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

LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), et al., Plaintiffs, v. GREG ABBOTT, et al., Defendants.	Civil Action No. 3:21-cv-259 (DCG-JES-JVB) (consolidated cases)

UNITED STATES' OPPOSITION TO LEGISLATORS' MOTION TO QUASH DEPOSITION SUBPEONAS

The United States has brought a claim here under the results test of Section 2 of the Voting Rights Act regarding Texas' 2021 State House redistricting plan and seeks to present the evidence required for an "intensely local appraisal of the design and impact" of challenged electoral districts "in the light of past and present reality, political and otherwise." *See Thornburg v. Gingles*, 489 U.S. 30, 78 (quoting *White v. Regester*, 412 U.S. 755, 769-70 (1973)). To that end, the United States has served deposition subpoenas on the individuals most recently elected from three challenged State House districts: Representative Ryan Guillen (HD 31), Representative Brooks Landgraf (HD 81), and Representative John Lujan (HD 118) (hereafter "Legislators"). Despite the federal courts having repeatedly permitted legislator depositions in statewide Voting Rights Act enforcement litigation in Texas, Legislators seek to quash their deposition subpoenas based on an evidentiary privilege that "is, at best, one which is qualified." *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Parish Gov't*, 849 F.3d 615, 624 (5th Cir. 2017) (internal quotation marks and citation omitted). This Court should deny the motion to quash and clarify the limited scope of legislative privilege.[1]

I. BACKGROUND

The United States alleges that Defendant the State of Texas violated Section 2 of the Act, 52 U.S.C. § 10301, by enacting and implementing the 2021 Congressional Redistricting Plan and 2021 State House Redistricting Plan. U.S. Compl. ¶¶ 162-167, *United States v. Texas*, No. 3:21-cv-299 (W.D. Tex. Dec. 6, 2021), ECF No. 1. With respect to the State House plan, the United

[1] The United States has also asserted discriminatory intent claims in this case under Section 2 regarding the redistricting plan for Congress that are not at issue in this round of depositions or the instant motion to quash, but they will potentially be at issue for future legislative depositions. The United States maintains here, as it has in past briefing on related issues, that the needs of the discriminatory intent claims in this case outweigh the qualified legislative privilege based on the five factors set forth in *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 101 (S.D.N.Y. 2003). *See* Resp. to Mot. to Quash TLC Subpoena at 11, ECF No. 227.

States specifically alleges that House District 118, in Bexar County; House District 31, in South Texas; and the districts in El Paso County and West Texas have discriminatory results. U.S. Compl. ¶¶ 104-146.

The United States served a subpoena on Representative Guillen April 20, seeking to depose the Representative on May 19. *See* Guillen Subpoena, ECF No. 262-2. The United States then served deposition subpoenas on Representative Landgraf and Representative Lujan on May 3, seeking to depose the Representatives on May 24 and May 25, respectively. *See* Landgraf Subpoena, ECF No. 262-3; Lujan Subpoena, ECF No. 262-4. Legislators moved to quash these subpoenas on May 5. *See* Mot. to Quash, ECF No. 262. The information that the United States seeks in the subpoenaed deposition testimony is highly relevant. All three of the representatives have run for office and been elected in challenged districts. Representative Guillen been elected nine times in District 31 and served on the House Redistricting Committee in the 87th Texas Legislature, which was responsible for enacting the challenged plans. Representative Landgraf has been elected four times in District 81—a majority Latino district adjacent to the El Paso/West Texas configuration—and also served on the House Redistricting Committee in the 87th Texas Legislature. Representative Lujan was elected in District 118 in November 2021 and January 2016 special elections, although he lost in the 2016 and 2018 general elections. Living in communities, campaigning, and representing constituents gives these individuals specific knowledge of community characteristics, political behavior, any localized history of discrimination, persistent socioeconomic disparities, and racial appeals in campaigns, all of which are relevant to a Section 2 claim. *See Gingles*, 478 U.S. at 37. Representative Guillen and Representative Landgraf's participation in the redistricting process and subsequent public statements are also relevant to whether policies underlying the House plan

are "tenuous." *Id.* at 37, 45; *see also, e.g.*, *LULAC v. Perry*, 548 U.S. 399, 441 (2006) (indicating that redrawing lines based on political preferences may establish tenuousness); *cf. LULAC v. Abbott*, No. 3:21-cv-259, 2022 WL 1410729, at *4-5, 7, 19-23, 26-27 (W.D. Tex. May 4, 2002) (three-judge court) (relying on testimony of Senator Huffman and Senator Powell).

II. LEGAL STANDARD

A party may serve a subpoena under Rule 45 to "command attendance at a deposition." Fed. R. Civ. P. 45(a)(1)(B). The recipient of a subpoena may move to quash only for one of four specific reasons, namely if the subpoena "(1) fails to allow a reasonable time for compliance; (2) requires a person who is not a party to travel more than 100 miles from where the person resides; (3) requires disclosure of privileged or protected matter; or (4) subjects a person to undue burden." *Tex. Keystone, Inc. v. Prime Nat. Res., Inc.*, 694 F.3d 548, 554 (5th Cir. 2012).[2] "The proponent of a motion to quash must meet the heavy burden of establishing that compliance with the subpoena would be unreasonable and oppressive," *SEC v. Reynolds*, 3:08-CV-0438, 2016 WL 9306255, at *2 (N.D. Tex. Apr. 29, 2016), and the oppressiveness of a subpoena "must be determined according to the facts of the case." *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). Thus, "a court should give a wider berth of discovery to subpoenas that concern substantial national, rather than merely parochial, interests." *In re Subpoenas to Plains All Am. Pipeline, L.P.*, No. 3:13-2975, 2014 WL 204447, at *3 (S.D. Tex. Jan. 17, 2014).

[2] Of these, Legislators appear to argue only the third—that legislator depositions are barred by legislative privilege. Although Legislators' motion references the "burden" of sitting for a deposition, the only concrete burden Legislators identify is ultimately grounded in their broad claims of legislative immunity. *See, e.g.*, Mot. at 1, 7, 11, 12. To alleviate any burdens related to travel, the United States repeatedly offered to conduct the depositions in any location convenient to each legislator. *E.g.*, Email from H. Berlin to P. Sweeten (May 3, 2022) (Ex. 1). Legislators have offered no alternative dates or locations for their depositions.

III. ARGUMENT

"While the common-law legislative immunity for state legislators is absolute, the legislative privilege for state lawmakers is, at best, one which is qualified." *Jefferson Cmty. Heatlh Care Ctrs.*, 849 F.3d at 624 (quoting *Perez v. Perry* (*Perez II*), No. 5:11-cv-360, 2014 WL 106927, at *2 (W.D. Tex. Jan. 8, 2014) (three-judge court)). "This privilege 'must be strictly construed and accepted only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining the truth.'" *Id.* (quoting *Perez II*, 2014 WL 106927, at *1). Thus, courts have uniformly denied Texas legislators' requests for blanket protective orders barring depositions in Voting Rights Act enforcement actions in the last decade. *See Perez v. Perry* (*Perez I*), No. 5:11-cv-360 (W.D. Tex. Aug. 1, 2011) (three-judge court), ECF No. 102 (Ex. 2); *Texas v. Holder*, No. 1:12-cv-128 (D.D.C. Apr. 20, 2012) (three-judge court), ECF No. 84 (Ex. 3); *Veasey v. Perry*, No. 2:13-cv-193 (S.D. Tex. June 18, 2014), ECF No. 341 (Ex. 4).

Much of Legislators' motion is based on an erroneous conflation of federal legislators' Speech or Debate Clause immunity, *see, e.g.*, Mot. at 1, 3, 11-12 (citing *Dombrowski v. Eastland*, 387 U.S. 82 (1967)), state legislators' immunity from civil suit, *see, e.g.*, Mot at 1, 4, 11-12 (citing *Tenney v. Brandhove*, 341 U.S. 367 (1951)), and the qualified testimonial privilege applicable here. The Speech or Debate Clause of the U.S. Constitution, U.S. Const. art. I, § 6, cl. 1, shields federal legislators from any award of damages or prospective relief and provides an accompanying testimonial privilege, *see United States v. Gravel*, 408 U.S. 606, 614-15 (1972), but does not apply to state or local legislators, either directly or via incorporation in federal common law. *See United States v. Gillock*, 445 U.S. 360, 368-73 (1980). Whatever protections

eighteenth century law afforded to state legislators, Mot. at 4, "[t]here can be no doubt that [the Supreme Court] has sanctioned intrusions by Congress, acting under the Civil War Amendments, into the judicial, executive, and legislative spheres of autonomy previously reserved to the States." *Fitzpatrick v. Bitzer*, 427 U.S. 445, 455 (1976). And while motive is not typically relevant to the legality of legislation, *see* Mot. at 1, 4, 16-17, there is "a very limited and well-defined class of cases where the very nature of the constitutional question requires an inquiry into legislative purpose." *United States v. O'Brien*, 391 U.S 367, 383 n.30 (1968). In this case, the United States' claim requires this Court to determine whether the stated policies underlying the House plan are "tenuous." *Gingles*, 478 U.S. at 37.

The Legislators' motion also incorporates an overbroad conception of legislative privilege that somehow includes communications with executive branch officials and other outsiders, as well as purely factual information. *See* Mot. at 9-10. *Contra, e.g.*, *Jackson Mun. Airport Auth. v. Bryant*, No. 3:16-cv-246, 2017 WL 6520967, at *7 (S.D. Miss. Dec. 19, 2017). Moreover, staying deposition discovery pending the Supreme Court's decision in *Merrill v. Milligan,* No. 21-1086, or until the United States has exhausted discovery of the "public record," Mot. at 5-7, makes little sense. This Court should permit depositions to go forward and should direct legislators to answer all questions outside the scope of the legislative privilege.

A. Federal Courts Have Repeatedly Refused to Grant Texas Legislators Blanket Protective Orders Barring Depositions in Voting Rights Cases.

The history of Texas's unsuccessful invocations of a blanket legislative privilege in voting rights cases shows why the Legislators' motion should be denied. In *Perez v. Perry*, prior statewide redistricting litigation in Texas under Section 2 of the Voting Rights Act, the State sought a protective order barring inquiries "on the issue of individual legislators' motives or purposes . . . if it is based on information or communications other than those contained in the

journals and publicly-available reports and acts of the 82nd Legislature." Mot. for Protective Order at 7, *Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. July 21, 2011), ECF No. 62. The *Perez* Court concluded that "any sort of blanket protective order that would insulate witnesses from testifying would be inappropriate." *Perez I* at 5 (citing *In re Grand Jury*, 821 F.2d 946, 957-58 (3d Cir. 1987)). The Court further ruled as follows:

- First, it found "that the assertion of the privilege is premature." It thus refused to "provide blanket protection to every person who may choose to assert the privilege during the discovery process."
- Second, the Court directed the parties to "proceed with depositions and the deponents must appear and testify even if it appears likely that the privilege may be invoked in response to certain questions."
- Third, the Court decided that a deponent "may invoke the privilege in response to particular questions, but the deponent must then answer the question subject to the privilege."
- Finally, the Court announced that with respect to portions of the transcript that the deponent claimed were privileged, that they "may then be sealed and submitted to the Court for in camera review, along with a motion to compel, if the party taking the deposition wishes to use the testimony in these proceedings. In other words, the testimony will not be disclosed or used unless the Court finds that the privilege does not apply, has been waived and/or should not be enforced."

Id. at 5-6 (internal footnote omitted). The State later moved to modify this order, but the *Perez* Court denied the motion. *See Perez II*, 2014 WL 106927, at *1. Nonetheless, the Court afforded alternative procedures under which a deponent might "choose not to answer specific questions, citing the privilege," after which a plaintiff could "file a motion to compel and the Court [would then] determine whether the privilege has been waived or is outweighed by a compelling, competing interest." *Id.* at *3.[3]

[3] For example, in *Perez*, following a deposition in which a legislator "declined to answer numerous questions on the grounds of legislative privilege," private plaintiffs moved to compel but did not meet their "burden of establishing" that the privilege should be overcome in that instance. *Perez v. Perry* (*Perez III*), No. 5:11-cv-360 (W.D. Tex. July 11, 2014) (three-judge

Despite the deeply probative evidence yielded through legislative discovery in *Perez v. Perry* and *Texas v. United States* (the accompanying preclearance litigation under Section 5 of the Voting Rights Act)—or perhaps because of it—the State again sought a blanket protective order barring all legislative depositions in *Texas v. Holder*, preclearance litigation concerning a photographic voter identification law known as Senate Bill 14 (SB 14). *See* Mot. for Protective Order, *Texas v. Holder*, No. 1:12-cv-128 (D.D.C. Mar. 22, 2012), ECF No. 34.[4] Again, a three-judge court denied this request, ruling, that "[i]f any legislators assert the privilege in response to specific requests for depositions or to justify withholding the production of specific communications, Defendants can move to compel in the appropriate court and Texas can oppose the motion or renew its motion for a protective order." *Texas v. Holder*, *supra*, at 3. All legislators whom the U.S. Attorney General deposed in *Texas v. Holder* asserted privilege and declined to answer numerous questions during depositions. Because some of these objections went beyond the scope of state legislative privilege, the *Texas v. Holder* Court permitted the U.S. Attorney General to reopen key depositions. *See* Order at 15, *Texas v. Holder*, No. 1:12-cv-128 (D.D.C. June 5, 2014), ECF No. 167; Minute Order, *Texas v. Holder*, No. 1:12-cv-128 (D.D.C. June 8, 2012).

Undeterred, Texas legislators and legislative aides again sought to quash deposition subpoenas in *Veasey v. Perry*, a subsequent challenge to SB 14 under Section 2 of the Voting

---

court), ECF No. 1138 (Ex. 5). This illustrates that depositions may proceed without unnecessarily intruding on legislative privilege.

[4] *See also Perez v. Perry*, No. 5:11-cv-360 (W.D. Tex. Mar. 19, 2012) (three-judge court), ECF No. 690 (relying on legislator testimony to find that the Texas Legislature "may have focused on race to an impermissible degree" when crafting the 2011 House plan); *Texas v. United States*, 887 F. Supp. 2d 133, 161 & n.32 (D.D.C. 2012) (three-judge court) (relying on email exchanged among state legislators to conclude that that the 2011 Congressional plan "was motivated, at least in part, by discriminatory intent"), *vacated on other grounds*, 133 S. Ct. 2885 (2013).

Rights Act. *See, e.g.*, Mot. to Quash, *Veasey v. Perry*, No. 2:13-cv-193 (S.D. Tex. May 27, 2014), ECF No. 290. The *Veasey* Court denied these motions and permitted depositions to proceed, while permitting legislators to adopt either the *Perez I* procedures or the *Perez II* procedures when asserting legislative privilege. *See Veasey*, *supra*.

The Legislators here have provided no basis for this Court to deviate from those decisions and impose an effective prohibition on plaintiff depositions in this case. *See Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979) ("It is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error."). Legislators raise numerous decisions regarding legislative immunity, Mot. at 4, 11-12, despite conceding that Legislators "are not named defendants in any complaint," Mot. at 3.[5] They also point to decisions concerning apex depositions, Mot. at 4-5, 7, but the 181 members of the Texas Legislature are not "[t]op executive department officials" protected by the apex doctrine. *See In re FDIC*, 58 F.3d 1055, 1060 (5th Cir. 1995) (internal quotation marks and citation omitted).[6] Although some courts have foreclosed most requests to depose local officials solely concerning legislative intent, even those courts have recognized that legislative privilege may yield and have not prohibited depositions of legislators concerning unprivileged matters. *See Lee v. City of Los Angeles*, 908 F.3d 1175, 1186-88 (9th Cir. 2018). The mere possibility that a deposition may "wander into impermissible terrain is not sufficient reason to halt [an

[5] *See also Reeder v. Madigan*, 780 F.3d 799 (7th Cir. 2015) (addressing legislative immunity); *Bagley v. Blagojevich*, 646 F.3d 378, 391-98 (7th Cir. 2011) (same); *Biblia Abierta v. Banks*, 129 F.3d 899 (7th Cir. 1997) (same); *cf. M. Se. & Invs., Inc. v. Miami-Dade Cnty.*, 2001 WL 1685515, at *1-2 (S.D. Fla. Aug. 14, 2001) (erroneously concluding that legislative immunity incorporates wholesale immunity from testimonial discovery).

[6] *See also In re Stone*, 986 F.2d 898, 904 (5th Cir. 1993) (addressing "high-ranking officials of cabinet agencies")); *cf. Harding v. Cnty. of Dallas*, No. 3:15-cv-131, 2016 WL 7426127, at *7-8 (N.D. Tex. Dec. 23, 2016) (applying apex doctrine to county judge and a county commissioner).

otherwise] permissible inquiry." *EEOC v. Wash. Suburban Sanitary Comm'n*, 631 F.3d 174, 183 (4th Cir. 2011); *see also Fla. Ass'n of Rehabilitation Facilities, Inc. v. Florida*, 164 F.R.D. 257, 268 (N.D. Fla. 1995) (permitting depositions while noting narrow issues that may be privileged). Finally, because the State has already called a legislator to testify and named another legislator as a likely witness in this case, *see LULAC v. Abbott*, 2022 WL 1410729, at *7; Defs.' Initial Disclosures at 4-5 (Ex. 6), this matter is already one of the "extraordinary" few where legislators are "called to the stand at trial to testify." *Cf. Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977) (addressing only testimony concerning legislative purpose). This Court should follow the path carved by *Perez*, *Texas v. Holder*, and *Veasey v. Perry* and continue to allow legislator depositions in statewide Voting Rights Act enforcement actions.

B. Legislative Privilege Does Not Extend Beyond Confidential Legislative Acts.

Legislators' motion proposes an expansive legislative privilege contrary to established law.[7] Legislative privilege applies only to "documents or information that contains or involves opinions, motives, recommendations or advice about legislative decisions between legislators or between legislators and their staff." *Jackson Mun. Airport Auth.*, 2017 WL 6520967, at *7. The privilege does not protect non-legislative or factual information. This leaves many areas of inquiry in this case that do not implicate legislative privilege.

As an initial matter, Representative Lujan holds no legislative privilege with respect to the 2021 House plan. Representative Lujan assumed office on November 16, 2021, "after the

[7] In this Court's preliminary injunction opinion and order in this case, the Court expressed concern that Defendants' broad conception of legislative privilege here would "raise serious questions about whether this Court (or any court) could ever accurately and effectively determine intent." *LULAC v. Abbott*, 2022 WL 1410729, at *27 n.14. In moving to quash legislator depositions now, Legislators here double down on the overbroad legislative privilege claims that Defendants pressed in the preliminary injunction proceedings.

date of [the] enactment." *League of Women Voters of Mich. v. Johnson*, No. 17-14148, 2018 WL 2335805, at *6 (E.D. Mich. May 23, 2018) (citation omitted). His current status as a legislator does not impart privilege retroactively, nor would it allow him to claim legislative privilege about his personal knowledge regarding the results of the 2021 House plan. *Cf. Jackson Mun. Airport Auth.*, 2017 WL 6520967, at *7 (addressing communications with legislative "outsiders").

The United States can question Representative Guillen and Representative Landgraf regarding a large range of topics not subject to bona fide privilege claims. Foremost, Representative Guillen and Representative Landgraf may be asked about knowledge gained as community leaders and candidates in challenged districts, a subject which lacks a direct relation to the legislative process. Counsel for State Defendants and Legislators have conceded that legislators may "testify as to some non-privileged matters, facts that don't go to legislative acts" and may so do "freely, as any other fact witness." *See* PI Tr. 152:6-16 (Vol. 5); *cf. United States v. Brewster*, 408 U.S. 501, 512 (1972) (explaining that "political" activities are not "legislative").[8] Representative Guillen and Representative Landgraf have also waived privilege regarding specific communications with legislative outsiders, including executive branch officials, Members of Congress, party leaders, and other members of the public. *See, e.g.*, *Perez*

[8] Legislators incorrectly seek to collapse the world of information to a false dichotomy between that which is privileged and that which appears in the public record. Mot. at 4-5. As the Court and State Defendants have recognized, many topics are neither privileged nor a part of the legislative record. *See* P.I. Tr. 152:17-22 (Vol. 5). For example, private conversations between Legislators and local officials or prospective candidates are neither privileged nor "in the public record." *See Favors v. Cuomo*, No. 11-CV-5632, 2015 WL 7075960, at *9 (E.D.N.Y. Feb. 8, 2015) (three-judge court) ("If individual defendants had a legislative privilege, it means they were entitled not to divulge their reasons for supporting or opposing legislation, and not to discuss such matters with outsiders. It does not mean they were entitled to discuss those matters with some outsiders but then later invoke the privilege as to others." (quotation marks and citation omitted)).

v. Perry (*Perez III*), No. 5:11-cv-360, 2014 WL 106927, at *2 (W.D. Tex. Jan. 8, 2014) (three-judge court); *Gilby v. Hughs*, 471 F. Supp. 3d 763, 767 (W.D. Tex. 2020).[9] Nor does legislative privilege extend to matters "outside the legislative forum," such as draft press statements and public communications. *Favors v. Cuomo*, No. 11-CV-5632, 2015 WL 7075960, at *6-*7 (E.D.N.Y. Feb. 8, 2015) (three-judge court); *see also, e.g.*, *Texas v. Holder*, No. 12-128, 2012 WL 13070060, at *3 (D.D.C. June 5, 2012) (three-judge court). Finally, legislative privilege does not shield factual information. *See, e.g.*, *League of Women Voters of Mich.*, 2018 WL 2335805, at *6; *see also, e.g.*, *Doe v. Nebraska*, 788 F. Supp. 2d 975, 984-85 (D. Neb. 2011). Legislators cannot assert legislative privilege to avoid answering questions about facts related to their own districts—such as political behavior, the history of discrimination, and socioeconomic disparities—that are relevant to the United States' discriminatory results claim against the 2021 House plan. *See Gingles*, 478 U.S. at 37.

C. Deposition Discovery Should Not Be Stayed.

This Court denied Texas's request for a stay pending the Supreme Court's resolution of *Merrill v. Milligan*, No. 21-1086 less than three weeks ago. *See* Order, ECF No. 246. Nevertheless, with no intervening change in circumstances, Texas and counsel for legislators now ask this Court to stay legislator depositions for the very same reason. Mot. at 7-9. This Court should deny that motion. With little more than two months left in discovery, a stay

[9] Legislators suggest that questions about Representative Guillen's political party switch may implicate the First Amendment, *see* Mot. at 10 n.6, but there is no evidence that such questions would chill political participation. *Cf. Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010) (relying on declarations that created "a reasonable inference that disclosure would have the practical effects of discouraging political association and inhibiting internal campaign communications that are essential to effective association and expression"). The First Amendment does not bar an inquiry into whether Representative Guillen took certain actions after enactment of the 2021 House plan because Anglo voters in the district would otherwise "defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 51.

pending resolution of the motions to dismiss would endanger the trial schedule; a stay pending resolution of *Merrill* would render a September trial impossible.[10]

Legislators' separate request that depositions be stayed until the United States exhausts "less intrusive means" of discovery, Mot. at 5, bears no scrutiny. There is no legal basis to import exhaustion requirements from the apex doctrine to the discovery sought here. *See In re FDIC*, 58 at 1060. Even if such a requirement were appropriate, the Legislators have provided limited responses to document subpoenas; there are no "alternative means of discovery" left to exhaust with respect to their own knowledge of relevant facts. Mot. at 5-6.[11] "[T]he public record" is no substitute for the personal knowledge of successful candidates in challenged districts. And Legislators have not—and likely cannot—identify other individuals with the same knowledge that the United States might seek to depose first.

Ultimately, there is nothing "extraordinary" about deposing legislators regarding the characteristics and needs of their communities, their communications with non-legislators, and their experience representing their constituents, particularly when those Legislators' districts are being challenged for having racially discriminatory results. *Cf. Arlington Heights*, 429 U.S. at 268 (noting limitations only on testimony concerning legislative purpose). The United States—

[10] For similar reasons, the Court should not delay discovery while the motion to dismiss is pending.

[11] At the meet and confer regarding this motion, counsel for Legislators proposed deposing Legislators by written questions. However, "written depositions are inadequate" when, as here, the evidence sought "may be sufficiently nuanced to necessitate follow up questions." *Box v. Dallas Mex. Consulate Gen.*, No. 3:08-cv-1010, 2013 WL 12353107, at *2 (N.D. Tex. Mar. 4, 2013); *see also Sadowski v. Tech. Career Insts., Inc.*, No. 93 Civ. 455, 1994 WL 240546, at *1 (S.D.N.Y. May 27, 1994) (describing why "depositions on written questions are a generally inadequate substitute for an oral deposition"); 8A Fed. Prac. & Proc. Civ. § 2131 (3d ed.) (noting that a deposition on written question "is more cumbersome than an oral examination").

just like Texas—is entitled to non-privileged testimony from legislators "as any other fact witness." P.I. Tr. 152:12-16 (Vol. 5). It is unnecessary to delay Legislator depositions.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court deny Legislators' motion to quash deposition subpoenas.

Dated: May 11, 2022

PAMELA S. KARLAN
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Daniel J. Freeman
T. CHRISTIAN HERREN, JR.
TIMOTHY F. MELLETT
DANIEL J. FREEMAN
JANIE ALISON (JAYE) SITTON
MICHELLE RUPP
JACKI L. ANDERSON
JASMIN LOTT
HOLLY F.B. BERLIN
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2022, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Daniel J. Freeman
Daniel J. Freeman
Voting Section
Civil Rights Division
U.S. Department of Justice
daniel.freeman@usdoj.gov

EXHIBIT

1

West, Jennifer (CRT)

From: Berlin, Holly (CRT)
Sent: Tuesday, May 3, 2022 11:30 AM
To: Patrick Sweeten; Eric Hudson; Jeff White; Jack DiSorbo; Will Thompson; taylor@consovoymccarthy.com
Cc: Mellett, Timothy F (CRT); Freeman, Daniel (CRT); Sitton, Jaye (CRT); Anderson, Jacki (CRT); Lott, Jasmin (CRT); Rupp, Michelle (CRT); nperales@MALDEF.org; SMcCaffity@textrial.com; jgonzalez@malc.org; mark@markgaber.com; chad@brazilanddunn.com; noor@scsj.org; allison@southerncoalition.org; akhanna@elias.law; dfox@elias.law; robert@notzonlaw.com; erosenberg@lawyerscommittee.org; garybledsoe@sbcglobal.net; nas@naslegal.com; martin.golando@gmail.com; richscot1@hotmail.com; Samantha Serna
Subject: LULAC v. Abbott: Deposition Subpoenas for Representatives Landgraf and Lujan
Attachments: Brooks Landgraf Deposition Subpoena_2022_05_03.pdf; John Lujan Deposition Subpoena_2022_05_03.pdf

Counsel,

Attached are subpoenas compelling the deposition testimony of Representatives Landgraf and Lujan. We inquired about the Representatives' availability via email on April 27 and May 2, and we have not received any proposed dates from your office. Consequently, we have selected May 24 to depose Representative Landgraf and May 25 to depose Representative Lujan. We remain open to alternative dates between May 18 and May 27. We are also happy to discuss alternative locations if Austin is inconvenient for the Representatives.

Holly Berlin

Holly F.B. Berlin
Trial Attorney
Voting Section, Civil Rights Division
U.S. Department of Justice
(202) 532-3514

EXHIBIT

2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED
AUG - 1 2011
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

SHANNON PEREZ; HAROLD DUTTON, JR.; GREGORY TAMEZ; SERGIO SALINAS; CARMEN RODRIGUEZ; RUDOLFO ORTIZ; NANCY HALL and DOROTHY DEBOSE

Plaintiffs

-and-

EDDIE BERNICE JOHNSON, SHEILA JACKSON-LEE, and ALEXANDER GREEN, MEMBERS OF THE UNITED STATES CONGRESS

-and-

TEXAS LEGISLATIVE BLACK CAUCUS, TEXAS HOUSE OF REPRESENTATIVES

-and-

TEXAS STATE CONFERENCE OF NAACP BRANCHES; HOWARD JEFFERSON, JUANITA WALLACE and REV. BILL LAWSON

Plaintiff-Intervenors

v.

STATE OF TEXAS; RICK PERRY, in his official capacity as Governor of the State of Texas; DAVID DEWHURST, in his official capacity as Lieutenant Governor of the State of Texas; JOE STRAUS, in his official capacity as Speaker of the Texas House of Representatives; HOPE ANDRADE, in her official capacity as Secretary of State of the State of Texas

Defendants

CIVIL ACTION NO.
11-CA-360-OLG-JES-XR
[Lead case]

MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES (MALC) Plaintiffs -and- THE HONORABLE HENRY CUELLAR, Member of Congress, CD 28; THE TEXAS DEMOCRATIC PARTY and BOYD RICHIE, in his official capacity as Chair of the Texas Democratic Party; and LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) and its individually named members Plaintiff-Intervenors v. STATE OF TEXAS; RICK PERRY, in his official capacity as Governor of the State of Texas; DAVID DEWHURST, in his official capacity as Lieutenant Governor of the State of Texas; JOE STRAUS, in his official capacity as Speaker of the Texas House of Representatives; Defendants	CIVIL ACTION NO. SA-11-CA-361-OLG-JES-XR [Consolidated case]
TEXAS LATINO REDISTRICTING TASK FORCE, JOEY CARDENAS, ALEX JIMENEZ, EMELDA MENENDEZ, TOMACITA OLIVARES, JOSE OLIVARES, ALEJANDRO ORTIZ, AND REBECCA ORTIZ Plaintiffs v. RICK PERRY, in his official capacity as Governor of the State of Texas Defendants	CIVIL ACTION NO. SA-11-CA-490-OLG-JES-XR [Consolidated case]

MARGARITA V. QUESADA; ROMEO MUNOZ; MARC VEASEY; JANE HAMILTON; LYMAN KING; and JOHN JENKINS Plaintiffs v. RICK PERRY, in his official capacity as Governor of the State of Texas; and HOPE ANDRADE, in her official capacity as Secretary of State for the State of Texas Defendants	CIVIL ACTION NO. SA-11-CA-592-OLG-JES-XR [Consolidated case]

JOHN T. MORRIS Plaintiff v. STATE OF TEXAS; RICK PERRY, in his official capacity as Governor of the State of Texas; DAVID DEWHURST, in his official capacity as Lieutenant Governor of the State of Texas; JOE STRAUS, in his official capacity as Speaker of the Texas House of Representatives; and HOPE ANDRADE, in her official capacity as Secretary of State of the State of Texas Defendants	CIVIL ACTION NO. SA-11-CA-615-OLG-JES-XR [Consolidated case]

EDDIE RODRIGUEZ, MILTON GERARD WASHINGTON, BRUCE ELFANT, ALEX SERNA, SANDRA SERNA, BETTY F. LOPEZ, DAVID GONZALEZ, BEATRICE SALOMA, LIONOR SOROLA-POHLMAN; ELIZA ALVARADO; JUANITA VALDEZ-COX; JOSEY MARTINEZ; NINA JO BAKER; TRAVIS COUNTY and CITY OF AUSTIN Plaintiffs v.	

RICK PERRY, in his official capacity as Governor of the State of Texas; DAVID DEWHURST, in his official capacity as Lieutenant Governor of the State of Texas; JOE STRAUS, in his official capacity as Speaker of the Texas House of Representatives; HOPE ANDRADE, in her official capacity as Secretary of State of the State of Texas; STATE OF TEXAS; BOYD RICHIE, in his official capacity as Chair of the Texas Democratic Party; and STEVE MUNISTERI, in his official capacity as Chair of the Republican Party of Texas Defendants	CIVIL ACTION NO. SA-11-CA-635-OLG-JES-XR [Consolidated case]

ORDER

Pending before the Court is Defendants' Motion for Protective Order (Dkt. # 62). The Texas Democratic Party (TDP) and Boyd Richie filed a response (Dkt. # 74). The Texas Latino Redistricting Task Force (LULAC) and its individuals members also filed a response (Dkt. # 88). The NAACP Plaintiff-Intervenors filed a response as well (Dkt. # 87).

In their motion, Defendants seek a protective order to "preserve the legislative privilege of witnesses called to testify in this case." (Dkt. # 62, p. 2). Defendants assert that their witnesses will likely face questioning on issues that are integral to the legislative process and that answering such questions will "invade the witnesses' legislative privilege." (Dkt. # 62, p. 2).

The TDP and Mr. Richie contend that a protective order is unwarranted. They claim that Defendants intend to use the privilege as both a sword and a shield and the privilege, if applicable, is qualified and may be waived. The LULAC Plaintiffs contend that the privilege does not apply or, alternatively, that it should be narrowly construed. The NAACP Plaintiffs contend that a blanket protective order would clearly be inappropriate, and if the Court makes any ruling, it should be based on the question being posed to each particular witness.

The Court understands that depositions will begin tomorrow; thus, it has reviewed the motion, response and applicable law in advance thereof. After such review, it clearly appears that any sort of blanket protective order that would insulate witnesses from testifying would be inappropriate. As an evidentiary and testimonial privilege, the legislative privilege is limited and qualified. In re Grand Jury, 821 F.2d 946, 957-58 (3rd Cir. 1987). The privilege may obviously be asserted by legislators and congressmen, who have a function and role in the legislative process. The privilege may also apply to staffers, aides or employees, with certain limitations. Gravel v. United States, 408 U.S. 606, 621-22, 92 S.Ct. 2614 (1972). However, the privilege does not apply to every person who may be deposed in this case, nor does it apply to every question that may be asked during deposition. The privilege is personal to each person who may be entitled to invoke it, and that person may choose to waive the privilege. Even if the deponent is entitled to invoke the privilege, the application of the privilege depends on the question being posed. Even if the privilege is asserted, it may be waived and/or the Court may find that it should not be enforced based on the information being sought and/or other circumstances that may not be readily apparent, such as whether the evidence is available from other sources.

For these reasons, the Court finds that the assertion of the privilege is premature.[1] The Court cannot provide blanket protection to every person who may choose to assert the privilege during the discovery process. Instead, the parties should proceed with depositions and the deponents must appear and testify even if it appears likely that the privilege may be invoked in response to certain questions. The deponents may invoke the privilege in response to particular questions, but the deponent must then answer the question subject to the privilege. Those portions of the deposition

---

[1] Florida Association of Rehabilitation Facilities, Inc. v. State of Florida, 164 F.R.D. 257, 260 (N.D. Fla. 1995)(question as to whether privilege applied was not ripe when witnesses had not appeared and asserted privilege in the context of specific questions).

transcript may then be sealed and submitted to the Court for *in camera* review, along with a motion to compel, if the party taking the deposition wishes to use the testimony in these proceedings. In other words, the testimony will not be disclosed or used unless the Court finds that the privilege does not apply, has been waived and/or should not be enforced.

It is therefore ORDERED that Defendants' Motion for Protective Order (Dkt. # 62) is DENIED without prejudice.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Xavier Rodriguez
United States District Judge
Western District of Texas

EXHIBIT

3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,	)	
	)	
Plaintiff,	)	
	)	**Civil Action No. 12-128**
v.	)	**(DST, RMC, RLW)**
	)	
ERIC H. HOLDER, JR., in his official Capacity as Attorney General, *et al.*	)	
	)	
Defendants.	)	

ORDER

The State of Texas seeks a protective order prohibiting the United States and the defendant-intervenors (collectively, "Defendants") from (1) compelling members of the Texas legislature to appear for depositions, and (2) seeking discovery of communications between state legislators, communications between legislators and their staff, and communications between legislators and their constituents. In Texas's view, all such discovery is barred by the state legislative privilege.

The state legislative privilege is well grounded in Supreme Court case law. *Cf. Tenney v. Brandhove*, 341 U.S. 367, 376 (1951) (describing legislative privilege to be free from arrest or civil process as "a tradition so well grounded in history" and holding that section 1983 did not "overturn" the privilege); *Vill. of Arlington Heights v. Metro. Hous. Dev.*, 429 U.S. 252, 268 (1977) (noting that "[i]n some extraordinary instances the members [of the legislature] might be called to the stand at trial to testify concerning the purpose of the official action, although even then such testimony frequently will be barred by privilege."). Although the contours of the

privilege remain somewhat uncertain, the Court's case law assumes that at least some of the privileges and immunities afforded to federal legislators by the Speech or Debate Clause are also afforded to state legislators. *See Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 733 (1980) ("Although the separation-of-powers doctrine justifies a broader privilege for Congressmen than for state legislators in criminal actions, we generally have equated the legislative immunity to which state legislators are entitled under § 1983 to that accorded Congressmen under the Constitution." (citations omitted)). To be sure, the privilege may be abrogated in "extraordinary instances," *Arlington Heights*, 429 U.S. at 268, and may not be as broad as Texas asserts. However, we cannot agree with the United States that every litigated Section 5 case under the Voting Rights Act, 42 U.S.C. § 1973c, constitutes an "extraordinary instance" warranting a need to "intru[de] into the workings" of the state legislature, *see id.* at 268 n.18, and the United States' recent brief is insufficient on this point.

That said, we think it inappropriate to carve out the contours of such a privilege in a blanket protective order that preemptively shields legislators and their staffs from discovery requests. Such an order—which would put us in the uncomfortable position of deciding potential issues before we even know whether they will arise—strains our preference for adjudicating concrete issues as they come. At this point in the litigation, we have no indication that all of the legislators Defendants seek to depose will in fact invoke the privilege. Some legislators may choose to waive the privilege, as they have in other preclearance lawsuits, *see, e.g., Texas v. United States*, No. 11-cv-1303, 2012 WL 11241, at *6 & n.7 (D.D.C. Jan. 2, 2012), in which case Defendants may freely seek document discovery from and depose such legislators. Given this, we have no grounds for barring Defendants entirely from seeking discovery from legislators and their staffs. Moreover, whether and how the privilege applies may depend on whether Texas

chooses to rely on legislative testimony on the merits. For all of these reasons, we deny Texas's motion for a protective order without prejudice. The parties may seek discovery from those legislators who are willing to waive the legislative privilege. Furthermore, because Texas has sought only protection from "discovery of communications between members of the state legislature, communications between state legislators and their staff, and communications between state legislators and their constituents," (*see* Proposed Order at Dkt. # 34-4; Mot. at pp. 1-2), Texas will presumably produce responsive documents from any legislators or staff members that fall outside the scope of the aforementioned communications. If any legislators assert the privilege in response to specific requests for depositions or to justify withholding the production of specific communications, Defendants can move to compel in the appropriate court and Texas can oppose the motion or renew its motion for a protective order. At that point, the precise scope of the privilege can be determined. Accordingly, it is hereby:

ORDERED that Texas's motion for protective order [Dkt. #34] is **DENIED** without prejudice; and it is

FURTHER ORDERED that Texas shall identify, no later than **April 24, 2012**, those legislators from whom Defendants seek discovery who assert a legislative privilege.

Date: April 20, 2012

/s/
DAVID S. TATEL
United States Circuit Judge

/s/
ROSEMARY M. COLLYER
United States District Judge

/s/
ROBERT L. WILKINS
United States District Judge

EXHIBIT

4

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, *et al.*, Plaintiffs, v. RICK PERRY, *et al.*, Defendants.	Civil Actions No. 2:13-cv-193 (NGR); 2:14-cv-225 (NGR); 2:14-cv-237 (NGR); 2:14-cv-244 (NGR); 2:14-cv-245 (NGR); 2:14-cv-246 (NGR); 2:14-mc-632 (NGR)

ORDER

Having reviewed the motions to quash deposition subpoenas filed by legislators and legislative aides, *see* No. 2:13-cv-193 (ECF Nos. 290, 296, 312, 313, 317); No. 2:14-cv-225 (ECF No. 1); No. 2:14-cv-237 (ECF No. 1); No. 2:14-cv-244 (ECF No. 1); No. 2:14-cv-245 (ECF No. 1); No. 2:14-cv-246 (ECF No. 1); 2:14-mc632 (ECF No. 1), and the United States' responses thereto, the motions are hereby **DENIED.** The legislators and legislative aides may invoke a legislative privilege in response to particular questions and then answer subject to the privilege. In that case, portions of the deposition transcript may then be sealed and submitted to the Court for *in camera* review, along with a motion to compel, if the party taking the deposition wishes to use the testimony in these proceedings. Alternatively, the deponent may choose not to answer specific questions, citing the privilege. In that event, Plaintiffs may thereafter file a motion to compel and the Court will thereafter determine whether the privilege has been waived

or is outweighed by a compelling, competing interest.

SO ORDERED.

June 18, 2014

Nelva Gonzales Ramos
United States District Judge

EXHIBIT

5

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ, ET AL,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civ. No. SA-11-CV-360-OLG-JES-XR**
	§	
RICK PERRY, ET AL.	§	
	§	
Defendant.	§	
	§	

ORDER

On this day the Court considered Plaintiff-Intervenor African-American Congress members's (hereinafter "Plaintiff") motion to compel deposition testimony from Representative Drew Darby, Chairman of the Texas House Redistricting Committee. Doc. No. 1069. After careful consideration, the motion is GRANTED IN PART and DENIED IN PART.

ANALYSIS

On May 20, 2014, Plaintiff's counsel took Chairman Darby's deposition. Chairman Darby, acting on the advice of counsel, declined to answer numerous questions on the grounds of legislative privilege or attorney-client privilege. Thereafter, Plaintiff filed the instant motion to compel in which it contends that neither privilege applies. Doc. No. 1069.

Much of Plaintiff's questioning pertains to matters covered by legislative privilege. Plaintiff's queries focused largely on whether Chairman Darby had reviewed certain documents or whether he had taken certain steps to investigate certain minority group complaints. *See* Doc. No. 1084. Ex. 2 (Rep. Darby Depo). Another line of inquiry dealt with whether Chairman Darby had conversations with other legislators about the plans. *Id.* at 155:22 ("Did you -- did you have

a discussion with any other legislator about whether the map violated Section 2, C235?"). These questions are necessarily directed at eliciting responses that pertain to either Chairman Darby's thought processes or the communications he had with other legislators. Plaintiff argues that Chairman Darby refused to proffer sufficient facts to show that his responses would be privileged. However, the very nature of the questions posed to Chairman Darby indicates that any putative responses would pertain to privileged material. Finally, in a hearing on this motion Plaintiff's counsel raised in passing the argument that the legislative privilege should not apply here. Although the legislative privilege is a qualified one, Plaintiff has not met its burden of establishing that the factors outlined in *Rodriguez v. Pataki*, 293 F. Supp. 2d 302, 304 (S.D.N.Y. 2003) weigh in favor of discarding the privilege in this case.

The same analysis does not apply to questions pertaining to the recess meeting that occurred between the Republican Caucus and a representative from OAG. Although Chairman Darby initially asserted the legislative privilege with respect to this line of questioning, he did not do so with respect to the follow-up questions. Rep. Darby Depo. at 138-40 (objecting on attorney-client privilege grounds only). With respect to the questions for which he did not assert legislative privilege, such a legislative privilege objection is considered waived. *See Natural Gas Pipeline Co. of America v. Energy Gathering, Inc.*, 2 F.3d 1397, 1406 (5th Cir. 1993); *see also United States v. El Paso Co.*, 682 F.2d 530, 539 (5th Cir. 1982) (Noting that blanket assertions of privilege are disfavored and finding that "[t]he privilege must be specifically asserted with respect to particular documents").

That does not resolve the issue because Chairman Darby declined to answer the majority of these questions on the grounds of the attorney-client privilege. *See* Rep. Darby Depo at p. 137-140. In a prior segment of his deposition, Chairman Darby admitted that the Texas Office

of the Attorney General ("OAG") "is not the attorney for the Republican Caucus." Rep. Darby Depo at 108:6-9. This is consistent with OAG's long-standing position in this case that it does not represent all individual legislators. Nevertheless, the State contends that communications that occurred during the Republican Caucus meeting are covered by the common legal interest extension of the attorney-client privilege. Doc. No. 1084 at p. 7. Specifically, the State argues that the Republican Caucus "members had a common legal interest in seeing the maps upheld." *Id.*

It is well settled that the party asserting the privilege has the burden of establishing its applicability. *See Hodges, Grant & Kaufmann v. United States*, 768 F.2d 719, 721 (5th Cir. 1985). "Disclosure of attorney-client communications to a third party who lacks a common legal interest waives the attorney-client privilege." *Ferko v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 218 F.R.D. 125, 134 (E.D. Tex. 2003) (citing *In re Auclair*, 961 F.2d 65, 69 (5th Cir. 1992). Inasmuch as Chairman Darby does not recall who was physically present at the meeting, he has not established that the communications were sufficiently confidential such that attorney client privilege would apply on the basis of a common legal interest. Darby Depo. at 107:4-16 (Testimony that Chairman Darby lacked recollection of who was at the meeting). "The assertor of the privilege must have a reasonable expectation of confidentiality, either that the information disclosed is intrinsically confidential, or by showing that he had a subjective intent of confidentiality." *United States v. Robinson*, 121 F.3d 971, 976 (5th Cir. 1997). Chairman Darby has not shown that all individuals present at the Republican Caucus meeting shared a common legal interest because he has not identified who was present. Notably, Chairman Darby could not even foreclose the possibility that a Democratic representative or staffer was present. *Id.* at 107:8-10 (testifying that there may have been a "small one [Democrat] the back or something").

Courts construe the attorney-client privilege narrowly. *See United States v. Pipkins*, 528 F.2d 559, 562 (5th Cir. 1976). It would be an undue extension of the privilege to apply the common legal interest doctrine where the party asserting the privilege has not demonstrated that everyone present shared such an interest. Stated differently, mere speculation that everyone at the meeting shared a cognizable common interest is insufficient to establish that the privilege applies. Consequently, Chairman Darby has not met his burden of establishing that the attorney-client privilege applies to the Republican Caucus meeting. The Court therefore ORDERS Chairman Darby to respond to questions pertaining to this meeting.

CONCLUSION

In light of the foregoing analysis, Plaintiffs' motion to compel is GRANTED with respect to questions pertaining to the Republican Caucus meeting. It is DENIED with respect to all other forms of questioning.

SIGNED this 11th day of July, 2014.

/S/

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE
[On behalf of the three judge panel]

EXHIBIT

6

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,	§	
Plaintiffs,	§	Case No. 3:21-cv-259 [Lead Case]
v.	§	
GREG ABBOTT, *et al.*,	§	
Defendants.	§	

DEFENDANTS' INITIAL DISCLOSURES

TO: The LULAC Plaintiffs (Case No. 3:21-cv-259), by and through their attorney of record, Nina Perales, Mexican American Legal Defense and Educational Fund, 110 Broadway Suite 300, San Antonio, TX 78205; Plaintiff Damon James Wilson (Case No. 1:21-cv-943), by and through his attorney of record, Richard Gladden, 1204 W. University Dr. Suite 307, Denton, TX 76201; the Voto Latino Plaintiffs (Case No. 1:21-cv-965), by and through their attorney of record, Renea Hicks, Law Office of Max Renea Hicks, P.O. Box 303187, Austin, TX 78703; the MALC Plaintiffs (Case No. 1:21-cv-988), by and through their attorney of record, George (Tex) Quesada, 3811 Turtle Creek Boulevard, Suite 1400, Dallas, TX 75219; the Brooks Plaintiffs (Case No. 1:21-cv-991), by and through their attorney of record, Chad W. Dunn, Brazil & Dunn, 4407 Bee Caves Road, Building 1, Ste. 111, Austin, TX 78746; Plaintiff Texas State Conference of the NAACP (Case No. 1:21-cv-1006), by and through its attorney of record, Lindsey B. Cohan, Dechert LLP, 515 Congress Avenue, Suite 1400, Austin, TX 78701; the Fair Maps Plaintiffs (Case No. 1:21-cv-1038), by and through their attorney of record, David A. Donatti, ACLU Foundation of Texas, Inc., P.O. Box 8306, Houston, TX 77288; Plaintiff United States of America (Case no. 3:21-cv-299), by and through its counsel of record, Daniel J. Freeman, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530; Plaintiff Trey Martinez Fischer (Case No. 3:21-cv-306) and Plaintiff Veronica Escobar, by and through their counsel of record, Martin Golando, The Law Office of Martin Golando, PLLC, 2326 W. Magnolia Ave., San Antonio, TX 78201; Intervenor Plaintiffs Lee, Green, Crockett, and Johnson (Case No. 3:21-cv-259), by and through their counsel of record, Gary Bledsoe, The Bledsoe Law Firm PLLC, 6633 Highway 290 East #208, Austin, Texas 78723.

Governor Greg Abbott, Secretary of State John Scott, Speaker Dade Phelan, Lieutenant Governor Dan Patrick, each in their official capacities, and the State of Texas (collectively, "Defendants") submit these Initial Disclosures in accordance with Rule 26(a)(1) of the Federal

Rules of Civil Procedure and the Scheduling Order (ECF 96). Defendants make these disclosures subject to pending motions to dismiss and do not concede the viability of any claim against any of the Defendants. Nor does any Defendant waive any protections provided by the attorney work product protection, attorney–client privilege, or any other applicable privilege, protection, doctrine, or immunity. Defendants reserve the right to supplement these Initial Disclosures as additional discovery, investigation, and analysis may warrant. Defendants likewise do not waive the right to object, on any grounds, to (1) the evidentiary use of the information contained in these Initial Disclosures or (2) discovery requests relating to these Initial Disclosures.

Date: January 21, 2022

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN
Deputy Attorney General for Special Litigation
Texas State Bar No. 00798537

WILLIAM T. THOMPSON
Deputy Chief, Special Litigation Unit
Texas State Bar No. 24088531

JEFFREY M. WHITE
Special Counsel, Special Litigation Division
Texas Bar No. 24064380

JACK B. DISORBO
Assistant Attorney General, Special Litigation Unit
Texas Bar No. 24120804

Office of the Attorney General
P.O. Box 12548 (MC-009)
Austin, Texas 78711-2548
Tel.: (512) 463-2100
Fax: (512) 457-4410
patrick.sweeten@oag.texas.gov
will.thompson@oag.texas.gov
jeff.white@oag.texas.gov
jack.disorbo@oag.texas.gov

Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was served on all parties via electronic mail on January 21, 2022.

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN

INITIAL DISCLOSURES

I. The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

Based on the information currently available to Defendants, Defendants may use the following individuals to support their claims or defenses in these consolidated cases. These individuals may have discoverable information on the identified subjects. This identification of individuals does not include those individuals who may be used solely for impeachment purposes.

A. Redistricting Committee Chairs

In these cases, the relevant bills are (1) An Act Relating to the Composition of Districts for the Election of Members of the Texas House of Representatives, H.B.1, 87th Leg., 3d C.S. (2021), (2) An Act Relating to the Composition of Districts for the Election of Members of the Texas Senate, S.B.4, 87th Leg., 3d C.S. (2021), (3) An Act Relating to the Composition of Districts for the Election of Members of the United States House of Representatives from the State of Texas, S.B.6, 87th Leg., 3d C.S. (2021), and (4) An Act Relating to the Composition of Districts for the Election of Members of the State Board of Education, S.B.7, 87th Leg., 3d C.S. (2021). These are referred to collectively as "the challenged redistricting bills."

Senator Huffman is the Chair of the Senate Special Committee on Redistricting. She may have discoverable information on the passage of the challenged redistricting bills in the Senate. The other members of the Senate Special Committee on Redistricting may also have discoverable

information on the legislative process related to the passage of the challenged redistricting bills.[1] Senator Huffman may be contacted through her counsel, as provided below:

Senator Joan Huffman
c/o Patrick K. Sweeten
Office of the Attorney General
P.O. Box 12548 (MC-076)
Austin, TX 78711-2548
(512) 936-1414

Representative Hunter is the Chair of the House Redistricting Committee. He may have discoverable information on the passage of the challenged redistricting bills in the House. The other members of the House Redistricting Committee may also have discoverable information on the legislative process related to the passage of the challenged redistricting bills.[2] Representative Hunter may be contacted through his counsel, as provided below:

Representative Todd Hunter
c/o Patrick K. Sweeten
Office of the Attorney General
P.O. Box 12548 (MC-076)
Austin, TX 78711-2548
(512) 936-1414

Representative Phil King is the former Chair of the House Redistricting Committee. He may have discoverable information on the actions taken by the House Redistricting Committee regarding the 2020 Census and efforts to prepare for subsequent redistricting legislation. Representative King may be contacted through his counsel, as provided below:

---

[1] For reference, the members of the Senate Special Committee on Redistricting may be found at the following website: https://senate.texas.gov/cmte.php?c=625.

[2] The members of the House Redistricting Committee may be found at the following website: https://house.texas.gov/committees/committee/?committee=C080.

Representative Phil King
c/o Patrick K. Sweeten
Office of the Attorney General
P.O. Box 12548 (MC-076)
Austin, TX 78711-2548
(512) 936-1414

B. Texas Legislative Council

The Texas Legislative Council is a nonpartisan legislative agency. Among other duties, it stores demographic data provided by the U.S. Census Bureau and houses publicly submitted redistricting maps on its *DistrictViewer* website. Members of the Texas Legislative Council may have relevant redistricting information and data.[3]

Texas Legislative Council
P.O. Box 12128
Austin, TX 78711-2128
(512) 463-6622

C. Plaintiffs and Intervenor-Plaintiffs

Defendants hereby incorporate by reference each of the individuals and entities identified in the plaintiffs' and intervenor-plaintiffs' initial disclosures. Those individuals and entities may have discoverable information regarding the allegations set forth in the plaintiffs' and intervenor-plaintiffs' complaints.

[3] Texas Legislative Council Redistricting Support: https://tlc.texas.gov/redistricting.

II. A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

A. Texas Legislative Council

The Texas Legislative Council houses redistricting maps and data that may be relevant to these cases. These documents and data are available to the public. The following websites contain the following specific information:

a. *DistrictViewer*. This webpage houses proposed redistricting maps that are made available to the public. Website: https://dvr.capitol.texas.gov/.

b. Elections Data. This webpage houses election-results data for a number of elections from 2010 to 2021. Website: https://data.capitol.texas.gov/topic/elections.

c. Geography. This webpage houses several maps that describe the geographic location of several redistricting measurements, such as voting tabulation districts. Website: https://data.capitol.texas.gov/topic/geography.

d. Redistricting 2021. This webpage houses information—such as maps and data—concerning each publicly-available redistricting proposal. Website: https://data.capitol.texas.gov/topic/redistricting.

e. Redistricting Archive. This webpage houses information—such as maps and data—on prior redistricting proposals. Website: https://data.capitol.texas.gov/topic/redistricting-2010s.

f. Redistricting Application. The Texas Legislative Council also administers the Texas Redistricting Application, or "RedAppl." RedAppl houses various Census and other demographic data, including data compiled by the American Community Survey. Members of the public may request access to RedAppl by following instructions located at this website: https://redistricting.capitol.texas.gov/docs/public-access-policies.pdf.

B. Texas Legislature Online

The Texas Legislature Online is the website for the Texas Legislature. It provides information on legislation, committees, and the House and Senate generally. It houses information that may be relevant to the legislative history of the challenged redistricting bills, including previous drafts of the bills, committee meetings, and bill analyses. Information concerning a

specific bill may be found at this webpage: https://capitol.texas.gov/Home.aspx. Information concerning committees may be found at this webpage: https://capitol.texas.gov/MnuCommittees.aspx. This information is publicly available.

C. Texas House and Senate Websites

The Texas House of Representatives and Texas Senate maintain websites on which records are housed. These websites may contain information relevant to the legislative process by which the challenged redistricting bills were passed, and accompanying records. Records of the House Journal may be found at this webpage: https://journals.house.texas.gov/hjrnl/home.htm. Records of video broadcasts of House committee hearings or House floor debates may be found at this webpage: https://house.texas.gov/video-audio/. Records pertaining to the House Redistricting Committee may be found at this webpage: https://house.texas.gov/committees/committee/?committee=C080. Records of the Senate Journal may be found at this webpage: https://journals.senate.texas.gov/sjrnl/home.htm. Records of video broadcasts of Senate committee hearings or floor debates may be found at this webpage: https://senate.texas.gov/av-live.php. Records pertaining to the Senate Special Committee on Redistricting may be found at this webpage: https://senate.texas.gov/cmte.php?c=625.

D. Texas Secretary of State Election Results

The Office of the Texas Secretary of State administers a website that houses data on results of elections conducted in Texas. This website may contain information relevant to election results as they relate to the redistricting claims at issue in these cases. Website: https://www.sos.state.tx.us/elections/historical/index.shtml.

III. A computation of each category of damages claimed by the disclosing party on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

Not Applicable.

IV. Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Not Applicable.