
19 the defendants and understand what their issue is. And  
20 I'm sure if there are documents they still -- documents  
21 that they think we owe them, we're happy to make a  
22 supplemental production.

23 **JUDGE GERGEL:** Okay. Here's what it is. I want  
24 y'all to meet and confer immediately.

25 And Mr. Moore, if you're not -- if you're not

1 satisfied by that, I want you to file a motion on April 29  
2 on these NAACP production. And then I want a response by  
3 the plaintiff on May the 2nd. But y'all try to resolve  
4 it. I mean --

5 (Indiscernible crosstalk.)

6 **MR. MOORE:** I'm sorry, Judge. I was going to  
7 tell you, I don't think Mr. Freedman was on the call where  
8 we had a -- where we began to have a discussion about it  
9 or perhaps it's in the emails. But a number of the folks  
10 on the plaintiff's side are well aware of the issue.

11 **JUDGE GERGEL:** Okay. Good. Just file it on the  
12 29th. Y'all meet and confer. Try to resolve it. If you  
13 can't resolve it, then you file it on the 29th. Plaintiff  
14 will respond on the 2nd.

15 You both should have gotten the flavor that  
16 we're going to make y'all produce the stuff. So, I mean,  
17 unless there's a serious objection to the plaintiffs, just  
18 go ahead and produce it. I mean, I've been through --  
19 we're going to probably issue an order today or tomorrow  
20 on this in camera stuff. There's just not much on  
21 anybody's there. So y'all just go ahead and get it done  
22 because y'all need to be spending your time getting ready  
23 for trial and not on these issues that are, you know, in  
24 my view largely unimportant.

25 **MR. BRYANT:** Judge Gergel, this is Chris Bryant

1 for plaintiffs. Plaintiffs also have an outstanding  
2 discovery issue. So I guess when Mr. Moore said from our  
3 side, there is a plaintiff's discovery issue. And I'm not  
4 sure if you'd like us to briefly introduce that as well.

5 **JUDGE GERGEL:** Tell me just very briefly.  
6 You're going to be on the same schedule of the 29th and  
7 response by the 2nd.

8 **MR. BRYANT:** Okay. I assumed it was the same  
9 schedule. Very briefly, you know, we had some discovery  
10 requests that went out, you know, back in January  
11 regarding individual involvement in the case, basically  
12 identifying people involved with map drawing. And it did  
13 not come out -- it -- I guess the best way to say it is  
14 their -- the written discovery -- the written discovery  
15 does not identify any Nexsen Pruet attorneys as being  
16 involved. It did come out in depositions that took place  
17 shortly before I guess we would say we took this pause  
18 that there were attorneys -- you know, I think we asked  
19 for people involved in evaluating, analyzing, et cetera,  
20 the map and draft maps to sort of understand where they  
21 came from. And so we did not understand and have not  
22 received information I guess from those -- from those  
23 attorneys. So that is the --

24 **JUDGE GERGEL:** You know, I'm never crazy about  
25 efforts to make lawyers -- the lawyers the witnesses.

1 Okay? So take a hard look at them about relevancy here.  
2 Because, you know, are you planning to put Nexsen Pruet  
3 lawyers on the stand? I mean, come on.

4 **MR. BRYANT:** Your Honor, the deposition  
5 testimony revealed that Nexsen Pruet attorneys were  
6 substantively -- involved in substantive map drawing. And  
7 that sort of goes to the crux of the matter in the case.  
8 We don't know personally how, but throughout testimony of  
9 individual legislators, you know, indicated direct  
10 communications regarding substantive map drawing --

11 **JUDGE GERGEL:** Well, in the end, you know, y'all  
12 are spending a lot of time on what other people did. The  
13 maps are very important, folks. Okay? Look at the maps.  
14 And I'm just -- I'm just going to start off with saying I  
15 am reluctant to convert the lawyers into witnesses. I  
16 mean, as a practical matter, you can't represent a party  
17 where you are a material witness. So I've never been  
18 crazy at efforts to convert attorneys of record into  
19 witnesses. So if there's something there that's material,  
20 fine. File your motion on the 29th. The House Defendants  
21 can respond on May 2nd.

22 But I will start by saying, you know, the end  
23 here is the maps. That's really the important thing. And  
24 I agree, how they got there, you know, may be instructive.  
25 But, um -- but I will just say a marked reluctance to

1 convert lawyers into witnesses on both sides, by the way.

2 **MR. MOORE:** And Judge Gergel, this is Mark  
3 Moore. I hear Your Honor loud and clear. I think I heard  
4 you at the last status conference on that issue. And when  
5 we meet and confer with the plaintiffs, we will  
6 converse -- we will meet and confer on all issues in hopes  
7 that we can avoid the filing of motions from either side,  
8 frankly. At the time that the plaintiffs first raised  
9 that issue with us, we had not seen the deposition  
10 transcripts of these two witnesses. I've seen one of them  
11 now. I don't think I have the other. But I'm prepared to  
12 have a substantive discussion with plaintiff's counsel in  
13 hopes to resolve that issue.

14 **JUDGE GERGEL:** Thank you.

15 I mean, folks, I have all these so called new  
16 discovery issues. None of them sound like they amount to  
17 a lot one way or the other. You know, we've got to look  
18 at these maps. What do the maps do? You know, that's  
19 going to drive this. And surely there are details about  
20 how the maps got there that would be relevant. But, you  
21 know, in the end, you know, I presume the experts are  
22 going to be very important in a determination whether race  
23 was predominant. And if so, whether any remedy is  
24 narrowly drawn to meet a compelling state interest. I  
25 mean, that's sort of the gravamen of these cases.

1           Okay. Are there other matters that either  
2 first, Mr. Bryant, you or Mr. Freedman need to raise with  
3 the panel?

4           **MR. FREEDMAN:** Your Honor, John Freedman. Just  
5 briefly. We are waiting for compliance on the Paragraph 4  
6 of the April 13th order. If we can get a representation  
7 from Mr. Moore when --

8           **JUDGE GERGEL:** Mr. Moore, how about Paragraph 4?

9           **MR. MOORE:** Well, Mr. Bryant and I talked about  
10 that last week and we have the certifications. And we  
11 believe that we have most of the collections in house. We  
12 will get those documents out to plaintiffs as soon as  
13 possible, well -- well before any deposition takes place  
14 that might be affected by those productions and well  
15 before the discovery deadline.

16           **JUDGE GERGEL:** Very good.

17           Okay. Mr. Freedman, does that satisfy you?

18           **MR. FREEDMAN:** The representation that we'll  
19 have them before the depositions I think is sufficient,  
20 yes.

21           **JUDGE GERGEL:** I thought it might be. Okay.  
22 Anything else from the plaintiff that you need to raise  
23 with me?

24           **MR. BRYANT:** Yes, Your Honor. Chris Bryant from  
25 the plaintiffs. I guess one thing. We understood Judge

1 Heytens, you know, loud and clear at the beginning of this  
2 status conference regarding the sufficiency or lack of  
3 sufficiency of I guess what was needed from the Senate and  
4 the House as far as consenting or a more fulsome consent I  
5 believe were the words. Does the Court have direction --  
6 I guess we're trying to figure out what -- what would make  
7 that consent more --

8 **JUDGE GERGEL:** Let me say, we're not going to  
9 issue an advisory opinion because a lot of times the devil  
10 is in the details. But my colleague, Judge Seymour, has  
11 asked the panel several times why don't they just pass a  
12 new plan if they have consent? And I've thought that was  
13 a pretty good point myself.

14 **MR. MOORE:** And Your Honor, do you want me to  
15 try to answer that question?

16 **JUDGE GERGEL:** Well, I think I know the answer.  
17 But I'm saying -- or, you know, there may be other ways to  
18 manifest assent by the bodies. But, you know, Mr. Moore,  
19 like you, I represented the legislative bodies. And I was  
20 always taught that a body can only act through its  
21 majority. And there needs to be some reflection, and  
22 that, you know, one individual can't speak for the body.  
23 And I understand there are issues we're late in the  
24 session and all of that. I get that.

25 But, you know, we've got -- as Judge Heytens

1 said, we need a clear manifestation of the consent of the  
2 bodies, not just one or two leaders of the body. And we  
3 need an indication that an executive officer, which is  
4 most logically here the governor, but could conceivably  
5 under the state constitution be the attorney general comes  
6 in and consents.

7 The case law makes it clear this is a  
8 legislative -- this is not a plan of the House. This is a  
9 plan of the State involving the House Redistricting. And  
10 you can enter into consent decree, Lawyer teaches us that,  
11 but under very strict standards. And since then, in Fouts  
12 and in Benson and in Madditt (phonetic) and, you know,  
13 we've taken the -- we read that case law carefully. And  
14 we're not telling y'all you can't get the case settled,  
15 you've just got to meet these standards. And you're not  
16 there yet. And you might get there but you're not there  
17 yet.

18 **MR. MOORE:** Your Honor?

19 **JUDGE GERGEL:** Yes?

20 **MR. MOORE:** And I know that the Court is loathe  
21 to give us advisory opinions and we understand that  
22 completely. And as Your Honors can tell, we're trying. I  
23 wish that we had time to pass the maps. I don't think we  
24 can. But I hear you loud and clear on what you would  
25 expect from the two legislative chambers. And obviously,

1 the lawyers from the Senate are on this call. And we will  
2 be talking to the lawyers for the Senate and we will be  
3 talking to our clients immediately on that point.

4 When Your Honor raises the issue of an  
5 executive's consent, and I just -- I want to just raise  
6 this issue with the Court. The governor is no longer a  
7 party to the action. My understanding is that the  
8 governor does not -- from discussions that my client has  
9 had with the governor's office, my understanding is that  
10 the governor has no intention to object to the settlement,  
11 no intention to proceed as an intervenor to try to stop  
12 this. But he is no longer a party to the action and there  
13 are issues concerning consent.

14 I also heard Your Honor loud and clear about the  
15 attorney general. And we will be glad to try to explore  
16 that issue. But I want to raise another issue. Because  
17 the governor isn't in this case, the attorney general  
18 isn't in this case, the State Election Commission is in  
19 this case. And we've briefly spoken to the Election  
20 Commission about this point. And they don't have an  
21 answer for us yet on their position. But the State  
22 Election Commission is empowered by statute with  
23 conducting elections. They have a chairman that is a  
24 chief administrative officer for the elections of this  
25 state. And they are all appointed by the governor. So we

1 query whether it's possible that the State Election  
2 Commission could be the executive to consent as they are a  
3 party?

4 **JUDGE GERGEL:** The answer is they do not have  
5 it. Just like in Benson, the Secretary of State in  
6 Michigan didn't have that authority. She was the election  
7 commissioner there.

8 You need to go get -- you know, what these cases  
9 say, regardless of whether the governor is a party or the  
10 attorney general has appeared, you can't modify -- this is  
11 a legislative action. You need the players at the table  
12 consenting. So saying I don't oppose it is not the  
13 answer. You need to have an executive -- you know,  
14 preferably, frankly, the governor. But there may be an  
15 argument under the state constitution, the attorney  
16 general could do this, to consent on behalf of the state.

17 But, you know, at this point you need -- you  
18 know, I think the safer thing is to go to the governor and  
19 just tell him that. I know legislative leaders can go to  
20 the governor and speak to him about that. That's the  
21 easier thing. But the simplest thing would be to pass the  
22 plan and everybody sign it. There may be something short  
23 of that that would work. But leaving the governor out is  
24 not an option.

25 **MR. MOORE:** Thank you, Your Honor. I wanted to

1 raise that issue and I appreciate your --

2 **JUDGE GERGEL:** It's a fair question, Mr. Moore.  
3 It is a fair question.

4 **MR. BRYANT:** Thank you, Your Honor. Chris  
5 Bryant for plaintiff again. And just wanted to sort of,  
6 in a statutory issue, the legislation -- you know, passing  
7 this -- the map expressly empowers the Speaker and the  
8 President of the Senate to sort of act on behalf of those  
9 bodies. And I guess that is both in litigation and  
10 related matters. And so that is, you know, instead of  
11 having the majority, that's why we went this route.

12 **JUDGE GERGEL:** Yeah. I understand your view.  
13 We read the language. You know, I'm very familiar with  
14 authority language. It might be in a will. It might be  
15 in a trust. It might be in a statute. And the omission  
16 of the authority to settle is, to me, very notable. And,  
17 you know, he does not have the authority. But he could go  
18 and if he could -- if he could determine he has the assent  
19 of his body that he gets that authority, that's fine. It  
20 could be a joint resolution or an individual resolution of  
21 the bodies. It could be something with a vote that would  
22 make it clear. But, generally, having him say, well, I'm  
23 the Speaker, I get to settle, I don't believe he has -- we  
24 don't read the statute to give him that authority.

25 **MR. BRYANT:** Thank you, Your Honor.

1           **MR. MOORE:** And Your Honor, I don't want to try  
2 to force patience. Here's a question that I feel like I  
3 must ask. I take it the Court would not be inclined to  
4 give us extra time just to try to accomplish those things,  
5 to give us a litigation pause to try to accomplish that?  
6 And if we can't accomplish it, we'd be able to give Your  
7 Honor a quick answer. Is the Court willing to consider  
8 that?

9           **JUDGE GERGEL:** No. You know, my experience  
10 doing this job now for a dozen years, is that deadlines  
11 have a way of helping resolve things. And if you can get  
12 the authority -- the legislature is going to be gone in a  
13 couple of weeks. They're either going to do it or not.  
14 They can do it. You know, if there's a will, there's a  
15 way to do this. If they actually have the support of the  
16 body to do it, there is a way to do this. The fact that  
17 they may not want to do it, prefer not to do it, I get  
18 that. I do, I get that. But that's not the way -- we  
19 have to act with authority. And we've got to deal with  
20 people who have actual authority, not just people who  
21 happen to be parties to this lawsuit. In a typical  
22 lawsuit the parties can settle cases. But this is not a  
23 typical lawsuit. This is one of the most sovereign acts  
24 of a state which is adopting a redistricting plan.

25           **MR. MOORE:** I hear Your Honor loud and clear.

1 Again, this is Mark Moore. So we will not come back to  
2 this Court and ask this Court for any consideration  
3 scheduling a fairness hearing or doing a pause of this  
4 litigation until and unless we can get those items. And  
5 if we can't get them, we can't get them and we'll try this  
6 case.

7 **JUDGE GERGEL:** That's exactly right. And every  
8 Court would prefer the parties to figure a way to work it  
9 out. In this case, the parties are a little complicated  
10 because it's the state itself. And, you know, you've got  
11 to satisfy the formalities to authorize the settlement in  
12 this situation. And I think y'all know the roadmap.

13 **MR. MOORE:** I think we do.

14 **JUDGE GERGEL:** I laid it out to you.

15 **MR. MOORE:** I think the three of you began to  
16 lay it out for us clearly yesterday. Today has been very  
17 helpful. We understand what we have to do. And if we can  
18 do it, then we'll be back to the Court. If we can't, then  
19 we'll be prepared to try this case.

20 It's not -- speaking for the House Defendants,  
21 it's not that we don't want to try this case. It's that  
22 we thought that a resolution would be fair and just for  
23 everyone. And we still believe that. But if we can't get  
24 it, and we can't get it in the manner that the Court  
25 believes is necessary to consider moving forward to a

1 consent decree, then we'll be prepared to try this case.

2 **JUDGE GERGEL:** I think that's where we are.

3 Mr. Moore, anything further from the defense?

4 **MR. MOORE:** We have nothing further from House  
5 Defendants, Your Honor.

6 **JUDGE GERGEL:** Okay.

7 Okay. Judge Heytens, I'll pass it back to you.

8 **JUDGE HEYTENS:** Well, I was just going to say I  
9 didn't have anything else.

10 Judge Seymour, do you have anything else?

11 **JUDGE SEYMOUR:** No, I don't have anything else  
12 to add. I think it's all been covered.

13 **JUDGE HEYTENS:** Great.

14 With that, then I guess we will recess the  
15 hearing. Thank you, everyone, for your time. And we'll  
16 look forward to getting back to you on some things that we  
17 need to get back to you on and hearing from you on  
18 anything you need from us as we proceed forward. Thank  
19 you all.

20 **ATTORNEYS IN UNISON:** Thank you.

21 (WHEREUPON, court was adjourned at 1:33 PM)

22 \*\*\*

23 I certify that the foregoing is a correct transcript from  
24 the record of proceedings in the above-entitled matter.

25 s/Karen E. Martin  
Karen E. Martin, RMR, CRR

4/27/2022  
Date

# **Exhibit C**

**(House Defendants' April 18, 2022 Discovery Letter)**



**Michael A. Parente**  
Associate

April 18, 2022

**DELIVERED VIA EMAIL**

Christopher Bryant  
Boroughs Bryant LLC  
1122 Lady St. Ste. 208  
Columbia, SC 29201

*Re: S.C. State Conf. of the NAACP and Taiwan Scott v. Alexander, et al.,  
Docket No. 3:21-cv-03302-MBS-TJH-RMG (D.S.C.)*

Dear Chris:

In light of information that has come to light in recent depositions, we felt it prudent to consult with you as soon as possible to address the below discovery issues pursuant to Rules 37(a) and 11 of the Federal Rules of Civil Procedure, in hopes of resolving the below deficiencies quickly and without the assistance of the Court. While there may be additional areas of discovery that we believe are deficient under the Rules that still need to be addressed, House Defendants have identified several deficiencies that warrant immediate attention given the deposition of SC State Conference of the NAACP President Brenda Murphy on April 14, 2022.

As you will recall, we originally scheduled the deposition of Present Murphy for February 4, 2022. We left this deposition open as it became quite clear during the deposition that multiple documents responsive to our requests had not been provided to us and we detailed those concerns over the course of the last few weeks. While we have received additional documents, deficiencies in Plaintiffs’ productions remain and those were brought to life during President Murphy’s deposition last Thursday.

The depositions of President Murphy, both as an individual and as a designee for the Rule 30(b)(6) deposition of the South Carolina State Conference of the NAACP (“SC NAACP”), clearly demonstrate Plaintiff’s deficient collection and productions with respect to the SC NAACP. During her recent deposition, President Murphy stated that she used her personal email address, [brendacmurph@gmail.com](mailto:brendacmurph@gmail.com), as her primary email

- Austin
- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Bluffton / Hilton Head
- Myrtle Beach
- Raleigh

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**Attorneys and Counselors at Law**

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during the COVID-19 pandemic because the SC NAACP office was closed.<sup>1</sup> President Murphy even lamented that she wished she had used her official email address so her personal email was not at issue. When asked about this personal email account, President Murphy stated that she provided this email account to her counsel, specifically Adam Pergament, for collection, review, and production roughly two weeks prior to her deposition. Still, to date, House Defendants have yet to receive a single email from this account with the discovery deadline approaching on April 22, 2022. In fact, during this deposition, House Defendants showed President Murphy several highly relevant emails that were sent to and from [brendacmurph@gmail.com](mailto:brendacmurph@gmail.com) that were produced by the *League of Women Voters of South Carolina* in response to our subpoena to them—but no such documents have been produced by Plaintiffs. President Murphy stated that she did not know why her counsel and Mr. Pergament had not yet produced any documents. House Defendants request that Plaintiffs provide a complete production of President Murphy's personal email account as soon as possible before the close of discovery.<sup>2</sup>

Second, while it appears only two (2) .PST files from the SC NAACP were collected and produced (President Murphy and Office Manager), it became apparent during these depositions that in fact there were numerous other people involved in the redistricting efforts that would be responsive to our Requests for Production. For example, President Murphy stated that the Executive Committee was responsible for decision-making for the SC NAACP, including reviewing and approving this lawsuit. The Executive Committee consists of roughly 26 individuals according to President Murphy, yet we have only received emails from the official account of one of those members: President Murphy. In addition, President Murphy identified several other employees including Amber Brooks, Laurie Gregory, Priscilla Smith, Shirley Able, Dr. Eloise Fomby-Denson, and Amelia Glisson who sent and received emails related to redistricting. While House Defendants have received a handful of emails with some of these individuals, a thorough and fulsome collection and production of these emails has not occurred. While certain of these individuals such as Amelia Glisson may no longer be employed by the SC NAACP, President Murphy believed that the organization retained those emails. As such, House Defendants request that the personal and/or official emails of all employees and members of the Executive Committee be collected, searched, and produced as soon as possible.

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<sup>1</sup> This is directly contradictory to representations Plaintiffs' counsel made during the meet and confer on March 14, 2022, which was apparently weeks before President Murphy even provided her Gmail account to Mr. Pergament.

<sup>2</sup> President Murphy also stated that she believed emails on her Gmail account deleted after one year. If a litigation hold was issued to President Murphy in October, when this lawsuit was first filed, there should be emails dating back to at least January 1, 2021, the beginning of the time period listed in our requests for production.

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Further, President Murphy disclosed for the first time that there were proposed draft South Carolina House of Representative maps that were sent from the American Civil Liberties Union (“ACLU”)<sup>3</sup> to President Murphy at her Gmail account and forwarded by her or a staffer to SC NAACP branch presidents. To date, House Defendants have not received *any* maps from the SC NAACP or any emails between the ACLU and the branch presidents in party discovery. In fact, the League of Women Voter’s production, which was fulsome and provided very quickly, has provided far more emails and information from members of the SC NAACP than Plaintiffs’ counsel has provided.

In addition to these omissions in collection and production of documents, there are several discrete items that have been discussed in depositions or in other documents that have not yet been produced. We have listed some of the deficiencies as follows:

- Meeting minutes from several Reapportionment Committee Meetings for which there are agendas and/or videos, including meetings on August 2, 2021, October 14, 2021, December 30, 2021, January 13, 2022, February 10, 2022, and February 17, 2022;
- Video recordings of Reapportionment Committee Meetings in prior to August of 2021 and for those meetings in October and November of 2021;
- Meeting minutes and video recordings from any subcommittee meetings;
- Meeting minutes and video recordings from Public Comment Training with NAACP Branch Members as noted in SCNAACP\_002584 or other training sessions on public comment and testimony;
- Public testimony training materials including the attachments to SCNAACP\_002583;
- Meeting minutes and video recordings of training sessions held by Dr. John Ruoff or Minister Evans Moore; and
- Video recording of the Annual Conference where redistricting training was given.

---

<sup>3</sup> President Murphy also discussed the demographers and statisticians from the ACLU who created the SC NAACP map, which is referenced in the Second Amended Complaint. *See* ECF No. 154 at 22, 31, 51-52, 54, 68. The identity of these map drawers has not been made known to House Defendants despite repeated requests and at least one representation by Plaintiffs’ counsel that such identities would be made known. House Defendants again request the identity of these map drawers.

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As the close of fact discovery is quickly approaching on April 22, 2022, please provide the documents requested above as soon as possible. If this case is not resolved at mediation tomorrow and these documents are not provided, House Defendants may be forced to file a motion to compel on the above topics.

Sincerely,

A handwritten signature in blue ink, appearing to read "M Parente", is written over a light blue grid background.

Michael A. Parente

cc: Counsel of Record for House Defendants and Plaintiffs

# **Exhibit D**

**(House Defendants' April 30, 2022 Production Letter)**



**Michael A. Parente**  
Associate

April 30, 2022

**DELIVERED VIA EMAIL**

Christopher Bryant  
Boroughs Bryant LLC  
1122 Lady St. Ste. 208  
Columbia, SC 29201

*Re: S.C. State Conf. of the NAACP and Taiwan Scott v. Alexander, et al.,  
Docket No. 3:21-cv-03302-MBS-TJH-RMG (D.S.C.)  
House Defendants’ Fifteenth Production*

Dear Chris:

Austin  
Charleston  
Charlotte  
**Columbia**  
Greensboro  
Greenville  
Bluffton / Hilton Head  
Myrtle Beach  
Raleigh

On behalf of Defendants James H. Lucas (in his official capacity as Speaker of the South Carolina House of Representatives), Chris Murphy (in his official capacity as Chairman of the South Carolina House of Representatives Judiciary Committee), and Wallace H. Jordan (in his official as Chairman of the South Carolina House of Representatives Redistricting Ad Hoc Committee) (collectively, the “House Defendants”), we are producing a fifteenth set of documents to Plaintiffs. The production is being made pursuant to the Panel’s April 13, 2022 Order (ECF No. 222) directing the production of communications such as personal email accounts and text messages. This production is made pursuant to the protest and reservations previously noted on the basis of legislative privilege.

As requested, this production is being sent via FTP to all counsel of record for Plaintiffs and the previously enumerated counsel for defendants. If counsel for the other defendants request that we provide copies of the productions to additional counsel, please let us know. The production includes 115 documents totaling 1,291 pages Bates labelled **SC\_HOUSE\_0109588 – SC\_HOUSE\_0110878**. There are 12 redactions made on the basis of non-responsiveness to Plaintiffs’ Requests for Production.

Please let us know if you have any questions or concerns.

1230 Main Street  
Suite 700 (29201)  
PO BOX 2426  
Columbia, SC 29202  
www.nexsenpruet.com

**T** (803) 253-8247  
**F** 803.253.8277  
**E** MParente@nexsenpruet.com  
Nexsen Pruet, LLC  
**Attorneys and Counselors at Law**

April 30, 2022  
Page 2

Sincerely,

A handwritten signature in blue ink, appearing to read "M Parente", is written over a light blue rectangular background.

Michael A. Parente

cc: Counsel of Record

# **EXHIBIT E**

**(April 29, 2022 E-mail from M. Moore to L. Aden)**

**From:** [Moore, Mark C.](#)  
**To:** "[Leah Aden](#)"; [Parente, Michael A.](#); [Christopher James Bryant](#); [achaney@aclusc.org](mailto:achaney@aclusc.org); [Antonio Ingram](#); [John Cusick](#); [pyan@aclu.org](mailto:pyan@aclu.org); [Raymond Audain](#); [Samantha Osaki](#); [Sarah Gryll](#); [Somil Trivedi](#); [Stuart Naifeh](#); [Adriel I. Cepeda Derieux](#); [John A. Freedman](#); [John Hindley](#); [jeffrey.fuisz@arnoldporter.com](mailto:jeffrey.fuisz@arnoldporter.com); [Paula Ramer](#); [Adam Pergament](#); [Gina Colarusso](#); [Mathias, Andrew A.](#); [Shedd, Erica Wells](#); [Barber, Hamilton B.](#); [Hollingsworth, Jennifer J.](#); [Ricard, Rhett D.](#); [Wilkins, William W.](#); [Diamaduros, Konstantine P.](#); [lcrum@burr.com](mailto:lcrum@burr.com); [jtrinkley@burr.com](mailto:jtrinkley@burr.com); [mburchstead@burr.com](mailto:mburchstead@burr.com); [tnicholson@elections.sc.gov](mailto:tnicholson@elections.sc.gov); [Rabon, Sheree M.](#); [Rob Tyson](#); [Lisle Traywick](#); [La"Jessica Stringfellow](#); [John M Gore](#); [Stephen J Kenny](#)  
**Bcc:** "[South Carolina House of Representatives 063947 00003 Stage 3 Potential Litigation E Mails](#)"  
**Subject:** RE: SC NAACP, et al v. Alexander - Plaintiff's Proposed Exhibit List [IWOV-NPCOL1.FID2240915]  
**Date:** Friday, April 29, 2022 1:44:57 PM

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Leah:

Thanks for your email and for the description of your proposed exhibits. While the Parties have not discussed an exchange of proposed exhibit lists nor is there a requirement in our scheduling order, we are happy to collaborate on trial exhibits and to schedule a “meet and confer” on each party’s exhibit plans. While we can provide our proposed exhibits today so that you have the information, please note that Local Rule (LR) 26.07 is not implicated here.

As you may have noted, LR 26.07(A) sets a time period for a meet and confer no less than 7 days prior to the date set for the filing of pretrial briefs—which is not provided for in this case as the Court specifically declined to require filing of pretrial briefs. The absence of such a pre-trial exchange is also not surprising given that here discovery is not yet complete and if the deadlines in LR 26.07(A) had been triggered, LR 26.07(C) would have required the exchange of proposed exhibit lists by all parties and the “physical exchange of exhibits” *before* the 7 day period contemplated by LR 26.07(A).

We do, however, see benefit to the contemplated “meet and confer” and can be scheduled in short order. Let us know when you’d like to discuss.

Best,

Mark

**Mark C. Moore**  
Member  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, SC 29201  
Post Office Box 2426 (29202)  
T: 803.540.2146, F: 8037271458  
[MMoore@nexsenpruet.com](mailto:MMoore@nexsenpruet.com)

[www.nexsenpruet.com](http://www.nexsenpruet.com)



---

**From:** Leah Aden <[laden@naacpldf.org](mailto:laden@naacpldf.org)>  
**Sent:** Thursday, April 28, 2022 11:46 PM

**To:** Parente, Michael A. <MParente@nexsenpruet.com>; Cynthia D. Nygord <cnygord@robinsongray.com>; Christopher James Bryant <chris@boroughsbryant.com>; achaney@aclusc.org; Antonio Ingram <aingram@naacpldf.org>; John Cusick <jcusick@naacpldf.org>; pyan@aclu.org; Raymond Audain <raudain@naacpldf.org>; Samantha Osaki <sosaki@aclu.org>; Sarah Gryll <sarah.gryll@arnoldporter.com>; Somil Trivedi <strivedi@aclu.org>; Stuart Naifeh <snaifeh@naacpldf.org>; Adriel I. Cepeda Derieux <ACepedaDerieux@aclu.org>; John A. Freedman <john.freedman@arnoldporter.com>; John Hindley <john.hindley@arnoldporter.com>; jeffrey.fuisz@arnoldporter.com; Paula Ramer <paula.ramer@arnoldporter.com>; Adam Pergament <adam.pergament@arnoldporter.com>; Gina Colarusso <gina.colarusso@arnoldporter.com>; Mathias, Andrew A. <AMathias@nexsenpruet.com>; Shedd, Erica Wells <EShedd@NexsenPruet.com>; Barber, Hamilton B. <HBarber@nexsenpruet.com>; Hollingsworth, Jennifer J. <JHollingsworth@nexsenpruet.com>; Moore, Mark C. <MMoore@nexsenpruet.com>; Ricard, Rhett D. <RRicard@nexsenpruet.com>; Wilkins, William W. <BWilkins@nexsenpruet.com>; Diamaduros, Konstantine P <KDiamaduros@nexsenpruet.com>; lcrum@burr.com; jtrinkley@burr.com; mburchstead@burr.com; tnicholson@elections.sc.gov; Rabon, Sheree M. <SRabon@nexsenpruet.com>; Rob Tyson <rtyson@robinsongray.com>; Lisle Traywick <ltraywick@robinsongray.com>; La'Jessica Stringfellow <lstringfellow@robinsongray.com>; John M Gore <jmgore@jonesday.com>; Stephen J Kenny <skenny@jonesday.com>; Leah Aden <laden@naacpldf.org>

**Subject:** RE: SC NAACP, et al v. Alexander - Plaintiff's Proposed Exhibit List

{EXTERNAL EMAIL}

Counsel –

Attached please find Plaintiffs' proposed exhibit list pursuant to the Court's local rules. We look forward to a meet and confer to discuss defendants' responses and any objections to these proposed exhibits.

(end)

leah

Leah Aden  
Deputy Director of Litigation  
NAACP Legal Defense and Educational Fund, Inc.  
40 Rector Street, 5th Floor, New York, NY 10006  
212.965.7715 [LAden@naacpldf.org](mailto:LAden@naacpldf.org)  
[www.naacpldf.org](http://www.naacpldf.org)

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