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

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H W D O H W D O

qualifications (other than the listed recipients). That is an extremely broad request and will necessarily apply to many documents that are irrelevant to Plaintiffs' claims in this case.

Defendant also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. See Gravel v. United States, 408 U.S. 606, 625 (1972); Hughes v. Tarrant County, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Secretary of State and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." Bogan v. Scott-Harris, 523 U.S. 44, 55 (1998) (citing Supreme Court of Virginia v. Consumers Union of U. S., Inc., 446 U.S. 719, 731–34 (198

Defendant also objects to this request because it calls for documents that are irrelevant to Plaintiffs' claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between candidates, political parties, lobbyists, and the other third parties mentioned would be relevant.

Defendant objects to this request to the extent it seeks documents outside of Defendant's possession, custody, or control.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

9. All other documents relating to redistricting of the Texas Senate, Texas House, congressional seats in Texas or the Texas SBOE from January 1, 2020 to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, study requests, letters or other communications.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant objects to this request because it is overbroad. The request calls for "[a]ll documents relating to redistricting of the Texas Senate, Texas House, congressional seats in

Texas or the Texas SBOE," without any qualifications (other than the listed recipients and date range). That is an extremely broad request and will necessarily apply to many documents that are irrelevant to Plaintiffs' claims in this case.

Defendant also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning "presentations," "meeting criteria," and "meeting minutes" go to the legislators' mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending or "legislative acts" protected by legislative privilege. See Gravel v. United States, 408 U.S. 606, 625 (1972); Hughes v. Tarrant County, 948 F.2d 918, 921 (5th Cir. 1991).

Defendant further objects to the phrase "but not limited to" as vague and overbroad. Defendant cannot precisely discern what other documents this phrase encompasses and, therefore, will use reasonable understanding of this request to search for any documents outside of those categories Plaintiffs specifically delineate.

Defendant further objects to this request insomuch as it asks for "or other communications." This phrase is vague and ambiguous. Because Defendant cannot discern what "other communications" Plaintiffs are referring to, Defendant will not consider this phrase in searching for, and producing, responsive documents.

Defendant further objects to the request because it seeks all documents extending to "the present." As explained above, documents created after October 25, 2021, are necessarily irrelevant.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

10. All documents relating to apportionment of population that is not total population for redistricting of the Texas Senate, Texas House, congressional seats in Texas or the Texas SBOE January 1, 2020 to the present, including but not limited to redistricting plans, public statements, correspondence, emails, meeting minutes, call logs, notes, presentations, studies, analyses, letters or other communications. "Apportionment of population that is not total population" includes but is

not limited to apportionment of citizen voting age population and apportionment of legal resident population.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section II.

Defendant objects to this request because it is overbroad. The request calls for "[a]ll documents relating to apportionment of population that is not total population for redistricting of the Texas Senate, Texas House, congressional seats in Texas or the Texas SBOE," without any qualifications (other than the listed recipients and date range). That is an extremely broad request and will necessarily apply to many documents that are irrelevant to Plaintiffs' claims in this case.

Defendant also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning "presentations," "redistricting criteria," and "meeting minutes" go to the legislators' mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. See Gravel v. United States, 408 U.S. 606, 625 (1972); Hughes v. Tarrant County, 948 F.2d 918, 921 (5th Cir. 1991).

Defendant further objects to the phrase "but not limited to" as vague and overbroad. Defendant cannot precisely discern what other documents this phrase encompasses and, therefore, will use reasonable understanding of this request to search for any documents outside of those categories Plaintiff specifically delineate.

Defendant further objects to this request insomuch as it asks for "or other communications." This phrase is vague and ambiguous. Because Defendant cannot discern what "other communications" Plaintiff are referring to, Defendant will not consider this phrase in searching for, and producing, responsive documents.

Defendant further objects to the request because it seeks documents extending to "the present." As explained above, documents created after October 25, 2021, are necessarily irrelevant.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

11. All documents relating to redistricting and Thomas Hofeller, Jerad Najvar, Andy Taylor or Eric Opiela, from January 1, 2018 to the present.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant objects to this request because it is overbroad. The request calls for "all documents relating to redistricting and Thomas Hofeller, Jerad Najvar, Andy Taylor or Eric Opiela," without any qualifications (other than the listed recipients and date range). That is an extremely broad request and will necessarily apply to documents that are irrelevant to Plaintiffs' claims in this case.

Defendant also objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product.

Defendant objects to this request as overbroad in scope of time. Requiring documents between January 1, 2018 and December 31, 2020 is overbroad, irrelevant and unlikely to lead to the discovery of admissible evidence. The special Legislative session in which the maps Plaintiffs challenge were drawn occurred in September and October of 2021. There is no basis for demanded documents created a year or more from that time period. Moreover, because the 3rd Special Session ended in October 2021, Plaintiffs' requests for documents beyond October 2021 are similarly overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Plaintiffs' claims require only evidence as to how and why the redistricting maps were drawn at the time of their drawing. In the interest of compromise, but without waiving these objections, Defendant will limit its search of documents to the time period of January 1, 2021 to October 25, 2021.

Defendant further objects to this request insomuch as it asks for "or other communications." This phrase is vague and ambiguous. Because Defendant cannot discern what "other communications" Plaintiffs are referring to, Defendant will not consider this phrase in searching for, and producing, responsive documents.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

12. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship relating to redistricting of the Texas Senate or Texas SBOE exchanged between, among, or with or within: the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, any legislator's staff, any SBOE member, any SBOE member's staff, the Committee on Redistricting or any member or staff thereof, the Senate Special Committee on Redistricting or any member or staff thereof, the Conference Committee regarding redistricting plan for the U.S. House of Representatives (Senate Bill 6) or any member thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas Senate, any candidate for the Texas SBOE, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas Senate, any campaign for the Texas SBOE, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any professor, any expert, any law firm or attorney, any vendor, any group or organization or any member of the public

OBJECTIONS:

> For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.
>
> Defendant objects to this request because it is overbroad. The request calls for "[a]ll documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship relating to redistricting of the Texas Senate or Texas SBOE,"

without any qualifications (other than the list of recipients). That is an extremely broad request and will likely apply to many documents that are irrelevant to Plaintiffs' claims in this case.

Defendant also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. See Gravel v. United States, 408 U.S. 606, 625 (1972); Hughes v. Tarrant County, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Secretary and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." Bogan v. Scott-Harris, 523 U.S. 44, 55 (1998) (citing Supreme Court of Virginia v. Consumers Union of U. S., Inc., 446 U.S. 719, 731–34 (198

Defendant also objects to this request because it calls for documents that are irrelevant to Plaintiffs' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between candidates, political parties, lobbyists, and the other third parties mentioned would be relevant

Defendant objects to this request to the extent it seeks documents outside of Defendant's possession, custody, or control.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

13. All documents relating to payment for services; agreement for representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting of the Texas Senate or Texas SBOE, including but not limited to any of the following individuals or entities: Anna Mackin, Sean Opperman, Adam Foltz, Forward Strategies LLC (Wisconsin) or any employee thereof, Chris Gober, Christopher D. Hilton, Matthew H. Frederick, Todd Disher, Butler Snow LLP or any employee thereof, Akin Gump Strauss Hauer & Feld LLP or any employee thereof, Michael Best Strategies or any employee thereof, Michael Best Consulting LLC or any employee thereof, any consultant, any political operative, any expert, any professor, the Office

of the Attorney General of Texas, any other law firm, any other attorney, any other vendor, or any other person or entity

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant objects to this request because it is substantially overbroad. Absolutely no limitation is provided on this request as evidenced by the use of the phrase "any other person or entity". That request is substantially overbroad, unduly burdensome, and not proportional to the needs of the case.

Defendant also objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. Bogan v. Scott-Harris, 523 U.S. 44, 55 (1998) (citing Supreme Court of Virginia v. Consumers Union of U. S., Inc., 446 U.S. 719, 731–34 (1980)). And documents relating to and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Defendant further objects to the phrase "but not limited to" as vague and overbroad. Defendant cannot precisely discern what other documents this phrase encompasses and, therefore, will use reasonable understanding of this request to search for any documents outside of those categories Plaintiffs specifically delineate.

Defendant further objects to this request insomuch as it asks for contracts with "any other person or entity." This phrase is vague and ambiguous. Because Defendant cannot discern what "other person or entity" Plaintiffs are referring to, Defendant will make a reasonable determination of what this phrase means in searching for, and producing, responsive documents.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

14. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 1.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

15. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 2.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

16. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 3.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

17. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 4.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Sections I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

18. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 5.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Sections I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

19. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 6.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

20. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 7.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

21. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 8.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

22. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 9.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

23. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 10.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

24. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 11.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Sections I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

25. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 21.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

26. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 13.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

27. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 14.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

28. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 15.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

29. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 16.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

30. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 17.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Sections I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

31. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 18.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

32. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 19.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

33. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 12.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Sections I, II, and III.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

34. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 12.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

35. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 22.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Sections I, II, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

36. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 23.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

37. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 42.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

38. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 52.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

39. Please produce any and all documents relied on for or which you may use to support your answer to Interrogatory No. 62.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

40. All documents responsive to, identified in or relied on in responding to any request for admission served upon Defendants by LULAC Plaintiffs in relation to this action.

OBJECTIONS:

For the sake of brevity, Defendant incorporates, by reference, the objections detailed immediately above in Section I, and II.

Defendant also incorporates all objections made to this interrogatory as they are found in Defendant's Interrogatory Responses and any amended responses.

Defendant objects to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney-client privilege.

RESPONSE:

Defendant has conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

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]

DEFENDANTS' OBJECTIONS AND RESPONSES TO NAACP'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Plaintiff Texas State Conference of the NAACP ("Texas NAACP"), by and through its attorney of record, Lindsey B. Cohan, Dechert LLP, 515 Congress Avenue, Suite 1400, Austin, TX 78701.

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendants, Greg Abbott, in his official capacity as Governor of Texas, John Scott, in his official capacity as Secretary of State, Jose Esparza, in his official capacity as Deputy Secretary of State, Dade Phelan, in his official capacity as Speaker of the Texas House of Representatives, and Dan Patrick, in his official capacity as Lieutenant Governor of Texas, provide these Objections and Responses to the Texas NAACP's First Request for Production of Documents.

Date: April 4, 2022

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

/s/ Patrick K. Sweeten
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2022, the attached Objections and Responses to the Texas NAACP's Subpoena for Documents and Records was served on opposing counsel via electronic mail to the foregoing:

Gary Bledsoe (garybledsoe@sbcglobal.net)
Ezra Rosenberg (erosenberg@lawyerscommittee.org)
Lindsey Cohan (lindsey.cohan@dechert.com)

/s/ Patrick K. Sweeten
PATRICK K. SWEETEN
Deputy Attorney General for Special Litigation

OBJECTIONS RELEVANT TO EACH REQUEST

Defendants assert that each of the following objections applies specifically to each request. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

Texas NAACP filed an amended complaint, dismissing the Lieutenant Governor and Speaker of the House as defendants. Thus, they are not parties to this dispute, and these requests are not properly directed at them.

There is currently a protective order in place between the parties. To the extent that documents may be identified that are discoverable but are not contemplated by the current protective order, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules allow only for discovery of "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). The twin demands for relevancy and proportionality "are related but distinct requirements." *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party's claims or defenses, "it is not necessary to determine whether it would be proportional if it *were* relevant." *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at *3 (E.D. La. Mar. 30, 2016). Conversely, "relevance alone does not translate into automatic discoverability" because "[a]n assessment of proportionality is essential." *Motorola Sols., Inc. v. Hytera Commc'ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Defendants object to these requests to the extent that the information sought is either irrelevant or disproportionate.

Given Defendants' role as the Governor of Texas and Secretary of State of Texas, and the scope of the requests, much of the requested production is subject to the deliberative process privilege. This privilege covers "documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Dep't of the Interior v. Klamath Water Users Prot. Ass'n*, 532 U.S. 1, 8 (2001) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)). It "rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance 'the quality of agency decisions.'" *Id.* at 8–9 (quoting *Sears, Roebuck & Co.*, 421 U.S. at 151). Under this privilege, deliberative and predicational oral and written communications, as well as related facts, are protected from disclosure. *See, e.g.*, *Swanston v. City of Plano*, No. 4:19-cv-412, 2020 WL 4732214, at *2 (E.D. Tex. Aug. 14, 2020) (citing *Skelton v. U.S. Postal Serv.*, 678 F.2d 35, 38 (5th Cir. 1982)).

In addition, given that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has "taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries." *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615–16 (1972). And requesting communications between the office of the Governor, the office of the Lieutenant Governor, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has

repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). Here, Plaintiff's attempt to compel disclosure of a legislator's "thought processes or the communications [he] had with other legislators" through Defendant's official-capacity role falls within the well-established contours of legislative privilege. *Perez v. Perry*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014).

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Defendants reserve the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Defendants likewise do not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to Plaintiff's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,[1] ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Defendants object to Plaintiff's requests to the extent that they fall short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Defendants' rights to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiff's characterization of any facts, circumstances, or legal obligations. Defendants reserve the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

[1] https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf

Defendants will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Defendants object to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Defendants will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

Defendants object to the definition of "Defendants" which includes *every* past or present employee, staff, interns, representative, designee, attorney, advisor, consultant, contractor, or agent of the State of Texas. Such a definition is unduly burdensome and significantly overbroad as it is not limited in any way, much less to those persons who were involved in the redistricting process during the 87th Legislative Session. Defendants further object to this definition's inclusion of "attorneys" to the extent it calls for documents from that source that are subject to attorney-client and/or work product privilege. Defendants also object to this definition's inclusion of any "persons…purporting to act" on behalf of Defendants. A person "purporting" to be an agent of the State of Texas does not make them an agent of the State of Texas by any rational reasoning. As such, this inclusion is nonsensical and will not be considered during Defendants' search of responsive discovery.

Defendants object to the definition of "document" to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Defendants object to the definitions of "Legislator," "Member of the U.S. House of Representatives," "individual person," "entity," and "organization," *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Defendants object to the implied application to any related persons or entities without specific enumeration.

Defendants object to Plaintiff's demand in ¶16 (p.4) that "Each document produced should be categorized by the number of the document request in response to which it is produced." Federal Rule of Civil Procedure 34(b)(2)(E)(i) clearly permits a party to "produce documents as they are kept in the usual course of business *or*…organize and label them to correspond to the categories in the request." Defendants do not agree to waive this option, nor any other option they are permitted to use in responding to these requests under Federal Rule of Civil Procedure 34 or any other Federal or local rule.

Defendants object to Plaintiff's demand in ¶19 (p.4-5) that Defendants produce an "unduly burdensome" log wherever such objection is raised in response to a request. Neither the local rules nor Federal Rules require such a log and Defendants will not agree to supply such a log.

Defendant objects to Plaintiff's instruction in ¶ 24 that "unless otherwise specified, all document requests concern the period of time from January 1, 2019 to the present." Requiring documents between January 1, 2019 and December 31, 2021 is overbroad, irrelevant and unlikely to lead to the discovery of admissible evidence. The special Legislative session in which the maps Plaintiff challenges were drawn occurred in September and October of 2021. There is no basis for demanded documents

created a year or more from that time period. Moreover, because the 3rd Special Session ended in October 2021, Plaintiff's requests for documents beyond October 2021 are similarly overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Plaintiff's claims require only evidence as to how and why the redistricting maps were drawn at the time of their drawing. In the interest of compromise, but without waiving these objections, Defendant will limit its search of documents to the time period of January 1, 2021 to October 25, 2021. Any documents created after the Governor signed the bill are necessarily irrelevant.

OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION

1. All Documents created or received by any Defendant Relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives, the Texas House, or the Texas Senate at any stage of the redistricting process, including but not limited to the Redistricting Plans. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal;

b. the impetus, rationale, background, or motivation for the Redistricting Plans;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software, each RED report, each PAR report, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to the pairing of any incumbents in any such Redistricting proposal;

e. all Documents Relating to any Redistricting amendment, whether partial or total, to each such proposal;

f. all Documents Relating to negotiations regarding any Redistricting proposal;

g. any concept maps or other pre-drafting Documents provided to, shown to, or discussed with Defendants;

h. any academic or expert materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Texas or elsewhere, articles, or litigation documents viewed or consulted;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind – including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, and (3) voter turnout (including Spanish Surname Voter Turnout) – that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Texas and the number of majority party seats that might be provided for in any Redistricting proposal; and

k. all correspondence to or from any Defendant, via e-mail, text, or any other means of communicating in which any redistricting proposal was discussed.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendant objects to this request because it seeks documents that are subject to legislative privilege, attorney–client privilege, attorney work-product privilege, deliberative-process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses "from any source" is likely to encompass documents that are protected by legislative privilege. So too will documents related to "negotiations regarding any redistricting proposal." Requesting "the origination(s)" and "the impetus, rationale, background or motivation" of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were "considered" by Legislators, "drafts in the development or revision of" redistricting proposals, "negotiations," and "calculations, reports, audits, estimates, projections, or other analyses" would be subject to legislative privilege for the same reason.

Defendant further objects to this request because it asks them to gather publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendant directs Plaintiffs to the Texas Legislative Council's Capitol Data Portal,[2] where such information may be found. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involves, such information may be found at the Texas Senate[3] and Texas House of Representatives[4] websites, as well as on the Texas Legislature Online ("TLO") website.[5] Insofar as the request seeks such information specifically considered by Defendant, the request calls for information subject to the legislative privilege.

Defendant objects to this request requiring documents "developed, seen, discussed or considered by *any person*," which is overbroad and vague. The responding party is the Secretary of State, therefore, any documents searched for, and produced, will be limited to those "developed, seen, discussed or considered by" Defendant John Scott, in his official capacity as the Secretary of State.

Defendant further objects to the phrase "but not limited to" as vague and overbroad. Defendant cannot precisely discern what other documents this phrase encompasses and, therefore, will use reasonable understanding of this request to search for any documents outside of those categories Plaintiff specifically delineates.

Lastly, insofar as the request seeks legal analysis concerning the "effect or impact" of redistricting proposals on "minority voters," "existing or emerging minority opportunity districts," or "voter turnout," it seeks information that may be subject to the attorney–client privilege or constitute attorney work product.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

2. All Documents Relating to the redistricting process for the Texas delegation to the U.S. House of Representatives, the Texas House, or the Texas Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations,

[2] https://data.capitol.texas.gov/organization/tlc.
[3] https://senate.texas.gov/index.php.
[4] https://house.texas.gov/.
[5] https://capitol.texas.gov/Home.aspx.

and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, such as the Texas Public Policy Foundation, True the Vote, the Texas Demographic Center, or any other third-party organization, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants' social media account or since deleted and including any comments made by Defendants on their own posts or other social media users' posts);

e. a list of all individuals requesting to, invited to, permitted to, or considered to testify in the Texas Senate and the Texas House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Texas House and Texas Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were reviewed by Republican Legislators or officials before they could be considered by the entire Texas Senate or Texas House;

i. all Documents Relating to the disregarding of the "delegation rule" that permitted delegations to agree on the maps that impact them;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by the Republican Party or any division, sub-division, or local branch of the Republican Party, including the Republican Party of Texas, the Harris County Republican Party, the Dallas County Republican Party, the Tarrant County Republican Party, and the Travis County Republican Party;

k. all Documents Relating to the placement, or lack thereof, of African-American, Latinx, Asian, or other minority Senators and African-American, Latinx, Asian, or other minority Representatives within the Texas Senate and Texas House committees on election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population, Citizen Voting Age Population, and/or Total Population with regard to the Redistricting Plans or the drawing of any district;

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents Relating to legislative seats or congressional seats considered protected under Section 2 of the Voting Rights Act;

p. all Documents Relating to the group or groups considered protected under Section 2 of the Voting Rights Act;

q. all Documents Relating to whether coalition districts are recognized under Section 2 of the Voting Rights Act;

r. all Documents Relating to any discussion of any coalition, disagreement, or division between African American and Latino voters; and

s. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the "planning" and "timing" of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Requesting all documents and amendments that were "considered by" the individual Legislators and "calculations, reports, audits, estimates, projections, or other analyses" would be subject to legislative privilege for the same reason.

Defendant further objects to this request because it asks them to gather publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendant directs Plaintiffs to the Texas Legislative Council's Capitol Data Portal,[6] where such information may be found. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involves, such information may be found at the Texas Senate[7] and Texas House of Representatives[8] websites, as well as on the Texas Legislature Online ("TLO") website.[9] The requests also seek data from Defendants' social media accounts, which is also publicly-available.

Lastly, insofar as the request seeks legal analysis concerning the "effect or impact" of redistricting proposals on "minority voters," "existing or emerging minority opportunity districts," or "voter turnout," Section 2, opportunity districts, or other legal subjects, it seeks information that may be subject to the attorney–client privilege or constitute attorney work product.

[6] https://data.capitol.texas.gov/organization/tlc.
[7] https://senate.texas.gov/index.php.
[8] https://house.texas.gov/.
[9] https://capitol.texas.gov/Home.aspx.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

3. All Documents Relating to any legislation discussed, considered, or passed where such legislation related to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including as relates to those who identify as white, Anglo, Caucasian, or European-American;

b. the process or standards by which bail amounts are determined for individuals accused of crimes, the process and standards by which these individuals are released on bail, and the standards for who is allowed to post bail; and

c. rules, regulations, penalties, and other guidance relating to elections.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it calls for documents that are irrelevant to Plaintiff's claims in this case. Specifically, it is unclear without further specification why documents relating to critical race theory, the history of slavery, or the process of determining bail amounts would be relevant. Texas's redistricting determinations are not subject to any alternative standard of review based on prior racial history, state legislation, or bail process.

Defendant also objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the "consideration" and "discussion" of legislation. These go to mental impressions, legislative strategy, and legislative process, which are at the core of the legislative privilege.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections.

Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

4. For January 1, 2010 until the present, all committee rules, legislative counsel rules, procedural memos, and guidelines for the Texas House and Texas Senate committees on elections, state affairs, and redistricting or any conference committee appointed to address bills being passed through any of these committees.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it asks them to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involves, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online ("TLO") website. See https://senate.texas.gov/index.php (Senate); https://house.texas.gov/ (House); https://capitol.texas.gov/Home.aspx (TLO).

Defendant also objects to this request because insofar as it calls for legislative documents not within the public-record, it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the "consideration" and "discussion" of legislation. These go to mental impressions, legislative strategy, and legislative process, which are at the core of the legislative privilege.

Defendant further objects to the request because it seeks all documents extending to "the present." As explained above, documents created after October 25, 2021, are necessarily irrelevant.

RESPONSE:

5. For January 1, 2017 until the present, the legislative agenda and legislative priorities for each Defendant.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it is overbroad. The request calls for "the legislative priorities," without any qualifications (other than the listed recipients). That is an extremely broad request and will necessarily apply to make documents that are irrelevant to Plaintiff's claims in this case.

Defendants also object to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning "legislative agenda and legislative priorities" go to the legislators' mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Defendant further objects to the request because it seeks all documents extending to "the present." As explained above, documents created after October 25, 2021, are necessarily irrelevant.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

6. All Documents Relating to Redistricting for the Texas delegation to the U.S. House of Representatives, the Texas House, or the Texas Senate exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House or Texas Senate, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House or Texas Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or

attorney, any vendor, any other political or community group or organization, or any member of the public.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it is overbroad. The request calls for "all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives," without any qualifications (other than the listed recipients). That is an extremely broad request and will necessarily apply to make documents that are irrelevant to Plaintiff's claims in this case.

Defendants also object to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Lieutenant Governor, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

Defendants also object to this request because it calls for documents that are irrelevant to Plaintiff's claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between candidates, political parties, lobbyists, and the other third parties mentioned would be relevant.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

7. All other Documents Relating to Redistricting for the Texas delegation to the U.S. House of Representatives, the Texas House, or the Texas Senate from July 1, 2021 to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations,

scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it is overbroad. The request calls for "all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives," without any qualifications (other than the listed recipients). That is an extremely broad request and will necessarily apply to make documents that are irrelevant to Plaintiff's claims in this case.

Defendants also object to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning "presentations," "redistricting criteria," and "meeting minutes" go to the legislators' mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Defendant further objects to the request because it seeks all documents extending to "the present." As explained above, documents created after October 25, 2021, are necessarily irrelevant.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

8. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Texas Legislative Council, any member of the U.S. House of Representatives, any

candidate for the Texas House or Texas Senate, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House or Texas Senate, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it is overbroad. The request calls for "all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes," without any qualifications (other than the listed recipients). That is an extremely broad request and will likely apply to make documents that are irrelevant to Plaintiff's claims in this case.

Defendants also object to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Lieutenant Governor, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

Defendants also object to this request because it calls for documents that are irrelevant to Plaintiff's claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between candidates, political parties, lobbyists, and the other third parties mentioned would be relevant.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

9. All Documents Relating to payment for services, agreements of representation, or contracts with any consultant, any political operative, any expert, any law firm, any attorney, any vendor, or any other person or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. All Documents Relating to the availability of any attorney to provide assistance to Defendants on Redistricting matters before the legislature; and

b. All Documents Relating to plans for any person or entity to be present in or near the legislature during or near the time of any committee hearing on Redistricting or during or near the time of Floor debate on redistricting.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it is substantially overbroad. Absolutely no limitation is provided on this request as evidenced by the use of the phrase "any other person or entity." That request is substantially overbroad, unduly burdensome and not proportional to the needs of the case.

In addition, Defendants object to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Defendants and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld

10. All Documents that Defendants may use to support any contention that the Redistricting Plans were not enacted with a discriminatory purpose, to the extent that Defendants take that position.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it calls for documents that are covered by the legislative privilege. First, to the extent this request seeks communications between legislators regarding the enactment of the above-mentioned Congressional Districts, communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). Second, this request makes no limitation on the documents requested, which indicates Plaintiff expects production of the impetus, rationale, background, or motivation of certain legislative proposals. To the extent this is so, this request is objectionable as seeking the exposure of legislative thought processes and mental impressions, which are also subject to legislative privilege.

Defendants further object to the extent this request seeks documents or communications subject to attorney-client and/or attorney work product privilege. Defendants utilized counsel during the process of enacting the above-mentioned Redistricting Plans and the documents related to that endeavor are privileged.

Defendants further object to this request as nonsensical as written. This request demands Defendants produce documents that prove a negative. This is harassing and unduly burdensome on Defendants to the extent it requires them to produce every document pertaining in any way to the redistricting process specified above to prove there is nothing that supports the contention that the districts were enacted with a discriminatory purpose. In addition, Defendants are not required to marshal evidence in defense of Plaintiff's claims at this stage. Defendants will disclose evidence supporting their defenses in due course and in compliance with Federal and local Rules, and any Court orders.

Defendants also object to the overbroad nature of the phrase "discriminatory purpose." It is Defendants understanding from Plaintiff's complaint that its claim of discriminatory purpose

is limited to a *racial* discriminatory purpose. Defendants' search for documents responsive to this request will, therefore, be limited in the same manner.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

11. For any time period, all Documents that Defendants may use to support the contention that the Redistricting Plans configurations do not have discriminatory results, as defined by 52 U.S.C. § 10301, to the extent that Defendants take that position.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request because it calls for documents that are covered by the legislative privilege. First, to the extent this request seeks communications between legislators regarding the enactment of the above-mentioned Districts, communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). Second, this request makes no limitation on the documents requested, which indicates Plaintiff expects production of the impetus, rationale, background, or motivation of certain legislative proposals. To the extent this is so, this request is objectionable as seeking the exposure of legislative thought processes and mental impressions, which are also subject to legislative privilege.

Defendants further object to the extent this request seeks documents or communications subject to attorney-client and/or attorney work product privilege. Defendants utilized counsel during the process of enacting the above-mentioned Districts and the documents related to that endeavor are privileged.

Defendants further object to this request as nonsensical as written. This request demands Defendants produce documents that prove a negative. This is harassing and unduly burdensome on Defendants to the extent it requires them to produce every document pertaining in any way to the districts specified above to prove there is nothing that supports the contention that the districts were enacted with a discriminatory purpose. In addition, Defendants are not required to marshal evidence in defense of Plaintiff's claims at this stage. Defendants will disclose evidence supporting their defenses in due course and in compliance with Federal and local Rules, and any Court orders.

Defendants also object to the overbroad nature of the phrase "discriminatory purpose." It is Defendants understanding from Plaintiff's complaint that its claim of discriminatory purpose is limited to a *racial* discriminatory purpose. Defendants' search for documents responsive to this request will, therefore, be limited in the same manner.

Defendant further objects to the request because it seeks all documents for "any time period." As explained above, documents created after October 25, 2021, are necessarily irrelevant.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld

12. For any time period, all Documents produced to other parties in the above captioned

dispute.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request on the basis that documents produced to other parties are not necessarily responsive to Plaintiff's requests. These redistricting cases involve many different parties, with many different claims, whose challenges encompass many different districts. Requesting all documents produced to all parties is unduly burdensome will not reasonably aid the development of Plaintiff's particular claims. Defendants will not produce documents pursuant to this request absent a clarification of the scope of the documents desired, with an appropriate explanation of why the precise documents requested are relevant to Plaintiff's claims in this case.

Defendants object to the extent this request seeks documents subject to withholding based on legislative, work product and/or attorney-client privilege.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Texas NAACP Relating to this action.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request on the basis that documents produced to other parties are not necessarily responsive to Plaintiff's requests. These redistricting cases involve many different parties, with many different claims, whose challenges encompass many different districts. Requesting all documents produced to all parties is unduly burdensome will not reasonably aid the development of Plaintiff's particular claims. Defendants will not produce documents pursuant to this request absent a clarification of the scope of the documents desired, with an appropriate explanation of why the precise documents requested are relevant to Plaintiff's claims in this case.

Defendants object to the extent this request seeks documents subject to withholding based on legislative, work product and/or attorney-client privilege.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

14. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Texas NAACP Relating to this action.

OBJECTIONS:

For brevity, Defendants incorporate by reference the general objections stated above.

Defendants object to this request on the basis that documents produced to other parties are not necessarily responsive to Plaintiff's requests. These redistricting cases involve many different parties, with many different claims, whose challenges encompass many different districts. Requesting all documents produced to all parties is unduly burdensome will not reasonably aid the development of Plaintiff's particular claims. Defendants will not produce documents pursuant to this request absent a clarification of the scope of the documents

desired, with an appropriate explanation of why the precise documents requested are relevant to Plaintiff's claims in this case.

Defendants object to the extent this request seeks documents subject to withholding based on legislative, work product and/or attorney-client privilege.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

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April 26, 2022

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RE: Defendants' Discovery Objections, *LULAC v. Abbott*, No. 3:21-cv-259-DCG-JES-JVB (W.D. Tex.)

Dear Counsel,

I write to respond to your clients' objections to certain discovery requests propounded by LULAC Plaintiffs in their First Set of Interrogatories and First Set of Requests for Production of Documents.[1] I send this letter in advance of our meet and confer in the hope that we can narrow some of the areas of disagreement between the parties.[2]

I. Defendants' Relevance and Proportionality Objections are Unfounded.

Defendants Greg Abbott and John Scott improperly assert relevance and proportionality objections to each of LULAC Plaintiffs' discovery requests.

[1] Specifically, this letter concerns the objections raised in: Defendant Greg Abbott's March 24, 2022 Objections and Answers to LULAC's First Set of Interrogatories ("Abbott Interrogatories Objections"); Defendant John Scott's March 24, 2022 Objections and Answers to LULAC's First Set of Interrogatories ("Scott Interrogatories Objections"); Defendant Abbott's April 4, 2022 Objections and Responses to LULAC Plaintiffs' First Request for Production of Documents ("Abbott RFP Objections"); and Defendant Scott's April 4, 2022 Objections and Responses to LULAC Plaintiffs' First Request for Production of Documents ("Scott RFP Objections").

[2] On April 21, 2022, LULAC Plaintiffs filed their Second Amended Complaint, adding the State of Texas as a defendant. Dkt. 237. No discovery has been propounded on the State of Texas as of the date of this letter. For ease of readability, unless otherwise noted, any use of "Defendants" in this letter shall refer to Defendants Greg Abbott and John Scott, upon whom LULAC Plaintiffs have served discovery requests.

Under Rule 26(b), "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b). "Relevant information encompasses any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *St. Pierre v. Dearborn Nat'l Life Ins. Co.*, No. 3:19-cv-223-DCG, 2020 WL 6122555, at *3 (W.D. Tex. Apr. 14, 2020). "Relevancy is broadly construed, and a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the claim or defense of any party." *Id.* (quotation omitted).

Measured against the scope of relevance and proportionality, Defendants' objections lack merit. LULAC Plaintiffs have asserted claims for which legislative intent is highly relevant, and documents regarding proposed redistricting plans and amendments, data related to those plans, and communications and analyses related to proposed plans or amendments—or the process by which those plans or amendments would be considered—are all plainly relevant to intent. Additionally, documents exchanged between candidates, political parties, lobbyists, and other third parties may shed light on the intent of legislators or any influence those individuals may have had over the redistricting process. Further, as Defendants have claimed, "this case requires a district-by-district analysis. Since these challenges are statewide, that means that every single district across the entire state of Texas must be analyzed[.]" Dkt. 211 at 1 (cleaned up). Thus, according to Defendants, the instant suit calls for a great "breadth of information," and "much of the relevant information will be district-specific." *Id.* at 2. Given the need for this "breadth of information," LULAC Plaintiffs' discovery requests are relevant and proportional, and Defendants must withdraw their relevance and proportionality objections.

II. Defendants' Privilege Objections are Improper.

Defendants assert objections based on various and incorrect claims of privilege to every discovery request. Defendants claim that certain requested documents are subject to the legislative privilege, Texas Government Code § 323.017, the deliberative-process privilege, the attorney-client privilege, and the attorney work-product privilege. But Defendants are incorrect.

First, Defendants improperly assert legislative privilege objections to LULAC Plaintiffs' discovery requests. As to each of LULAC Plaintiffs' requests for production of documents, Defendants—members of the executive branch—assert that, "given that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege," Abbott RFP Objections at 3; Scott RFP Objections at 3, and they similarly invoke legislative privilege as to each of LULAC Plaintiffs' interrogatories, Abbott Interrogatories Objections at 3; Scott Interrogatories Objections at 3. Regarding the application of legislative privilege to individuals outside of the legislative branch, Defendants Abbott and Scott state that "the Supreme Court has repeatedly recognized that 'officials outside the legislative branch are entitled to

legislative *immunity* when they perform legislative functions.'" Abbott RFP Objections at 3, 17, 22; Scott RFP Objections at 3, 17, 22 (emphasis added). Thus, according to Defendants, they may assert legislative privilege over documents and answers responsive to LULAC Plaintiffs' discovery requests.

However, courts in the Fifth Circuit have rejected that position. As the Fifth Circuit has made clear, common-law legislative privilege is "an evidentiary privilege, 'governed by federal common law, as applied through Rule 501 of the Federal Rules of Evidence.'" *Jefferson Cmty. Health Care Cntrs., Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 624 (5th Cir. 2017) (quoting *Perez v. Perry*, No. SA-11-cv-360, 2014 WL 106927, at *1 (W.D. Tex. Jan. 8, 2014)). And regarding this privilege, courts in this Circuit—including the three-judge court in the prior round of Texas redistricting litigation—have consistently held that "neither the Governor, nor the Secretary of State or the State of Texas has standing to assert the legislative privilege on behalf of any legislator or staff member." *Perez*, 2014 WL 106927, at *1; *see also Gilby v. Hughes*, 471 F. Supp. 3d 763, 768 (W.D. Tex. 2020); *TitleMax of Tex., Inc. v. City of Dallas*, No. 3:21-cv-1040, 2022 WL326566, at *6 (N.D. Tex. Feb. 3, 2022). That is because "[l]egislative privilege is a personal one and may be waived or asserted" by only each individual legislator. *Gilby*, 471 F. Supp. 3d at 768 (citing *Perez*, 2014 WL 106927, at *1). Nor, of course, are Defendants entitled to assert the legislative privilege on their own behalf for documents within their own agencies, as they are members of the executive branch—*not* the legislative branch.[3] *See, e.g.*, *Perez*, 2014 WL 106927, at *2. Accordingly, Defendants cannot invoke legislative privilege to object to LULAC Plaintiffs' discovery requests.

Nor does Texas Government Code § 323.017—upon which Defendants rely as a basis for asserting legislative privilege—counsel otherwise, as it is inapplicable in this case.[4] "Federal Rule of Evidence 501 provides that federal common law of privilege

[3] Defendants' mistaken invocation of legislative privilege appears to have resulted, at least in part, from a conflation of legislative *immunity* and legislative *privilege*, applying case law regarding the former to the latter. *See, e.g.*, Abbott RFP Objections at 3, 17, 22; Scott RFP Objections at 3, 17, 22. But as the Fifth Circuit has emphasized, the two are distinct concepts. *Jefferson Cmty.*, 849 F.3d at 624 (citing *Perez*, 2014 WL 106927, at *2). Indeed, while legislative immunity is absolute, legislative privilege for state lawmakers is qualified, and the "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*, 2014 WL 106927, at *1). Thus, even if Defendants could invoke legislative privilege—and they cannot—they have failed to show why such a qualified privilege applies to any of the responses here. *See Perez*, 2014 WL 106927, at *2 ("It is well settled that the party asserting the privilege has the burden of establishing its applicability.").

[4] Section 323.017 of the Texas Government Code provides, among other things:

> Communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor, an officer of the house or senate, a legislative agency, office, or committee or a member of the staff of any of those officers or entities and an assistant or employee of the council that relate to a request by the officer or entity for information, advice, or

applies in general in federal cases." *Hobart v. City of Stafford*, 784 F. Supp. 2d 732, 764 n.22 (S.D. Tex. 2011); *see also TitleMax*, 2022 WL326566, at *2. The instant suit is pending in federal court and arises under federal causes of action. *See* Dkt. 237. Accordingly, "the Court must apply the federal common law as to legislative privilege, even though the privilege as applied under Texas law may offer more protection" to individuals who invoke it. *TitleMax*, 2022 WL326566, at *4. As such, Texas Government Code § 323.017 is inapplicable here, and Defendants cannot object to LULAC Plaintiffs' discovery requests on the basis of legislative privilege.

Accordingly, Defendants must withdraw their assertions of legislative privilege and privilege under Texas Government Code § 323.017.

Second, Defendants incorrectly invoke the deliberative-process privilege. Although the "[d]eliberative-process privilege protects candid discussions *within* the executive branch needed for optimum administrative decision making," that "rationale does not support privilege for communication where the agency is not the decision maker and the separation of powers veil has been pierced." *Gilby*, 471 F. Supp. 3d at 767 (emphasis added). "At issue here is not the internal decision-making processes of the executive branch, but instead a part of the legislative process." *Id.* By invoking the deliberative-process privilege in the context of legislative decisionmaking, Defendants essentially "ask[] the court to expand deliberative-process privilege to protect legislators' need for flexibility to obtain candid input about pending legislation from the Executive Branch that will ultimately enforce, implement, or provide interpretations of law." *Id.* (cleaned up). That position, however, "is inconsistent with the purposes of both legislative privilege and deliberative-process privilege." *Id.* at 767–68. Accordingly, Defendants may not object to LULAC Plaintiffs' discovery requests based on the deliberative-process privilege and must withdraw their assertions of that privilege.

LULAC Plaintiffs are willing to confer about any remaining privilege concerns that Defendants may maintain, should any exist, as well as how such claims can be fairly evaluated.

III. Defendants' Objections to Definitions in LULAC Plaintiffs' Discovery Requests are Without Merit.

Defendants object to the definition of "you" or "your" and "Legislator" in LULAC Plaintiffs' discovery requests because they include the phrase "purporting to act," asserting that the phrase is nonsensical, unduly burdensome, and calls for responses outside the bounds of the discovery rules—and therefore will not be considered in their search for responsive discovery. *See* Abbott Interrogatories Objections at 4; Scott Interrogatories Objections at 4; Abbott RFP Objections at 5; Scott RFP Objections at 5.

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opinions from an assistant or employee of the council are confidential and subject to legislative privilege.

Tex. Gov't Code § 323.017(a).

However, Defendants' objection is without merit. Notably, in Defendants' own discovery requests to LULAC Plaintiffs, "you" or "your" is defined as:

> "Plaintiff," "you," and "your" refers to League of United Latin American Citizens, Southwest Voter Registration Education Project, Mi Familia Vota, American GI Forum, La Union Del Pueblo Entero, Mexican American Bar Association of Texas, Texas Hispanics Organized for Political Education, William C. Velasquez Institute, Fiel Houston Inc., Texas Association of Latino Administrators and Superintendents, Proyecto Azteca, Reform Immigration for Texas Alliance, Workers Defense Project, Emelda Menendez, Gilberto Menendez, Jose Olivares, Florinda Chavez, Joey Cardenas, Paulita Sanchez, Jo Ann Acevedo, David Lopez, Diana Martinez Alexander, and Jeandra Ortiz, and any representative acting or *purporting to act* on their behalf, including but not limited to employees, attorneys, consultants, agents, and any other representative.

State Defendants' First Set of Interrogatories to LULAC Plaintiffs at 3 (emphasis added); *see also* State Defendants' First Request For Production To LULAC Plaintiffs at 3. Given Defendants' use of the same phrase in their own discovery requests, they concede that "purporting to act" is neither nonsensical nor unduly burdensome nor calling for responses outside the bounds of discovery. Accordingly, Defendants must withdraw their objections and accept the phrase in their search for responsive discovery.

Additionally, Defendants object to the definition of "you" or "your" in LULAC Plaintiffs' interrogatories because it includes the phrase "staff member," claiming that the inclusion of "staff member" is vague and unduly burdensome. *See* Abbott Interrogatories Objections at 4; Scott Interrogatories Objections at 4. However, Defendants' objections are without merit, as they fail to articulate how the inclusion of the word "staff member" is unduly burdensome. *Heller v. City of Dallas*, 303 F.R.D. 466, 490 (N.D. Tex. 2014) ("A party resisting discovery must show specifically how each interrogatory or document request is overly broad, unduly burdensome, or oppressive."). Moreover, where terms are not defined, Defendants "should exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in interrogatories," *id.* at 491 (quotation omitted), just as they do in other portions of their responses to LULAC Plaintiffs' discovery requests, *see, e.g.*, Abbott RFP Objections at 9 (objecting to "but not limited to" as vague and overbroad but nevertheless stating that they "will use reasonable understanding of this request to search for any documents"). Accordingly, Defendants must withdraw their objections to LULAC Plaintiffs' definition of "you" and "your" and fully respond to LULAC Plaintiffs' discovery requests.

IV. Defendants' Assertions that LULAC Plaintiffs' Discovery Requests are Overbroad, Vague, or Unduly Burdensome are Without Merit.

Defendants improperly assert that a number of LULAC Plaintiffs' discovery requests are overbroad, vague, or unduly burdensome.

First, Defendants' object in a boilerplate fashion to the definitions included in LULAC Plaintiffs' discovery requests. As to each of LULAC Plaintiffs' discovery requests, Defendants note they "object[] to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions." Abbott Interrogatories Objections at 4; Scott Interrogatories Objections at 4; Abbott RFP Objections at 4; Scott RFP Objections at 4. However, Defendants do not articulate the basis of their objection, thereby failing to meet their burden of "show[ing] how each discovery request is . . . objectionable." *See St. Pierre*, 2020 WL 6122555, at *2. Moreover, Defendants' recurring objections are also improper because they fail to indicate whether Defendants are withholding documents pursuant to their objections. *See* Fed. R. Civ. P. 34(b)(2)(C); *see also VeroBlue Farms USA Inc. v. Wulf*, --- F.R.D. ----, ---, 2021 WL 5176839, at *8 (N.D. Tex. Nov. 8, 2021). Accordingly, Defendants must withdraw these objections and respond to LULAC Plaintiffs' discovery requests consistent with the definitions set forth therein.

Second, Defendants improperly objected to LULAC Plaintiffs' instructions to search for documents from January 1, 2019 to the present, instead limiting their search to January 1, 2021 to October 25, 2021. Abbott RFP Objections at 6; Scott RFP Objections at 6. Testimony during the preliminary injunction hearing in this action revealed that legislators met prior to 2021 to discuss redistricting. Accordingly, documents prior to January 1, 2021 may provide evidence of legislators' intent and the development of the redistricting process, which is more than enough to satisfy the relevancy standard. *See St. Pierre*, 2020 612255, at *3. Moreover, Defendants fail to explain how LULAC Plaintiffs' instructed period of time is unduly burdensome. Accordingly, Defendants must withdraw their objections to the instructed period of time and fully respond to LULAC Plaintiffs' Interrogatories and Requests for Production to Defendants.

Third, regarding the requests for certain documents "developed, seen, discussed or considered by any person," Defendants improperly limit the scope of their responses.[5] More specifically, Defendants assert that, because only Abbott and Scott respond to these requests, "any documents searched for, and produced, will be limited to those 'developed, seen, discussed or considered'" by Abbott in his capacity as governor or Scott in his capacity as Secretary of State. *See, e.g.*, Abbott RFP Objections at 9. But that justification is unavailing. After all, "Rule 34 provides that, subject to the relevancy limitations of Rule 26, a party may serve on any other party a request 'to produce . . . items in the responding party's possession, custody, or control,'" and "a party can 'control' documents that are within the possession or custody of a non-party." *Perez v. Perry*, No. SA-11-cv-360, 2014 WL 1796661, at *1 (W.D. Tex. May 6, 2014) (quoting Fed. R. Civ. P. 34(a)(1)(A)); *see also St. Pierre*, 2020 WL 612255, at *4. Because Defendants may have in their possession, custody, or control documents that they

[5] As to this issue, Defendants object to LULAC Plaintiffs' Document Requests #1, 2, 5 and 6.

themselves may not have "developed, seen, discussed or considered," but that are nevertheless relevant to the case, Defendants must withdraw their objection and conduct a search for documents to the full extent called for by LULAC Plaintiffs' requests.

Fourth, Defendants make additional improper objections to LULAC Plaintiffs' Document Request #4. Document Request #4 for both Abbott and Scott seeks: "All documents relating to voting patterns in Texas elections with respect to race, ethnicity or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, information related to racially polarized voting or other analyses." Regarding this request, Defendants assert that "documents relating to voting patterns in Texas may well be irrelevant to Plaintiffs' claims—which are limited to several districts in the Texas House of Representatives map and Congressional map." Abbott RFP Objections at 13; Scott Objections at 13. That objection is improper for several reasons. Most significantly, because LULAC Plaintiffs challenge all redistricting plans for both their district-specific *and statewide* effects on Latino voting strength, *see* Dkt. 237 ¶¶ 177–78, voting trends across the state are relevant to their claims—a fact that, as noted above, Defendants have already acknowledged earlier in this case, *see* Section I; *see also* Dkt. 211 at 1–2. Moreover, Defendants fail to mention LULAC Plaintiffs' claims regarding the Texas Senate or Texas State Board of Education, suggesting that Defendants may not conduct searches regarding those claims in response to this request. Finally, Defendants fail to indicate the extent to which they will withhold documents or decline to search for documents in connection with this objection. *VeroBlue Farms*, --- F.R.D. at ----, 2021 WL 5176839, at *8.

Additionally, regarding Request #4, Defendants improperly object to the phrase "or other analyses" as vague and ambiguous. Regarding this objection, Defendants state that they "cannot discern what 'other analyses Plaintiffs are referring to" and therefore "will not consider this phrase in searching for, and producing, responsive documents." Abbott RFP Objections at 13; Scott Objections at 13. But again, to the extent that Defendants considered the phrase vague or ambiguous, they were obligated to exercise reason and common sense in interpreting the phrase and, in any event, if they believed "that the request is vague," they "should [have] attempted to obtain clarification prior to objecting on this ground." *Heller*, 303 F.R.D. at 491–92. For example, "other analyses" could be voter polls or scholarly articles. Accordingly, Defendants must withdraw these objections to Request #4 and conduct a search consistent with the full scope of that request.

Sixth, Defendants incorrectly object to the phrase "or other communications" in LULAC Plaintiffs' Document Requests #9 and 10.[6] Those requests call for certain documents including but not limited to "public statements, correspondence, emails, meeting minutes, call logs, presentations, studies, advocacy, letters or other communications." *See, e.g.*, Abbott RFP Objections at 18–19 (Request #10); *see also id.*

[6] Defendants also object to the phrase in Document Request #11. Abbott RFP Objections at 20; Scott RFP Objections at 20. However, because Document Request #11 does not contain the phrase "or other communications," the objection is inapplicable to that request.

at 17 (identical language in Request #9 but for the addition of "calendar invitations"). Defendants assert that the phrase "or other communications" is ambiguous and, as a result, fail to consider the phrase in searching for or producing responsive documents. *See, e.g.*, *id.* at 19. However, LULAC Plaintiffs provide a definition for the term "communication" in their discovery requests, affording Defendants the necessary context to comprehend the request. And in any event, as with Request #4, Defendants should have attempted to obtain clarification prior to objecting on this ground. *See Heller*, 303 F.R.D. at 491–92. Accordingly, Defendants must withdraw this objection and conduct a search consistent with the full scope of Document Requests #9 and 10.

* * *

LULAC Plaintiffs reserve the right to raise additional issues with Defendants' objections either during the parties' meet and confer or at a later meeting, as necessary. I look forward to speaking with you about these matters and hope that the parties can narrow the scope of disagreement or reach an amicable resolution without seeking Court intervention.

Sincerely,

Nina Perales

Nina Perales
Vice President of Litigation

Counsel for LULAC Plaintiffs

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]
VOTO LATINO, *et al.*, *Plaintiffs,* V. GREG ABBOTT, *et al.*, *Defendants.*	§ § § § § § § § § §	Case No. 1:21-cv-00965 [Consolidated Case]

OBJECTIONS AND RESPONSES TO VOTO LATINO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Voto Latino Plaintiffs, by and through its attorneys of record, Renea Hicks, P.O. Box 303187, Austin, Texas 78703-0504; Abha Khanna, Elias Law Group LLP, 1700 Seventh Ave, Suite 2100, Seattle, WA 98101; and Kevin J. Hamilton, Perkins Coie, 1201 Third Avenue, Suite 4900, Seattle, WA 98101-3099

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendants Greg Abbott, in his official capacity as Governor of Texas, and John Scott, in his capacity as the Texas Secretary of State, provide these Objections and Responses to Voto Latino's First Request for Production of Documents to Defendants.

Date: April 18, 2022

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

Respectfully submitted.

/s/ Patrick K. Sweeten
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CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2022, the attached Objections and Responses to Voto Latino Plaintiffs' First Request for Production of Documents to Defendants was served on opposing counsel via electronic mail to the foregoing:

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/s/ Patrick K. Sweeten
PATRICK K. SWEETEN
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OBJECTIONS RELEVANT TO EACH REQUEST

Defendants asserts that each of the following objections applies specifically to each request. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently a protective order in place between the parties. To the extent that documents may be identified that are discoverable but are not contemplated by the current protective order, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules allow for discovery of only "any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). The twin demands for relevancy and proportionality "are related but distinct requirements." *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party's claims or defenses, "it is not necessary to determine whether it would be proportional if it *were* relevant." *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at *3 (E.D. La. Mar. 30, 2016). Conversely, "relevance alone does not translate into automatic discoverability" because "[a]n assessment of proportionality is essential." *Motorola Sols., Inc. v. Hytera Commc'ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Defendants object to these requests to the extent that the information sought is either irrelevant or disproportionate.

Given Defendants' roles as Governor and Secretary of State, and the scope of the requests, much of the requested production is subject to the deliberative-process privilege. This privilege covers "documents reflecting advisory opinions, recommendations[,] and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Dep't of the Interior v. Klamath Water Users Prot. Ass'n*, 532 U.S. 1, 8 (2001) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)). It "rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news, and its object is to enhance 'the quality of agency decisions.'" *Id.* at 8–9 (quoting *Sears, Roebuck & Co.*, 421 U.S. at 151). Under this privilege, deliberative and predecisional oral and written communications, as well as related facts, are protected from disclosure. *E.g.*, *Swanston v. City of Plano*, No. 4:19-cv-412, 2020 WL 4732214, at *2 (E.D. Tex. Aug. 14, 2020) (citing *Skelton v. U.S. Postal Serv.*, 678 F.2d 35, 38 (5th Cir. 1982)).

In addition, given that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has "taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries." *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615–16 (1972). And requesting communications between the office of the Governor, the office of the Lieutenant Governor, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). Here, Plaintiffs' attempt to compel disclosure of a legislator's "thought processes or the communications [he] had with other

legislators" through Defendants' official-capacity roles falls within the well-established contours of legislative privilege. *Perez v. Perry*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014).

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Defendants reserve the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Defendants likewise do not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to Plaintiffs' claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,[1] ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). But this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* The 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Va. Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Defendants object to Plaintiffs' requests to the extent that they fall short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Defendants' right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with Plaintiffs' characterization of any facts, circumstances, or legal obligations. Defendants reserve the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Defendants will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Defendants object to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or

[1] https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf.

instructions. Defendants will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Defendants object to the definitions of "document" and "communication" to the extent that either calls for documents protected from disclosure by legislative privilege, attorney–client privilege, attorney work-product privilege, deliberative-process privilege, or any other applicable privilege.

Defendants object to the definition of "Defendants" because it includes "persons or entities . . . purporting to act on their behalf." A person "purporting" to be an agent of Defendants does not necessarily make him an agent of Defendants. This term is illogical and will not be considered during Defendants' search of responsive discovery. Defendants further object to this definition's inclusion of "attorneys" to the extent it calls for documents from that source that are subject to the attorney–client or work-product privilege.

Defendants object to the definition of "Legislator" because it is overbroad and inaccurate. The definition improperly groups all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Defendants object to the implied application to any related persons or entities without specific enumeration. Defendants further object to the definition of "Legislator" because it includes "persons or entities . . . purporting to act" on behalf of the Legislator. A person "purporting" to be an agent of a Legislator does not necessarily make him an agent of that Legislator. This term is illogical and will not be considered during Defendants' search of responsive discovery.

Defendants object to Plaintiffs' Instruction No. 1 (p.4) to the extent it suggests documents within Defendants' possession, custody or control are "documents which Defendants have the legal right to obtain on demand or the practical ability to obtain from a nonparty to this action." This statement, as written, appears to have no limitation on it and is, therefore, vague and overbroad. This could be read to include—for example—the right to secure a document by a Freedom of Information Act request. Defendants object to this definition insofar as Plaintiffs seek publicly available documents that are equally accessible to Plaintiffs. Defendants further object to this instruction's inclusion of this statement as being outside the scope of the requirements of Federal Rule of Civil Procedure 34. Defendants will respond to Plaintiffs' requests by considering what is in its "actual possession, custody, or control" consistent with Rule 34.

Defendants object to Plaintiffs' Instructions No. 2-3 (p.4) to the extent they include attorneys as a type of individual or entity. Defendants object insomuch as this inclusion calls for documents protected from disclosure by legislative privilege, attorney–client privilege, attorney work-product privilege, deliberative-process privilege, or any other applicable privilege. Defendants further object to this instruction because of the inclusion of "persons or entities . . . purporting to act on the individual person's behalf" or "on behalf of such an organization." A person or entity "purporting" to be an agent of a person does not necessarily make him or it an agent of that person. That term is illogical and will not be considered during Defendants' search of responsive discovery.

Defendants object to Plaintiffs' Instruction No. 8 wherein Plaintiffs claim they "will treat any ground [for objection] not stated as waived." Such is not within Plaintiffs' purview, but rather, is a matter for

the Court to determine. As such, Defendants will not concede that they have "waived" any objections on the basis that Plaintiffs believe it to be so.

Defendants object to Plaintiffs' Instruction No. 13 (p.6) that, "[i]f Defendants expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, Defendants are requested to state this fact in each response." This request is beyond the scope of requirements under Federal Rule of Civil Procedure 34. Defendants do not agree to expand Rule 34 in this way.

Defendants object to Plaintiffs' Instruction No. 14 (p.6) that "unless otherwise specified, all document requests concern the period of time from January 1, 2019 to the present." Requiring documents between January 1, 2019 and December 31, 2021 is overbroad, irrelevant and unlikely to lead to the discovery of admissible evidence. The special Legislative session in which the maps Plaintiffs challenge were drawn occurred in September and October of 2021. There is no basis for demanded documents created a year or more from that time period. Moreover, because the 3rd Special Session ended in October 2021, Plaintiffs' requests for documents beyond October 2021 are similarly overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Plaintiffs' claims require only evidence as to how and why the redistricting maps were drawn at the time of their drawing. In the interest of compromise, but without waiving these objections, Defendants will limit their search of documents to the time period of January 1, 2021 to October 25, 2021. Any documents created after the Governor signed the bill are irrelevant.

OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives, including but not limited to Senate Bill 6, and any other Congressional redistricting proposals drawn, discussed, or considered. This request includes but is not limited to documents relating to:

a. the origination(s) or source(s) of any such redistricting proposal;

b. the impetus, rationale, background or motivation for any such redistricting proposal;

c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, citizenship or changing census geography;

d. the pairing of any incumbents in any such redistricting proposal;

e. any amendment, whether partial or total, to each such redistricting proposal;

f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably specific, and unduly burdensome. Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directed to or from SOS or OOG employees dating to January of 2019. SOS and OOG employ hundreds of employees across many different divisions, very few of whom have job responsibilities that relate in any way to the subject matter of this request. Defendants are prepared to meet and confer concerning both custodians and reasonable search terms.

Defendants object to this request because it calls for the production of documents either: (a) subject to legislative, attorney-client, attorney work-product, or deliberative process privilege, or (b) protected from disclosure by Texas Government Code § 323.017, which are therefore privileged under Fed. R. Evid. 501. In particular, requesting analyses "from any source" is encompasses documents protected by legislative privilege. Furnishing "the origination(s)" and "the impetus, rationale, background, or motivation" of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Analyses that were "considered by" the Legislature, "drafts in the development or revision of" redistricting proposals, redistricting-related "negotiations," and "calculations, reports, audits, estimates, projections, or other analyses" would all be subject to legislative privilege for the same reason.

Defendants further object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendants direct Plaintiffs to the Texas Legislative Council's Capitol Data Portal, https://data.capitol.texas.gov/organization/tlc, where such information may be found.

Additionally, Defendants directs Plaintiffs to publicly-accessible sites containing the Texas Legislative Reference Library and the Texas House of Representatives and Texas Senate Journals that capture activity and statements by legislators concerning legislation under consideration by the Texas Legislature:

- Activity concerning specific legislation, including statements about legislation by individual legislators, is publicly available. *See* Legislative Reference Library of Texas, https://lrl.texas.gov/collections/journals/journals.cfm.

Defendants further object to the phrase "but not limited to" as vague and overbroad. Defendants cannot precisely discern what other documents this phrase encompasses and, therefore, will use reasonable understanding of this request to search for any documents outside of those categories Plaintiffs specifically delineate.

Last, insofar as the request seeks legal analysis concerning the "effect or impact" of redistricting proposals on "minority voters," "existing or emerging minority opportunity districts," or "voter turnout," it seeks information subject to the attorney-client privilege or constituting attorney work product.

RESPONSE:

Defendants are conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

2. All documents relating to the redistricting process for the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public participation, deadlines, limitations, and persons or entities involved.

OBJECTIONS:

For the sake of brevity, Defendants incorporates, by reference, the objections detailed immediately above.

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably specific, and unduly burdensome. Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directed to or from SOS or OOG employees dating to January of 2019. SOS and OOG employ hundreds of employees across many different divisions, very few of whom have job responsibilities that relate in any way to the subject matter of this request. Defendants are prepared to meet and confer concerning both custodians and reasonable search terms.

Defendants object to this request because it calls for the production of documents either: (a) subject to legislative, attorney-client, attorney work-product, or deliberative process privilege, or (b) protected from disclosure by Texas Government Code § 323.017, which are therefore privileged under Fed. R. Evid. 501.

Defendants further object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendants direct Plaintiffs to the Texas Legislative Council's Capitol Data Portal, https://data.capitol.texas.gov/organization/tlc, where such information may be found.

Additionally, Defendants direct Plaintiffs to publicly-accessible sites containing the Texas Legislative Reference Library and the Texas House of Representatives and Texas Senate Journals that capture activity and statements by legislators concerning legislation under consideration by the Texas Legislature:

- Bill history for Senate Bill 6 is publicly available. *See* Texas Legislature Online, *available at* https://legiscan.com/TX/bill/SB6/2021/X3.

- Activity concerning specific legislation, including statements about legislation by individual legislators, is publicly available. *See* Legislative Reference Library of Texas, https://lrl.texas.gov/collections/journals/journals.cfm.

- Defendants also object to this request because it seeks publicly available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online ("TLO") website. *See* https://capitol.texas.gov/Home.aspx (TLO); https://senate.texas.gov/index.php (Senate); https://house.texas.gov/ (House).

- Defendants further object to the phrase "but not limited to" as vague and overbroad. Defendants cannot precisely discern what other documents this phrase encompasses and, therefore, will use reasonable understanding of this request to search for any documents outside of those categories Plaintiffs specifically delineate.

Defendants also object to this request because it is facially overbroad. It calls for "all" documents relating to the redistricting process for the Texas delegation without temporal limitation (other than the one included in the instructions) or further specification. Further, it seeks documents relating to districts Plaintiffs are not challenging, which are therefore irrelevant to Plaintiff's claims.

RESPONSE:

Defendants are conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably

specific, and unduly burdensome. For example, Plaintiffs challenge only the Congressional Maps in its lawsuit, yet it seeks *all documents* relating to voting patterns in Texas. That same breadth is applied to information based upon race, ethnicity, and language minority status. Additionally, at bottom, the requests are not reasonably cabined to information necessary and proportional to litigate the claims brought by Plaintiffs, and thus, are unduly burdensome and improper. Defendants will limit their search to only those documents relating to Congressional maps.

Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directed to or from SOS or OOG employees dating to January of 2019. SOS and OOG employ hundreds of employees across many different divisions, very few of whom have job responsibilities that relate in any way to the subject matter of this request. Defendants are prepared to meet and confer concerning both custodians and reasonable search terms.

Defendants object to this request because it calls for the production of documents either: (a) subject to legislative, attorney-client, attorney work-product, or deliberative process privilege, or (b) protected from disclosure by Texas Government Code § 323.017, which are therefore privileged under Fed. R. Evid. 501.

Defendants further object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendants direct Plaintiffs to the Texas Legislative Council's Capitol Data Portal, https://data.capitol.texas.gov/organization/tlc, where such information may be found.

Additionally, Defendants directs Plaintiffs to publicly-accessible sites containing the Texas Legislative Reference Library and the Texas House of Representatives and Texas Senate Journals that capture activity and statements by legislators concerning legislation under consideration by the Texas Legislature:

- Bill history for Senate Bill 6 is publicly available. *See* Texas Legislature Online, *available at* https://legiscan.com/TX/bill/SB6/2021/X3.

- Activity concerning specific legislation, including statements about legislation by individual legislators, is publicly available. *See* Legislative Reference Library of Texas, https://lrl.texas.gov/collections/journals/journals.cfm.

Defendants also object to this request because it seeks publicly available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online ("TLO") website. *See* https://senate.texas.gov/index.php (Senate); https://house.texas.gov/ (House); https://capitol.texas.gov/Home.aspx (TLO).

Defendants also object to this request because it is facially overbroad. It calls for "all" documents relating to the redistricting process for the Texas delegation without temporal limitation (other than the one included in the instructions) or further specification. Further, it seeks documents relating to districts Plaintiffs are not challenging, which are therefore irrelevant to Plaintiffs' claims.

Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Defendants object that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege.

Defendants further object to the phrase "but not limited to" as vague and overbroad. Defendants cannot precisely discern what other documents this phrase encompasses and, therefore, will use reasonable understanding of this request to search for any documents outside of those categories Plaintiffs specifically delineate.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

4. All documents relating to whether Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably specific, and unduly burdensome. For example, Plaintiffs challenge only the Congressional Maps in its lawsuit, yet it seeks *all documents* relating to any other redistricting proposal in Texas. At bottom, the requests are not reasonably cabined to information necessary and proportional to litigate the claims brought by Plaintiffs, and thus, are unduly burdensome and improper. Defendants will limit their search to only those documents relating to Congressional maps.

Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directed to or from SOS or OOG employees dating to January

of 2019. SOS and OOG employ hundreds of employees across many different divisions, very few of whom have job responsibilities that relate in any way to the subject matter of this request. Defendants are prepared to meet and confer concerning both custodians and reasonable search terms.

Defendants object to this request because it calls for the production of documents either: (a) subject to legislative, attorney-client, attorney work-product, or deliberative process privilege, or (b) protected from disclosure by Texas Government Code § 323.017, which are therefore privileged under Fed. R. Evid. 501. Asking for documents relating to whether redistricted maps comply with the Voting Rights Act is designed to impinge on these privileges, and thus, it is facially objectionable.

Defendants further object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendants direct Plaintiffs to the Texas Legislative Council's Capitol Data Portal, https://data.capitol.texas.gov/organization/tlc, where such information may be found.

Additionally, Defendants directs Plaintiffs to publicly-accessible sites containing the Texas Legislative Reference Library and the Texas House of Representatives and Texas Senate Journals that capture activity and statements by legislators concerning legislation under consideration by the Texas Legislature:

- Bill history for Senate Bill 1 is publicly available. *See* Texas Legislature Online, *available at* https://capitol.texas.gov/BillLookup/History.aspx?LegSess=872&Bill=SB1.

- Bill history for Senate Bill 6 is publicly available. *See* Texas Legislature Online, *available at* https://legiscan.com/TX/bill/SB6/2021/X3.

- Activity concerning specific legislation, including statements about legislation by individual legislators, is publicly available. *See* Legislative Reference Library of Texas, https://lrl.texas.gov/collections/journals/journals.cfm.

Defendants also object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online ("TLO") website. *See* https://senate.texas.gov/index.php (Senate); https://house.texas.gov/ (House); https://capitol.texas.gov/Home.aspx (TLO).

RESPONSE:

Defendants are conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant

to this process, this response will be supplemented to reflect that such documents are being withheld.

5. All documents relating to redistricting for the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public..

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above..

To the extent that this request seeks information from the Texas Legislature, the Lieutenant Governor, and other non-party groups and associations, the Defendants have no care, custody, or control over documents that may be held by those non-party actors. *See, e.g. Spallone v. United States*, 493 U.S. 265, 276 (1990).

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably specific, and unduly burdensome. For example, Plaintiffs challenge only the Congressional Maps in its lawsuit, yet it seeks *all documents* relating to any other redistricting proposal in Texas. At bottom, the requests are not reasonably cabined to information necessary and proportional to litigate the claims brought by Plaintiffs, and thus, are unduly burdensome and improper.

Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directed to or from SOS or OOG employees dating to January

of 2019. SOS and OOG employ hundreds of employees across many different divisions, very few of whom have job responsibilities that relate in any way to the subject matter of this request. Defendants are prepared to meet and confer concerning both custodians and reasonable search terms.

Defendants further object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendants direct Plaintiffs to the Texas Legislative Council's Capitol Data Portal, https://data.capitol.texas.gov/organization/tlc, where such information may be found.

Additionally, Defendants directs Plaintiffs to publicly-accessible sites containing the Texas Legislative Reference Library and the Texas House of Representatives and Texas Senate Journals that capture activity and statements by legislators concerning legislation under consideration by the Texas Legislature:

- Bill history for Senate Bill 6 is publicly available. *See* Texas Legislature Online, *available at* https://legiscan.com/TX/bill/SB6/2021/X3.

- Activity concerning specific legislation, including statements about legislation by individual legislators, is publicly available. *See* Legislative Reference Library of Texas, https://lrl.texas.gov/collections/journals/journals.cfm.

Defendants also object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online ("TLO") website. *See* https://senate.texas.gov/index.php (Senate); https://house.texas.gov/ (House); https://capitol.texas.gov/Home.aspx (TLO).

Defendants also object to this request because it calls for documents that are covered by the legislative privilege. Communications and deliberations between legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). Further, a request for communications between the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and similar entities, along with their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

Defendants further object to this request because it calls to produce documents either: (a) attorney-client, attorney work-product, or deliberative process privilege, or (b) protected from disclosure by Texas Government Code § 323.017, which are therefore privileged under Fed. R. Evid. 501.

RESPONSE:

Defendants are conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

6. All other documents relating to redistricting for the Texas delegation to the U.S. House of Representatives or the Texas House from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

To the extent that this request seeks information from the U.S. House of Representatives or other non-party groups, the Defendants have no care, custody, or control over documents that may be held by those non-party actors. *See, e.g. Spallone v. United States*, 493 U.S. 265, 276 (1990).

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably specific, and unduly burdensome. For example, Plaintiffs challenge only the Congressional Maps in its lawsuit, yet it seeks *all documents* relating to any other redistricting proposal in Texas. At bottom, the requests are not reasonably cabined to information necessary and proportional to litigate the claims brought by Plaintiffs, and thus, are unduly burdensome and improper.

Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directed to or from SOS or OOG employees dating to January of 2019. SOS and OOG employ hundreds of employees across many different divisions, very few of whom have job responsibilities that relate in any way to the subject matter of this request. Defendants are prepared to meet and confer concerning both custodians and reasonable search terms.

Defendants further object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendants direct Plaintiffs to the Texas

Legislative Council's Capitol Data Portal, https://data.capitol.texas.gov/organization/tlc, where such information may be found.

Additionally, Defendants directs Plaintiffs to publicly-accessible sites containing the Texas Legislative Reference Library and the Texas House of Representatives and Texas Senate Journals that capture activity and statements by legislators concerning legislation under consideration by the Texas Legislature:

- Bill history for Senate Bill 6 is publicly available. *See* Texas Legislature Online, *available at* https://legiscan.com/TX/bill/SB6/2021/X3.

- Activity concerning specific legislation, including statements about legislation by individual legislators, is publicly available. *See* Legislative Reference Library of Texas, https://lrl.texas.gov/collections/journals/journals.cfm.

Defendants also object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online ("TLO") website. *See* https://senate.texas.gov/index.php (Senate); https://house.texas.gov/ (House); https://capitol.texas.gov/Home.aspx (TLO).

Defendants also object to this request because it calls for documents that are covered by the legislative privilege. Communications and deliberations between legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). Further, a request for communications between the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and similar entities, along with their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

Defendants further object to this request because it calls to produce documents either: (a) attorney-client, attorney work-product, or deliberative process privilege, or (b) protected from disclosure by Texas Government Code § 323.017, which are therefore privileged under Fed. R. Evid. 501.

RESPONSE:

Defendants are conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to this request because it is overbroad. The request calls for "all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes," without any qualifications (other than the listed recipients). A request that broad necessarily encompasses documents irrelevant to Plaintiff's claims. Gathering and reviewing the volume of documents responsive to such a request would impose a burden disproportionate to any benefit that might be derived from their production.

To the extent that this request seeks information from the Texas Legislature, the Lieutenant Governor, and other non-party groups and associations, the Defendants have no care, custody, or control over documents that may be held by those non-party actors. *See, e.g. Spallone v. United States*, 493 U.S. 265, 276 (1990).

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably specific, and unduly burdensome. For example, Plaintiffs challenge only the Congressional Maps in its lawsuit, yet it seeks *all documents* relating to any other redistricting proposal in Texas. At bottom, the requests are not reasonably cabined to information necessary and proportional to litigate the claims brought by Plaintiffs, and thus, are unduly burdensome and improper.

Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directed to or from SOS or OOG employees dating to January of 2019. SOS and OOG employ hundreds of employees across many different divisions, very few of whom have job responsibilities that relate in any way to the subject matter of this request. Defendants are prepared to meet and confer concerning both custodians and reasonable search terms.

Defendants further object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendants direct Plaintiffs to the Texas Legislative Council's Capitol Data Portal, https://data.capitol.texas.gov/organization/tlc, where such information may be found.

Additionally, Defendants directs Plaintiffs to publicly-accessible sites containing the Texas Legislative Reference Library and the Texas House of Representatives and Texas Senate Journals that capture activity and statements by legislators concerning legislation under consideration by the Texas Legislature:

- Bill history for Senate Bill 6 is publicly available. *See* Texas Legislature Online, *available at* https://legiscan.com/TX/bill/SB6/2021/X3.

- Activity concerning specific legislation, including statements about legislation by individual legislators, is publicly available. *See* Legislative Reference Library of Texas, https://lrl.texas.gov/collections/journals/journals.cfm.

Defendants also object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online ("TLO") website. *See* https://senate.texas.gov/index.php (Senate); https://house.texas.gov/ (House); https://capitol.texas.gov/Home.aspx (TLO).

Defendants also object to this request because it calls for documents that are covered by the legislative privilege. Communications and deliberations between legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). Further, a request for communications between the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and similar entities, along with their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

Defendants further object to this request because it calls to produce documents either: (a) attorney-client, attorney work-product, or deliberative process privilege, or (b) protected from

disclosure by Texas Government Code § 323.017, which are therefore privileged under Fed. R. Evid. 501.

Defendants also object to this request because it calls for irrelevant documents. Specifically, the purported relevance of documents relating to demographic enumerations or estimates potentially exchanged between candidates, political parties, lobbyists, and the other third parties mentioned is altogether unclear

RESPONSE:

Defendants are conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

8. All documents relating to payment for services, agreements of representation, or contracts with any consultant, any political operative, any expert, any law firm, any attorney, any vendor, or any other person or entity relating to redistricting for the Texas delegation to the U.S. House of Representatives.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

To the extent that this request seeks information from the Texas Legislature, the Lieutenant Governor, and other non-party groups and associations, the Defendants have no care, custody, or control over documents that may be held by those non-party actors. *See, e.g. Spallone v. United States*, 493 U.S. 265, 276 (1990).

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably specific, and unduly burdensome. For example, Plaintiffs challenge only the Congressional Maps in its lawsuit, yet it seeks *all documents* relating to any other redistricting proposal in Texas. At bottom, the requests are not reasonably cabined to information necessary and proportional to litigate the claims brought by Plaintiffs, and thus, are unduly burdensome and improper.

Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directed to or from SOS or OOG employees dating to January of 2019. SOS and OOG employ hundreds of employees across many different divisions, very few of whom have job responsibilities that relate in any way to the subject matter of this request. Defendants are prepared to meet and confer concerning both custodians and reasonable search terms.

Defendants also object to this request because it calls for documents that are covered by the legislative privilege. Communications and deliberations between legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). Further, a request for communications between the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and similar entities, along with their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

In addition, Defendants object to this request because it calls for documents subject to the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Defendants' legal representation, by the Office of the Texas Attorney General or otherwise, are subject to the attorney-client privilege.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

9. All non-privileged documents relating to the instant lawsuit, including all consolidated lawsuits, or any investigation of Texas by the U.S. Department of Justice relating to redistricting from 2020 to the present, including but not limited to all documents produced to the U.S. Department of Justice as part of any such investigation.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to this request because it is overbroad. It is unclear from the face of this request why "all documents relating" to this lawsuit, the consolidated lawsuits or the DOJ's preceding investigation would be relevant to Plaintiffs' claims. And insofar as these documents relate to DOJ's investigation, these documents are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including

state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Defendants to collect them far exceeds any benefit that might result. *See Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should "consider what information is available to the requesting party from other sources" when analyzing "the benefit side of the ledger").

Defendants object to this request to the extent that the information sought is not proportional to the needs of this case, overly broad, irrelevant to any claim or defense, not reasonably specific, and unduly burdensome. For example, Plaintiffs challenge only the Congressional Maps in its lawsuit, yet it seeks *all documents* relating to the lawsuit. Moreover, the portion of the request targeted at all non-privileged document *relating to the instant lawsuit* is necessarily duplicative of each and every one of the foregoing and following requests. Defendants object to searching for documents pursuant to this request absent reasonable limitation by Plaintiffs.

Further, Defendants object that this request is vague. To the extent that Plaintiffs refers to an "investigation of Texas" the phrase is undefined and does not put Defendants on reasonable notice of what materials they should look for or who may hold such materials.

RESPONSE:

Defendants are conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

10. All documents that Defendants may use to support the contention that the Challenged Congressional Districts were not enacted with a discriminatory purpose, to the extent that Defendants take that position.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to this request because it is overbroad. The request calls for "[a]ll documents" without any qualifications (other than the challenged districts). That is an extremely broad request and will necessarily apply to many documents that are irrelevant to Plaintiffs' claims in this case.

Defendants further object to this request because it asks them to gather publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the

pairing of incumbents, and other general information, Defendants directs Plaintiffs to the Texas Legislative Council's Capitol Data Portal,[2] where such information may be found. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involves, such information may be found at the Texas Senate[3] and Texas House of Representatives[4] websites, as well as on the Texas Legislature Online ("TLO") website.[5] Insofar as the request seeks such information specifically considered by Defendants, the request calls for information subject to the legislative privilege.

Defendants also object to this request because it calls for documents that are subject to the legislative privilege. Documents concerning the enactment of the Challenged Congressional Districts necessarily goes to the legislators' mental impressions and motivations in creating legislation, which is clearly covered by the privilege. Communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Further, Defendants object to this request because it purports to require them to marshal evidence in advance of deadlines set by the Federal Rules of Civil Procedure and by this Court. Defendants will disclosure witnesses and evidence as provided by the rules and Court order.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

11. All documents that Defendants may use to support the contention that the Challenged Congressional Districts do not have discriminatory results, as defined by Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, to the extent that Defendants take that position.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to this request because it is overbroad. The request calls for "[a]ll documents" without any qualifications (other than the challenged districts). That is an

[2] https://data.capitol.texas.gov/organization/tlc.
[3] https://senate.texas.gov/index.php.
[4] https://house.texas.gov/.
[5] https://capitol.texas.gov/Home.aspx.

extremely broad request and will necessarily apply to many documents that are irrelevant to Plaintiffs' claims in this case.

Defendants further object to this request because it asks them to gather publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Defendants directs Plaintiffs to the Texas Legislative Council's Capitol Data Portal,[6] where such information may be found. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involves, such information may be found at the Texas Senate[7] and Texas House of Representatives[8] websites, as well as on the Texas Legislature Online ("TLO") website.[9] Insofar as the request seeks such information specifically considered by Defendants, the request calls for information subject to the legislative privilege.

Defendants also object to this request because it calls for documents that are subject to the legislative privilege. Documents concerning the enactment of the Challenged Congressional Districts necessarily goes to the legislators' mental impressions and motivations in creating legislation, which is clearly covered by the privilege. Communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Further, Defendants object to this request because it purports to require them to marshal evidence in advance of deadlines set by the Federal Rules of Civil Procedure and by this Court. Defendants will disclosure witnesses and evidence as provided by the rules and Court order.

12. All documents relating to comments or communications from the public relating to redistricting for the Texas delegation to the U.S. House of Representatives.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to this request because it is overbroad. The request calls for "[a]ll documents relating to comments or communications from the public" without any qualifications. That is an extremely broad request and will likely apply to many documents that are irrelevant to Plaintiffs' claims in this case.

[6] https://data.capitol.texas.gov/organization/tlc.
[7] https://senate.texas.gov/index.php.
[8] https://house.texas.gov/.
[9] https://capitol.texas.gov/Home.aspx.

Defendants further object to this request because it asks them to gather publicly available documents that are equally accessible to Plaintiffs. Insofar as the request seeks information on the attendance and date of hearings, testimony given, and persons and entities involved, such information may be found at the Texas Senate[10] and Texas House of Representatives[11] websites, as well as on the Texas Legislature Online ("TLO") website.[12]

Defendants also object to this request because it calls for documents that are subject to the legislative privilege. Documents concerning commentary sent by the public to the 87th Legislature, which would have been considered by Defendants in enacting legislation, necessarily goes to the legislators' mental impressions and motivations in creating legislation, which is clearly covered by the privilege. Communications and deliberations by legislators about public commentary on pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Defendants also object to this request because it calls for documents that are irrelevant to Plaintiffs' claims in this case. Specifically, it is unclear without further specification why all public testimony on any non-Challenged Congressional Districts would be relevant.

Defendants object to this request to the extent it seeks documents outside of Defendants' possession, custody, or control.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

13. All documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by any plaintiff in these actions.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants also incorporate all objections made to the interrogatories referenced in this request as they are found in Defendants' Interrogatory Responses and any amended responses.

[10] https://senate.texas.gov/index.php.
[11] https://house.texas.gov/.
[12] https://capitol.texas.gov/Home.aspx.

Defendants object to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney–client privilege.

Defendants also object to this request because it is overbroad and calls for documents that are irrelevant to Plaintiffs' claims in this case. Specifically, it is unclear without further specification why documents used to respond to "*any* interrogatory" in the consolidate suit would be necessary where many of the other suits therein are unrelated to Plaintiffs' claims in this case. Defendants will not include any documents considered in responding to interrogatories that are unrelated to the Challenged Congressional Districts.

Defendants object to this request because it fails to connect the documents it seeks to Plaintiffs' claims. The different plaintiff groups in this case challenge many different maps and districts. As such, Plaintiffs have no need to receive all responses and documents produced to *all* party discovery in this case. Defendants object to producing documents in response to this request absent reasonable limitation by Plaintiffs.

14. Please documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by any plaintiff in these actions.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants also incorporate all objections made to the interrogatories referenced in this request as they are found in Defendants' Responses to Requests for Admission and any amended responses.

Defendants object to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney–client privilege.

Defendants also object to this request because it is overbroad and calls for documents that are irrelevant to Plaintiffs' claims in this case. Specifically, it is unclear without further specification why documents used to respond to "*any* request for admission" in the consolidate suit would be necessary where many of the other suits therein are unrelated to Plaintiffs' claims in this case. Defendants will not include any documents considered in responding to requests for admission that are unrelated to the Challenged Congressional Districts.

Defendants object to this request because it fails to connect the documents it seeks to Plaintiffs' claims. The different plaintiff groups in this case challenge many different maps and districts. As such, Plaintiffs have no need to receive all responses and documents produced to *all* party discovery in this case. Defendants object to producing documents in response to this request absent reasonable limitation by Plaintiffs.

15. Please documents relating to the history of official voting-related discrimination in Texas from 1990 to the present.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants further object to the overbroad and vague nature of the phrase "history of official voting-related discrimination in Texas." Defendants are unable to discern what Plaintiffs intend to encompass with this phrase.

Defendants also object that this request calls for documents that are irrelevant to Plaintiffs' claims in this case. Plaintiffs challenge the Texas Congressional maps drawn during the 87th Legislative session in September – October 2021. Whatever broad "history" of discrimination Plaintiffs believe Texas has as to "voting" is unrelated to Plaintiffs' burden or Defendants' defenses in this case.

To the extent this request is seeking the requested documents insomuch as they were considered during the drawing and/or enactment of the Challenged Congressional Districts, Defendants object that this request seeks documents subject to withholding based on legislative, work-product, or attorney–client privilege.

Because this request is overbroad, vague, and largely irrelevant to Plaintiffs' claims, Defendants will not search for or produce documents pursuant to this request absent reasonable limitation.

16. Please documents relating to the use of racial appeals in political campaigns in Texas from 1990 to the present.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants further object to the overbroad and vague nature of the phrase "racial appeals in political campaigns." Defendants are unable to discern what Plaintiffs intend to encompass with this phrase. To the extent Plaintiffs want specific representations made by individuals campaigning for a legislative seat, Defendants are not in actual custody, possession, or control of such documents.

Defendants also object that this request calls for documents that are irrelevant to Plaintiffs' claims in this case. Plaintiffs challenge the Texas Congressional maps drawn during the 87th

Legislative session in September – October 2021. Whatever broad "history" of discrimination Plaintiffs believe Texas has as to "voting" is unrelated to Plaintiffs' burden or Defendants' defenses in this case.

To the extent this request is seeking the requested documents insomuch as they were considered during the drawing and/or enactment of the Challenged Congressional Districts, Defendants object that this request seeks documents subject to withholding based on legislative, work-product, or attorney–client privilege.

Because this request is overbroad, vague, and largely irrelevant to Plaintiffs' claims, Defendants will not search for or produce documents pursuant to this request absent reasonable limitation.

17. All documents relating to submissions to the United States Department of Justice seeking preclearance of election practices or procedures, and all correspondence from the Department of Justice relating to requests for preclearance, from January 1, 2000 to present.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants also object to this request because it is overbroad and calls for documents that are irrelevant to Plaintiffs' claims in this case. It is unclear why any documents related to preclearance would be necessary to Plaintiffs' claims in this case regarding the 87th Legislative session's enactment of S.B. 6, which was not subject to preclearance. Defendants will not respond to this request based on the aforementioned.

Because this request is overbroad, vague, and largely irrelevant to Plaintiffs' claims, Defendants will not search for or produce documents pursuant to this request absent reasonable limitation.

18. All documents relating to complaints or reports made by any person, organization, or official relating to discrimination or alleged discrimination based on race, ethnicity, or national origin in the administration or implementation of any laws, practices, or procedures relating to voting in Texas, from January 1, 2010 to the present, including but not limited to any actions taken by you in response to the complaints or reports and the final resolution of the complaints or reports.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants object to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney–client privilege.

Defendants also object to this request because it is overbroad and calls for documents that are irrelevant to Plaintiffs' claims in this case. Specifically, it is unclear without further specification why documents regarding complaints or reports related to discrimination in "the administration or implementation of *any* laws, practices, or procedures relating to voting in Texas" would be necessary where Plaintiffs clearly only challenge a specific group of Congressional Districts enacted during the Third Special, 87th Legislative Session.

Based on the aforementioned, Defendants, will limit their search to "complaints or reports made by any person, organization, or official relating to discrimination or alleged discrimination" related to the Challenged Congressional Districts, other than those in the consolidated suit, from January 1, 2021 to October 25, 2021.

RESPONSE:

Defendants have conducted a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of this response to the extent they are not withheld based on any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

19. All documents produced by Defendants to any party in response to any request for the production of documents in these actions.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants also incorporate all objections made to the interrogatories referenced in this request as they are found in Defendants' Responses to Requests for Production and any amended responses.

Defendants object to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney–client privilege.

Defendants also object to this request because it is overbroad and calls for documents that are irrelevant to Plaintiffs' claims in this case. Specifically, it is unclear without further specification why documents used to respond to "*any* request for admission" in the consolidate suit would

be necessary where many of the other suits therein are unrelated to Plaintiffs' claims in this case. Defendants will not include any documents considered in responding to requests for production that are unrelated to the Challenged Congressional Districts.

Defendants object to this request because it fails to connect the documents it seeks to Plaintiffs' claims. The different plaintiff groups in this case challenge many different maps and districts. As such, Plaintiffs have no need to receive all responses and documents produced to *all* party discovery in this case. Defendants object to producing documents in response to this request absent reasonable limitation by Plaintiffs.

20. All documents produced to Defendants by any third-party in response to a subpoena in these actions.

OBJECTIONS:

For the sake of brevity, Defendants incorporate by reference the objections detailed immediately above.

Defendants also incorporate all objections made to the subpoenas referenced in this request as they are found in any original or amended responses to the subpoenas.

Defendants object to the extent this request seeks documents subject to withholding based on legislative, work-product, or attorney–client privilege.

Defendants also object to this request because it is overbroad and calls for documents that are irrelevant to Plaintiffs' claims in this case. Specifically, it is unclear without further specification why documents used to respond to "*any* subpoena" in the consolidate suit would be necessary where many of the other suits therein are unrelated to Plaintiffs' claims in this case. Defendants will not include any documents produced in response to subpoenas that are unrelated to the Challenged Congressional Districts.

Defendants object to this request because it fails to connect the documents it seeks to Plaintiffs' claims. The different plaintiff groups in this case challenge many different maps and districts. As such, Plaintiffs have no need to receive all responses and documents produced to *all* party discovery in this case. Defendants object to producing documents in response to this request absent reasonable limitation by Plaintiffs.

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

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, et al., Plaintiffs v. GREG ABBOTT, et al., Defendants.	Civil Action Lead Case No.: 3:21-CV-00259-DCG-JES-JVB
VOTO LATINO, et al.. Plaintiffs, v. JOHN SCOTT, et al.; Defendants.	Consolidated Case No.: 1:21-CV-00965-RP-JES-JVB

VOTO LATINO PLAINTIFFS'
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiffs in *Voto Latino v. Scott*, No. 1:21-cv-00965 (the "*Voto Latino*" Plaintiffs) request that Defendants the State of Texas and John Scott identify and produce the documents and items requested below for inspection and copying and deliver copies to counsel for the *Voto Latino* Plaintiffs by June 2, 2022. This request is continuing in nature, as provided by Rule 26(e) of the Federal Rules of Civil Procedure.

DEFINITIONS

1. Pursuant to Local Rule CV-26(b), the following definitions apply to all discovery requests:

a. Communication. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

b. Document. The term "document" means any document or electronically stored information as described in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

c. Identify (With Respect to Persons). When referring to a person, to "identify" means to give, to the extent known, the person's full name, present or last known address, e-mail address, and telephone number, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

d. Identify (With Respect to Documents). When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

e. Parties. The terms "plaintiff" and "defendant" as well as a party's full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

f. Person. The term "person" means any natural person or business, legal or governmental entity or association.

g. Concerning. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

2. In addition, as authorized by Local Rule CV-26(b). the following definitions specific to this particular litigation apply to these discovery requests:

a. "Challenged House Districts" means any and all of the following Texas House Districts: 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 101, 127, 128, 129, 142, 143, and 144.

b. "Defendants" mean the Gregory Abbott, in his capacity as Governor of Texas, and John Scott, in his capacity as the Texas Secretary of State, along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

c. "Legislator" means a past or present elected member of the Texas House of Representatives ("Texas House") or the Texas Senate, including such member's past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member's behalf or subject to the member's control or on behalf of any committee or other body of which the elected member is a member.

d. "Redistricting" means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas delegation to the U.S. House of Representatives, the Texas Senate, or the Texas State Board of Education.

e. "Relating to" means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

f. "House Bill 1" means the legislation setting forth the district boundaries for members of the Texas House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

g. "United States' First Request for the Production of Documents" means the request for the production of documents served on Defendants by the United States on January 12, 2022.

INSTRUCTIONS

1. In responding to these requests, please produce all responsive documents in the Defendants' possession, custody, or control. This means that Defendants must produce all responsive documents within their actual possession, custody, or control, as well as such documents which Defendants have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed.

2. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person's behalf or subject to the control of such a person.

3. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns,

representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

4. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms "and" and "or" either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

5. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

6. Documents should be produced in a form consistent with the Court's Stipulated Order Regarding Discovery of Electronically Stored Information, ECF No. 203.

7. Each document produced should be categorized by the number of the document request in response to which it is produced, unless the documents are produced as they are kept in the usual course of business.

8. No portion of a request should be left unanswered because an objection is raised to another part of that request. If Defendants object to any portion of a document request, please state with specificity the grounds of any objections. Plaintiffs will treat any ground not stated as waived.

9. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the Federal Rules of Civil Procedure, including a

description of the basis of the claimed privilege and all information necessary for the *Voto Latino* Plaintiffs to assess the privilege claim.

10. If Defendants contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what Defendants contend to be an unreasonable request; (b) describe with particularity the efforts made by Defendants or on their behalf to produce such documents; and (c) state with particularity the grounds upon which Defendants contend that additional efforts to produce such documents would be unreasonable.

11. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

12. In the event that a responsive document has been destroyed or has passed out of Defendants' possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

13. These requests are continuing in nature. Defendants' response must be supplemented and any additional responsive material disclosed if responsive material becomes available after Defendants serve their response. Defendants must also amend their responses to these requests if they learn that an answer is in some material respect incomplete or incorrect. If Defendants expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, they are requested to state this fact in each response.

14. Unless otherwise specified, all other document requests concern the period of time from January 1, 2019, to the present.

REQUESTS FOR PRODUCTION

REQUEST NO. 21:[1] All documents relating to any redistricting proposal for the Texas House, including but not limited to House Bill 1, and any other House redistricting proposals drawn, discussed, or considered. This request includes, but is not limited to:

a. the origination(s) or source(s) of any such redistricting proposal;

b. the impetus, rationale, background, or motivation for any such redistricting proposal;

c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, citizenship, or changing census geography;

d. the pairing of any incumbents in any such redistricting proposal;

e. any redistricting amendment, whether partial or total, to each such proposal;

f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, (3) voter turnout (including

[1] This request is identical to Request No. 1 in the United States' Requests for the Production of Documents, except that it is limited to redistricting relating to the Texas House.

Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

REQUEST NO. 22:[2] All documents relating to the redistricting process for the Texas House, including but not limited to planning, timing, hearings, outreach, publicity, public participation, deadlines, limitations, and persons or entities involved.

REQUEST NO. 23:[3] All documents relating to whether House Bill 1, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

REQUEST NO. 24:[4] All documents relating to redistricting for the Texas House exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any

[2] This request is identical to Request No. 2 in the United States' Requests for the Production of Documents, except that it is limited to redistricting relating to the Texas House.
[3] This request is identical to Request No. 4 in the United States' Requests for the Production of Documents, except that it is limited to redistricting relating to the Texas House.
[4] This request is identical to Request No. 5 in the United States' Requests for the Production of Documents, except that it is limited to redistricting relating to the Texas House.

consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

REQUEST NO. 25:[5] All other documents relating to redistricting for the Texas House from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

REQUEST NO. 26:[6] All documents relating to payment for services, agreements of representation, or contracts with any consultant, any political operative, any expert, any law firm, any attorney, any vendor, or any other person or entity relating to redistricting for the Texas House.

REQUEST NO. 27: All documents that Defendants may use to support the contention that the Challenged House Districts were not enacted with a discriminatory purpose, to the extent that Defendants take that position.

REQUEST NO. 28: All documents that Defendants may use to support the contention that the Challenged House Districts do not have discriminatory results, as defined by Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, to the extent that Defendants take that position.

REQUEST NO. 29: All documents relating to comments or communications from the public relating to redistricting for the Texas House.

[5] This request is identical to Request No. 6 in the United States' Requests for the Production of Documents, except that it is limited to redistricting relating to the Texas House.
[6] This request is identical to Request No. 8 in the United States' Requests for the Production of Documents, except that it is limited to redistricting relating to the Texas House.

Dated: May 3, 2022

Respectfully submitted,

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*Admitted *Pro Hac Vice*
**Pending *Pro Hac Vice* Admission

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2022, I served a true and correct copy of the foregoing via electronic mail on all counsel of record.

/s/ David R. Fox

Counsel for Plaintiffs

Privilege Log - Office of the Governor

Control Number	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
DOC_0356555			Greg Abbott	Jeff Oldham	Luis Saenz; Gardner Pate; Angela Colmenero		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356556	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356557		5/27/2013					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356558			Jeff Oldham	Angela Colmenero			Attorney Client; Work Product; Deliberative	Document related to draft litigation hold letter regarding redistricting litigation. Includes input from OOG attorneys.
DOC_0356559	Angela Colmenero	9/3/2021					Attorney Client; Work Product; Deliberative	Document related to draft litigation hold letter regarding redistricting litigation. Includes input from OOG attorneys.
DOC_0356560			Courtney Hjaltman; Gardner Pate; Jeff Oldham; Angela Colmenero	Sean Opperman			Legislative	Confidential communication from Senator Huffman to members of the Senate, as well as certain executive branch offices, regarding expected release of Census data.
DOC_0356561	Sean Opperman	8/12/2021					Legislative	Confidential communication from Senator Huffman to members of the Senate, as well as certain executive branch offices, regarding expected release of Census data.

DOC_0356569			Luis Saenz; Gardner Pate; Jeff Oldham; Angela Colmenero; Mark Miner; Renae Eze	Wes Hambrick			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft letter to U.S. Census Bureau. Includes input from OOG attorneys.
DOC_0356571			Greg Davidson	Jeff Oldham	Angela Colmenero; Gardner Pate		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356575			Luis Saenz; Gardner Pate; Jordan Hale; Sarah Hicks; Wes Hambrick; Courtney Hjaltman; Renae Eze; Mark Miner; Chris Warren; Nan Tolson; Sheridan Nolen; Jeff Oldham; Kieran Hillis; Joseph Behnke; Marie Dahlmann; Greg Davidson; Cobey Fletcher	Angela Colmenero			Attorney Client; Work Product	Confidential communication regarding litigation hold for redistricting litigation. Includes input from OOG attorneys.

DOC_0356576	Angela Colmenero	9/3/2021					Attorney Client; Work Product	Confidential communication regarding litigation hold for redistricting litigation. Includes input from OOG attorneys.
DOC_0356578	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356579			Jeff Oldham; Luis Saenz; Angela Colmenero	Gardner Pate			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356580	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356581			Luis Saenz; Gardner Pate; Jeff Oldham	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356582	Greg Davidson	9/7/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356583			Luis Saenz; Gardner Pate; Jeff Oldham	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356584	Greg Davidson	9/7/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356585	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356586			Gardner Pate; Jeff Oldham; Courtney Hjaltman; Angela Colmenero	Sean Opperman	Anna Mackin		Attorney Client; Work Product; Deliberative	Confidential communication regarding potential third special session. Inludes input from OOG attorneys.
DOC_0356587		8/26/2021					Attorney Client; Work Product; Deliberative	Attachment to confidential communication regarding potential third special session. Inludes input from OOG attorneys.
DOC_0356588		8/26/2021					Attorney Client; Work Product; Deliberative	Attachment to confidential communicationregarding potential third special session. Inludes input from OOG attorneys.

DOC_0356590			Jeff Oldham	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356591	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356592			Greg Davidson; Luis Saenz; Jeff Oldham	Gardner Pate			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356593			Sean Opperman; Gardner Pate; Jeff Oldham; Angela Colmenero	Courtney Hjaltman	Anna Mackin		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356594			Nan Tolson; Sheridan Nolen; Chris Warren; Mark Miner; Luis Saenz; Jeff Oldham; James Sullivan	Gardner Pate			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356595			Sheridan Nolen; Chris Warren; Mark Miner; Luis Saenz; Gardner Pate; Jeff Oldham; James Sullivan	Nan Tolson			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356596			Sheridan Nolen; Nan Tolson; Chris Warren; Mark Miner; Gardner Pate; Jeff Oldham; James Sullivan	Luis Saenz			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356597			Nan Tolson; Sheridan Nolen; Chris Warren; Mark Miner; Gardner Pate; Jeff Oldham; James Sullivan	Luis Saenz			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356598			Angela Colmenero	Senate Redistricting & Jurisprudence Committee (via Dropbox)			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication from Senate Redistricting Committee regarding materials related to draft redistricting legislation.
DOC_0356599		3/18/2022					Attorney Client; Work Product; Deliberative	Communication from U.S. Census Bureau regarding census data, with annotations by OOG attorneys.
DOC_0356600			Angela Colmenero	Senate Redistricting & Jurisprudence Committee (via Dropbox)			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication from Senate Redistricting Committee regarding materials related to draft redistricting legislation.
DOC_0356604			Nan Tolson; Chris Warren; Mark Miner; Luis Saenz; Gardner Pate; Jeff Oldham; James Sullivan	Sheridan Nolen			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356606		3/10/2022	Greg Abbott	Dan Patrick			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft redistricting legislation.
DOC_0356609			Greg Abbott	Jeff Oldham	Luis Saenz; Gardner Pate; Angela Colmenero		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356610	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.

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May 16, 2022

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RE: Defendant Greg Abbott's Privilege Log Regarding LULAC Plaintiffs' and Texas NAACP's First Requests for Production of Documents and Defendants' Objections to LULAC Plaintiffs' Discovery Requests, *LULAC v. Abbott*, No. 3:21-cv-259-DCG-JES-JVB (W.D. Tex.)

Dear Counsel,

We write to respond to some of the objections you raised in the privilege log you served jointly on LULAC Plaintiffs and Texas NAACP on May 4, 2022 on behalf of Defendant Greg Abbott ("the Privilege Log"), in connection with their respective First Requests for Production of Documents.[1] Additionally, LULAC Plaintiffs reiterate concerns regarding some of Defendants' other objections to LULAC Plaintiffs' discovery requests; those concerns were previously discussed in their letter dated April 26, 2022.[2] Because the parties have already met and conferred regarding these issues, LULAC Plaintiffs and Texas NAACP request a response by May 20, 2022.

[1] LULAC Plaintiffs sent their First Set of Requests for Production to Defendants Greg Abbott and John Scott on March 5, 2022, and sent amended requests to Scott on March 7, 2022; Texas NAACP sent their First Set of Requests for Production to Defendants Abbott and Scott on March 3, 2022. Additionally, this letter references the following discovery responses: Defendant Greg Abbott's March 24, 2022 Objections and Answers to LULAC's First Set of Interrogatories ("Abbott Interrogatories Objections"); Defendant John Scott's March 24, 2022 Objections and Answers to LULAC's First Set of Interrogatories ("Scott Interrogatories Objections"); Defendant Abbott's April 4, 2022 Objections and Responses to LULAC Plaintiffs' First Request for Production of Documents ("Abbott RFP Objections"); and Defendant Scott's April 4, 2022 Objections and Responses to LULAC Plaintiffs' First Request for Production of Documents ("Scott RFP Objections").

On April 26, 2022, LULAC Plaintiffs sent a letter to Defendants outlining LULAC Plaintiffs' concerns regarding some of Defendants' objections to LULAC Plaintiffs' First Set of Requests for Production of Documents. On April 28, 2022, LULAC Plaintiffs held a meet and confer regarding those concerns, during which Defendants indicated that their forthcoming privilege log would provide more information regarding their objections; during that meeting, LULAC Plaintiffs reiterated the arguments in their letter and stated that they would revisit those concerns upon reviewing Defendants' privilege log.

On May 4, 2022, Abbott served the Privilege Log to LULAC Plaintiffs and Texas NAACP. On May 12, 2022, counsel for LULAC Plaintiffs, Texas NAACP, and Defendants met and conferred regarding the Privilege Log, and LULAC Plaintiffs and Texas NAACP agreed to follow up with a letter further outlining their concerns with the objections that Abbott asserted in the log.

Accordingly, we send this letter in the hope that we can narrow some of the areas of disagreement between the parties, and we look forward to a response by May 20, 2022.

I. LULAC Plaintiffs' and Texas NAACP's Joint Concerns Regarding the Privilege Log

A. As a General Matter, the Privilege Log Fails to Comply with the Requirements of the Federal Rules of Civil Procedure and Parties' Stipulated ESI Order.

When a party who withholds otherwise discoverable information by asserting a privilege or claiming protection of the material, the party must assert the privilege or claim and "describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." FRCP 26(b)(5).

Per the Stipulated Order Regarding Discovery of Electronically Stored Information ("Stipulated ESI Agreement"), all documents withheld based on privilege or other protection require a privilege log that contains the following information:

> a) Bates number range, with the start and end bates numbers or, for native files, the Document ID number; b) Date the document was prepared or created; c) Document type; d) Name and title of author(s) e) Custodian; f) Name and title of recipient(s) (including all individuals in the "to" or "cc" or "BCC" fields); g) Name and title of any attorney(s) included in the communication; h) The privilege

[2] On April 20, 2022, LULAC Plaintiffs filed their Second Amended Complaint, adding the State of Texas as a defendant. Dkt. 237. No discovery has been propounded on the State of Texas as of the date of this letter. For ease of readability, unless otherwise noted, any use of "Defendants" in this letter shall refer to Defendants Greg Abbott and John Scott, upon whom LULAC Plaintiffs have served discovery requests.

> or protection asserted; i) The basis for the privilege or protection asserted; j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim; k) Purpose of preparing the document.

Dkt. 203 at 15–16.

In several ways, the Privilege Log fails to comply with both the Federal Rules of Civil Procedure and the Stipulated ESI Agreement.

First, the Privilege Log lacks specificity regarding the type of documents that Abbott withheld. Without this information, Plaintiffs are unable to determine for each entry what kind of communication—an email, a letter, a document, or a native file—to which the "Control Number" column refers. The nature of the document is important because it will allow Plaintiffs to assess the basis for which Abbott withholds the document.

Second, the Privilege Log does not list a Bates number range for every "Control Number" entry or instead indicate that the entry is a native file. Bates number ranges help contextualize a particular document, including whether that document is part of a larger set of documents or was an individual document.

Third, of the 37 entries included in the Privilege Log, Abbott fails to list the dates that 21 of those were created or prepared. For example, some entries concerning "confidential communications" have no dates indicating when the communication was sent or received,[3] but other entries concerning "confidential communications" do have dates.[4] Confusingly, Defendants provide no information as to why some have dates and others do not, especially in light of the Stipulated ESI Agreement.

Fourth, the Privilege Log fails to include the authors, custodians, and name and title for every recipient in every entry. To the extent that any of the recipients or authors listed are attorneys, the Privilege Log fails to include the name and title of those individuals.

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[3] Some entries described as "confidential communications" provide no dates at all. *See* DOC_0356555, DOC_0356560, DOC_0356569, DOC_0356571, DOC_0356575, DOC_0356579, DOC_0356581, DOC_0356583, DOC_0356586, DOC_0356590, DOC_0356592, DOC_0356593, DOC_0356594, DOC_0356595, DOC_0356596, DOC_0356597, DOC_0356598, DOC_0356600, DOC_0356604, DOC_0356606, DOC_0356609.

[4] *See* DOC_0356561 (date created field but no dates as to when communication sent or received); DOC_0356576 (same). Some entries described as "attachment" to "confidential communication" also have dates but it is unclear whether the date refers to the attachment or to the communication *See, e.g.*, DOC_0356587, DOC_0356588.

Fifth, and finally, Abbott fails to meet his burden for establishing that any of the privileges apply to the withheld documents. *See Hobart v. City of Stafford*, 784 F. Supp. 2d 732, 763 (S.D. Tex. 2011) ("A party asserting a privilege exemption from discovery bears the burden of demonstrating its applicability." (quoting *In re Santa Fe Int'l Corp.*, 272 F.3d 705, 710 (5th Cir. 2001)); *see also Perez v. Perry*, No. SA-11-CV-360-OLG-JES, 2014 WL 3495414, at *2 (W.D. Tex. July 11, 2014). While the Privilege Log lists a privilege or protection for every entry, Abbott fails to articulate the basis for the privilege or protection asserted—or relatedly, to articulate the purpose for which each entry was prepared. For example, Abbott withholds several documents based on the attorney-client privilege or work product doctrine, describing those documents in part as receiving "input from OOG attorneys."[5] As noted, the Privilege Log fails to indicate which individuals with access to the document are attorneys. Moreover, these entries fail to describe in sufficient detail the type of input any attorney provided to determine whether any privilege applies. Without even these basic fields of information required under the Stipulated ESI Agreement, Abbott has failed to meet his burden of establishing the basis for and scope of the privileges asserted.

The Privilege Log thus fails to comply with the Federal Rules of Civil Procedure and the Stipulated ESI Agreement. Accordingly, Abbott must supplement the Privilege Log to comply with the Stipulated ESI Agreement and Rule 26(b)(5), by providing information fully regarding: Bates stamp numbering; dates the documents were created or prepared; the name and title of the authors, senders, and recipients (including any attorneys); the bases for the privileges asserted; a description of the documents that, without revealing information itself privileged or protected, will enable the requesting party to assess the claims; and the purpose of preparing each document. *See* Dkt. 203 at 15–16.

B. Regardless of the Privilege Log's Deficiencies, Abbott's Privilege Objections to Certain Documents Are Improper.

Notwithstanding the deficiencies in the Privilege Log noted in Section I.A, and regardless of whatever additional information Abbott may supplement regarding the log, LULAC Plaintiffs and Texas NAACP have identified specific documents that Abbott has incorrectly withheld.[6] This letter addresses each of those errors in turn.[7]

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[5] *See, e.g.*, DOC_0356556, DOC_0356557, DOC_0356558, DOC_0356559, DOC_0356569, DOC_0356571, DOC_0356575, DOC_0356576, DOC_0356578, DOC_0356579, DOC_0356580, DOC_0356581, DOC_0356582, DOC_0356583, DOC_0356584, DOC_0356585, DOC_0356586, DOC_0356587, DOC_0356588, DOC_0356590, DOC_0356591, DOC_0356592, DOC_0356593, DOC_0356594, DOC_0356595, DOC_0356596, DOC_0356597, DOC_0356604, DOC_0356609, DOC_0356610.

[6] LULAC Plaintiffs and Texas NAACP reserve the right to challenge the withholding of other documents in the event that Abbott continues to fail to provide sufficient information to meet his burden regarding the respective privileges asserted as to those documents.

[7] LULAC Plaintiffs previously raised several of the concerns in this section in their April 26, 2022 letter and their April 28, 2022 meet and confer with Defendants.

1. DOC_0356561

Abbott improperly asserts legislative privilege over DOC_0356561, which the Privilege Log describes as "Confidential communication from Senator Huffman to members of the Senate, as well as certain executive branch offices, regarding expected release of Census data," and lists Sean Opperman—an employee of the Legislature when the document was made—as the author. Privilege Log at 2.

As an initial matter, courts in this Circuit have concluded that Abbott lacks standing to assert legislative privilege. As the Fifth Circuit has made clear, common-law legislative privilege is "an evidentiary privilege, 'governed by federal common law, as applied through Rule 501 of the Federal Rules of Evidence.'" *Jefferson Cmty. Health Care Cntrs., Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 624 (5th Cir. 2017) (quoting *Perez v. Perry*, No. SA-11-cv-360, 2014 WL 106927, at *1 (W.D. Tex. Jan. 8, 2014)). And regarding this privilege, courts in this Circuit—including the three-judge court in the prior round of Texas redistricting litigation—have consistently held that "neither the Governor, nor the Secretary of State or the State of Texas has standing to assert the legislative privilege on behalf of any legislator or staff member." *Perez* 2014 WL 106927, at *1; *see also Gilby v. Hughes*, 471 F. Supp. 3d 763, 768 (W.D. Tex. 2020); *TitleMax of Tex., Inc. v. City of Dallas*, No. 3:21-cv-1040, 2022 WL326566, at *6 (N.D. Tex. Feb. 3, 2022). That is because "[l]egislative privilege is a personal one and may be waived or asserted" by only each individual legislator. *Gilby*, 471 F. Supp. 3d at 768 (citing *Perez*, 2014 WL 106927, at *1). And in any event, even if Abbott could invoke legislative privilege on behalf of a legislator (or staff), any privilege has been waived because of the legislative staff's communication with an individual outside of the legislative branch. *See id.* at 767 ("To the extent that legislators or legislative staff communicated with any outsider (e.g. non-legislators, non-legislative staff) any legislative privilege is waived as to the contents of those specific communications." (quoting *Perez*, 2014 WL 106927, at *2)).

Nor, of course, can Abbott assert the legislative privilege on his own behalf for documents within his own agencies, as he is a member of the executive branch—*not* the legislative branch. *See, e.g.*, *Perez*, 2014 WL 106927, at *2. And to the extent that Abbott asserts the legislative privilege because the documents involve both his office and the legislative branch communicating regarding actions that may be related to the Legislature, courts in this Circuit have already emphasized that that position "is inconsistent with the purposes of both legislative privilege and deliberative-process privilege." *Gilby*, 471 F. Supp. 3d at 767–68; *see also Favors v. Cuomo*, 285 F.R.D. 187, 212 (S.D.N.Y. 2012) (noting that "communications with 'knowledgeable outsiders' . . . fall outside the privilege"). After all, as the governor, Abbott has no role in enacting the substance of any legislation; indeed, the Texas Constitution explicitly disclaims any such role. *See* Tex. Const. art. II, sec. 1 ("The powers of the Government of the State of Texas shall be divided into three distinct departments . . . and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."). Accordingly,

Abbott cannot invoke legislative privilege as a basis for withholding production of DOC_0356561.[8]

And nor does Texas Government Code § 323.017—upon which Abbott relied as a basis for asserting legislative privilege in his objections to LULAC Plaintiffs' and Texas NAACP's Requests for Production—counsel otherwise, as it is inapposite here.[9] "Federal Rule of Evidence 501 provides that federal common law of privilege applies in general in federal cases." *Hobart*, 784 F. Supp. 2d at 764 n.22; *see also TitleMax*, 2022 WL 326566, at *2. The instant suits are pending in federal court and arise under federal causes of action. Accordingly, "the Court must apply the federal common law as to legislative privilege, even though the privilege as applied under Texas law may offer more protection" to individuals who invoke it. *TitleMax*, 2022 WL326566, at *4. As such, Texas Government Code § 323.017 is inapplicable here, and Abbott cannot object to the production of this document on the basis of legislative privilege.

Accordingly, Abbott must withdraw his assertion of legislative privilege regarding DOC_0356561 and produce that document.

2. DOC_356586

Abbott also improperly withholds DOC_356586, which the Privilege Log describes as "Confidential communication regarding potential third session," and lists

[8] Additionally, Abbott's mistaken invocation of legislative privilege appears to have resulted, at least in part, from a conflation of legislative *immunity* and legislative *privilege*, applying case law regarding the former to the latter. *See, e.g.*, Abbott RFP Objections at 3, 17, 22; Scott RFP Objections at 3, 17, 22. But as the Fifth Circuit has emphasized, the two are distinct concepts. *Jefferson Cmty.*, 849 F.3d at 624 (citing *Perez*, 2014 WL 106927, at *2). Indeed, while legislative immunity is absolute, legislative privilege for state lawmakers is "at best . . . qualified," and the "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*, 2014 WL 106927, at *1). Thus, even if Abbott could invoke legislative privilege—and he cannot—he has failed to show why such a qualified privilege applies to any of the specific documents LULAC Plaintiffs and Texas NAACP identify in this section. *See Perez*, 2014 WL 106927, at *2 ("It is well settled that the party asserting the privilege has the burden of establishing its applicability.").

[9] Section 323.017 of the Texas Government Code provides, among other things:

> Communications, including conversations, correspondence, and electronic communications, between a member of the legislature or the lieutenant governor, an officer of the house or senate, a legislative agency, office, or committee or a member of the staff of any of those officers or entities and an assistant or employee of the council that relate to a request by the officer or entity for information, advice, or opinions from an assistant or employee of the council are confidential and subject to legislative privilege.

Tex. Gov't Code § 323.017(a).

Sean Opperman as the sender and individuals in the Office of the Governor and Anna Mackin as recipients. Privilege Log at 6.

First, Abbott incorrectly asserts that he can withhold the document based on the deliberative process privilege. Notably, at no time between January 1, 2021 and the present did Sean Opperman and Anna Mackin work within the executive branch of the state of Texas; instead, during at least part of that time, they were employees of the Texas Senate. So, although the "[d]eliberative-process privilege protects candid discussions *within* the executive branch needed for optimum administrative decision making," that "rationale does not support privilege for communication where the agency is not the decision maker and the separation of powers veil has been pierced." *Gilby*, 471 F. Supp. 3d at 767 (emphasis added). "At issue here is not the internal decision-making processes of the executive branch, but instead a part of the legislative process." *Id.* By invoking the deliberative-process privilege in the context of decisionmaking related to the Legislature, Abbott essentially "asks the court to expand deliberative-process privilege to protect legislators' need for flexibility to obtain candid input about pending legislation from the Executive Branch that will ultimately enforce, implement, or provide interpretations of law." *Id.* (cleaned up). As noted in Section I.B.1, however, that position "is inconsistent with the purposes of both legislative privilege and deliberative-process privilege." *Id.* at 767–68. Accordingly, Abbott cannot withhold DOC_356586 on the basis of the deliberative-process privilege.

Second, Abbott incorrectly argues that he can withhold the document based on the attorney-client privilege. As an initial matter, Abbott bears the burden of establishing the applicability of the privilege, *see Perez*, 2014 WL 3495414, at *2, and the Fifth Circuit has explained that, "[b]ecause the attorney-client privilege has the effect of withholding relevant information from the fact-finder, it is interpreted narrowly so as to appl[y] only where necessary to achieve its purpose." *E.E.O.C. v. BDO USA, L.L.P.*, 876 F.3d 690, 695 (5th Cir. 2017) (quotation omitted). To that end, "courts have stated that simply describing a lawyer's advice as 'legal,' without more, is conclusory and insufficient to carry out the proponent's burden of establishing attorney-client privilege," and that documents sent from one staff member to another are not privileged "merely because a copy is also sent to counsel." *See id.* at 696. Of note, "documents concerning advice on political, strategic or policy issues . . . [are not] shielded from disclosure by the attorney-client privilege." *Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645, at *2 (E.D. Wis. Dec. 20, 2011) (citing *Evans v. Chicago*, 231 F.R.D. 302, 312 (N.D. Ill. 2005)). And critically, "[d]isclosure of attorney-client communications to a third party who lacks a common legal interest waives the attorney-client privilege," and the "mere speculation that" every recipient of a document "shared a cognizable common interest is insufficient to establish that the privilege applies." *Perez*, 2014 WL 3495414, at *2.

Abbott has failed to satisfy his burden to show that the attorney client privilege could apply to this document in the first instance, as discussed in Section I.A. Moreover, to the extent that the document constitutes political, strategic, or policy advice, it would not qualify for the privilege. *Baldus*, 2011 WL 6385645, at *2. But even if the privilege *could* apply to the document, the privilege is waived because Sean Opperman and Anna

Mackin—individuals who were not part of the Office of the Governor and who worked for the legislative, not the executive, branch—shared the document with the Office of the Governor. *See Perez*, 2014 WL 3495414, at *2. Accordingly, Abbott cannot withhold DOC_356586 on the basis of the attorney-client privilege

Third, Abbott is wrong that he can withhold the document based on the work product doctrine. As with the legislative and attorney-client privileges, courts must strictly construe the work product doctrine. *See Harding v. Cnty. of Dallas*, No. 3:15-CV-0131-D, 2016 WL 7426127, at *11 (N.D. Tex. Dec. 23, 2016). Critically, to qualify for protection under the work product doctrine, "'the primary motivating purpose' behind the creation of the document must be to aid in possible future litigation." *Id.* at *10 (quoting *In re Kaiser Aluminum & Chem Co.*, 214 F.3d 586, 593 (5th Cir. 2000)). To that end, "[o]therwise identical work by an attorney is not protected . . . if it was created in the ordinary course of business." *Bethune-Hill v. Virginia State Bd. of Elections*, 114 F. Supp. 3d 323, 348 (E.D. Va. 2015) (quotation omitted). In the context of the legislative process, courts have emphasized that "[l]egislative counsel could not, for example, withhold documents pertaining to pending legislation on the basis of the work product doctrine because the legislature could *always* have a reasonable belief that *any* of its enactments would result in litigation. That is the nature of the legislative process," *id.* (quotation and alterations omitted), as "it often involves contentious issues that the public may challenge as unconstitutional," *Baldus*, 2011 WL 6385645, at *2. As such, "materials prepared in the ordinary course of a party's business—here, the Legislature enacting laws—even if prepared when litigation was reasonably anticipated, are not work product." *See id.* (cleaned up and citations omitted); *see also Bethune-Hill*, 114 F. Supp. 3d at 348.

Here, Abbott asserts that the work product doctrine applies to a communication about the third special session of the Texas Legislature between employees of the executive branch and legislative branch. Abbott provides no information to show that the primary purpose of the document is to aid in possible future litigation. Indeed, the document relates to a potential session Abbott could (and eventually did) call; as such, it is a document prepared in the ordinary course of business—and therefore not subject to the work product doctrine. *See Bethune-Hill*, 114 F. Supp. 3d at 348.

Accordingly, Abbott must withdraw his assertions of the deliberative process privilege, attorney-client privilege, and the work product doctrine regarding DOC_0356586 and produce that document.[10]

3. DOC_0356587 and DOC_0356588

Abbott also contends that DOC_0356587 and DOC_0356588—each described as "Attachment to confidential communication regarding potential third special session.

[10] During the May 12, 2022 meet and confer, counsel for Defendants suggested that the document could also be withheld on the basis of the legislative privilege. For the reasons stated in Section I.B.1, the legislative privilege could not be asserted or applied to DOC_0356586.

Includes input from OOG attorneys"—are protected from disclosure by the attorney-client privilege, the work product doctrine, and the deliberative process privilege. Privilege Log at 6. Again, Abbott is wrong.

As an initial matter, the Privilege Log lacks any information about the author, sender, or recipients of the documents, in violation of the Stipulated ESI Agreement. Assuming that the documents were originally attachments to the communication in DOC_0356386, Abbott incorrectly withholds DOC_0356587 and DOC_0356588, for the same reasons articulated in Section I.B.2.

Accordingly, Abbott must withdraw his assertions of the attorney-client privilege, work product doctrine, and deliberative process privilege regarding DOC_0356587 and DOC_0356588 and produce those documents.[11]

4. DOC_0356593

Additionally, Abbott erroneously withholds DOC_0356593—described as "Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys" and sent to employees of the Office of the Governor, Sean Opperman and Anna Mackin—based on: the attorney-client privilege, work product doctrine, legislative privilege, and deliberative process privilege.

For the reasons set forth in Section I.B.2, this document is not entitled to the attorney-client privilege, deliberative process privilege, or work product doctrine, as the document appears to constitute political, policy, or strategic advice; has been disclosed to individuals outside of the Office of the Governor; and pertains to a draft proclamation of the special session—*i.e.*, something in the ordinary course of calling the Legislature. And for the reasons set forth in Section I.B.1, Abbott cannot withhold the document on the basis of legislative privilege, as he lacks standing to assert the privilege, any privilege that could be asserted has been waived because the document has been shared with an individual outside the Legislature, he cannot invoke the privilege on his own behalf, and he has failed to show that—should the privilege apply—the privilege should not yield here.

Accordingly, Abbott must withdraw his assertions of the legislative privilege, attorney-client privilege, work product doctrine, and deliberative process privilege regarding DOC_0356593 and produce that document.

5. DOC_0356598 and DOC_0356600

Abbott also incorrectly withholds DOC_0356598 and DOC_0356600—described as "Confidential communication from Senate Redistricting Committee regarding

[11] In the event that these documents were originally attached to the communication in DOC_0356386, Abbott cannot withhold them based on the legislative privilege either, for the same reasons noted in Section I.B.1.

materials related to draft redistricting legislation" and sent by "Senate Redistricting and Jurisprudence Committee (via Dropbox)"—based on the following: the attorney-client privilege, the work product doctrine, the legislative privilege, and the deliberative process privilege. Privilege Log at 9.

As an initial matter, the Privilege Log does not indicate whether any documents linked to in the communication—*i.e.*, that were accessible "via Dropbox"—are listed in the log or have been withheld. *See id.* "Rule 34 provides that, subject to the relevancy limitations of Rule 26, a party may serve on any other party a request 'to produce . . . items in the responding party's possession, custody, or control,'" and "a party can 'control' documents that are within the possession or custody of a non-party." *Perez v. Perry*, No. SA-11-CV-360-OLG-JES, 2014 WL 1796661, at *1 (W.D. Tex. May 6, 2014) (quoting Fed. R. Civ. P. 34(a)(1)(A)); *see also St. Pierre v. Dearborn Nat'l Life Ins. Co.*, No. 3:19-cv-223-DCG, 2020 WL 6122555, at *4 (W.D. Tex. Apr. 14, 2020). "Documents are considered to be within a party's control when that party has the right, authority, or practical ability to obtain the documents from a nonparty." *Perez*, 2014 WL 1796661, at *1 (quotation omitted). Because the Office of the Governor received a link via Dropbox, Abbott must produce any document accessible via that link or state the reasons for withholding any such document in his Privilege Log (along with listing any other individuals who had access to that Dropbox link).

For the reasons set forth in Section I.B.2, DOC_0356598 and DOC_0356600—and any document included in the Dropbox link—are not entitled to the attorney-client privilege, deliberative process privilege, or work product doctrine, as the documents appear to constitute political, policy, or strategic advice; have been disclosed to individuals outside of the Office of the Governor; and pertain to draft redistricting legislation—*i.e.*, something in the ordinary course of the legislative process. And for the reasons set forth in Section I.B.1, Abbott cannot withhold the documents on the basis of legislative privilege, as he lacks standing to assert the privilege, any privilege that could be asserted has been waived because the document has been shared with an individual outside the Legislature, he cannot invoke the privilege on his own behalf, and he has failed to show that—should the privilege apply—the privilege should not yield here.

Accordingly, Abbott must withdraw his assertions of the legislative privilege, attorney-client privilege, work product doctrine, and the deliberative process privilege regarding DOC_0356598 and DOC_0356600 and produce those documents, along with any documents that were accessible through the Dropbox link referenced in those communications.

6. DOC_0356606

Abbott also incorrectly withholds DOC_0356606—described as "Confidential communication regarding draft redistricting legislation," dated March 10, 2022, and sent from Lieutenant Governor Dan Patrick to Abbott—based on the following: the attorney-client privilege, the work product doctrine, the legislative privilege, and the deliberative process privilege. Privilege Log at 10.

For the reasons set forth in Section I.B.1, Abbott may not withhold the document based on legislative privilege, as Abbot lacks standing to assert the privilege, he may not invoke the privilege on his own behalf, and, in any event, the privilege has been waived because he is a member of the executive branch. Moreover, the document is dated March 10, 2022, and thus reflects a communication *after* the enactment of the legislation at issue, and therefore is not subject to legislative privilege or deliberative process privilege. And for the reasons set forth in Section I.B.2, this document is not entitled to the attorney-client privilege or work product doctrine, as the communication does not include counsel for the Office of the Governor; appears to constitute political, policy, or strategic advice; has been disclosed to individuals outside of the Office of the Governor; and pertains to a draft legislation—*i.e.*, something in the ordinary course of enacting legislation.

Accordingly, Abbott must withdraw his assertions of the legislative privilege, attorney-client privilege, work product doctrine, and deliberative process privilege regarding DOC_0356606 and produce that document.

II. LULAC Plaintiffs' Separate Objections and Concerns

The following pertain to only LULAC Plaintiffs' discovery requests.

A. Confirmation of Date Range for Document Search

LULAC Plaintiffs reiterate the following objection raised in their April 26, 2022 meet and confer letter to Defendants: Defendants improperly object to LULAC Plaintiffs' instructions to search for documents from January 1, 2019 to the present, instead limiting their search to January 1, 2021 to October 25, 2021. Abbott RFP Objections at 6; Scott RFP Objections at 6. Testimony during the preliminary injunction hearing in this action revealed that legislators met prior to 2021 to discuss redistricting. Accordingly, documents prior to January 1, 2021 may provide evidence of legislators' intent and the development of the redistricting process, which is more than enough to satisfy the relevancy standard for discovery. *See St. Pierre*, 2020 WL 612255, at *3. Additionally, documents after October 25, 2021 are relevant to LULAC Plaintiffs' claims. Moreover, Defendants fail to explain how LULAC Plaintiffs' instructed period of time is unduly burdensome.

Accordingly, Defendants must withdraw their objections to the instructed period of time, indicate they have searched for documents during that period, and fully respond to LULAC Plaintiffs' Interrogatories and Requests for Production to Defendants.

B. Defendants' Objection to the Term "Staff Member" in LULAC Plaintiffs' Interrogatories is Without Merit.

LULAC Plaintiffs reiterate the following objection raised in their April 26, 2022 meet and confer letter to Defendants: Defendants object to the definition of "you" or

"your" in LULAC Plaintiffs' interrogatories because it includes the phrase "staff member," claiming that the inclusion of "staff member" is vague and unduly burdensome. *See* Abbott Interrogatories Objections at 4; Scott Interrogatories Objections at 4. However, Defendants' objections are without merit, as they fail to articulate how the inclusion of the word "staff member" is unduly burdensome. *Heller v. City of Dallas*, 303 F.R.D. 466, 490 (N.D. Tex. 2014) ("A party resisting discovery must show specifically how each interrogatory or document request is overly broad, unduly burdensome, or oppressive."). Moreover, where terms are not defined, Defendants "should exercise reason and common sense to attribute ordinary definitions to terms and phrases utilized in interrogatories," *id.* at 491 (quotation omitted), just as they do in other portions of their responses to LULAC Plaintiffs' discovery requests, *see, e.g.*, Abbott RFP Objections at 9 (objecting to "but not limited to" as vague and overbroad but nevertheless stating that they "will use reasonable understanding of this request to search for any documents").

Accordingly, Defendants must withdraw their objections to LULAC Plaintiffs' definition of "you" and "your," indicate they have responded to LULAC Plaintiffs' discovery requests consistent with that definition, and fully respond to LULAC Plaintiffs' discovery requests.

* * *

LULAC Plaintiffs and Texas NAACP reserve the right to raise additional issues with Abbott's Privilege Log and Defendants' other objections to discovery requests, as necessary. We hope that the parties can narrow the scope of disagreement or reach an amicable resolution without seeking Court intervention.

Sincerely,

Nina Perales

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Kenneth Parreno
Samantha Serna Uribe
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Counsel for Texas NAACP

Privilege Log - Office of the Governor

Control Number	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
DOC_0356555			Greg Abbott	Jeff Oldham	Luis Saenz; Gardner Pate; Angela Colmenero		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356556	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356557		5/27/2013					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356558			Jeff Oldham	Angela Colmenero			Attorney Client; Work Product; Deliberative	Document related to draft litigation hold letter regarding redistricting litigation. Includes input from OOG attorneys.
DOC_0356559	Angela Colmenero	9/3/2021					Attorney Client; Work Product; Deliberative	Document related to draft litigation hold letter regarding redistricting litigation. Includes input from OOG attorneys.
DOC_0356560			Courtney Hjaltman; Gardner Pate; Jeff Oldham; Angela Colmenero	Sean Opperman			Legislative	Confidential communication from Senator Huffman to members of the Senate, as well as certain executive branch offices, regarding expected release of Census data.
DOC_0356561	Sean Opperman	8/12/2021					Legislative	Confidential communication from Senator Huffman to members of the Senate, as well as certain executive branch offices, regarding expected release of Census data.

DOC_0356569			Luis Saenz; Gardner Pate; Jeff Oldham; Angela Colmenero; Mark Miner; Renae Eze	Wes Hambrick			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft letter to U.S. Census Bureau. Includes input from OOG attorneys.
DOC_0356571			Greg Davidson	Jeff Oldham	Angela Colmenero; Gardner Pate		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356575			Luis Saenz; Gardner Pate; Jordan Hale; Sarah Hicks; Wes Hambrick; Courtney Hjaltman; Renae Eze; Mark Miner; Chris Warren; Nan Tolson; Sheridan Nolen; Jeff Oldham; Kieran Hillis; Joseph Behnke; Marie Dahlmann; Greg Davidson; Cobey Fletcher	Angela Colmenero			Attorney Client; Work Product	Confidential communication regarding litigation hold for redistricting litigation. Includes input from OOG attorneys.

DOC_0356576	Angela Colmenero	9/3/2021					Attorney Client; Work Product	Confidential communication regarding litigation hold for redistricting litigation. Includes input from OOG attorneys.
DOC_0356578	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356579			Jeff Oldham; Luis Saenz; Angela Colmenero	Gardner Pate			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356580	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356581			Luis Saenz; Gardner Pate; Jeff Oldham	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356582	Greg Davidson	9/7/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356583			Luis Saenz; Gardner Pate; Jeff Oldham	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356584	Greg Davidson	9/7/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356585	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356586			Gardner Pate; Jeff Oldham; Courtney Hjaltman; Angela Colmenero	Sean Opperman	Anna Mackin		Attorney Client; Work Product; Deliberative	Confidential communication regarding potential third special session. Inludes input from OOG attorneys.
DOC_0356587		8/26/2021					Attorney Client; Work Product; Deliberative	Attachment to confidential communication regarding potential third special session. Inludes input from OOG attorneys.
DOC_0356588		8/26/2021					Attorney Client; Work Product; Deliberative	Attachment to confidential communicationregarding potential third special session. Inludes input from OOG attorneys.

DOC_0356590			Jeff Oldham	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356591	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356592			Greg Davidson; Luis Saenz; Jeff Oldham	Gardner Pate			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356593			Sean Opperman; Gardner Pate; Jeff Oldham; Angela Colmenero	Courtney Hjaltman	Anna Mackin		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356594			Nan Tolson; Sheridan Nolen; Chris Warren; Mark Miner; Luis Saenz; Jeff Oldham; James Sullivan	Gardner Pate			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356595			Sheridan Nolen; Chris Warren; Mark Miner; Luis Saenz; Gardner Pate; Jeff Oldham; James Sullivan	Nan Tolson			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356596			Sheridan Nolen; Nan Tolson; Chris Warren; Mark Miner; Gardner Pate; Jeff Oldham; James Sullivan	Luis Saenz			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356597			Nan Tolson; Sheridan Nolen; Chris Warren; Mark Miner; Gardner Pate; Jeff Oldham; James Sullivan	Luis Saenz			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356598			Angela Colmenero	Senate Redistricting & Jurisprudence Committee (via Dropbox)			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication from Senate Redistricting Committee regarding materials related to draft redistricting legislation.
DOC_0356599		3/18/2022					Attorney Client; Work Product; Deliberative	Communication from U.S. Census Bureau regarding census data, with annotations by OOG attorneys.
DOC_0356600			Angela Colmenero	Senate Redistricting & Jurisprudence Committee (via Dropbox)			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication from Senate Redistricting Committee regarding materials related to draft redistricting legislation.
DOC_0356604			Nan Tolson; Chris Warren; Mark Miner; Luis Saenz; Gardner Pate; Jeff Oldham; James Sullivan	Sheridan Nolen			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.

DOC_0356606		3/10/2022	Greg Abbott	Dan Patrick			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft redistricting legislation.
DOC_0356609			Greg Abbott	Jeff Oldham	Luis Saenz; Gardner Pate; Angela Colmenero		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes input from OOG attorneys.
DOC_0356610	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes input from OOG attorneys.

Privilege Log - Office of the Governor

Control Number	File Extension	Custodian	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
DOC_0356555	MSG	OOG		9/2/2021	Greg Abbott	Jeff Oldham (attorney)	Luis Saenz; Gardner Pate; Angela Colmenero (attorney)		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356556	DOC	OOG	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356557	PDF	OOG		5/27/2013					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356558	MSG	OOG			Jeff Oldham (attorney)	Angela Colmenero (attorney)			Attorney Client; Work Product; Deliberative	Document related to draft litigation hold letter regarding redistricting litigation. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356559	DOCX	OOG	Angela Colmenero (attorney)	9/3/2021					Attorney Client; Work Product; Deliberative	Document related to draft litigation hold letter regarding redistricting litigation. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.

DOC_0356560	MSG	OOG		8/12/2021	Courtney Hjaltman; Gardner Pate; Jeff Oldham (attorney); Angela Colmenero (attorney)	Sean Opperman (attorney)			Legislative	Confidential communication from Senator Huffman to members of the Senate, as well as certain executive branch offices, regarding expected release of Census data.
DOC_0356561	PDF	OOG	Sean Opperman (attorney)	8/12/2021					Legislative	Confidential communication from Senator Huffman to members of the Senate, as well as certain executive branch offices, regarding expected release of Census data.
DOC_0356569	MSG	OOG		6/21/2021	Luis Saenz; Gardner Pate; Jeff Oldham (attorney); Angela Colmenero (attorney); Mark Miner; Renae Eze	Wes Hambrick			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft letter to U.S. Census Bureau. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356571	MSG	OOG		9/2/2021	Greg Davidson	Jeff Oldham (attorney)	Angela Colmenero (attorney); Gardner Pate		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356575	MSG	OOG		9/3/2021	Luis Saenz; Gardner Pate; Jordan Hale; Sarah Hicks; Wes Hambrick; Courtney Hjaltman; Renae Eze; Mark Miner; Chris Warren; Nan Tolson; Sheridan Nolen; Jeff Oldham (attorney); Kieran Hillis; Joseph Behnke; Marie Dahlmann; Greg Davidson; Cobey Fletcher	Angela Colmenero (attorney)			Attorney Client; Work Product	Confidential communication regarding litigation hold for redistricting litigation. Includes legal advice from OOG attorneys on required action items.
DOC_0356576	PDF	OOG	Angela Colmenero (attorney)	9/3/2021					Attorney Client; Work Product	Confidential communication regarding litigation hold for redistricting litigation. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.

DOC_0356578	DOC	OOG	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356579	MSG	OOG		9/2/2021	Jeff Oldham (attorney); Luis Saenz; Angela Colmenero (attorney)	Gardner Pate			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356580	DOC	OOG	Greg Davidson	9/1/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356581	MSG	OOG		9/7/2021	Luis Saenz; Gardner Pate; Jeff Oldham (attorney)	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356582	PDF	OOG	Greg Davidson	9/7/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356583	MSG	OOG		9/7/2021	Luis Saenz; Gardner Pate; Jeff Oldham (attorney)	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.

DOC_0356584	PDF	OOG	Greg Davidson	9/7/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356585	PDF	OOG	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356586	MSG	OOG		8/27/2021	Gardner Pate; Jeff Oldham (attorney); Courtney Hjaltman; Angela Colmenero (attorney)	Sean Opperman (attorney)	Anna Mackin (attorney)		Attorney Client; Work Product; Deliberative	Confidential communication regarding potential third special session. Inludes input from OOG attorneys.
DOC_0356587	DOCX	OOG		8/26/2021					Attorney Client; Work Product; Deliberative	Attachment to confidential communication regarding potential third special session. Inludes input from OOG attorneys.
DOC_0356588	DOCX	OOG		8/26/2021					Attorney Client; Work Product; Deliberative	Attachment to confidential communicationregarding potential third special session. Inludes input from OOG attorneys.
DOC_0356590	MSG	OOG		9/2/2021	Jeff Oldham (attorney)	Greg Davidson			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.

DOC_0356591	PDF	OOG	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.
DOC_0356592	MSG	OOG		9/7/2021	Greg Davidson; Luis Saenz; Jeff Oldham (attorney)	Gardner Pate			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356593	MSG	OOG		8/27/2021	Sean Opperman (attorney); Gardner Pate; Jeff Oldham (attorney); Angela Colmenero (attorney)	Courtney Hjaltman	Anna Mackin (attorney)		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356594	MSG	OOG		9/7/2021	Nan Tolson; Sheridan Nolen; Chris Warren; Mark Miner; Luis Saenz; Jeff Oldham (attorney); James Sullivan (attorney)	Gardner Pate			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356595	MSG	OOG		9/7/2021	Sheridan Nolen; Chris Warren; Mark Miner; Luis Saenz; Gardner Pate; Jeff Oldham (attorney); James Sullivan (attorney)	Nan Tolson			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356596	MSG	OOG		9/7/2021	Sheridan Nolen; Nan Tolson; Chris Warren; Mark Miner; Gardner Pate; Jeff Oldham (attorney); James Sullivan (attorney)	Luis Saenz			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.

DOC_0356597	MSG	OOG		9/7/2021	Nan Tolson; Sheridan Nolen; Chris Warren; Mark Miner; Gardner Pate; Jeff Oldham (attorney); James Sullivan (attorney)	Luis Saenz			Attorney Client; Work Product; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356598	MSG	OOG		8/30/2021	Angela Colmenero (attorney)	Senate Redistricting & Jurisprudence Committee (via Dropbox)			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication from Senate Redistricting Committee regarding materials related to draft redistricting legislation. These materials were shared with and intended to be used by only those to whom they were sent.
DOC_0356599	PDF	OOG		3/18/2022					Attorney Client; Work Product; Deliberative	Communication from U.S. Census Bureau regarding census data, with annotations by OOG attorneys.
DOC_0356600	MSG	OOG		8/27/2021	Angela Colmenero (attorney)	Senate Redistricting & Jurisprudence Committee (via Dropbox)			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication from Senate Redistricting Committee regarding materials related to draft redistricting legislation. These materials were shared with and intended to be used by only those to whom they were sent.
DOC_0356604	MSG	OOG		9/7/2021	Nan Tolson; Chris Warren; Mark Miner; Luis Saenz; Gardner Pate; Jeff Oldham (attorney); James Sullivan (attorney)	Sheridan Nolen			Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356606	PDF	OOG		3/10/2022	Greg Abbott	Dan Patrick			Legislative; Deliberative	Confidential communication regarding draft redistricting legislation.

DOC_0356609	MSG	OOG		9/3/2021	Greg Abbott	Jeff Oldham (attorney)	Luis Saenz; Gardner Pate; Angela Colmenero (attorney)		Attorney Client; Work Product; Legislative; Deliberative	Confidential communication regarding draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the communication.
DOC_0356610	PDF	OOG	Greg Davidson	9/2/2021					Attorney Client; Work Product; Legislative; Deliberative	Document related to draft proclamation of special session. Includes legal advice from OOG attorneys on the substance, legal compliance, and strategy of the subject of the document.

RE: LULAC v. Abbott, 3:21-cv-259 (W.D. Tex.): LULAC Plaintiffs' and Texas NAACP's Letter Re: Defendant Abbott's Privilege Log and Defendants' Discovery Objections

Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>

Wed 5/25/2022 7:44 PM

To: Kenneth Parreno <Kparreno@MALDEF.org>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>;

Cc: Nina Perales <nperales@MALDEF.org>; Samantha Serna <sserna@MALDEF.org>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Robert@notzonlaw.com <Robert@notzonlaw.com>; lindsey.cohan@dechert.com <lindsey.cohan@dechert.com>; neil.steiner@dechert.com <neil.steiner@dechert.com>;

1 attachment

OOG supplemental privilege log.pdf;

Good evening counsel,

Attached is a supplemental privilege log that provides additional information regarding the privilege assertions Defendants made for documents withheld in connection with LULAC and NAACP's first set of requests for documents. We provide this supplement without conceding the deficiency of the original privilege log. And as always, to the extent LULAC and NAACP contend that they do not understand the basis of certain privilege assertions, we would be happy to meet and confer to discuss the subject, or to provide additional information.

Defendants have provided supplemental information regarding the file extension, custodian, date of the entry, as well as to identify any attorneys involved with the entry. You will note that for some entries, one or multiple of the fields are not populated (for example, the *author* or *date created* field). That is because the documents provided to Defendants do not have that information. That is, if a document does not list the *author*, that is because the document provided does not list that information in its metadata. We have populated these fields based on all information we possess.

To briefly address your letter of May 16th, Defendants have asserted the deliberative-process and legislative privileges over documents and communications relating to the Governor's constitutional authority to call special sessions of the legislature. As indicated in the privilege log, these include (i) gathering information on the expected release of the Census data, (ii) considering whether and when to call a special session to address redistricting, and related scheduling topics, and (iii) drafting and editing a proclamation calling such a special session. And in many instances, lawyers from the Governor's office gave legal advice on the content of the documents and communications, and the legality of the actions pursued. We believe the circumstances articulated in the log support our privilege assertions.

We appreciate the parties efforts to narrow the disagreements presented by this privilege log, and remain open to discussing any remaining disagreements.

Sincerely, Jack DiSorbo

Jack DiSorbo
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Jack.DiSorbo@oag.texas.gov

From: Kenneth Parreno <Kparreno@MALDEF.org>
Sent: Monday, May 16, 2022 2:45 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Eric Hudson <Eric.Hudson@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Nina Perales <nperales@MALDEF.org>; Samantha Serna <sserna@MALDEF.org>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Robert@notzonlaw.com; lindsey.cohan@dechert.com; neil.steiner@dechert.com
Subject: Re: LULAC v. Abbott, 3:21-cv-259 (W.D. Tex.): LULAC Plaintiffs' and Texas NAACP's Letter Re: Defendant Abbott's Privilege Log and Defendants' Discovery Objections

Hi Jack,

LULAC Plaintiffs and Texas NAACP are okay with receiving a response to our letter by Wednesday, May 25, 2022.

Thank you,
Kenneth

Kenneth Parreno
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t 210.224.5476 / f 210.224.5382
kparreno@maldef.org

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Monday, May 16, 2022 1:48 PM
To: Kenneth Parreno; Patrick Sweeten; Eric Hudson; Will Thompson
Cc: Nina Perales; Samantha Serna; Ezra Rosenberg; Pooja Chaudhuri; Sofia Fernandez Gold; Robert@notzonlaw.com; lindsey.cohan@dechert.com; neil.steiner@dechert.com
Subject: RE: LULAC v. Abbott, 3:21-cv-259 (W.D. Tex.): LULAC Plaintiffs' and Texas NAACP's Letter Re: Defendant Abbott's Privilege Log and Defendants' Discovery Objections

Hi Kenneth,

Thank you for your email, and the attached letter. We appreciate your identifying the specific privilege assertions to which LULAC and NAACP is objecting, and the opportunity to supplement. As I said on the call, I'm hopeful we'll be able to resolve a good portion of the disagreements here informally.

Would LULAC and NAACP be amenable to receiving a supplement by next Wednesday, May 25th? We have five responsive pleadings and a privilege log due on the 18th, a reply brief due on the 19th, and interrogatory responses due on the 20th. I would be able to dedicate more time to supplementing this privilege log if I could turn to it after those deadlines.

Best, Jack

Jack DiSorbo

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Jack.DiSorbo@oag.texas.gov

From: Kenneth Parreno <Kparreno@MALDEF.org>
Sent: Monday, May 16, 2022 12:48 PM
To: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Eric Hudson <Eric.Hudson@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Nina Perales <nperales@MALDEF.org>; Samantha Serna <sserna@MALDEF.org>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Sofia Fernandez Gold <sfgold@lawyerscommittee.org>; Robert@notzonlaw.com; lindsey.cohan@dechert.com; neil.steiner@dechert.com
Subject: LULAC v. Abbott, 3:21-cv-259 (W.D. Tex.): LULAC Plaintiffs' and Texas NAACP's Letter Re: Defendant Abbott's Privilege Log and Defendants' Discovery Objections

Counsel:

As discussed during our May 12, 2022 meet and confer, please see the attached letter following up on our concerns regarding Defendant Abbott's privilege log, which was served jointly on LULAC Plaintiffs and Texas NAACP on May 4, 2022. The attached also reiterates a few other concerns raised in LULAC Plaintiffs' April 26, 2022 meet and confer letter.

We request a response by May 20, 2022.

Thank you,

Kenneth

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Re: LULAC v. Abbott, 3:21-cv-259: Final Meet and Confer Regarding Documents Withheld by Defendant Abbott

Kenneth Parreno

Fri 6/24/2022 12:12 PM

To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Nina Perales <nperales@MALDEF.org>;

Cc: dfox@elias.law <dfox@elias.law>; pchaudhuri@lawyerscommittee.org <pchaudhuri@lawyerscommittee.org>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>;

Hi Jack,

Thanks for your email and stating Defendants' position on both our motion for leave to exceed the page limit and our motion to compel. We certainly share the same sentiment of hoping to continue working well together going forward. Hope you have a great weekend.

Kenneth

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Friday, June 24, 2022 11:54 AM
To: Kenneth Parreno; Nina Perales
Cc: dfox@elias.law; pchaudhuri@lawyerscommittee.org; Patrick Sweeten; Will Thompson; Courtney Corbello
Subject: RE: LULAC v. Abbott, 3:21-cv-259: Final Meet and Confer Regarding Documents Withheld by Defendant Abbott

Kenneth,

I appreciate your response, though disagree with the sentiments expressed. I think future conferral on this subject will unfortunately be unavailing. I am disappointed that we were unable to limit the dispute presented to the Court, but will endeavor to continue working well together going forward.

We oppose your motion for leave to file a 25 page brief.

Jack

From: Kenneth Parreno <Kparreno@MALDEF.org>
Sent: Thursday, June 23, 2022 9:20 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Nina Perales <nperales@MALDEF.org>
Cc: dfox@elias.law; pchaudhuri@lawyerscommittee.org; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>
Subject: RE: LULAC v. Abbott, 3:21-cv-259: Final Meet and Confer Regarding Documents Withheld by Defendant Abbott

Hi Jack,

Thank you for your response. I did not see a response in your email to our request that you provide Defendants' position on our joint motion to exceed the page limit for our joint motion to compel. We would appreciate a response regarding that request by tomorrow (Friday, June 24, 2022) at 12pm CT.

We will hold off on filing our joint motion to compel until tomorrow afternoon (Friday, June 24, 2022). If, after reviewing my email, you would still like to meet to discuss your position on these documents, we're available tomorrow (Friday, June 24, 2022) before 1pm CT to discuss. If you would like to meet, please let me know what time would work for you.

After reviewing your email, our position remains that all of the documents I identified in my prior email should be disclosed, and that the privileges you assert over those documents do not apply, for the reasons already articulated across our multiple meetings and letters. Regarding the 23 documents you have identified, the Supplemental Privilege Log, along with further elaboration in your email, offers no more than conclusory and boilerplate statements that "legal advice" was given. In any event, these documents concern (a) facts, not legal advice, (b) advice on political, strategic, or policy issues, and/or (c) were not created in anticipation of litigation. Moreover, for any document that was shared outside of the Office of the Governor, any claim of attorney-client privilege or work product doctrine has been waived.

Regarding the relevance of the 23 documents you listed, given their subject matter, they pertain to the process and/or circumstances surrounding the enactment of the challenged redistricting legislation, and some documents contain communications that may reveal the intent of the legislators who enacted that legislation, especially given that at least some of the documents have been shared with legislative staff. Thus, the documents may be relevant to both the intent- and effects-based claims brought by Plaintiffs.

As I said, please let me know if you'd like to meet tomorrow, and let me know whether you oppose Plaintiffs' joint motion to exceed the page limit.

Thanks,
Kenneth

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From: Jack DiSorbo [mailto:Jack.DiSorbo@oag.texas.gov]
Sent: Thursday, June 23, 2022 7:11 AM
To: Kenneth Parreno; Nina Perales
Cc: dfox@elias.law; pchaudhuri@lawyerscommittee.org; Patrick Sweeten; Will Thompson; Courtney Corbello
Subject: RE: LULAC v. Abbott, 3:21-cv-259: Final Meet and Confer Regarding Documents Withheld by Defendant Abbott

Kenneth and Nina,

Thank you for your email. I want to briefly address my hope that through additional discussion we can limit the scope of our disagreement. To be sure, for some documents, I think our positions are too far apart to reach agreement. But I don't think the same is true for others. In particular, consider the documents "related to draft proclamation of special session." These documents are quite literally drafts of a proclamation calling a third special session. They were prepared by attorneys and other OOG staff, as the privilege log indicates. In preparing these drafts, and by advising on their preparation, OOG attorneys gave legal advice as to the required content of these drafts, and their compliance with applicable law. These drafts were then sent in "confidential communications" to members of the OOG staff, including attorneys. These messages themselves also contained commentary and other legal advice regarding the drafts. All of this information is provided in the privilege log.

If I recall correctly, your previous objections regarding these entries were that you were unable to ascertain (i) whether attorneys were involved in the preparing of the documents and sending of the messages, and (ii) the subject and purpose of the documents and communications. We have endeavored to provide that additional information here. Do you have additional objections to these entries? I struggle to see how the attorney client and attorney work product privileges would not apply here. Moreover, I do not understand how these documents are at all related to the LULAC, NAACP, and Abuabara plaintiffs' claims. What is your relevance basis for seeking these documents? Consider whether it would be more expedient to present your motion without these entries (understanding of course that you may want to maintain your objections to those entries without moving to compel them). I think we would all prefer to avoid presenting unnecessary argument to the Court.

For reference, the documents and communications related to the draft proclamation are as follows: DOC_0356555, DOC_0356556, DOC_0356557, DOC_0356571, DOC_0356578, DOC_0356579, DOC_0356580, DOC_0356581, DOC_03565802, DOC_0356583, DOC_0356584, DOC_0356585, DOC_0356590, DOC_0356591, DOC_0356592, DOC_0356593, DOC_0356594, DOC_0356595, DOC_0356596, DOC_0356597, DOC_0356604, DOC_0356609, and DOC_0356610.

I would appreciate the opportunity to confer regarding these documents. Do you have time in the next few days? You may be aware that I'm in Representative Lujan's deposition today. As I stated, I honestly think we may be able to come to an understanding on these documents (which constitute the majority of the entries on the log).

Jack

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From: Kenneth Parreno <Kparreno@MALDEF.org>
Sent: Wednesday, June 22, 2022 3:41 PM
To: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>
Cc: dfox@elias.law; pchaudhuri@lawyerscommittee.org; Nina Perales <nperales@MALDEF.org>
Subject: LULAC v. Abbott, 3:21-cv-259: Final Meet and Confer Regarding Documents Withheld by Defendant Abbott

Counsel,

Thank you for providing a Supplemental Privilege Log for Defendant Abbott (see attached) in response to the document requests of LULAC Plaintiffs, Abuabara Plaintiffs, and Texas NAACP ("Plaintiffs"). I write to address two matters related to the Supplemental Privilege Log, and request a response to both matters by 5pm CT tomorrow, June 23, 2022.

First, it is our understanding that you are withholding the documents listed in the attached Supplemental Privilege Log based on your assertions of one or more of the following: legislative privilege, deliberative-process privilege, attorney-client privilege, and work product doctrine. In our meet and confers and correspondence, Plaintiffs have taken the position that these privileges do not apply, for the reasons explained in those meetings and correspondence. In light of the disagreement over whether Abbott may withhold documents based on the privileges he asserts, and our meetings and correspondence attempting to resolve the disagreement, Plaintiffs intend to file a joint motion to compel tomorrow at 5pm CT, seeking disclosure of all documents listed in the Supplemental Privilege Log except for the following: DOC_0356558, DOC_0356559, DOC_0356575, and DOC_0356576. As one last effort to resolve this matter without Court intervention, we are reaching out to determine which, if any, of the documents you would produce in light of our position on the asserted privileges. Please indicate your position on Plaintiffs' request for these documents by 5pm CT tomorrow (Thursday, June 23, 2022).

Second, pursuant to Local Rule 7(C), Plaintiffs intend to file a motion for leave to exceed the page limit for a discovery-related motion, seeking to file a motion to compel that shall not exceed 25 pages, exclusive of the caption, signature block, etc. Plaintiffs seek this page-limit extension to address fully each of the privileges Abbott asserts, and the extension is necessary given the consolidated nature of the motion. Please let us know whether you oppose Plaintiffs' motion for leave to exceed the page limit.

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