

twenty-eight more depositions. *See* ECF 433. In moving for this discovery extension, MALC erroneously claims that Thomas Bryan and Eric Wienckowski have “agreed” to be deposed. ECF 433 at 2.

Thomas Bryan is a demographer who was hired as a consulting expert by the law firm Butler Snow LLP to assist the firm in advising its client—the Chairman and his staff of the House Redistricting Committee of the Texas House of Representatives, including the General Counsel to the Texas House—in state legislative, board of education, and congressional reapportionment and redistricting matters. *See* ECF 390-1. Butler Snow LLP explicitly hired Mr. Bryan in anticipation of litigation. ECF 390-1. After Mr. Bryan was retained by Butler Snow LLP, he hired Mr. Wienckowski to assist him in providing advice and consulting to the firm and its clients. ECF 390-1. Mr. Bryan and Mr. Wienckowski provided services only as directed by Butler Snow to assist the firm in rendering legal advice and consultation to the firm’s clients. ECF 390-2.

Plaintiff the United States served Mr. Bryan and Wienckowski with subpoenas and subsequently moved to compel compliance with the subpoenas. ECF 385; 392. Mr. Bryan and Mr. Wienckowski have filed a response to this motion to compel, claiming the same various privileges and protections Mr. Bryan and Mr. Wienckowski asserted in their original objections and responses to the subpoenas. ECF 390.

Mr. Bryan and Mr. Wienckowski have maintained since the onset of this litigation that any document in their possession is protected by numerous overlapping protections and privileges. *See* generally ECF 390. Any deposition testimony from Mr. Bryan or Mr. Wienckowski would be likewise subject to the same privileges and protections. Accordingly, Mr. Bryan and Mr. Wienckowski have not and would not agree to appear for any deposition in this case, absent a court order requiring them to do so.

Moreover, MALC's counsel has never contacted Mr. Bryan or Mr. Wienckowski's counsel to ask if they would agree to appear for a deposition. Nevertheless, MALC now inexplicably states that Mr. Bryan and Mr. Wienckowski have "agreed" to be deposed. ECF 433. The only contact Mr. Bryan or Mr. Wienckowski received regarding any depositions came from Dan Freeman, an attorney for the Department of Justice. Counsel for Mr. Bryan and Mr. Wienckowski told Mr. Freeman that Mr. Bryan and Mr. Wienckowski would be willing to work with Mr. Freeman on identifying possible deposition dates, only if the court were to "extend the deadline for fact discovery and the court allows discovery from these witnesses." *See* Ex. 1. Accordingly, contrary to MALC's assertions in its motion, Mr. Bryan and Mr. Wienckowski have never "agreed" to appear for depositions in this case. ECF 433.

MALC's motion should therefore be denied because it is based on material factual inaccuracies.

Dated: July 15, 2022

Respectfully submitted,

/s/Scott K. Field

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CERTIFICATE OF SERVICE

I hereby certify on July 15, 2022, copies of the foregoing Response to the MALC's Motion for Leave for Limited Discovery Out of Time was served on counsel of record through the Court's CM/ECF service.

/s/Scott K. Field

Scott K. Field

EXHIBIT 1

From: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>
Sent: Wednesday, July 6, 2022 4:08 PM
To: Scott Field <Scott.Field@butlersnow.com>
Cc: Mellett, Timothy F (CRT) <Timothy.F.Mellett@usdoj.gov>
Subject: RE: LULAC v. Abbott (Redistricting): Deposition Dates

Scott,

Thank you for the information. I will be in touch after the Foltz deposition, and we can discuss the best way forward.

Dan

From: Scott Field <Scott.Field@butlersnow.com>
Sent: Wednesday, July 6, 2022 5:06 PM
To: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>
Subject: [EXTERNAL] RE: LULAC v. Abbott (Redistricting): Deposition Dates

Dan, thanks for the heads up. Assuming you're able to get the court to extend the deadline for fact discovery and the court allows discovery from these witnesses, I'll be glad to work with you on dates for their depositions.

Putting those issues aside, the problem we have is existing travel schedules. Tom Bryan is out from July 10 through the end of the month on vacation. I am out of the country from July 18-28 on

vacation, too. So, I think without my even checking further with them, we know the earliest we could do depositions is the first week of August.

Given that, my thought would be for you to take Adam Foltz's depo on the 14th and then see if you still need/want Tom and Eric's depositions. If you do, let me know and I can reach out to them to get early August dates that we can put a pin in and hold should the court allow the discovery. I have no problem figuring out dates with you as long as we can work around vacations.

Scott

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From: Freeman, Daniel (CRT) <Daniel.Freeman@usdoj.gov>
Sent: Wednesday, July 6, 2022 2:54 PM
To: Scott Field <Scott.Field@butlersnow.com>
Subject: LULAC v. Abbott (Redistricting): Deposition Dates

Scott,

I am reaching out regarding potential deposition dates for Thomas Bryan and Eric Wienckowski. We have not sought to take depositions of these individuals thus far, and we may not need to do so, depending on what we learn from Adam Foltz on July 14. We also recognize that resolution of our motion to enforce document subpoenas may impact our ability to depose them. However, we would appreciate if you could advise us of their availability for the remainder of the month.

Thanks very much,

Dan Freeman

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