IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*, *Plaintiffs,* V. GREG ABBOTT, *et al.*, *Defendants.*	§ § § § § § § § § § §	Case No. 3:21-cv-00259 [Lead Case]
UNITED STATES OF AMERICA, *Plaintiff,* V. STATE OF TEXAS, *et al.*, *Defendants.*	§ § § § § § § § § §	Case No. 3:21-cv-00299 [Consolidated Case]

LEGISLATORS' MOTION TO QUASH OR MODIFY DEPOSITION SUBPOENAS AND MOTION FOR PROTECTIVE ORDER

INTRODUCTION

The United States wants three sitting legislators to be its very first deponents. But legislators engaged "in the sphere of legitimate legislative activity" are protected "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (quoting *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951)). It is "not consonant with our scheme of government for a court to inquire into the motives of legislators." *Tenney*, 341 U.S. at 377. Redistricting cases are no exception. At the very least, the subpoenas to depose the legislators should be modified or a protective order entered that limits or stays the depositions. The United States' extraordinary discovery request also presents the opportunity for the Court to consider whether the subpoenas ought to be quashed altogether.

BACKGROUND

In December 2021, the U.S. Department of Justice sued to invalidate Texas's newly enacted state house and congressional redistricting plans. Its only claim is that the redistricting legislation violates Section 2 of the Voting Rights Act. *See* Compl. ¶¶161-67, *United States v. Texas*, No. 3:21-cv-299, ECF 1. The United States is pursuing extensive third-party discovery, issuing more than 25 third-party subpoenas to legislators, staff members, other officials, and the Texas Legislative Council for all redistricting-related documents. *See generally* Ex. A. to Mot. to Quash TLC Subpoena, *LULAC v. Abbott*, No. 3:21-cv-259, ECF 219-1.

The United States now wishes to depose three sitting legislators "on topics pertinent to the Voting Rights Act enforcement action [it] ha[s] brought against the 2021 Texas House Plan." *See* Ex. A at 7 (4/28/2022 email from D. Freeman); *see also* Ex. B (Rep. Guillen deposition subpoena); Ex. C (Rep. Landgraf deposition subpoena); Ex. D (Rep. Lujan deposition subpoena). The complaint alleges the house redistricting legislation "results in a denial or abridgment" of voting rights "on account of

race…." Compl. ¶166 (quoting 52 U.S.C. §10301(a)). The complaint specifically challenges the following house districts:

- **House District 118:** The United States alleges that the San Antonio-area district "eliminates Latino voters' opportunity to elect representatives of their choice," while averring that the Hispanic Citizen Voting Age Population (CVAP) of the district is between 56.4 and 57.5 percent. Compl. ¶¶104, 111. The United States complains that the district elected a Latino Republican in 2016 and 2021 special elections—Representative John Lujan—and he is "not the Latino candidate of choice." *Id.* ¶108. Representative Lujan is one of the three legislators whom the United States now wishes to depose. *See* Ex. D (subpoena).

- **House District 31:** The United States alleges the South Texas district "reduces Latino population share," while averring that the Hispanic CVAP of the district is between 64.5 and 66.6 percent. Compl. ¶¶117, 123. The complaint states that Latino voters have "reelected their preferred candidate by a comfortable margin" but complains that he has now "switched parties." *Id.* ¶¶117, 120. That incumbent is Representative Ryan Guillen, whom the United States now wishes to depose. *See* Ex. B (subpoena).

- **El Paso and West Texas House Districts:** The United States alleges that the 2021 redistricting legislation removed a Latino opportunity district from El Paso County (existing District 76), and overpopulated other El Paso-area districts (deviating from ideal by roughly 4.25 percent). Compl. ¶¶131, 139.

The complaint does not allege that invidious discriminatory intent motivated the house redistricting legislation; the complaint is based on effects alone. *Compare* Compl. ¶166 (house districts), *with id.* ¶¶164-65 (alleging impermissible legislative "purpose" and effect of congressional districts); Opp'n to Mot. to Quash TLC Subpoena, ECF 227 at 11-12 (distinguishing congressional districts claims).

Texas moved to dismiss the United States' complaint and later moved to stay this litigation pending the Supreme Court's decision in *Merrill v. Milligan*, No. 21-1086, and *Merrill v. Caster*, No. 21-1086. *See* ECF 111; ECF 241. The motion to dismiss, arguing that the complaint fails to state a Section 2 claim, is pending. The motion to stay, explaining that the Supreme Court will be considering anew what Section 2 requires of States in redistricting (and what the Equal Protection Clause prohibits),[1] has been denied. ECF 246.

[1] *See Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring in grant of stay); Merits Br. of Secretary Merrill, *Merrill v. Milligan*, No. 21-1086, bit.ly/39nC1Iy.

The United States now intends to subpoena Texas House Representatives Ryan Guillen, Brooks Landgraf, and John Lujan for depositions later this month—the first depositions that the United States seeks in this case. *See* Ex. B (noticing 5/19/2022 deposition for Rep. Guillen); Ex. C (noticing 5/24/2022 deposition for Rep. Landgraf); Ex. D (noticing 5/25/2022 deposition for Rep. Lujan). The legislators are not named defendants in any complaint, nor have they intervened. Their only connection to the litigation is as house members; two were in office when the State enacted the house redistricting legislation, while the third (Rep. Lujan) was not sworn into office until after the bill passed. The United States has already subpoenaed all redistricting-related documents from each of these representatives and two dozen other third parties. In response, subpoena recipients have produced non-privileged documents and invoked applicable privileges for others.

Counsel have met and conferred. The United States asserted that depositions could "encompass numerous matters over which"—according to counsel—"any common law state legislative privilege applicable in federal courts does not apply." Ex. A at 7 (4/28/2022 email from D. Freeman). Counsel later elaborated that it was entitled to depose the legislators about the *Gingles* standard,[2] including discussion of "population patterns, political behavior, the history of discrimination, socioeconomic disparities, campaign tactics, and other matters." *See* Ex. A at 1 (5/3/2022 email from D. Freeman). The legislators' counsel explained that there were alternative, less intrusive means for the United States to obtain whatever non-privileged, relevant material it believes it could obtain from deposing legislators. Ex. A at 8 (4/27/2022 email from P. Sweeten). In response, counsel for the United States said it was not open to alternatives at this time. *See* Ex. A at 2 (5/2/2022 email from W. Thompson).

[2] *See Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986) (discussing factors from 1982 Senate Report that "typically may be relevant to a §2 claim," though "neither comprehensive nor exclusive," including "history of voting-related discrimination," "racially polarized" voting, "exclusion of members of the minority group from candidate slating processes," or "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process," among others).

ARGUMENT

Legislative privilege and immunity safeguard the legislative process. They are safeguards older than the country itself. *See United States v. Johnson*, 383 U.S. 169, 178-82 (1966) (discussing history of English analog and importance of legislator independence). At the founding, legislative privilege and immunity were "deemed so essential" that these safeguards were "written into the Articles of Confederation and later into the Constitution." *Tenney*, 341 U.S. at 372. Still today, they protect legislators from inquiries about what motivated or informed their legislative acts, based on the elementary principle that it is "not consonant with our scheme of government for a court to inquire into the motives of legislators." *Id.* at 377; *see, e.g.*, *Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) ("An inquiry into a legislator's motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court."); *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187-88 (9th Cir. 2018) (rejecting redistricting "Plaintiffs['] call for a categorical exception whenever a constitutional claim directly implicates the government's intent," which "would render the privilege 'of little value'" (quoting *Tenney*, 341 U.S. at 377)); *In re Hubbard*, 803 F.3d 1298, 1307-08, 1315 (11th Cir. 2015) (quashing subpoenas for legislators' documents); *Reeder v. Madigan*, 780 F.3d 799, 804 (7th Cir. 2015) (raising concerns that it would be "nearly impossible for a legislature to function" without privilege).

These protections are already well-known to this Court. Consistent with centuries of precedent, at the preliminary injunction stage, this Court already ruled that a legislator could testify about that "within the public record," but anything beyond the public record would require a waiver of legislative privilege. PI Tr. 152:1-5 (Vol. 5) ("Senator Huffman will be allowed to testify to everything within the public record; and if she goes outside the public record, she will waive her privilege."); *accord Tenney*, 341 U.S. at 373-77; *Dombrowski*, 387 U.S. at 85; *see also Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2573-74 (2019) (refusing to permit extra-record discovery, including deposition, of Commerce Secretary after staying order compelling deposition, *In re Dep't of Commerce*, 139 S. Ct. 16 (2018)); *In re*

Stone, 986 F.2d 898, 904 (5th Cir. 1993) (explaining that officials "could never do their jobs" if subject to such discovery because they would be less willing to explore all options before them, lest they "be subpoenaed for every case involving their agency"). The Court prohibited plaintiffs from questioning the testifying senator about her mental impressions or opinions regarding legislation, or what otherwise motivated or informed her or others during the legislative process. *See, e.g.*, PI Tr. 152:2-7 (Vol. 6); PI Tr. 25:6-10 (Vol. 7); PI Tr. 29:6-20 (Vol. 7).

Applying those protections again here, movants request that this Court quash or modify the subpoenas to depose sitting legislators. And should any depositions proceed, movants request that this Court enter a protective order prohibiting the United States from deposing legislators about privileged matters, including matters beyond the public record. Relatedly, movants request an administrative stay to postpone the depositions until this Court resolves this motion.

I. At the very least, an order modifying the subpoenas or a protective order is warranted.

There is good reason to quash the subpoenas altogether, *infra* Part II. The United States has not been able to articulate any relevant, non-privileged information that it expects to obtain from the legislators' depositions that could warrant such intrusive and comity-frustrating discovery. Whatever "numerous matters" the United States envisions it could explore by deposing legislators, those matters are either privileged or discoverable through less intrusive means. At the very least, and in light of the obvious legislative immunity and privilege concerns raised by such depositions, the legislators request that the subpoenas be modified or a protective order issued as follows.

A. The legislators request that the Court require the United States to first exhaust less intrusive means to discover whatever it is that the United States hopes to discover regarding the house redistricting legislation before resorting to "extraordinary" depositions of legislators. *Vill. of Arlington Heights v. MHDC*, 429 U.S. 252, 268 & n.18 (1977). An extensive public record regarding the house

redistricting legislation and the resulting boundaries are readily available to all parties.[3] At this stage of the proceedings, it is implausible that it is necessary to depose Representatives Guillen, Landgraf, and Lujan (and presumably others to come) to answer questions to confirm that the public record says what the public record says.

Exhausting alternative means of discovery is especially warranted in light of counsel's stated purpose for the legislators' depositions. Counsel intends to depose the legislators regarding the house redistricting legislation. *See* Ex. A at 7 (4/28/2022 email from D. Freeman). The United States' allegations regarding that legislation are focused on effects (or "results" alone); the United States does not allege that the legislation was imbued with improper purpose. *See* Compl. ¶166; Ex. A at 4 (5/2/2022 email from D. Freeman) (describing "results claims"); ECF 227 at 10-11 (distinguishing intent-based claims for congressional districts). As pled, the legality of those districts will be largely left to expert opinion about their so-called "effects," to the extent relevant under the Voting Rights Act. There is no utility at this stage of the proceedings to depose sitting legislators about such results-based claims. *See, e.g.*, *Am. Trucking Ass'n, Inc. v. Alvitti*, 14 F.4th 76, 88-90 (1st Cir. 2021) (quashing subpoenas to depose state lawmakers because Dormant Commerce Clause claim was predominantly focused on effect of state law, not purpose). The United States has not and likely cannot articulate why already-

[3] *See, e.g.*, TX HB1, Texas Legislature Online, capitol.texas.gov/BillLookup/History.aspx?LegSess=873&Bill=HB1 (containing bill history for passage of Texas house districts, including committee report and relevant house journal excerpts); "Texas Redistricting," redistricting.capitol.texas.gov/ (landing page for redistricting materials, including redistricting process and recordings of and notices for all redistricting hearings); "DistrictViewer," dvr.capitol.texas.gov/ (containing more than 100 plans for house and congressional districts, publicly introduced or submitted by legislators or members of the public throughout the legislative process); "Capitol Data Portal," data.capitol.texas.gov/ (containing redistricting datasets, including datasets for enacted plans and proposed alternatives); Texas House Journal, journals.house.texas.gov/hjrnl/home.htm (record of events occurring in the Texas House); Texas House Redistricting Committee, house.texas.gov/committees/committee/?committee=C080 (committee webpage containing various public materials).

issued document subpoenas, an extensive public record, and forthcoming expert discovery are insufficient for such claims.

Deposing a legislator would be "extraordinary" in any case and ordinarily barred by legislative privilege. *Arlington Heights*, 429 U.S. at 268 & n.18. It is all the more extraordinary for the United States to demand the depositions of three legislators as its opening foray here. To the extent plaintiffs deem it necessary to further discuss that which is in the public record or to seek other non-privileged information, the United States can do so in ways far less intrusive than deposing a legislator. *See, e.g.*, *In re Perry*, 60 S.W.3d 857, 861-62 (Tex. 2001) (relying on *Arlington Heights* for admonition that "all other available evidentiary sources must first be exhausted before extraordinary circumstances will be considered"); *Austin Lifecare, Inc. v. City of Austin*, 2012 WL 12850268 (W.D. Tex. Mar. 20, 2012) (quashing deposition notices based, in part, on finding that "Plaintiffs have alternative methods for discovering the information they seek," including the public record); *Harding v. Dallas*, 2016 WL 7426127, at *8-9 (N.D. Tex. Dec. 23, 2016) (finding no extraordinary circumstances warranted deposing county redistricting commissioners); *see also In re F.D.I.C.*, 58 F.3d 1055, 1060 (5th Cir. 1995) ("exceptional circumstances must exist before the involuntary depositions of high agency officials" (quotation marks omitted)). At this stage, the burdens of deposing legislators well outweigh any conceivable benefit to be gained by questions regarding the already-public record, the *Gingles* standard, or whatever other unenumerated non-privileged matters the United States intends to cover in a deposition.

B. The legislators further request that any legislative depositions be stayed until the Court decides Defendants' pending motion to dismiss the United States' complaint, which could affect the permissible scope of any depositions. *Cf. Hubbard*, 803 F.3d at 1304 (holding motions to quash in abeyance until motion to dismiss decided); *see also Bickford v. Boerne Indep. Sch. Dist.*, 2016 WL 1430063, at *1 (W.D. Tex. Apr. 8, 2016) (staying discovery pending the disposition of the motion to dismiss under the trial court's "broad discretion and inherent power to stay discovery until preliminary

question that may dispose of the case are determined"). The motion argues that that the United States has failed to state any Voting Rights Act claim regarding the house redistricting legislation, ECF 111 at 18-24—the intended topic of discussion at depositions, Ex. A at 4, 7 (4/28/2022 and 5/2/2022 emails from D. Freeman). If granted in whole or in part, the United States' asserted basis for deposing the legislators disappears in whole or in part.

C. Relatedly, especially in light of counsel's assertion that depositions are warranted to ask legislators about the Supreme Court's complex *Gingles* standard, Ex. A at 1-2, the legislators request that the Court stay or limit any depositions of legislators pending the Supreme Court's decisions in *Merrill v. Milligan*, No. 21-1086, and *Merrill v. Caster*, No. 21-1087. Even though these cases will not be stayed altogether pending *Merrill*, the more specific question remains: should depositions of legislators in particular be permitted pending *Merrill*? It would be unusual to depose a legislator about *Gingles* in the ordinary case given that expert witnesses are typically deployed for such a task.[4] It is all the more unusual to depose a legislator about *Gingles* now given that the Supreme Court is considering when and how *Gingles* applies to cases involving single-member districts in a way that is consistent with the statutorily required showing that districts are "not equally open" based on the "totality of circumstances." 52 U.S.C. §10301(b). Further confirmed by Alabama's merits brief filed last week, the pendency of *Merrill* sows further doubt about what possible relevance, if any, legislators' depositions about the house districts could serve here. *See generally* Br. of Secretary Merrill at 42-52, 71-80, *Merrill v. Milligan*, No. 21-1086, bit.ly/39nC1Iy (interpreting statutory "totality of circumstances" terminology, arguing for clarification of *Gingles*, proposing race-neutrality as the §2 benchmark, and arguing in the alternative that §2 does not apply to single-member districts).

[4] *See, e.g.*, *Rose v. Raffensperger*, 2022 WL 205674, at *11 (N.D. Ga. Jan. 24, 2022) (discussing use of *Gingles* expert testimony in challenge to statewide election procedure).

In short, there is a substantial risk that deposing legislators now will prove itself to have been completely unnecessary after *Merrill*. Alternatively, there is substantial risk that deposing legislators now will not be the last of it, should the Supreme Court clarify §2 in such a way that the United States demands to depose legislators yet again in light of *Merrill*. Either way, such depositions would be premature and unduly burdensome at this time. *See, e.g.*, *Whitford v. Vos*, 2019 WL 4571109 (7th Cir. July 11, 2019) (staying deposition of Speaker of Wisconsin Assembly pending *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), and then vacating district court's order compelling deposition in light of *Rucho*); *see also, e.g.*, Order, *Thomas v. Merrill*, 2:21-cv-1531 (N.D. Ala. Mar. 21, 2022), ECF 61 (staying VRA challenge to state-level districts pending *Merrill*).

D. In the alternative, if any depositions are to proceed, the legislators request a protective order limiting depositions to inquiring about non-privileged information within the public record. That limitation abides by this Court's prior ruling. *See* PI Tr. 152:1-5 (Vol. 5). As discussed throughout this motion, that ruling is consistent with binding precedent; civil discovery cannot probe the minds of legislators, their staff, or others acting in a legislative function about their legislative acts. *See infra* Part II.B. To the extent the "numerous matters" that the United States would like to discuss would in fact implicate privileged information, *see* Ex. A at 7 (4/28/2022 email from D. Freeman), the legislators request a protective order prohibiting such inquiries. And should the United States pursue such an inquiry anyway, the legislators request that the protective order confirm that deponents may invoke privilege and choose not to answer, after which the United States can decide whether to raise its disagreement about the scope of the privilege in a motion to compel. *Accord Perez v. Perry*, 2014 WL 106927, *3 (W.D. Tex. Jan. 8, 2014).

Relatedly, to the extent those "numerous matters" would include questioning Representative Guillen about the United States' allegation that he "switched parties," Compl. ¶117,[5] movants request a protective order excluding any such questions. In addition to implicating legislative and First Amendment privileges,[6] such an inquiry is irrelevant to the United States' §2 claim. Section 2 is about voting rights denied or abridged "on account of race," not politics. 52 U.S.C. §10301(a). Claims fail when the "animating issue … is partisan, not racial." *LULAC v. Abbott*, 369 F. Supp. 3d 768, 786 (W.D. Tex. 2019) (relying upon *Whitcomb v. Chavis*, 403 U.S. 124 (1971), and *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993)), *aff'd*, 951 F.3d 311 (5th Cir. 2020). "Section 2 is a balm for racial minorities, not political ones—even though the two often coincide." *Clements*, 999 F.2d at 853-54. It "does not guarantee that nominees of the Democratic Party will be elected, even if [minority] voters are likely to favor that party's candidates. Rather, §2 is implicated only where Democrats lose because they are black, not where blacks lose because they are Democrats." *Id.*

II. Legislators cannot be called to testify about legislative acts absent extraordinary circumstances.

In light of Supreme Court precedent and recent decisions by other courts applying that precedent, there is good reason to quash the subpoenas altogether.

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[5] Representative Guillen currently represents House District 31, where Latino voters have repeatedly elected Representative Guillen as their candidate of choice, by the United States' own admission. Compl. ¶117. The United States' qualm is that Representative Guillen has "switched parties." *Id.*

[6] Such questions chill protected First Amendment conduct. For example, in *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010), the Ninth Circuit issued a writ of mandamus to prohibit subpoenas for defendant-intervenors' internal campaign communications. The Ninth Circuit explained that because such discovery could chill the First Amendment right to associate, the information must meet "a more demanding standard"—it must be "highly relevant" to the claims, "carefully tailored to avoid unnecessary interference with protected activities," and "otherwise unavailable." *Id.* at 1161; *accord In re Motor Fuel Temperature Sales Pracs. Litig.*, 641 F.3d 470, 481 (10th Cir. 2011) (prohibiting discovery of lobbying communications). Here, political association should have no relevance; and even if it could be conceivably relevant, deposing a third-party legislator is a most extraordinary first step in seeking such discovery.

A. Subpoenas compelling sitting legislators' testimony should be quashed based on legislative immunity and privilege.

1. State legislators are absolutely immune from civil suit. *Tenney*, 341 U.S. at 376-77; *see Bogan v. Scott-Harris*, 523 U.S. 44, 46 (1998) ("It is well established that federal, state, and regional legislators are entitled to absolute immunity from civil liability for their legislative activities."); *Sup. Ct. of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 731-34 (1980) (same). That immunity protects legislators "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski*, 387 U.S. at 85. It "provides legislators with the breathing room necessary to make these choices in the public's interest" and "reinforc[ing] representative democracy" by "allow[ing] them to focus on their public duties by removing the costs and distractions attending lawsuits" and "shield[ing] them from political wars of attrition in which their opponents try to defeat them through litigation rather than at the ballot box." *E.E.O.C. v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011). Thus, a state legislator acting within the sphere of legitimate legislative activity may not be required to testify, "whether or not legislators themselves have been sued." *Hubbard*, 803 F.3d at 1308; *see Wash. Suburban Sanitary Comm'n*, 631 F.3d at 181 ("Legislative privilege against compulsory evidentiary process exists to safeguard this legislative immunity and to further encourage the republican values it promotes…. Because litigation's costs do not fall on named parties alone, this privilege applies whether or not the legislators themselves have been sued.").

Accordingly, courts have deemed state legislators absolutely immune from testifying about their legislative acts, including in depositions. And redistricting disputes are no exception. *See, e.g.*, *Lee*, 908 F.3d at 1186-87 (barring depositions of legislative actors in redistricting-related Equal Protection Clause case); *In re Perry*, 60 S.W.3d at 860-62 (canvassing state and federal law, explaining that "courts have affirmed that the doctrine generally shields legislative actors not only from liability, but also from being called to testify about their legislative activities," and concluding that it was an abuse of discretion to deny motion to quash depositions of redistricting board members); *Marylanders for Fair*

Representation v. Schaefer, 144 F.R.D. 292, 299 (D. Md. 1992) (finding "[w]ithout question" that Maryland House and Senate were "acting 'within the sphere of legitimate legislative activity' in failing to enact an alternative redistricting plan" such that legislators "deserve all of the protection the *Tenney* court extended to them" and "entirely barr[ing]" "*any* inquiry"); *see also, e.g.*, *Bagley v. Blagojevich*, 646 F.3d 378, 396-97 (7th Cir. 2011) (finding governor acted in legislative capacity and barring deposition); *M Sec. & Invs., Inc. v. Miami-Dade Cnty.*, 2001 WL 1685515, at *1-2 (S.D. Fla. Aug. 14, 2001) (quashing deposition subpoena of local legislator in Equal Protection Clause case). Here too, there is no basis for demanding that third-party legislators bear that burden of defending themselves in such depositions, *see Dombrowski*, 387 U.S. at 85, especially when plaintiffs haven't even attempted to get relevant, non-privileged discovery through other means, *supra*.

2. For the same reasons, legislative privilege, springing from legislative immunity, also counsels in favor of quashing the subpoenas. "[J]udicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government" and will be "frequently barred by privilege" except for "extraordinary circumstances." *Arlington Heights*, 429 U.S. at 268 & n.18. That privilege applies with "full force" even in cases where legislators' motives are at the "factual heart" of plaintiffs' claims. *Hubbard*, 803 F.3d at 1310-11.

Applied here, even if the Court finds that third-party legislators are not altogether immune from the deposition subpoenas, the subpoenas should be quashed as overly burdensome and for targeting privileged or protected information.[7] Any conceivable benefit of deposing the legislators cannot

[7] Counsel for the United States has stated that he does "not intend to delve into matters covered by *bona fide* assertions of legislative privilege," Ex. A at 4 (5/2/2022 email from D. Freeman), and that there are "numerous matters over which any common law state legislative privilege applicable in federal courts does not apply," *id.* at 7 (4/28/2022 email from D. Freeman). That beggars belief. The United States has chosen three legislators to be its first deponents; its complaint challenges legislation; and it intends to ask the legislators about that legislation. In all events, the United States' most recently filed brief on related privilege issues reveals that its view on "*bona fide* assertions of legislative privilege" is out-of-step with binding Supreme Court precedent, *infra* Part II.B.

outweigh the burdens of deposing them *See* Fed. R. Civ. P. 45(d)(1); Fed. R. Civ. P. 26(c)(1) (court may "issue an order to protect … [a] person from annoyance, embarrassment, oppression, or undue burden or expense"); *see, e.g.*, *W. Life Ins. v. W. Nat'l Life Ins.*, 2010 WL 5174366, at *2-4 (W.D. Tex. Dec. 13, 2010); *RE/MAX Int'l, Inc. v. Century 21 Real Estate Corp.*, 846 F. Supp. 910, 912 (D. Colo. 1994). Any relevant testimony will be privileged or available from other sources, making the deposition an unduly burdensome exercise poised to harass state legislators.

B. There is no bespoke test for legislative privilege in voting rights cases.

The legislators anticipate that the United States will argue that legislative privilege is so qualified that Voting Rights Act plaintiffs are free to depose sitting state legislators with few, if any, limitations. While federal courts have stated that legislative privilege is qualified in some circumstances, *Jefferson Cmty. Health Care Ctrs Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 624 (5th Cir. 2017), there is no basis for whittling the privilege down to nonexistent in redistricting cases.

The origins for qualifying legislative privilege are the Supreme Court's decision in *United States v. Gillock*, 445 U.S. 360 (1980), and other criminal cases. *See, e.g.*, *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 94 (S.D.N.Y. 2003) (relying on application of privilege in criminal case of *Trammel v. United States*, 445 U.S. 40, 51 (1980)). On its own terms, *Gillock* qualified legislative immunity and privilege for *federal criminal prosecutions*, not civil cases such as this one. 445 U.S. at 474; *accord Gravel v. United States*, 408 U.S. 606, 627 (1972) ("[W]e cannot carry a judicially fashioned privilege so far as to immunize *criminal conduct* proscribed by an Act of Congress or to frustrate the grand jury's inquiry into whether publication of these classified documents violated a *federal criminal statute*." (emphasis added)); *Trammel*, 445 U.S. at 51 (qualifying spousal privilege in federal criminal prosecution); *In re Grand Jury*, 821 F.2d 946, 948 (3d Cir. 1987) (federal criminal grand jury investigation). *Gillock* itself distinguished criminal cases from civil cases: "in protecting the independence of state legislators, *Tenney* and subsequent cases on official immunity have drawn the line *at civil actions*." 445 U.S. at 373 (emphasis added). Whatever

important federal interests might justify a more qualified privilege in the enforcement of "criminal statutes," *id.*, they are absent here in this civil action.

But already in this litigation, the United States has transported the Supreme Court's qualification of legislative privilege in criminal matters to this civil matter—endorsing a multi-factor balancing test first deployed by a New York district court in a redistricting dispute. *See* ECF 227at 10-11 (citing *Rodriguez*, 280 F. Supp. 2d 89). To decide whether privilege applies, that test balances "(i) the relevance of the evidence sought to be protected; (ii) the availability of other evidence; (iii) the 'seriousness' of the litigation and the issues involved; (iv) the role of the government in the litigation; and (v) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable" in deciding whether privilege applies. *Id.*[8] It bears little resemblance to binding Supreme Court precedent regarding the scope of legislative immunity and privilege in civil cases, and applying it here to *abrogate* legislative privilege would be serious error.

1. As an initial matter, such a balancing test was not initially conceived as basis for *deposing* a sitting legislator who is a third-party to litigation. In *Rodriguez* itself, the court emphasized that plaintiffs were "*not* seeking any depositions of legislators or their staffs." 280 F. Supp. 2d at 96 (emphasis added). *Rodriguez* and other cases initially applying it involved document discovery. And even then, the privilege largely held. *See, e.g.*, *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 2011 WL 4837508, at *10-11 (N.D. Ill. Oct. 12, 2011) (refusing to compel privileged documents "concerning the motives, objectives, plans, reports and/or procedures used by lawmakers" or "the identities of persons who participated in decisions regarding the [challenged] Map"); *Rodriguez*, 280 F. Supp. 2d at 103 (denying

[8] *Jefferson Community Health Care Centers*, 849 F.3d at 624, *Veasey v. Perry*, 2014 WL 1340077, at *1 n.3 (S.D. Tex. Apr. 3, 2014), and *Perez*, 2014 WL 106927 at *2, cited *Rodriguez* favorably. *Jefferson Community* cited *Rodriguez* in dictum that privileges are not absolute. *Veasey* did not involve redistricting. Discussed *infra*, *Perez* did involve redistricting and applied *Rodriguez* to conclude that the case did not justify "discarding the privilege"—meaning a legislator's testimony could not be compelled. *Perez*, No. 5:11-cv-360 (W.D. Tex. July 11, 2014), ECF 1138 at 1-2.

motion to compel privileged documents "to the extent that the plaintiffs seek information concerning the actual deliberations of the Legislature—or individual legislators—which took place outside [the citizen-legislator redistricting committee]"); *Hall v. Louisiana*, 2014 WL 1652791, at *12 (M.D. La. Apr. 23, 2014) (applying *Rodriguez* but quashing legislator deposition subpoenas). It would be especially inappropriate to apply *Rodriguez* in this case to compel the *depositions* of legislators, when plaintiffs have already sought substantial document discovery from such legislators and when the United States has not otherwise explored alternative, less intrusive, less extraordinary discovery.

2. Lessons learned since last decennial's *Perez v. Perry* litigation are also instructive. The court cited *Rodriguez* in a dispute over legislative depositions. 2014 WL 106927 at *2.[9] The court's protocol was to permit deponents to "choose not to answer specific questions, citing the privilege," after which plaintiffs could choose to file a motion to compel. *Id.* at *3. Plaintiffs later filed a motion to compel one legislator's testimony, and the court applied *Rodriguez* as a *shield* the privileged testimony, not as a *sword* to require it. *See Perez*, No. 5:11-cv-360 (W.D. Tex.), ECF 1138 at 1-2.

Since *Perez*, courts have continued to limit legislative discovery, including in redistricting cases. In *Lee*, relying on the Supreme Court's decision in *Tenney*, the Ninth Circuit affirmed an order barring depositions of public officials acting in a legislative capacity, even though plaintiffs' claims were intent-based claims that race predominated in redistricting. 908 F.3d at 1187. Similarly, the Eleventh Circuit in *Hubbard* ordered a district court to quash subpoenas for legislators' documents relating to the passage of legislation, even though plaintiffs' claims were intent-based claims that the legislation was retaliatory. 803 F.3d at 1302-03, 1315. The Eleventh Circuit stated that privilege applied with "full

[9] Initially in *Perez*, the privilege dispute involved subpoenas for four legislative staff members. *Perez*, No. 5:11-cv-360 (W.D. Tex.), ECF 62 at 2 n.1. Defendants requested a protective order but did not ask to quash the depositions. *Id.* at 7. Opposing any protective order, plaintiffs endorsed *Rodriguez*'s balancing test, *e.g. id.*, ECF 87 at 6-7, and Defendants' later motion for reconsideration did not challenge the application of *Rodriguez*, *id.*, ECF 930.

force against requests for information about the motives for legislative votes and legislative enactments," even if such information was at the heart of plaintiffs' claim. *Id.* at 1310-11. The court refused to require "the lawmakers to peruse the subpoenaed documents, to specifically designate and describe which documents were covered by the legislative privilege, or to explain why the privilege applied to those documents" and ordered that the motion to quash be granted on remand. *Id.* at 1311, 1315; *see also, e.g.*, *Am. Trucking*, 14 F.4th at 89-90 (quashing legislator depositions). More recently in the census litigation, the Supreme Court refused to permit discovery beyond the administrative record, akin to the public record here, including refusing plaintiffs' request to depose the Secretary of Commerce. *See Dep't of Commerce*, 139 S. Ct. at 2573-74; *In re Dep't of Commerce*, 139 S. Ct. at 16-17. Finally, even though intent was at the heart of plaintiffs' claims in the *Gill v. Whitford* partisan gerrymandering litigation, the Seventh Circuit stayed and ultimately vacated an order compelling the deposition of the Speaker of the Wisconsin Assembly. *See Whitford*, 2019 WL 4571109 at *1.

The court in *Perez* ultimately concluded that redistricting claims were not a basis for ignoring legislative privilege. Other courts have since refused to permit plaintiffs to depose legislators. Here too, there is no basis for requiring legislators' depositions at this time.

3. Most fundamentally, any bespoke test curtailing legislative privilege in Voting Rights Act cases is at odds with binding precedent, *supra*. And to what end? The United States does not allege that the house redistricting legislation was imbued with any improper purpose. And even if it had, the Supreme Court has repeatedly held that, as a "principle of constitutional law," courts cannot "strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *United States v. O'Brien*, 391 U.S. 367, 383 (1968). That is so even in cases turning on legislative purpose. *Id.* at 382-83 (rejecting that three Congressmen's statements in the legislative history established illicit congressional purpose). It is a "fundamental principle" that courts may not "void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of

Congressmen said about it." *Id.* at 383-84; *see Arizona v. California*, 283 U.S. 423, 455 (1931) ("Into the motives which induced members of Congress to enact the [statute], this court may not inquire."); *Palmer v. Thompson*, 403 U.S. 217, 224 (1971) ("[N]o case in this Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it."); *Am. Trucking*, 14 F.4th at 90 (quashing depositions and describing "inherent challenges of using [deposition] evidence of individual lawmakers' motives to establish that the legislature as a whole enacted [law] with any particular purpose"). Why? Because the Supreme Court has insisted that courts presume legislatures act with good intent and afford them a presumption of legislative good faith including in redistricting disputes. *See Miller v. Johnson*, 515 U.S. 900, 915 (1995). The same rules apply in Voting Rights Act cases. *Id.*; *see Abbott v. Perez*, 138 S. Ct. 2305, 2324-25 (2018) (presumption "not changed by a finding of past discrimination"); *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2350 (2021) (legislators are not agents of one another; rather, each has "a duty to exercise their judgment and to represent their constituents. It is insulting to suggest that they are mere dupes or tools").

CONCLUSION

For the foregoing reasons, the legislators respectfully request that the Court stay the depositions until it resolves this motion. The legislators further request an order quashing or modifying the subpoenas. In the alternative, movants respectfully request a protective order prohibiting the depositions from probing the minds of legislators on privileged matters, including matters beyond the public record.

Date: May 4, 2022

Respectfully submitted,

/s/ J. Michael Connolly

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Counsel for Reps. Guillen, Landgraf, and Lujan

**Pro hace vice motions pending*

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Counsel for Reps. Guillen, Landgraf, and Lujan and Defendants

CERTIFICATE OF CONFERENCE

I certify that counsel conferred with counsel for the United States regarding the subject of this motion. Counsel for the United States indicated it opposed any motion to quash or modify the subpoena, which confirms opposition to the relief sought here.

/s/ J. Michael Connolly
J. MICHAEL CONNOLLY

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on May 4, 2022, and that all counsel of record were served by CM/ECF.

/s/ J. Michael Connolly
J. MICHAEL CONNOLLY

EXHIBIT A

Subject: RE: [EXTERNAL] RE: LULAC v. Texas: Deposition Dates
Date: Tuesday, May 3, 2022 at 1:01:52 PM Central Daylight Time
From: Will Thompson
To: Freeman, Daniel (CRT)
CC: Jack DiSorbo, Eric Hudson, Courtney Corbello, Mellett, Timothy F (CRT), Sitton, Jaye (CRT), Rupp, Michelle (CRT), Anderson, Jacki (CRT), Lott, Jasmin (CRT), Berlin, Holly (CRT), Nina Perales, Pooja Chaudhuri, Sofia Fernandez Gold, martin.golando@gmail.com, garybledsoe@sbcglobal.net, Chad Dunn, mark@markgaber.com, gainesjesse@ymail.com, Fatima Menendez, noor@scsj.org, SMcCaffity@textrial.com, quesada@textrial.com, sserna@maldef.org, Thomas Buser-Clancy, Ashley Harris, rhicks@renea-hicks.com, akhanna@elias.law, abranch@perkinscoie.com, Patrick Sweeten, Taylor Meehan

Dan,

I'm in a deposition, so I'll have to keep this response brief. I appreciate you providing the United States' position on the motion, but I want to clarify that I did not agree with your assertions regarding apex depositions or what you call the *Morgan* doctrine. What I said was that the depositions would be improper regardless of whether we characterize them as apex depositions. To the extent I was unclear, I apologize. We can discuss other issues another time if needed.

Best,
Will

From: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>
Sent: Tuesday, May 3, 2022 10:01 AM
To: Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; martin.golando@gmail.com; garybledsoe@sbcglobal.net; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com; gainesjesse@ymail.com; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org; SMcCaffity@textrial.com; quesada@textrial.com; sserna@maldef.org; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com; akhanna@elias.law; abranch@perkinscoie.com; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Taylor Meehan <taylor@consovoymccarthy.com>
Subject: RE: [EXTERNAL] RE: LULAC v. Texas: Deposition Dates

Will,

The United States intends to depose Representative Guillen, Representative Landgraf, and Representative Lujan regarding matters relevant to the Section 2 enforcement action that we have brought concerning the Texas House redistricting plan. Section 2 requires the Court to assess the totality of circumstances in the districts Representative Guillen, Representative Landgraf, and Representative Lujan represent, including population patterns, political behavior, the history of discrimination, socioeconomic disparities, campaign tactics, and other matters. *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30 (1986). As both elected officials and

candidates, Representative Guillen, Representative Landgraf, and Representative Lujan likely have highly probative information regarding the United States' claims.

During our meet and confer, you appeared to agree that the *Morgan* doctrine does not apply to all 181 members of the Texas Legislature and that the United States does not seek apex depositions at this time. You then merely suggested that Texas legislators should not be subject to depositions in every challenge to state legislation. As you know, the United States did not seek to depose legislators in our current challenge to Texas Senate Bill 1. However, legislators are subject to deposition in statewide redistricting litigation, and the depositions we have sought and will continue to seek are appropriate and permissible under the Federal Rules.

We oppose any motion to quash the United States' subpoenas.

Dan

From: Will Thompson <Will.Thompson@oag.texas.gov>
Sent: Monday, May 2, 2022 10:54 PM
To: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>
Cc: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; martin.golando@gmail.com; garybledsoe@sbcglobal.net; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com; gainesjesse@ymail.com; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org; SMcCaffity@textrial.com; quesada@textrial.com; sserna@maldef.org; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com; akhanna@elias.law; abranch@perkinscoie.com; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Taylor Meehan <taylor@consovoymccarthy.com>
Subject: RE: [EXTERNAL] RE: LULAC v. Texas: Deposition Dates

Dan,

Thanks for taking the time to meet and confer about your intention to depose Representatives Guillen, Landgraf, and Lujan. Consistent with your earlier email, we understand that you would like to depose these legislators regarding the house redistricting legislation and that you believe such depositions could implicate numerous matters that you don't believe are privileged —namely, discussing the *Gingles* standard with the legislators. We also understand that you are not interested in alternatives to deposing the legislators at this time.

We think it is most efficient to resolve our disagreement about the propriety of deposing the legislators now (and any applicable limits) in advance of any such depositions. It is our intention to file a motion to quash or modify or a motion for protective order. Can you confirm that you would oppose that motion?

Best,
Will

From: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>

Sent: Monday, May 2, 2022 9:18 AM
To: Will Thompson <Will.Thompson@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>
Cc: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; martin.golando@gmail.com; garybledsoe@sbcglobal.net; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com; gainesjesse@ymail.com; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org; SMcCaffity@textrial.com; quesada@textrial.com; sserna@maldef.org; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com; akhanna@elias.law; abranch@perkinscoie.com
Subject: RE: [EXTERNAL] RE: LULAC v. Texas: Deposition Dates

Will,

Thanks very much. We can use the following zoom room: https://www.zoomgov.com/j/16191158462.

Private Plaintiffs are welcome to join as well of course.

Dan

From: Will Thompson <Will.Thompson@oag.texas.gov>
Sent: Monday, May 2, 2022 9:43 AM
To: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>
Cc: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Stewart, Michael (CRT) <Michael.Stewart3@usdoj.gov>; martin.golando@gmail.com; garybledsoe@sbcglobal.net; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com; gainesjesse@ymail.com; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org; SMcCaffity@textrial.com; quesada@textrial.com; sserna@maldef.org; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com; akhanna@elias.law; abranch@perkinscoie.com
Subject: Re: [EXTERNAL] RE: LULAC v. Texas: Deposition Dates

Dan,

We're available to discuss these issues anytime after 2:30 eastern / 1:30 central today. Thanks for offering to send the Zoom link.

Best,
Will

Will Thompson
Deputy Chief, Special Litigation Unit
Office of the Attorney General
P.O. Box 12548

Austin, Texas 78711-2548
(512) 936-2567

From: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>
Sent: Monday, May 2, 2022 7:38:35 AM
To: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>
Cc: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Stewart, Michael (CRT) <Michael.Stewart3@usdoj.gov>; martin.golando@gmail.com <martin.golando@gmail.com>; garybledsoe@sbcglobal.net <garybledsoe@sbcglobal.net>; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com <mark@markgaber.com>; gainesjesse@ymail.com <gainesjesse@ymail.com>; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org <noor@scsj.org>; SMcCaffity@textrial.com <SMcCaffity@textrial.com>; quesada@textrial.com <quesada@textrial.com>; sserna@maldef.org <sserna@maldef.org>; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com <rhicks@renea-hicks.com>; akhanna@elias.law <akhanna@elias.law>; abranch@perkinscoie.com <abranch@perkinscoie.com>
Subject: Re: [EXTERNAL] RE: LULAC v. Texas: Deposition Dates

Good Morning Patrick,

The United States intends to address matters relevant to our discriminatory results claims regarding the districts represented by these Representatives, as well as regional and statewide aspects of these claims. I understand you and your colleagues to be familiar with the *Gingles* standard, but additional information is available here: https://www.justice.gov/crt/section-2-voting-rights-act. We do not intend to delve into matters covered by bona fide assertions of legislative privilege.

My Thursday morning email indicated that the United States would be available this morning between 9-10 EST, not at 10 EST. Moreover, I did not hear back from you until early this morning and scheduled another matter during the 9-10 window. I can consult with my team regarding updated availability, but this afternoon now appears to be generally open, given that I will no longer be headed to College Station. Please let me know a time that will work for your team, and I will provide a zoom link.

To clarify, the United States intends to depose Representatives Guillen, Lujan, and Landgraf at this time. We welcome the opportunity to discuss the Representatives' availability.

Dan

Daniel J. Freeman
Trial Attorney
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On May 2, 2022, at 4:45 AM, Patrick Sweeten <Patrick.Sweeten@oag.texas.gov> wrote:

Dan,

Adding Will Thompson to this correspondence, as he was apparently not included.

Thank you,

Patrick

From: Patrick Sweeten
Sent: Monday, May 2, 2022 3:43 AM
To: 'Freeman, Daniel (CRT)' <Daniel.Freeman@usdoj.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Stewart, Michael (CRT) <Michael.Stewart3@usdoj.gov>; martin.golando@gmail.com; garybledsoe@sbcglobal.net; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com; gainesjesse@ymail.com; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org; SMcCaffity@textrial.com; quesada@textrial.com; sserna@maldef.org; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com; akhanna@elias.law; abranch@perkinscoie.com
Subject: RE: LULAC v. Texas: Deposition Dates

Dan,

Thanks for your email.

Can you elaborate on the "numerous matters" you indicate you intend to cover?

Additionally, based on your initial description, it appears there is a strong probability the United States intends to pose questions that call for information protected by the legislative privilege. The United States' claims relate to the design and content of redistricting legislation regarding the Texas House districts, and you are seeking to depose sitting representatives ostensibly for that purpose. In fact, when your co-plaintiffs took Senator Huffman's deposition in *Brooks*, information protected by the legislative privilege was sought shortly after the deposition began. Thus, we would request additional information and specificity regarding the areas of inquiry.

Additionally, we are unclear based on your messages which three representatives you are seeking to depose. You have said three and then below you name Guillen, Lujan, Murr and Landgraf. Please let us know.

Given the concerns above, our attorneys can meet Monday at 10:00 am EST, as you suggested, to discuss.

Best regards,

Patrick

From: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>
Sent: Thursday, April 28, 2022 7:33 AM
To: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Stewart, Michael (CRT) <Michael.Stewart3@usdoj.gov>; martin.golando@gmail.com; garybledsoe@sbcglobal.net; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com; gainesjesse@ymail.com; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org; SMcCaffity@textrial.com;

quesada@textrial.com; sserna@maldef.org; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com; akhanna@elias.law; abranch@perkinscoie.com
Subject: RE: LULAC v. Texas: Deposition Dates

Patrick,

Thank you for your email. The United States intends to depose Representative Guillen, Representative Lujan, and Representative Murr on topics pertinent to the Voting Rights Act enforcement action we have brought against the 2021 Texas House Plan, as well as any defenses you may assert in this matter. Such topics encompass numerous matters over which any common law state legislative privilege applicable in federal courts does not apply.

We do not envision alternatives to conducting legislator depositions in this matter, but we would be happy to meet and confer regarding this issue either tomorrow afternoon or Monday between 9 and 10 EST. Schedules are quite packed as we near the close of discovery in SB 1, as I'm sure you can understand.

Regards,

Dan Freeman

From: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>
Sent: Wednesday, April 27, 2022 9:09 PM
To: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Stewart, Michael (CRT) <Michael.Stewart3@usdoj.gov>; martin.golando@gmail.com; garybledsoe@sbcglobal.net; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com; gainesjesse@ymail.com; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org; SMcCaffity@textrial.com; quesada@textrial.com; sserna@maldef.org; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com; akhanna@elias.law; abranch@perkinscoie.com
Subject: [EXTERNAL] RE: LULAC v. Texas: Deposition Dates

Dan,
Representatives Guillen, Landgraf, and Lujan, whom you state you have subpoenaed and/or intend to subpoena for a deposition, have and will continue to assert legislative privilege and any other applicable privileges and immunities. When legislative privilege issues arose during the preliminary injunction hearing, the Court already ruled that questioning of a testifying legislator would be limited to matters "within the public record" unless a particular legislator chose to waive her legislative privilege. PI Tr. 152:1-5 (Vol. 5). Thus, I do not see the basis for subjecting myriad sitting legislators to endless questioning.
If, consistent with the Court's ruling, your intent is to ask about what is "within the public record"—readily available to plaintiffs and the public at large—I am certain we could work together to find less obtrusive alternatives to deposing sitting legislators.
In short, can you please advise what relevant, non-privileged information you believe warrant depositions of sitting legislators? I am happy to meet and confer on this issue sometime next week.
Let me know what day may work for such a meeting.
Best Regards,
Patrick K. Sweeten

From: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>
Sent: Wednesday, April 27, 2022 9:56 AM
To: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Eric Hudson <Eric.Hudson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>; Sitton, Jaye (CRT) <Jaye.Sitton@usdoj.gov>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Anderson, Jacki (CRT) <Jacki.Anderson@usdoj.gov>; Lott, Jasmin (CRT) <Jasmin.Lott@usdoj.gov>; Berlin, Holly (CRT) <Holly.Berlin@usdoj.gov>; Nina Perales <nperales@maldef.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Rupp, Michelle (CRT) <Michelle.Rupp@usdoj.gov>; Stewart, Michael (CRT) <Michael.Stewart3@usdoj.gov>; martin.golando@gmail.com; garybledsoe@sbcglobal.net; Chad Dunn <chad@brazilanddunn.com>; mark@markgaber.com; gainesjesse@ymail.com; Fatima Menendez <fmenendez@maldef.org>; noor@scsj.org; SMcCaffity@textrial.com; quesada@textrial.com; sserna@maldef.org; Thomas Buser-Clancy <tbuser-clancy@aclutx.org>; Ashley Harris <aharris@aclutx.org>; rhicks@renea-hicks.com; akhanna@elias.law; abranch@perkinscoie.com
Subject: LULAC v. Texas: Deposition Dates

Patrick and Jack,

The United States intends to subpoena Representative John Lujan and Representative Brooks Landgraf for depositions in relation to LULAC v. Texas. Please provide dates that will work for the Representatives between May 18 and May 27, as well as whether your office will make them available in Austin or elsewhere.

Thank you,

Dan

Daniel J. Freeman
Trial Attorney
Voting Section, Civil Rights Division
U.S. Department of Justice
4 Constitution Square
150 M Street NE, Room 8.143
Washington, DC 20530
(202) 305-4355 (o), (202) 305-5451 (c)
daniel.freeman@usdoj.gov

EXHIBIT B

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.
Plaintiff
v.
Greg Abbott, et al.
Defendant

Civil Action No. 3:21-cv-259 (DCG-JES-JVB)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Representative Ryan Guillen
Texas Capitol, 1100 Congress Ave., Room 1W.3, Austin, TX 78701
(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place:	Date and Time:
Price Daniel Sr. State Office Building 209 W 14th Street Austin, Texas 78701	05/19/2022 9:00 am

The deposition will be recorded by this method: Stenographic & Audiovisual Recording

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

By May 17, 2022, all documents, if any, that the witness relied on to prepare for the deposition.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/20/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Daniel J. Freeman
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* United States of America, who issues or requests this subpoena, are:

Daniel J. Freeman, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington DC 20530
daniel.freeman@usdoj.gov, (202) 305-4355

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:21-cv-259 (DCG-JES-JVB)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____ on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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

EXHIBIT C

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.
Plaintiff
v.
Greg Abbott, et al.
Defendant

Civil Action No. 3:21-cv-259 (DCG-JES-JVB)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Representative Brooks Landgraf
Texas Capitol Extension, 1100 Congress Ave., Room E1.324, Austin, TX 78701
(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place:	Date and Time:
Price Daniel Sr. State Office Building 209 W 14th Street Austin, Texas 78701	05/24/2022 9:00 am

The deposition will be recorded by this method: Stenographic & Audiovisual Recording

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

By May 23, 2022, all documents, if any, that the witness relied on to prepare for the deposition.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/03/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Holly F.B. Berlin
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* United States of America, who issues or requests this subpoena, are:

Holly F.B. Berlin, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington DC 20530
holly.berlin@usdoj.gov, (202) 532-3514

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:21-cv-259 (DCG-JES-JVB)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____ on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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

EXHIBIT D

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.
Plaintiff
v.
Greg Abbott, et al.
Defendant

Civil Action No. 3:21-cv-259 (DCG-JES-JVB)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Representative John Lujan
Texas Capitol Extension, 1100 Congress Ave., Room E1.218, Austin, TX 78701
(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place:	Date and Time:
Price Daniel Sr. State Office Building 209 W 14th Street Austin, Texas 78701	05/25/2022 9:00 am

The deposition will be recorded by this method: Stenographic & Audiovisual Recording

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

By May 24, 2022, all documents, if any, that the witness relied on to prepare for the deposition.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/03/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Holly F.B. Berlin
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* United States of America, who issues or requests this subpoena, are:

Holly F.B. Berlin, Civil Rights Division, U.S. Department of Justice, 950 Pennsylvania Ave. NW, Washington DC 20530
holly.berlin@usdoj.gov, (202) 532-3514

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:21-cv-259 (DCG-JES-JVB)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____ on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*, *Plaintiffs,* V. GREG ABBOTT, *et al.*, *Defendants.*	§ § § § § § § § § §	Case No. 3:21-cv-00259 [Lead Case]
UNITED STATES OF AMERICA, *Plaintiff,* V. STATE OF TEXAS, *et al.*, *Defendants.*	§ § § § § § § § § §	Case No. 3:21-cv-00299 [Consolidated Case]

ORDER

Upon consideration of Movants Texas House Representatives Ryan Guillen, Brooks Landgraf, and John Lujan's Motion to Quash or Modify Deposition Subpoenas and Motion for Protective Order, it is hereby

ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that the deposition subpoenas issued to Movants are **QUASHED**.

SO ORDERED and **SIGNED** this ___ day of May, 2022.

David C. Guaderrama
U.S. District Judge
U.S. District Court for the Western District of Texas

On behalf of

Jerry E. Smith
U.S. Circuit Judge
U.S. Court of Appeals for the Fifth Circuit

Jeffrey V. Brown
U.S. District Judge
U.S. District Court for the Southern District of Texas