

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

LEAGUE OF UNITED LATIN AMERICAN

CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREGORY W. ABBOTT et al.,

Defendants.

Civil Action No. 3:21-cv-00259

(Lead Case)

FAIR MAPS TEXAS ACTION COMMITTEE,

et al.,

Plaintiffs,

v.

GREG ABBOTT et al.,

Defendants.

Civil Action No. 3:21-cv-01038

(Consolidated case)

**FAIR MAPS PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF
DOCUMENTS FROM DEFENDANTS**

Fair Maps Plaintiffs (“Fair Maps” or “Plaintiffs”) brought suit to challenge the House, Senate, and Congressional redistricting plans recently enacted by the Texas Legislature, alleging violations of the Voting Rights Act and the United States Constitution. Fair Maps allege, among other things, that the Texas Legislature enacted the redistricting plans with the intent to

discriminate against racial minorities, and assert that the totality of circumstances shows that those minorities have less opportunity to participate in the political process and to elect representatives of their choice. In furtherance of these claims, Fair Maps served their requests for production of documents on Defendants. These document requests were substantially similar to those made by Plaintiffs LULAC, Texas NAACP, and Abuabara Plaintiffs, as described in those Plaintiffs' Joint Motion to Compel ("Private Plaintiffs' Joint Motion"). Dkt. 380.

Based on overbroad claims of privilege, Defendants withheld a number of responsive documents from their response to all Plaintiffs' requests. Defendants withheld documents that fell into two categories: (1) documents related to Defendant Governor Abbott's ("Gov. Abbott") proclamation calling the special legislative session in which the Texas Legislature enacted the challenged redistricting legislation, and (2) documents related to draft redistricting legislation. However, Gov. Abbott—a member of the executive branch—has shared several of these documents with the legislative branch, and many of these documents were created to aid in calling the third special session or in enacting legislation—not for or in anticipation of litigation. Accordingly, the privileges Gov. Abbott asserts over those documents do not apply—or if they ever did, they have since been waived.

Plaintiffs were no exception, receiving (upon information and belief) identical productions and an identical privilege log from Gov. Abbott in response to their request. To preserve their rights, Fair Maps Plaintiffs make a separate motion to compel. In the interest of judicial economy and to minimize any costs associated with this motion, Fair Maps Plaintiffs incorporate by reference the arguments made in the other Plaintiffs' Joint Motion, Dkt. 380, which are briefly summarized below in Sections II.A-F.

After multiple "meet and confer" exchanges between the parties and correspondence

outlining Fair Maps' positions did not resolve the parties' dispute, Fair Maps now respectfully request that the Court compel disclosure of those documents.

I. BACKGROUND

On April 12, 2022, Fair Maps served its first set of document requests on Defendants. Ex. A. These requests were substantially similar to those made by NAACP Plaintiffs. *See* Dkt. 380-3 (Exhibit B to Motion to Compel). On May 12, Defendants responded with a letter asserting various objections to those requests, including broad claims of the legislative privilege, deliberative-process privilege, attorney-client privilege, and that the requests were irrelevant and outside the scope of Federal Rule of Civil Procedure 26. Ex. B. Defendants also produced documents with Bates numbers STATE-REDISTRICTING_000001–000669 as responsive to Fair Maps Texas's First Request for Production of Documents. Ex. C. Defendants did not serve any privilege log on Fair Maps with this production.

Fair Maps responded on June 15, challenging Defendants privilege assertions and their basis for withholding documents for purported lack of relevance, and offering to meet and confer on these issues. Ex. D. Fair Maps requested clarification on whether and how Defendants had searched for documents, including whether any were being withheld in areas where Defendants represented they were still searching. *Id.* Additionally, Fair Maps explained their belief that assertions of legislative privilege and deliberative privilege were overbroad and that documents and communications between Defendants and other third parties were relevant, contrary to Defendants' objections. *Id.* Fair Maps also noted that they had not received any privilege log from Defendants' to date. *Id.* at 3.

On June 22, Fair Maps requested a meet and confer to discuss the parties' discovery requests and responses and attached to their email (among other items) Fair Maps' June 15 letter

responding to Defendants responses and objections. Ex. E. Defendants and Fair Maps Plaintiffs met and conferred two days later, but during this call Defendants represented that they were not prepared to discuss their responses and objections to Fair Maps' requests and would have to follow up at a later time. Fair Maps, and specifically Fair Maps counsel Hilary Klein (who was the main point of contact on discovery issues), requested that Defendants follow up regarding Defendants' failure to provide a privilege log in response to Fair Maps' document requests, and (as is relevant here) to clarify the scope of Defendants' other relevance objections. Following the meet and confer, Defendants emailed Fair Maps' counsel later that day addressing some of the issues raised by Fair Maps and providing (for the first time to Fair Maps) a privilege log. Ex. G.

Defendants' June 24 email was directed to Ms. Klein but did not include her as a recipient. Ex. G. Ms. Klein, having not received any response to her June 24 inquiry, emailed Defendants on July 7 to follow up on the issues she inquired about during the meet and confer that were not addressed. Ex. F (July 7 Klein email). Defendants responded in an email, attaching their June 24 correspondence, and acknowledging the omission of Ms. Klein as an original recipient. Ex. F (July 8 Herbert email). On July 14, 2022, Ms. Klein notified Defendants of Fair Maps' intent to file a motion to compel on substantially the same grounds as the other plaintiffs in Dkt. No. 380 with the understanding that (having opposed that motion) Defendants' position was unchanged, but offering to meet and confer nonetheless. Ex. F (July 14 Klein email). Plaintiffs and Defendants thereafter met and conferred from July 18–21 over the phone and via email, and were able to resolve some, but not all of the issues of disagreement between the parties. *See generally* Exs F & I¹. Defendants agreed to remove privilege designations and produce documents that were produced

¹ Exhibit I has been redacted of information unrelated to the issues addressed in this Motion that are subject to the May 18, 2022 Protective Order, Dkt. 282, in order to avoid unnecessarily sealing this Motion and in the interest of judicial economy. If directed by the Court, Plaintiffs would be happy to file under seal an unredacted version of this correspondence.

to the other Plaintiffs in response to their motion to compel at Dkt. 380 (which Fair Maps has now excluded from this Motion), but asserted their position was otherwise unchanged from what they included in their Response to the other plaintiffs' Motion at Dkt. 380. Ex. F (at 18 & 19 July DiSorbo emails).²

II. LEGAL STANDARD

“A party seeking discovery may move for an order compelling an answer, designation, production, or inspection” if the other party “fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B)(iv). Rule 34 permits parties to serve upon each other “a request within the scope of Rule 26(b)” to produce certain items “in the responding party’s possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). “Parties 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)(1).

Rule 26 requires a party that asserts a privilege to “describe the nature of the documents, communications, or tangible things not produced or disclosed—and to do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 26(b)(5)(A)(ii). “It is well settled that the party asserting the privilege has the burden of establishing its applicability.” *Perez v. Perry*, No. SA-11-CV-360-OLG-JES-XR, 2014 U.S. Dist. LEXIS 94276, at *15 (W.D. Tex. July 11, 2014) (citing *Hodges, Grant & Kaufman v. United States*, 768 F.2d 719, 721 (5th Cir. 1985)). Conclusory assertions are “insufficient to carry out the proponent’s burden of establishing” privilege. *E.E.O.C. v. BDO*

² The parties continued on July 20 and 21 (are continuing to meet and confer) on one outstanding issue with respect to Fair Maps Request For Production No. 5, and Fair Maps reserves the right to file any motion to compel documents relevant to this request.

USA, L.L.P., 876 F.3d 690, 696 (5th Cir. 2017) (citing *United States v. Chen*, 99 F.3d 1495, 1502 (9th Cir. 1996)).

When a motion to compel “is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party . . . whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees.” Fed. R. Civ. P. 37(a)(5)(A).

III. ARGUMENT

A. Gov. Abbott is not a Legislator and Thus Cannot Withhold Documents Based on the Legislative Privilege.

In the interest of judicial efficiency, Plaintiffs incorporate by reference the arguments made in support of this ground in Private Plaintiffs’ Joint Motion. Dkt. 380 at 7-15. In brief, Gov. Abbott inappropriately asserts the legislative privilege over several documents in the Supplemental Privilege Log.³ Gov. Abbott lacks standing to assert the legislative privilege, because he is not a legislator, cannot invoke the privilege on behalf of legislators, and cannot invoke the privilege on his own behalf. *Perez v. Perry*, No. SA-11-cv-360, 2014 U.S. Dist. LEXIS 1838, at *16 (W.D. Tex. Jan. 8, 2014); *La Union Del Pueblo Entero (LUPE) v. Abbott*, No. SA-21-CV-00844-XR, 2022 U.S. Dist. LEXIS 93601, at *20-21 (W.D. Tex. May 25, 2022); *In re Turner*, 627 S.W.3d 654, 659-60. Even if Gov. Abbott could invoke the privilege, notwithstanding these deficiencies, the privilege should yield here because all five factors considered by courts in this Circuit—(1)

³ Of the documents Plaintiffs seek, Gov. Abbott asserts the legislative privilege over: DOC_356555, DOC_0356556, DOC_0356557, DOC_0356569, DOC_0356571, DOC_0356578, DOC_0356579, DOC_0356580, DOC_0356581, DOC_0356582, DOC_0356583, DOC_0356584, DOC_0356585, DOC_0356590, DOC_0356591, DOC_0356592, DOC_0356593, DOC_0356604, DOC_0356609, and DOC_0356610. Ex. H.

the relevance of the evidence sought to be protected; (2) the availability of other evidence; (3) the seriousness of the litigation and issues involved; (4) the role of the government in the litigation; and (5) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable—weigh in favor of disclosure here. *Perez*, 2014 U.S. Dist. LEXIS 1838, at *19; Dkt. 282 at 2 (quoting *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Parish Gov't*, 849 F.3d 615, 624 (5th Cir. 2017)); *see also* *LUPE*, 2022 U.S. Dist. LEXIS 93601, at *27-30; *Veasey v. Perry*, No. 2:13–CV–193, 2014 U.S. Dist. LEXIS 54935, at *9-14 (S.D. Tex. 2014); *Baldus v. Brennan*, No. 11-CV-562, 11-CV-1011, 2011 U.S. Dist. LEXIS 142338, at *8 (E.D. Wis. Dec. 8, 2011).

B. Deliberative-Process Privilege

In the interest of judicial efficiency, Plaintiffs incorporate by reference the arguments made in Private Plaintiffs' Joint Motion. Dkt. 380 at 15-20. In brief, Defendants also improperly invoke the deliberative-process privilege as to these documents.⁴ The deliberative-process privilege does not cover documents that Gov. Abbot's office sent to or received from members of the Legislature or their staff. *See Gilby v. Hughes*, 471 F. Supp. 3d 763, 768 (W.D. Tex. 2020). Furthermore, Defendants' Privilege Log fails adequately to support any claim to deliberative-process privilege with any declarations from agency officials explaining the basis of the privilege claim. *See Ascom Hasler Mailing Sys., Inc. v. USPS*, 267 F.R.D. 1, 4 (D.D.C. 2010). Additionally, the deliberative-process privilege may only be invoked by an agency head after a personal review, which the record does not support here. *See In re McKesson Governmental Entities Average Wholesale Price Litig.*,

⁴ Of the documents Plaintiffs seek, Gov. Abbott asserts the deliberative-process privilege over: DOC_0356555, DOC_0356556, DOC_0356557, DOC_0356559, DOC_0356569, DOC_0356571, DOC_0356578, DOC_0356579, DOC_0356580, DOC_0356581, DOC_0356582, 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. Ex. H.

264 F.R.D. 595, 601 (N.D. Cal. 2009). Gov. Abbott has also improperly invoked the deliberative-process privilege concerning documents that followed the enactment at issue, since documents must be pre-decisional and deliberative in order for the privilege to attach. *See Doe v. City of San Antonio*, No. SA-14-CV-102-XR, 2014 U.S. Dist. LEXIS 161434, at *4-5 (W.D. Tex. Nov. 17, 2014); *Senate of the Com. of Puerto Rico on Behalf of Judiciary Comm. v. United States Dep't of Just.*, 823 F.2d 574, 584–85 (D.C. Cir. 1987). Finally, even if Gov. Abbott could claim the deliberative-process privilege, notwithstanding these deficiencies, the privilege should yield here because the factors considered when determining whether deliberative-process privilege should yield are similar to those courts consider when determining whether the legislative privilege should yield, and those factors cut in Plaintiffs' favor here. *See Harding v. Cnty. of Dallas*, No. 3:15-CV-0131-D, 2016 U.S. Dist. LEXIS 177937, at *33-34 (N.D. Tex. Dec. 23, 2016); *In re Sealed Case*, 121 F.3d 729, 737–38 (D.C. Cir. 1997).

C. Attorney-Client Privilege

In the interest of judicial efficiency, Plaintiffs incorporate by reference the arguments made in Private Plaintiffs' Joint Motion. Dkt. 380 at 20-23. Briefly, Defendants incorrectly withhold several documents based on the attorney-client privilege.⁵ Gov. Abbott fails to meet his burden to show that the privilege applies, instead making only boilerplate assertions. *See BDO USA, L.L.P.*, 876 F.3d at 695 (5th Cir. 2017). Gov. Abbott has also failed to show that the substance of the communications fall within the privilege. *See LUPE*, 2022 U.S. Dist. LEXIS 93601, at *31-32.

⁵ Of the documents Plaintiffs seek, Gov. Abbott asserts attorney-client privilege over: DOC_356555, 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_0356590, DOC_0356591, DOC_0356592, DOC_0356593, DOC_0356594, DOC_0356595, DOC_0356596, DOC_0356597, DOC_0356604, DOC_0356609, and DOC_0356610. Ex. H.

Additionally, the documents Gov. Abbott seeks to withhold concern advice on political, strategic, or policy issues and must be disclosed. *See Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 U.S. Dist. LEXIS 146869, at *11-12 (E.D. Wis. Dec. 20, 2011). Gov. Abbott has also waived the privilege concerning many of these documents. *Perez*, 2014 U.S. Dist. LEXIS 94276, at *14-16. Because Gov. Abbott has waived the privilege as to many of these documents and none of them were made for a privileged purpose, he cannot withhold them on that basis here.

D. Work Product Doctrine

In the interest of judicial efficiency, Plaintiffs incorporate by reference the arguments made in Private Plaintiffs' Joint Motion. Dkt. 380 at 23-25. Briefly, Defendants' assertions of the work product doctrine are also unavailing.⁶ Defendants assert the work product doctrine over the same two categories of documents as the other privileges: (1) documents related to calling the third special session and drafting a proclamation to do so, and (2) documents related to drafts of the redistricting legislation. Gov. Abbott provides no information to show that the primary purpose of the documents is instead to aid in possible future litigation. *See Harding*, 2016 U.S. Dist. LEXIS 177937, at *30-32; *Bethune-Hill v. Virginia State Bd. of Elections*, 114 F. Supp. 3d 323, 348 (E.D. Va. 2015). Accordingly, Gov. Abbott may not withhold the documents based on the work product doctrine.

E. Gov. Abbott Must Provide All Documents Referenced in Dropbox

In the interest of judicial efficiency, Plaintiffs incorporate by reference the arguments made in Private Plaintiffs' Joint Motion. Dkt. 380 at 25-26. Briefly, the Privilege Log makes clear that

⁶ Of the documents Plaintiffs seek, Gov. Abbott asserts the work product doctrine over: DOC_356555, 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_0356590, DOC_0356591, DOC_0356592, DOC_0356593, DOC_0356594, DOC_0356595, DOC_0356596, DOC_0356597, DOC_0356604, DOC_0356609, and DOC_0356610. Ex. H.

Gov. Abbott has failed to disclose—or include in the log—all responsive information within his custody, possession, or control in response to Plaintiffs’ document requests. *See* Ex. H. The descriptions for DOC_0356598 and DOC_0356600—“Confidential communication from Senate Redistricting Committee regarding materials related to draft redistricting legislation” and sent by “Senate Redistricting & Jurisprudence Committee (via Dropbox)”—indicate that the communications contain links to other documents or folders. *Id.* However, 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. When invited to clarify whether they had attempted to access the Dropbox links, Defendants declined to do so. *See* Ex. I (at 19 July Klein email and DiSorbo response). This clearly does not satisfy Defendants’ requirement to ascertain what documents are in their custody or control, and the fact that documents were made available to them through this link indicates that these Dropbox documents were accessible (and thus under their “control”); it thus immaterial whether they were in the possession or custody of a non-party. *See Perez v. Perry*, No. SA-11-CV-360-OLG-JES, 2014 WL 1796661, at *12 (W.D. Tex. May 6, 2014); *In re White Tail Oilfield Servs.*, No. 11-0009, 2012 U.S. Dist. LEXIS 146321, at *6 (E.D. La. Oct. 11, 2012) (granting motion to compel where withholding party disclaimed not knowing how to download information at issue).

For the same reasons set forth above in Section II. B-D, none of the privileges Gov. Abbott asserts can justify withholding these documents. Accordingly, Gov. Abbott must produce any document accessible via any Dropbox link in DOC_0356598 and DOC_0356600—along with listing any other individuals who had access to those Dropbox links or the documents accessible through those links,

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion

to compel.

Dated: July 21, 2022

Respectfully submitted,

/s/ Noor Taj

Noor Taj

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**Admitted Pro Hac Vice*

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CERTIFICATE OF CONFERENCE

I hereby certify that, on June 24, July 14, 15, 18-21 2022, counsel for Fair Maps Plaintiffs conferred with counsel for Defendants concerning the subject of the instant motion. Counsel for Defendants stated that they opposed the relief sought.

/s/ Noor Taj
Noor Taj

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that she has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 21st day of July 2022.

/s/ Noor Taj
Noor Taj

EXHIBIT A

**UNITED STATES DISTRICT COURT
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(Consolidated case)

FAIR MAPS PLAINTIFFS FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to the Federal Rules of Civil Procedure, Plaintiffs Fair Maps Texas Action Committee, OCA-Greater Houston, North Texas APAPA, Emgage, Khanay Turner, Angela Rainey, Austin Ruiz, Aya Eneli, Sofia Sheikh, Jennifer Cazares, Niloufar Hafizi, Lakshmi Ramakrishnan, Amatullah Contractor, Deborah Chen, Arthur Resa, Sumita Ghosh, and Anand Krishnaswamy (together, “Fair Maps Plaintiffs”) serve this First Request for Production to Defendant(s) Gregory Abbott and John Scott, sued in their official capacities. Defendant(s) must serve their responses upon the undersigned counsel within thirty (30) days. Defendant(s) must supplement their responses as required by the Federal Rules of Civil Procedure and any orders entered by the Court.

DEFINITIONS

1. “Defendant(s),” “you,” and “your” refer to Gregory Abbott, in his official capacity as the governor of the State of Texas, and John Scott, in his official capacity as the Secretary of the State of Texas, as well as their predecessors in office and any representative acting or purporting to act on their behalf or subject to their control, including but not limited to past or present employees, agents, interns, attorneys, advisors, consultants, and/or contractors.

2. “Legislator” means a past or present elected member of the Texas House of Representatives or the Texas Senate, including such member’s past or present employees, agents, attorneys, advisors, consultants, contractors, and/or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control on behalf of any committee or other body of which the elected member is part.

3. “Document” means any writing of any kind, source, or authorship, regardless of how it may be recorded, stored, or reproduced. The term includes both originals and all non-identical copies thereof, as well as all drafts, revisions, and amendments, regardless of whether adopted. The term also includes but is not limited to handwritten, typewritten, printed, photocopied, photographic, and electronically recorded matter. For purposes of illustration and not limitation, the term includes: contracts, agreements, communications, reports, charges, complaints, correspondence, letters, emails, social media postings, telegrams, memoranda, applications, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, journals, diaries, schedules, charts, graphs, worksheets, spreadsheets, reports, notebooks, note charts, handwritten notes, plans, drawings, sketches, maps, brochures, pamphlets, advertisements, circulars, press releases, summaries or records of meetings or conferences, summaries or reports or records of investigations or negotiations, opinions or reports of

consultants, bills, statements, invoices, affidavits, schedules, audio recordings, video recordings, transcriptions, and photographs.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, any single legislative district, or districts within a geographic area.

5. “Identify” when referring:

- a. to a person, means to state the person’s full name, present or last known address, telephone number, and email address;
- b. to an organization or entity, means to state its full name, present or last known address, telephone number, fax number, and email address;
- c. to a document, means to describe its contents; to identify when, where, and how it was made; to identify who made it; and to identify who has present or last known possession, custody, or control of the document;
- d. to a statement or communication, means to describe its contents; to identify when, where, and how it was made; to identify who made it and who was present when it was made; and to identify who has present or last known possession, custody, or control of any recording of the statement or communication;
- e. to a social media account, means to provide the username of the account, identify all persons who control or have access to the account, and provide the date(s) of the relevant activity on the account.

6. “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.

7. “Redistricting Plans” means collectively the redistricting plans for the Texas Senate (S2168), the Texas House (H2316), the U.S. Congress (C2193), and the Board of Education (E2106).

INSTRUCTIONS

8. This First Request for Production is served jointly on all Defendant(s) for convenience only. It is to be construed as a separate request for each.

9. In responding to these requests, please produce all responsive document in your possession, custody, or control, including documents reviewed by Defendant(s) which Defendant(s) have the legal right and/or the practical ability to obtain from a non-party to this action.

10. All references in these requests to an individual person include their employees and agents past and present, including attorneys, advisors, consultants, contractors, predecessors, and all other persons or entities acting or purporting to act their behalf or subject to the control of such person.

11. 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.

12. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response.

- a. 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.
- b. Words used in the singular include the plural and vice-versa.
- c. 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.
- d. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

13. 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; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as Excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

14. For the avoidance of doubt, these requests are not intended to require the production of sensitive personally identifiable information.

15. Documents should be produced in a form consistent with any agreement concerning production format entered in this action.

16. Each document produced should be categorized by the number of the document request in response to which it is produced.

17. No portion of a request may be left unanswered because an objection is raised to another part of that request. If Defendant(s) object to any portion of a document request, they must state with specificity the grounds of any objections. Any ground not stated will be waived.

18. 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 Fair Maps Plaintiffs to assess the privilege claim.

19. If Defendant(s) 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 Defendant(s) contend to be an unreasonable request; (b) describe with particularity the efforts made by Defendant(s) or on their behalf to produce such documents; and (c) state with particularity the grounds upon which Defendant(s) contend that additional efforts to produce such documents would be unreasonable.

20. 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.

21. In the event that a responsive document has been destroyed or has passed out of Defendant(s)' 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.

22. These requests are continuing in nature. Defendant(s)' responses must be supplemented and any additional responsive material disclosed if responsive materials become available after Defendant(s) serve their response. Defendant(s) must also amend their responses to these requests if they learn that an answer is in some material respect incomplete or incorrect. If Defendant(s) 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.

23. Fair Maps Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

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 2021 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 proposal;
- c. all drafts in the development or revision of any of the redistricting proposals, 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 proposal;

- d. all correspondence between or among Defendant(s) relating to the redistricting proposal;
- e. all documents relating to the pairing of any incumbents in any such redistricting proposal;
- f. all documents relating to any amendment, whether partial or total, to each such proposal;
- g. all documents relating to negotiations regarding any redistricting proposal;
- h. any concept maps or other pre-drafting documents provided to, shown to, or discussed with Defendant(s);
- i. 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;
- j. all calculations, reports, audits, estimates, projections, or other analyses, 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;
- k. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the total population or eligible voter population of Texas and the

number of majority party seats and minority party seats that might be provided for in any redistricting proposal; and

1. 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 relating to any redistricting proposal.
2. All documents relating to the 2021 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, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence within the Office of the Governor, and the Office of the Secretary of State relating to the redistricting process;
- b. all correspondence between or among Defendant(s) relating to the redistricting process;
- 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 relating to the redistricting process;
- d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendant(s)' social media account or since deleted and including any comments made by Defendant(s) on

- their own posts or to other social media users' posts) relating to the redistricting process, review of redistricting proposals and adoption of the Redistricting Plans;
- e. a list of all individuals requested to, invited to, permitted to, or considered to testify in the Texas Senate and the Texas House relating to the redistricting process, redistricting proposals or the Redistricting Plans, in any forum and form, including in-person, virtually, orally, and in writing;
 - f. all transcripts of testimony given to Defendant(s) and legislators relating to the redistricting process, redistricting proposals, and the Redistricting Plans;
 - g. all written testimony and comments received by mail, email, legislative portal, or by other means;
 - h. all notices published or transmitted to individuals or the public about the redistricting hearings and the scheduling of such hearings;
 - i. 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;
 - j. all documents relating to the process by which proposed amendments were reviewed by Democratic Legislators or officials before they could be considered by the entire Texas Senate or Texas House;
 - k. all documents relating to the "delegation rule" that permitted delegations to agree on the maps that impact them;
 - l. all documents relating to the involvement with or comments on the Redistricting Plans by the Republican Party of 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, the Fort Bend County Republican Party, the Bell County Republican Party, and the Collin County Republican Party;

- m. all documents relating to the placement, or lack thereof, of African-American, Latino, Asian, and AAPI Representatives within the Texas Senate and Texas House committees on election and redistricting matters;
- n. 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;
- o. all documents relating to the growth, diminishment, or stagnation of populations of white, African-American, Latino, AAPI, or other minority residents and/or voters in Texas as a whole or in counties, municipalities, or metropolitan areas within Texas;
- p. 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;
- q. 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;
- r. all documents relating to legislative or congressional seats considered protected under Section 2 of the Voting Rights Act;
- s. all documents relating to the group or groups considered protected under Section 2 of the Voting Rights Act;

- t. all documents relating to whether “coalition districts” are recognized under Section 2 of the Voting Rights Act;
- u. all documents relating to any discussion of any coalition, disagreement, or division between African American, Latino, or AAPI voters; and
- v. all documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters;

3. For the period spanning 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.

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

5. 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 lobbying entity, 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.

6. 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.

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 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 lobbying entity, any political activist or operative, any other government entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

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 related to the Redistricting Plans. This request specifically includes but is not limited to:

- a. all documents relating to the availability of any attorney to provide assistance to Defendant(s) 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.

9. All documents that Defendant(s) may use to support any contention that the Redistricting Plans were not enacted with a discriminatory purpose, to the extent that Defendant(s) take that position.

10. For any time period, all documents that Defendant(s) 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 Defendant(s) take that position.

11. For any time period, all documents produced to other parties in the above captioned dispute.

April 12, 2022

Respectfully submitted,

/s/ Noor Taj

Noor Taj

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Allison J. Riggs

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**Admitted Pro Hac Vice*

Counsel for Fair Maps Texas Plaintiffs

CERTIFICATE OF SERVICE

I certify that on April 12, 2022, the foregoing was served on all counsel of record via electronic mail.

/s/ Noor Taj

Noor Taj

EXHIBIT B

Hilary Harris Klein

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Thursday, May 12, 2022 4:05 PM
To: Noor Taj; Hilary Harris Klein; ddonatti@aclutx.org; tbuser-clancy@aclutx.org; jvattamala@aaldef.org; pstegemoeller@aaldef.org; Allison Riggs; Mitchell D. Brown; aharris@aclutx.org; asegura@aclutx.org; slorenzo-giguere@aaldef.org
Cc: Patrick Sweeten; Will Thompson; Ari Herbert; Courtney Corbello; Ryan Kercher
Subject: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Fair Maps' first RFPs
Attachments: Responses and Objections - Fair Maps RFPs.pdf

Good afternoon Counsel,

Attached are Defendants' responses and objections to the Fair Maps plaintiffs' first set of RFPs. You should receive a message from Adrian Skinner later today, inviting you to access responsive documents.

Sincerely, Jack DiSorbo

Jack DiSorbo
Assistant Attorney General, Special Litigation Unit
Office of the Attorney General
Work: (512) 936-1067
Cell: (713) 628-7407
Jack.DiSorbo@oag.texas.gov

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.

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Case No. 3:21-cv-00259
[Lead Case]

FAIR MAPS TEXAS ACTION COMMITTEE, *et al.*,

Plaintiffs,

V.

GREG ABBOTT, *et al.*,

Defendants.

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Case No. 1:21-cv-01038
[Consolidated Case]

**DEFENDANTS' RESPONSES AND OBJECTIONS TO
FAIR MAPS PLAINTIFFS' FIRST REQUEST FOR PRODUCTION**

TO: Fair Maps Texas Action Committee (including its constituent organizations), OCA-Greater Houston, North Texas APAPA, Emgage, Khanay Turner, Angela Rainey, Austin Ruiz, Aya Eneli, Sofia Sheikh, Jennifer Cazares, Niloufar Hafizi, Lakshmi Ramakrishnan, Amatulla Contractor, Deborah Chen, Arthur Resa, Sumita Ghosh, and Anand Krishnaswamy, by and through counsel Noor Taj, Southern Coalition for Social Justice, 1415 West Highway 54, Suite 101, Durham, NC 27707; David Donatti, ACLU Foundation of Texas, Inc., P.O. Box 8306, Houston, TX 77288; and Jerry Vattamala, Asian American Legal Defense and Education Fund, 99 Hudson Street, 12th Floor, New York, NY 10013, and to all counsel of record.

Defendants Greg Abbott, in his official capacity as Governor of Texas, and John Scott, in his official capacity as the Texas Secretary of State, provide these Objections as Responses to Plaintiffs Fair Maps Texas Action Committee, OCA-Greater Houston, North Texas APAPA, Emgage, Khanay Turner, Angela Rainey, Austin Ruiz, Aya Eneli, Sofia Sheikh, Jennifer Cazares, Niloufar Hafizi, Lakshmi Ramakrishnan, Amatulla Contractor, Deborah Chen, Arthur Resa Sumita Ghosh, and Anand

Krishnaswamy (collectively, “Fair Maps Plaintiffs”) pursuant to the Federal Rules of Civil Procedure.

Date: May 12, 2022

Respectfully submitted.

KEN PAXTON
Attorney General of Texas

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

BRENT WEBSTER
First Assistant Attorney General

WILLIAM T. THOMPSON
Deputy Chief, Special Litigation Unit
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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was served in compliance with the Federal Rules of Civil Procedure upon the following via electronic mail on May 12, 2022:

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/s/ Patrick K. Sweeten
PATRICK K. SWEETEN

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.

In addition, Defendants' object to the temporal scope of these requests. Plaintiffs have not explained why they seek documents created before January 1, 2021, and any documents created after October 25, 2021—when the Governor signed the maps into law—are necessarily irrelevant. Defendants will therefore

¹ <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>.

limit their search to documents created during the time period listed above.

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 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. 9 (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. 10-11 (p.4) to the extent they include attorneys as a type of individual or entity. Defendants object inasmuch 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. 17 wherein Plaintiffs claim "[a]ny ground [for objection] not stated will be 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 objection to Instruction 18 to the extent it requests that Defendants provide a privilege log with more information than that required by the Court's ESI order, ECF 203.

Defendants object to Plaintiffs' Instruction No. 22 (p.7) 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.

**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 2021 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 proposal;
 - c. all drafts in the development or revision of any of the redistricting proposals, 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 proposal;

- d. all correspondence between or among Defendant(s) relating to the redistricting proposal;
 - e. all documents relating to the pairing of any incumbents in any such redistricting proposal;
 - f. all documents relating to any amendment, whether partial or total, to each such proposal;
 - g. all documents relating to negotiations regarding any redistricting proposal;

 - h. any concept maps or other pre-drafting documents provided to, shown to, or discussed with Defendant(s);
 - i. 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;
 - j. all calculations, reports, audits, estimates, projections, or other analyses, 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;
 - k. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the total population or eligible voter population of Texas and the number of majority party seats and minority party seats that might be provided for in any redistricting proposal; and
 - l. 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 relating to any redistricting proposal.
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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 directly to or from SOS or OOG employees for an undefined period of time. 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 the unlimited time scope of this request. The special Legislative session in which the maps Plaintiffs challenge were drawn occurred in September and October of 2021. There is no basis for demanding documents created a year or more from that time period, as such a demand would be overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Moreover, because the 3rd Special Session ended in October 2021, any requests for documents beyond October 2021 are overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Any documents created after the Governor signed the bill are irrelevant. 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.

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” encompasses documents protected by legislative privilege. Furnishing “the origination” 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 reasons.

Defendants further object to this request because it seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shape files, files, or datasets used in mapping software, pairing of incumbents, amendments, 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:

- 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 specially 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 2021 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, and persons or entities. This request specifically includes but is not limited to:
 - a. all correspondence within the Office of the Governor, and the Office of the Secretary of State relating to the redistricting process;
 - b. all correspondence between or among Defendant(s) relating to the redistricting process;
 - 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 relating to the redistricting process;
 - d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendant(s)' social media account or since deleted
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- and including any comments made by Defendant(s) on their own posts or to other social media users' posts) relating to the redistricting process, review of redistricting proposals and adoption of the Redistricting Plans;
- e. a list of all individuals requested to, invited to, permitted to, or considered to testify in the Texas Senate and the Texas House relating to the redistricting process, redistricting proposals or the Redistricting Plans, in any forum and form, including in-person, virtually, orally, and in writing;
 - f. all transcripts of testimony given to Defendant(s) and legislators relating to the redistricting process, redistricting proposals, and the Redistricting Plans;
 - g. all written testimony and comments received by mail, email, legislative portal, or by other means;
 - h. all notices published or transmitted to individuals or the public about the redistricting hearings and the scheduling of such hearings;
 - i. 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;
 - j. all documents relating to the process by which proposed amendments were reviewed by Democratic Legislators or officials before they could be considered by the entire Texas Senate or Texas House;
 - k. all documents relating to the "delegation rule" that permitted delegations to agree on the maps that impact them;
 - l. all documents relating to the involvement with or comments on the Redistricting Plans by the Republican Party of any division, sub-division, or local branch of the Republican Party, including the Republican Party of Texas, the Harris County Republican Party, the Dallas
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County Republican Party, the Tarrant County Republican Party, the Fort Bend County Republican Party, the Bell County Republican Party, and the Collin County Republican Party;

- m. all documents relating to the placement, or lack thereof, of African-American, Latino, Asian, and AAPI Representatives within the Texas Senate and Texas House committees on election and redistricting matters;
 - n. 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;
 - o. all documents relating to the growth, diminishment, or stagnation of populations of white, African-American, Latino, AAPI, or other minority residents and/or voters in Texas as a whole or in counties, municipalities, or metropolitan areas within Texas;
 - p. 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;
 - q. 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;
 - r. all documents relating to legislative or congressional seats considered protected under Section 2 of the Voting Rights Act;
 - s. all documents relating to the group or groups considered protected under Section 2 of the Voting Rights Act; all documents relating to whether “coalition districts” are recognized under Section 2 of the Voting Rights Act;
 - t. all documents relating to whether “coalition districts” are recognized under Section 2 of the Voting Rights Act;
 - u. all documents relating to any discussion of any coalition, disagreement, or division between
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African American, Latino, or AAPI voters; and

- v. all documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

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 directly to or from SOS or OOG employees for an undefined period of time. 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 the unlimited time scope of this request. The special Legislative session in which the maps Plaintiffs challenge were drawn occurred in September and October of 2021. There is no basis for demanding documents created a year or more from that time period, as such a demand would be overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Moreover, because the 3rd Special Session ended in October 2021, any requests for documents beyond October 2021 are overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Any documents created after the Governor signed the bill are irrelevant. 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.

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 documents related to “whether the Redistricting Plans comply with the Voting Rights Act,” “guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution,” “congressional seats considered protected under Section 2,” “the group or groups considered protected under Section 2,” “whether ‘coalition districts’ are recognized under Section 2,” “any coalition, disagreement, or division between African American, Latino, or AAPI voters,” and “a distinction, or lack of distinction, between minority voters and Democratic voters,” would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Additionally, requested communications from “any other...law firm,” and “guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution” would be subject to the attorney-client and work product privileges.

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 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 seeks publicly available documents that are equally accessible to Plaintiffs. Insofar as the request generally seeks shape files, files, or datasets used in mapping software, pairing of incumbents, amendments, 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:

- 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>
 - 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>.
 - Insofar as this 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*
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<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 specially 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, Texas House, or Texas Senate, without limitation.

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. For the period spanning 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 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 directly to or from SOS or OOG employees for an undefined period of time. 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 the overbroad time scope of this request. The special Legislative session in which the maps Plaintiffs challenge were drawn occurred in September and October of 2021. There is no basis for demanding documents created a year or more from that time period, as such a demand would be overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Moreover, because the 3rd Special Session ended in October 2021, any requests for documents beyond October 2021 are 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 dozen years from that time period. Any documents created after the Governor signed the bill are irrelevant. 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.

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 shape files, files, or datasets used in mapping software, pairing of incumbents, amendments, 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:

- 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>
 - 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>.
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- Insofar as this 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 also object to this request because it is facially overbroad. It calls for “all” documents relating to the redistricting process for the Texas delegation, Texas House, or Texas Senate, without temporal limitation. Further, it seeks documents relating to districts Plaintiffs do not challenge, 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.

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

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 directly to or from SOS or OOG employees for an undefined period of time. 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 the overbroad time scope of this request. The special Legislative session in which the maps Plaintiffs challenge were drawn occurred in September and October of 2021. There is no basis for demanding documents created a year or more from that time period, as such a demand would be overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Moreover, because the 3rd Special Session ended in October 2021, any requests for documents beyond October 2021 are 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 dozen years from that time period. Any documents created after the Governor signed the bill are irrelevant. 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.

Defendants further object to this request as facially overbroad, inasmuch as it seeks the entire legislative agenda and all legislative priorities for Defendants, regardless of whether such agendas or priorities relate in any way to Plaintiffs' 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.

5. 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 lobbying entity, 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,
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or any member of the public.

OBJECTIONS:

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

Defendant objects to this request because it is overbroad. The request calls for “[a]ll documents relating to redistricting for the Texas delegation to the U.S. House of Representatives, the Texas House, or the Texas Senate,” without any 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.

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 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 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 Defendants' possession, custody, or control.

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

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 the overbroad time scope of this request. The special Legislative session in which the maps Plaintiffs challenge were drawn occurred in September and October of 2021. There is no basis for demanding documents created a year or more from that time period, as such a demand would be overbroad, irrelevant, and unlikely to lead to the discovery of admissible evidence. Moreover, because the 3rd Special Session ended in October 2021, any requests for documents beyond October 2021 are 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 dozen years from that time period. Any documents created after the Governor signed the bill are irrelevant. 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.

Defendants further object to this request as facially overbroad, inasmuch as it constitutes a catch-all provision that that appears to ask for nothing more or less than “everything else you have not provided.” 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.

Defendants further object 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 inasmuch 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, or producing, responsive documents.

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 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 lobbying entity, any political activist or operative, any other government 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.

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. Defendants further object to this request to the extent that it requires Defendants to search and examine any and all emails directly to or from SOS or OOG employees for an undefined period of time. 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, this request specifically seeks documents shared with “any law firm or attorney.”

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)).

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 related to the Redistricting Plans. This request specifically includes but is not limited

to:

- a. all documents relating to the availability of any attorney to provide assistance to Defendant(s) 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 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 directly to or from SOS or OOG employees for an undefined period of time. 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 as substantially overbroad, as it contains no limitations—e.g., “or any other person or entity related to the Redistricting Plans.” This last term is also vague and ambiguous. Defendants will make a reasonable determination of what this phrase means in searching for, and producing, responsive documents.

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, this request specifically seeks documents related to “any law

firm, and attorney,” and “any attorney to provide assistance to Defendant(s).”

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.

9. All documents that Defendant(s) may use to support any contention that the Redistricting Plans were not enacted with a discriminatory purpose, to the extent that Defendant(s) take that position.

OBJECTIONS:

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

Defendants object to this request to the extent it requires Defendants to marshal their evidence before the deadlines set forth by the Federal Rules of Civil Procedure and the Court’s orders.

Defendants will disclose such documents pursuant to the above obligations.

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. For any time period, all documents that Defendant(s) 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 Defendant(s) take that position.

OBJECTIONS:

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

Defendants object to this request to the extent it requires Defendants to marshal their evidence before the deadlines set forth by the Federal Rules of Civil Procedure and the Court's orders.

Defendants will disclose such documents pursuant to the above obligations.

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.

11. For any time period, all documents produced to other parties in the above captioned dispute.

OBJECTIONS:

Defendants object to phrase "For any time period" as vague inasmuch as it appears to conflict with the limiting phrase, "in the above captioned dispute."

Defendant incorporates all objections made in response to document requests made by other

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

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.

EXHIBIT C

Chris Shenton

From: accellionadmin@texasattorneygeneral.gov
Sent: Thursday, May 12, 2022 9:22 PM
To: asegura@aclutx.org; jvattamala@aaldef.org; slorenzo-giguere@aaldef.org; tuser-clancy@aclutx.org; pstegemoeller@aaldef.org; aharris@aclutx.org; ddonnati@aclutx.org; Allison Riggs; Hilary Harris Klein; Noor Taj; Mitchell D. Brown
Cc: christopher.hilton@oag.texas.gov; elizabeth.saunders@oag.texas.gov; courtney.corbello@oag.texas.gov; patrick.sweeten@oag.texas.gov; jack.disorbo@oag.texas.gov
Subject: [External]LULAC v. Abbott, No. 3:21-cv-259 (W.D. Tex.), Fair Maps Texas's First Request for Production of Documents



Adrian Skinner sent you a secure message

[Access message](#)

Please use the link provided within this email to download defendants' production of documents bearing Bates numbers STATE-REDISTRICTING_000001 to STATE-REDISTRICTING_000669. These documents are responsive to Fair Maps Texas's First Request for Production of Documents, and are being produced pursuant to the terms of the Rule 502 Order (ECF 201), Confidentiality and Protective Order (ECF 202) and ESI Order (ECF 203). Included in this production is a table that indicates which custodians apply to each bates range.

If accessing Kiteworks SecureSpace for the first time, please click the "Forgot Password?" link, then enter your email address to receive an initial password to access the system.

Adrian Skinner, CEDS
Specialist
Electronic Discovery Services
adrian.skinner@oag.texas.gov



Attachments expire on Jun 12, 2022



3 compressed files

STATE REDISTRICTING PROD_20220404.zip, STATE REDISTRICTING
PROD_20220422.zip, STATE REDISTRICTING PROD_20220303.zip

This message requires that you sign in to access the message and any file attachments.

EXHIBIT D



1415 W. Hwy 54, Suite 101
Durham, NC 27707
919-323-3380
southerncoalition.org

June 15, 2022

Via Electronic Mail and Secure Electronic File Transfer

To: PATRICK K. SWEETEN
Deputy Attorney General for Special Litigation
Tex. State Bar No. 00798537

WILLIAM T. THOMPSON
Deputy Chief, Special Litigation Unit
Tex. State Bar No. 24088531
Office of the Attorney General
P.O. Box 12548 (MC-009)
Austin, Texas 78711-2548
Tel.: (512) 463-2100
Fax: (512) 457-4410
patrick.sweeten@oag.texas.gov
will.thompson@oag.texas.gov

Re: **State Defendants' Response to *Fair Maps* Plaintiffs' First Request for Production in *LULAC v. Abbott*, Case No. 3:21-cv-00259 (lead case), 1:21-cv-01038 (consolidated) (W.D. Tex. 2021)**

Counsel:

We received and have had opportunity to review the State Defendants' Responses and Objections (the "Responses") to the *Fair Maps* Plaintiffs' First Request for Production (the "Requests") in the above captioned matter. Below I have outlined several areas of concern in your Responses that we raise here in an effort to resolve these issues without the need to involve the Court. We also would look forward any additional opportunity to confer regarding custodians and search terms that may be necessary.

First, we respectfully request an update on whether State Defendants have withheld any documents for those Requests in which you have indicated you will be conducting a diligent search, as indicated in your Responses and as required by the applicable Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(b)(5)(A). Furthermore, we respectfully request information regarding the scope and parameters of the State Defendants' searches for responsive documents to date, especially as they relate to the State Defendants' proportionality objections to the Requests, as the objections included in the Responses lack the necessary specificity for Plaintiffs to assess whether they are consistent with the Rules of Civil Procedure and applicable law.



Second, regarding State Defendants' objection to the temporal scope of the Requests, you state that "Plaintiffs have not explained why they seek documents created before January 1, 2021." These documents are relevant because public sources confirm preparations for the 2021 redistricting cycle by elected officials began long before January 2021. For example, the state Senate and House Redistricting committees began taking public testimony in preparation for redistricting as early as September of 2019. Accordingly, any correspondence or other documentation related to pre-2021 redistricting activities has obvious relevance to the maps enacted in 2021, and are not protected from disclosure based on a limitation that, within the context of these activities, is arbitrary. State Defendants should therefore search for and produce relevant documents from this public comment period as well.

Third, *Fair Maps* Plaintiffs respectfully request further clarification on the State Defendants' objection to Plaintiffs' Instruction No. 9, which alludes to Plaintiffs' right to secure documentation via a Freedom of Information Act request. "It is [] settled law that FOIA was not intended to be a substitute for discovery." *Cooper Cameron Corp. v. U.S. Dep't of Lab., Occupational Safety & Health Admin.*, 280 F.3d 539, 548 (5th Cir. 2002). To be clear, *Fair Maps* Plaintiffs are not contending the State Defendants are required to submit FOIA requests to other governmental entities in order to respond to the Requests. However, to the extent that State Defendants are withholding information they otherwise have a legal right to obtain on demand or the practical ability to obtain from a nonparty to this action and are withholding that information merely because that information would hypothetically be available to Plaintiffs via a FOIA request, this would be contrary to applicable law. State Defendants should therefore produce all relevant documents that were withheld based on this objection, or confirm that they do not possess any such documents.

Fourth, State Defendants' assertion of legislative privilege is improper for several reasons. As an initial matter, legislative privilege is a personal one and may be waived or asserted by each individual legislator. *Perez v. Perry*, 2014 U.S. Dist. LEXIS 1838, at *1 (W.D. Tex. Jan. 8, 2014). A legislator cannot assert or waive the privilege on behalf of another legislator and "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 that may be deposed." *Id.* State Defendants' contention that "the Supreme Court has repeatedly recognized that officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions" is inapposite here as the cases you rely on—*Bogan v. Scott-Harris*, 523 U.S. 44 (1998) and *Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 446 U.S. 719 (1980)—because both discuss legislative immunity, not the issue of legislative privilege relevant here. Ultimately, State Defendants have no grounds on which to claim a blanket legislative privilege over documents requested. *See also Gilby v. Hughs*, 471 F. Supp. 3d 763, 767 (W.D. Tex. 2020) (holding the Secretary of State did not have standing to invoke legislative privilege and granting motion to compel production of documents in challenge to state voting law).

But even assuming it were appropriate for State Defendants to assert legislative privilege here (which it is not), State Defendants' generalized objection to producing any manner of communications is improper given that the Fifth Circuit Court of Appeals has already held in this matter that "the state legislative privilege is not absolute," and that particular areas of inquiry may fall outside topics potentially covered by legislative privilege. *See* Doc. 311 at 7. As observed by the U.S. Supreme Court, "Members of Congress are constantly in touch with the Executive Branch of the Government and with administrative agencies—they may cajole, and exhort with respect to the administration of a federal statute—but such conduct, though generally done, is not protected



legislative activity.” *Gravel v. U.S.*, 408 U.S. 606, 625, 92 S. Ct. 2614, 33 L. Ed. 2d 583 (1972). Furthermore, to the extent that legislators or legislative staff communicated with non-legislators or non-legislative staff, including agents of the State Defendants, any legislative privilege is waived as to the contents of those specific communications. *Perez*, 2014 U.S. Dist. LEXIS 1838, at *2.

Fifth, and similarly, State Defendants’ assertion of deliberative privilege in response to the Requests, as stated, appears overly broad. As recently held by the Court: “Communications received by the Secretary from legislators looking to obtain guidance in formulating legislation are not meaningfully different from communications received by constituents from legislators or communications received by lobbyists, think-tanks, or any outsider,” and not subject to the deliberative privilege. *Gilby v. Hughs*, 471 F. Supp. 3d 763, 768 (W.D. Tex. 2020) (granting motion to compel production of documents by the Secretary of State).

In light of the above, *Fair Maps* Plaintiffs respectfully request the exact scope of documents withheld on the basis of the deliberative privilege, and the immediate production of all documents withheld on the basis of legislative privilege. To date, counsel for Fair Maps has not received a privilege log, as required by the Stipulated Order Regarding Discovery of Electronically Stored Information, Doc. 203.

Finally, State Defendants objected to Request 5 by contending it calls for “documents that are irrelevant to Plaintiffs’ claims” in this case because 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.” Put plainly, these documents are relevant to the intent of line-drawers, including any purported defense asserted by the State that district lines in the challenged plans were drawn based on predominantly political, not racial reasons, and whether such a defense is “more of a post-hoc rationalization than an initial aim.” *Harris. v. McCrory*, 159 F. Supp. 3d 600, 620 (M.D.N.C. 2016). Such information is squarely within permissible discovery as it pertains to the anticipated defenses at issue. *See* Fed. R. Civ. P. 26(b)(1) (defining the scope of discovery as “any nonprivileged matter that is relevant to any party’s claim or defense (emphasis added)). If the State Defendants will represent that they do not intend to raise such a defense in their anticipated Answers or otherwise at trial, *Fair Maps* plaintiffs are willing to negotiate on the scope of this request. Otherwise, State Defendants should produce these documents.

We hope to discuss the above issues, as well as additional questions and concerns we have regarding your Objections and Responses, in a meet and confer, and the above should not be considered an exhaustive list; Plaintiffs reserve the right to bring additional issues to the Court’s attention if and when required. We are available for a meet and confer and to find a time at your convenience to do so.

Kind Regards,

/s/ Hilary Klein

Hilary Klein

Counsel for Fair Maps Plaintiffs



EXHIBIT E

Hilary Harris Klein

From: Hilary Harris Klein
Sent: Wednesday, June 22, 2022 11:42 AM
To: Courtney Corbello; Elizabeth Saunders; Ryan Kercher; Ari Herbert; Munera Al-Fuhaid; 'Sweeten, Patrick'; Thompson, Will
Cc: Noor Taj; Alexandra Wolfson; Brachman, Paul D; David Donatti; Jerry Vattamala (jvattamala@aaldef.org)
Subject: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures
Attachments: 20220615_Meet and Confer RE Fair Maps Responses to Defs First Set of Discovery Req.pdf; 2022.06.15_Letter re State Defs Response to Fair Maps RFP.pdf; 2022.06.21 - Fair Maps' Responses and Objections to Defendants' 30(b)(6) Notice and Document Requests.pdf

Counsel,

I am reaching out to inquire about a meet and confer regarding the attached correspondence and related discovery disclosures. We would be available Friday, July 24 from 11 – 4pm CT or Monday, January 27 from 9 – 12pm CT.

Kind regards,

Hilary

Hilary Harris Klein
Pronouns: She, Her, Hers

Senior Counsel for Voting Rights
Southern Coalition for Social Justice
1415 W. Hwy 54, Suite 101, Durham, NC 27707
hilaryhklein@scsj.org
scsj.org | [@scsj](https://www.facebook.com/scsj) | FB: [@southerncoalition](https://www.facebook.com/southerncoalition)
(Admitted in NC and NY)

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EXHIBIT F

From: [Hilary Harris Klein](#)
To: [Jack DiSorbo](#); [Ari Herbert](#); [Courtney Corbello](#); [Elizabeth Saunders](#); [Ryan Kercher](#); [Munera Al-Fuhaid](#); [Patrick Sweeten](#); [Will Thompson](#)
Cc: [Noor Taj](#); [Brachman, Paul D](#); [David Donatti](#); [Jerry Vattamala \(jvattamala@aaldef.org\)](#); [Chris Shenton](#)
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures
Date: Friday, July 15, 2022 7:06:00 PM

Thank you Jack. I just sent a zoom invitation to this group for Monday 1pm CT. Have a great weekend.

Hilary Harris Klein
hilaryhklein@scsj.org

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Friday, July 15, 2022 6:29 PM
To: Hilary Harris Klein <hilaryhklein@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>; Chris Shenton <chrisshenton@scsj.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Yes, sorry. Let's say 1:00 pm CT on Monday. Thank you very much.

Jack

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Friday, July 15, 2022 4:40 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>; Chris Shenton <chrisshenton@scsj.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Thank you Jack. Do any of the times that I proposed work for you team to meet and confer? We do not want to delay more than a few days the filing.

Hilary Harris Klein
hilaryhklein@scsj.org

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Friday, July 15, 2022 5:19 PM
To: Hilary Harris Klein <hilaryhklein@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>; Chris Shenton <chrisshenton@scsj.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Hilary,

Defendants represent that they will not oppose a motion to compel as untimely or on the basis that plaintiffs' filing the motion next week instead of this week prejudices them.

Thank you very much,

Jack

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Friday, July 15, 2022 2:28 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>; Chris Shenton <chrisshenton@scsj.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Thank you for working with us on this Jack.

Can Defendants represent they will not oppose our motion to compel on the grounds that it is untimely or claim our waiting to file until next week after we have met and conferred poses any prejudice to Defendants?

We would be available Monday, July 18 from 12:30 – 2pm CT or Tuesday, July 19 from 8am – 11am CT for a meet and confer.

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Friday, July 15, 2022 3:13 PM
To: Hilary Harris Klein <hilaryhklein@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>; Chris Shenton <chrishshenton@scsj.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Hilary,

I appreciate your response, and would like to further consider your concerns. I would like to take you up on your offer to meet early next week. What do you need from us in order to preserve your right to file a motion? (If we are ultimately unable to reach a solution)

Thank you, Jack

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Friday, July 15, 2022 12:33 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>; Chris Shenton <chrishshenton@scsj.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Jack,

Thank you for your response and offer of a solution. Our concern remains that, if we do not file a motion to compel, we will not be properly preserving the rights of our clients to challenge any decision on the discovery motion in the future. Although our legal arguments in support of the motion to compel will reference those made by other plaintiffs, the client interests are not identical and thus the options we may pursue in the future may not perfectly align.

However, and to address your concerns and likewise reach a mutually agreeable solution to this, we

can agree that Defendants may incorporate by reference the arguments they have already made in ECF No. 423 to oppose the motion as to the privilege assertions, thereby minimizing if not eliminating any attorney time for your team on these arguments. We also can agree to make clear to the Court in our motion that we understand any disposition of the other Plaintiffs' Motion in ECF No. 380 would similarly encompass the portions of our motion made on the same grounds. Do you have any further concerns that need to be addressed regarding this approach?

I remain available to confer today at 3 – 4pm CT. As I offered below, if Defendants are willing to waive any timeliness objections to a future motion to compel on these issues filed by Fair Maps Plaintiffs, we would also be happy to accommodate a meeting early next week and not file today as planned.

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

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

Sent: Friday, July 15, 2022 1:05 PM

To: Hilary Harris Klein <hilaryhklein@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>

Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (<jvattamala@aaldef.org> <jvattamala@aaldef.org>); Chris Shenton <chrisshenton@scsj.org>

Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Hilary,

Thank you for your message. We have additional responses as to (1) and (2), but we may be able to avoid that altogether. You've explained that your primary motivation in contemplating filing a motion to compel is (understandably) to preserve the Fair Maps plaintiffs' rights to seek the production of the documents in the privilege log at issue.

My intent is to work toward a solution of avoid further and unnecessary briefing on discovery issues. Defendants are therefore willing to make the following offer: In exchange for the Fair Maps plaintiffs' not filing a motion to compel as to the documents in the OOG privilege log, Defendants will agree to produce the documents, if any, the Court orders produced in connection with the LULAC, Abuabara, and NAACP plaintiffs motion to compel, ECF 380. Defendants would of course comply with any Court order, and abide by this agreement.

Please let me know if Fair Maps is amenable to those terms. If not, I would be happy to discuss further. We can also provide more information on (1) and (2) if

necessary.

Thank you,

Jack DiSorbo

Jack DiSorbo
Assistant Attorney General, Special Litigation Unit
Office of the Attorney General
Work: (512) 936-1067
Cell: (713) 628-7407
Jack.DiSorbo@oag.texas.gov

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Thursday, July 14, 2022 8:20 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (<jvattamala@aaldef.org> <jvattamala@aaldef.org>); Chris Shenton <chrisshenton@scsj.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Hi Jack,

Our response to your questions, which I believe my below email has largely already addressed, are as follows:

1. The reasons we believe the documents in the supplemental privilege log should be provided are, as a mentioned below, substantially similar to those provided in ECF 380, which I understand your team has responded to in ECF 423 and, as indicated by the exhibits to the Motion, extensively conferred with the other plaintiffs (before we ever received a privilege log from you on June 24). I am confused that your team appears unfamiliar with those grounds given the briefing, but for clarification, these grounds include: (1) that Governor Abbott is not a Legislator and thus cannot withhold documents based on legislative privilege, (2) that Governor Abbott cannot claim deliberative-process privilege over communications with third-parties including legislators and the privilege log fails to adequately support these claims, (3) that Governor Abbott failed to substantiate that the attorney-client privilege applies by failing to preserve confidentiality and failing to make the communications for a privileged purpose, and (4) that Governor Abbott has not shown the work product privilege applies because there is no indication the primary purpose of the documents was to aid possible future litigation. Furthermore, that Governor Abbott fails to provide documents referenced in

Dropbox.

2. We intend to rely on substantially the same arguments with respect to privilege as were asserted in ECF 380. We additionally intend to move to compel documents in response to Request for Production 5 based upon the grounds set forth in our letter dated June 15, 2022, to which we did not receive a response. In this letter we set forth the following:

State Defendants objected to Request 5 by contending it calls for “documents that are irrelevant to Plaintiffs’ claims” in this case because 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.” Put plainly, these documents are relevant to the intent of line-drawers, including any purported defense asserted by the State that district lines in the challenged plans were drawn based on predominantly political, not racial reasons, and whether such a defense is “more of a post-hoc rationalization than an initial aim.” *Harris. v. McCrory*, 159 F. Supp. 3d 600, 620 (M.D.N.C. 2016). Such information is squarely within permissible discovery as it pertains to the anticipated defenses at issue. See Fed. R. Civ. P. 26(b)(1) (defining the scope of discovery as “any nonprivileged matter that is relevant to any party’s claim or defense . . . (emphasis added)). If the State Defendants will represent that they do not intend to raise such a defense in their anticipated Answers or otherwise at trial, Fair Maps plaintiffs are willing to negotiate on the scope of this request. Otherwise, State Defendants should produce these documents.

We also raised this issue in our June 24 meet and confer, which Defendants’ representative was not prepared to address, and your responsive email also did not address this request. We remain willing to negotiate the scope of this request if Defendants’ position has changed from its prior objections to our responses.

3. We believe the motion by Fair Maps Plaintiffs is necessary to preserve our clients’ rights with respect to the Defendants’ failure to produce relevant documents. As I noted above, we intend to incorporate those arguments already made and, in the interest of judicial economy, reference those to minimize any attorney time or costs associated with such a motion. I anticipate your team can do the same in any response. Please note we had not received the privilege log in response to our requests until, at earliest, just three days before that motion was made on June 24, thereby limiting our ability to confer with you and join the motion within the timeframe within which it was filed. Furthermore, your failure to include me in your June 24, 2022 email (despite the email being directed to me and despite it being myself during our prior meet and confer who inquired about these issues) understandably delayed our consideration of this information, and I have sought to confer with you within a reasonable time frame of being made aware of that email.

This is a large matter with many filings, and the intent of my email below was simply not to waste anyone’s time re-hashing issues that have been considered and decided by your team. We understand the privilege log you provided to us to be identical to that provided to other plaintiffs. Please correct me if that is not the case. I remain available tomorrow 10 – 11 CT or 3 – 4pm CT for a meet and confer if your team is available and can represent you have changed your previously-expressed positions on these issues. If Defendants are willing to waive any timeliness objections to a future motion to compel on these issues filed by Fair Maps Plaintiffs, we would also be happy to accommodate a meeting early next week.

Kind regards,

Hilary
Hilary Harris Klein
Pronouns: She, Her, Hers

Senior Counsel for Voting Rights
Southern Coalition for Social Justice
1415 W. Hwy 54, Suite 101, Durham, NC 27707
hilaryhklein@scsj.org
scsj.org | [@scsj](https://www.instagram.com/scsj) | FB: [@southerncoalition](https://www.facebook.com/southerncoalition)
(Admitted in NC and NY)

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From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Thursday, July 14, 2022 5:09 PM
To: Hilary Harris Klein <hilaryhklein@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (<jvattamala@aaldef.org> <jvattamala@aaldef.org>); Chris Shenton <chrisshenton@scsj.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Hilary,

We are surprised to hear of your intent to file a motion to compel, particularly because Fair Maps is required under Rule 37(a) to confer in good faith before seeking Court intervention. We are additionally surprised because we responded to your initial email on June 24th, and forwarded that message again on July 8th. We have heard nothing from the Fair Maps plaintiffs in the interim.

We provided an updated privilege log in response to your inquiries. You have not identified any ways in which you believe the privilege log is deficient, nor any documents you believe are otherwise improperly withheld. As such, you have not given Defendants an opportunity to address those assertions before you file your motion. We are certainly happy to meet and confer to discuss these documents, but we cannot simply agree to withdraw privilege assertions without understanding the basis of your concerns. As required by the federal rules, we would ask that you please describe the reasons why you believe these documents should be produced, and provide an adequate opportunity for us to assess and

respond to those assertions.

In addition, if your motion to compel will be substantially similar to the one filed by the other plaintiff groups, filing an supplemental motion to compel is not the most efficient course of action. If, as it relates to ECF 380, the Court orders the production of some OOG documents, Defendants will of course produce them to both the involved parties and to the Fair Maps plaintiffs. There is no reason to burden the Court (or the parties) with additional briefing if the issues are entirely duplicative. But if you intend to advance materially different arguments than those presented in ECF 380, please identify those arguments because we are entitled to take a position on whether we believe they warrant production.

In response to this email, please indicate:

- i. The reasons, if any, why you believe the documents in the supplemental privilege log should be provided;
- ii. The arguments, if any, that you intend to advance that are different than those advanced in the prior motion to compel, ECF 380;
- iii. The reason, if any, why you believe that a supplemental motion to compel is necessary in light of the previous motion to compel and Defendants' agreement to produce to the Fair Maps plaintiffs any documents the Court orders produced.

We look forward to your response.

Sincerely, Jack DiSorbo

Jack DiSorbo
Assistant Attorney General, Special Litigation Unit
Office of the Attorney General
Work: (512) 936-1067
Cell: (713) 628-7407
Jack.DiSorbo@oag.texas.gov

From: Hilary Harris Klein <hilaryhklein@scsj.org>

Sent: Thursday, July 14, 2022 3:45 PM

To: Ari Herbert <Ari.Herbert@oag.texas.gov>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>

Cc: Noor Taj <noor@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (<jvattamala@aaldef.org> <jvattamala@aaldef.org>); Chris Shenton <chrisshenton@scsj.org>

Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Ari,

Thank you for your response. Fair Maps Plaintiffs intend to file a motion to compel tomorrow on substantially similar grounds to that filed by the LULAC, NAACP, and Abuabara Plaintiffs, ECF No. 380. We understand following our June 24 meet and confer and from the email you sent to me on July 8 and its attachment that you are taking a position substantially similar to those in response to the discovery requests by the aforementioned plaintiffs, including with respect to the privilege log you have provided.

We are writing to confirm this understanding, and that no further meet and confer is necessary as you have already confirmed your position on these points in briefing the other plaintiffs' motion to compel, ECF No. 380. We intend to file our motion to compel tomorrow. If you are amenable to changing your position on these issues, we would be available for a meet and confer tomorrow before filing our motion.

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Ari Herbert <Ari.Herbert@oag.texas.gov>

Sent: Friday, July 8, 2022 1:06 PM

To: Hilary Harris Klein <hilaryhklein@scsj.org>; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>

Cc: Noor Taj <noor@scsj.org>; Alexandra Wolfson <alexandra@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala <jvattamala@aaldef.org> <jvattamala@aaldef.org>

Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Hilary,

Thanks for your email. The same day as our meet-and-confer call—June 24—State defendants did in fact respond to the issues that Fair Maps raised. Looking back to that email, I now see that we neglected to include you in the recipients. But we did include your colleagues Noor, David, and Jerry, along with a few others who are not copied in this email. Please accept my apologies for that oversight. Attached is a copy of our June 24th email addressing the issues that Fair Maps raised during the meet-and-confer call. (As you can see, the email was addressed to you.) I hope you had a nice Fourth of July weekend.

Best,
Ari

Ari M. Herbert

Assistant Attorney General
Special Litigation Unit
OFFICE OF THE ATTORNEY GENERAL
(512) 936-1817 (office)
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ari.herbert@oag.texas.gov

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From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Thursday, July 7, 2022 10:56 AM
To: Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Alexandra Wolfson <alexandra@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala <jvattamala@aaldef.org> <jvattamala@aaldef.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Counsel,

I am following up on our 6/24 meet & confer, and specifically those issues regarding the deficiencies in the State's production (including failure to provide any privilege log or document productions in response to the Fair Maps requests to date) that you represented you would internally confer about and get back to us as soon as possible. Do you have an update for us on these and the other items we discussed?

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Hilary Harris Klein
Sent: Thursday, June 23, 2022 2:43 PM
To: Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Alexandra Wolfson <alexandra@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala <jvattamala@aaldef.org> <jvattamala@aaldef.org>
Subject: RE: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Thank you Courtney. Please find below Zoom information for a 1pm CT meeting tomorrow.

Kind regards,

Hilary

Hilary Klein (she/her) is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us06web.zoom.us/j/87208816640?pwd=VUNWVGNjaVBXa04zWFRqMExPZzcwUT09>

Meeting ID: 872 0881 6640

Passcode: 684193

One tap mobile

+13126266799,,87208816640#,,,,*684193# US (Chicago)

+19292056099,,87208816640#,,,,*684193# US (New York)

Dial by your location

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

Meeting ID: 872 0881 6640

Passcode: 684193

Find your local number: <https://us06web.zoom.us/u/kHGXhyxb>

Hilary Harris Klein

hilaryhklein@scsj.org

From: Courtney Corbello <Courtney.Corbello@oag.texas.gov>

Sent: Thursday, June 23, 2022 2:41 PM

To: Hilary Harris Klein <hilaryhklein@scsj.org>; Elizabeth Saunders

<Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Ari Herbert

<Ari.Herbert@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick

Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>

Cc: Noor Taj <noor@scsj.org>; Alexandra Wolfson <alexandra@scsj.org>; Brachman, Paul D

<pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala

<jvattamala@aaldef.org> <jvattamala@aaldef.org>

Subject: [External]RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Apologies – let's do 1PM.

Courtney Corbello | Assistant Attorney General | General Litigation Division
MC-019, PO Box 12548 | Austin, TX 78711-2548
512.463.2120 | Fax: 512.320.0667 | email: courtney.corbello@oag.texas.gov |

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From: Courtney Corbello

Sent: Thursday, June 23, 2022 1:38 PM

To: Hilary Harris Klein <hilaryhklein@scsj.org>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>

Cc: Noor Taj <noor@scsj.org>; Alexandra Wolfson <alexandra@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>

Subject: RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Hi Hilary,

Let's plan for 2PM tomorrow if that still works on your end.

Courtney Corbello | Assistant Attorney General | General Litigation Division
MC-019, PO Box 12548 | Austin, TX 78711-2548
512.463.2120 | Fax: 512.320.0667 | email: courtney.corbello@oag.texas.gov |

PRIVILEGED AND CONFIDENTIAL: This communication may be confidential and/or privileged pursuant to Government Code sections 552.101, 552.103, 552.107 and 552.111, and should not be disclosed without the express authorization of the Attorney General.

From: Hilary Harris Klein <hilaryhklein@scsj.org>

Sent: Thursday, June 23, 2022 1:34 PM

To: Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>

Cc: Noor Taj <noor@scsj.org>; Alexandra Wolfson <alexandra@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>

Subject: RE: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Counsel,

I am following up on my email below regarding a meeting and confer on the Fair Maps and State Defendants' discovery issues. Are you available in the below times to discuss the exchanged requests, responses, and objections? In particular, we would like to avoid the necessity of filing a protective order related to the Stephanie Swanson 30(b)(6) deposition, and believe there is common ground and clarifications you might provide that could obviate the need for motions practice.

Friday, July 24 from 11 – 4pm CT

Monday, January 27 from 9 – 12pm CT.

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Hilary Harris Klein
Sent: Wednesday, June 22, 2022 11:42 AM
To: Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Elizabeth Saunders <Elizabeth.Saunders@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; 'Sweeten, Patrick' <Patrick.Sweeten@oag.texas.gov>; Thompson, Will <Will.Thompson@oag.texas.gov>
Cc: Noor Taj <noor@scsj.org>; Alexandra Wolfson <alexandra@scsj.org>; Brachman, Paul D <pbrachman@paulweiss.com>; David Donatti <ddonatti@aclutx.org>; Jerry Vattamala (jvattamala@aaldef.org) <jvattamala@aaldef.org>
Subject: Meet & Confer regarding Fair Maps and Defendants Discovery Disclosures

Counsel,

I am reaching out to inquire about a meet and confer regarding the attached correspondence and related discovery disclosures. We would be available Friday, July 24 from 11 – 4pm CT or Monday, January 27 from 9 – 12pm CT.

Kind regards,

Hilary

Hilary Harris Klein
Pronouns: She, Her, Hers

Senior Counsel for Voting Rights
Southern Coalition for Social Justice
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(Admitted in NC and NY)

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EXHIBIT G

From: [Jack DiSorbo](#)
To: [Noor Taj](#); [ddonatti@aclutx.org](#); [tbuser-clancy@aclutx.org](#); [jvattamala@aaldef.org](#); [pstegemoeller@aaldef.org](#); [Allison Riggs](#); [Mitchell D. Brown](#); [aharris@aclutx.org](#); [asegura@aclutx.org](#); [slorenzo-giguere@aaldef.org](#)
Cc: [Patrick Sweeten](#); [Will Thompson](#); [Courtney Corbello](#); [Ari Herbert](#); [Munera Al-Fuhaid](#); [Ryan Kercher](#)
Subject: LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Fair Maps" first RFPs
Attachments: [Privilege Log - OOG.pdf](#)

Ms. Klein,

I write to follow-up on today's meet and confer. I'm advised that the parties also discussed Fair Maps' requests for production, and that a few questions were raised. I think I can answer those questions here.

- I understand that we have provided two productions to the Fair Maps plaintiffs. First, STATE-REDISTRICTING_000001 to STATE-REDISTRICTING_000669. Second, BILL_FILE_0000001 to BILL_FILE_0018874. Please note that the Bill File materials are *not* made in response to any parties' requests for production, and were instead produced purely as a litigation courtesy to help all parties refer to the same body of public-facing materials.
- I can confirm that we have identified no other documents responsive to the Fair Maps plaintiffs' requests.
- As to the timing and scope of the search, we continue to maintain—as stated in our responses and objections to your requests for production—that the relevant time period is 01/01/2021 to 10/15/2021. But we do not think this objection should be an issue because we are not presently withholding any documents based on that asserted limitation.
- As it pertains to the documents that have been withheld, please see the attached privilege log for documents withheld in connection with documents produced pursuant to the Fair Maps plaintiffs' requests. The privilege log should help counsel understand the nature and basis of the documents withheld.

Thank you again for taking the time to confer with us today. We look forward to seeing you at the 30(b)(6) deposition next week.

Sincerely, Jack DiSorbo

Jack DiSorbo
Assistant Attorney General, Special Litigation Unit
Office of the Attorney General
Work: (512) 936-1067

Cell: (713) 628-7407

Jack.DiSorbo@oag.texas.gov

EXHIBIT H

Entry	Control Number	File Extension	Custodian	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
1	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.
2	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.
3	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.
4	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.
5	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.
6	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.

Entry	Control Number	File Extension	Custodian	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
7	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.
8	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.
9	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.
10	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 Dahmann; 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.
11	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.

Entry	Control Number	File Extension	Custodian	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
12	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.
13	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.
14	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.
15	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.
16	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.
17	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.

Entry	Control Number	File Extension	Custodian	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
18	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.
19	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.
20	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. Includes input from OOG attorneys.
21	DOC_0356587	DOCX	OOG		8/26/2021					Attorney Client; Work Product; Deliberative	Attachment to confidential communication regarding potential third special session. Includes input from OOG attorneys.
22	DOC_0356588	DOCX	OOG		8/26/2021					Attorney Client; Work Product; Deliberative	Attachment to confidential communication regarding potential third special session. Includes input from OOG attorneys.
23	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.

Entry	Control Number	File Extension	Custodian	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
24	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.
25	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.
26	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.
27	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.
28	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.
29	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.

Entry	Control Number	File Extension	Custodian	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
30	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.
31	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.
32	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.
33	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.
34	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.
35	DOC_0356606	PDF	OOG		3/10/2022	Greg Abbott	Dan Patrick			Legislative; Deliberative	Confidential communication regarding draft redistricting legislation.

Entry	Control Number	File Extension	Custodian	Author(s)	Date Created	To	From	CC	BCC	Privilege Claim	Description
36	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.
37	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.

EXHIBIT I

[Redacted of information subject to Protective Order]

From: [Jack DiSorbo](#)
To: [Hilary Harris Klein](#)
Cc: [Munera Al-Fuhaid](#); [Chris Shenton](#); [Noor Taj](#); [Ari Herbert](#)
Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents
Date: Thursday, July 21, 2022 1:00:27 PM

Hello Hilary,

Thank you very much for this information. I will consult with my client regarding Mr. Munisteri, and revert back as soon as I can. I am hopeful we can resolve this and limit our dispute to the issued presented in the prior motion to compel.

Jack

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Thursday, July 21, 2022 11:52 AM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrisshenton@scsj.org>; Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>
Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Hi Jack,

Thank you for this additional information. We are concerned that Steven Munisteri was not listed among custodians, especially given his hiring shortly before the redistricting regular session in 2021 and his connection to the groups referenced in Request 5. Can you explain why Mr. Munisteri was not included among custodians or represent that his role did not involve any responsibilities relevant to statewide redistricting (e.g., whether and when to call special sessions, map-drawing considerations, the Governor's approval) since he was hired? If that is not the case, can you state your willingness to do targeted limited searches of his documents (we are happy to confer on those searches) in response to Request 5?

Given that the above may require consultation with your client, we will go ahead and file our motion just on the privilege log issues that we have resolved below for the time being. We will not need to file that under seal or exceed the word limit.

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Thursday, July 21, 2022 10:51 AM
To: Hilary Harris Klein <hilaryhklein@scsj.org>
Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrisshenton@scsj.org>; Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>

Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Hilary,

You have failed to address my first question. Please advise:

- i. Which *State Defendant* you believe had third-party communications regarding redistricting;
- ii. With whom you believe that State Defendant corresponded; and
- iii. Whose deposition testimony you believe supports that belief.

Redacted

You have failed to produce any specific reason why you believe OOG or SOS has communications that have not been disclosed to you. If I am mistaken, please point me to that evidence.

As to the OOG search, we continue to object to providing the full details of our communications with our client regarding this search, but are willing to provide some information if that would help you better understand. Subject to that explanation, in the course of our search, we identified any relevant OOG staff who may have possibly had documents or communications relating to redistricting. These persons—all of whom are listed in the privilege log—are as follows:

- Angela Colmenero (attorney);
- James Sullivan (attorney);
- Jeff Oldham (attorney);
- Luis Saenz;
- Gardner Pate;
- Jordan Hale;
- Sarah Hicks;
- Wes Hambrick;
- Courtney Hjaltman;
- Renae Eze;
- Mark Miner;
- Chris Warren;
- Nan Tolson;
- Sheridan Nolen;
- Kieran Hillis;
- Joseph Behnke;
- Marie Dahlmann;
- Greg Davidson; and
- Cobey Fletcher

For each of these persons, a search was conducted into all physical and electronic documents. For communications, broad search terms were used, designed to cover

anything remotely related to redistricting, such as “redistricting,” “reapportion,” “districts,” “REDAPPL,” “DistrictViewer,” “House map,” “Senate map,” and so on. For both physical and electronic documents, we reviewed anything that could conceivably be considered responsive to Fair Maps’ requests. As we have said before, all responsive non-privileged documents were produced, and privileged documents were listed in the privilege log we provided.

I understand you to contend that the OOG search may be underinclusive. If that remains your position, please specifically identify:

- i. Which aspect of the search you contend is underinclusive; and
- ii. What documents and/or communications you believe were not included, but should have been.

Finally, we still cannot take a position on your motion to seal and motion to exceed the page limit. We have outstanding inquiries about the deposition testimony and Request 5, and the resolution of those inquiries are likely to affect your need to file your motion under seal and your need to exceed the 10-page limit.

Sincerely,

Jack

From: Hilary Harris Klein <hilaryhklein@scsj.org>

Sent: Thursday, July 21, 2022 9:24 AM

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

Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrisshenton@scsj.org>;

Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>

Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Jack,

Do I understand correctly that you are no longer asserting privilege over all information relevant to the scope of your searches? If so, please provide more information so we can understand the scope of those searches, such as the custodians identified and terms applied that lead you to believe those searches would have captured third-party communications, as requested below on Tuesday. We have been going back and forth on this for days, and you are repeatedly asking for explanations that have already been provided to you about our concerns, with the result of delaying the filing of our motion significantly.

Also, can you please provide your position on the sealing motion and the motion to exceed the word limit as requested below?

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Thursday, July 21, 2022 10:05 AM
To: Hilary Harris Klein <hilaryhklein@scsj.org>
Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrishshenton@scsj.org>; Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>
Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

HIGHLY CONFIDENTIAL – Email contains information subject to Protective Order

Hilary,

Thank you for your response. Redacted

[REDACTED] Perhaps I misunderstand your point. Can you confirm which *State Defendant* you believe communicated about redistricting, with whom, and which deposition testimony you believe supports that belief?

Also, I truly think we can informally resolve the disagreement regarding Request 5. What is it that you think you need to be more assured that our search would have covered any third-party communications relating to redistricting? I can give a full custodian list if that would help. I could also potentially give more information on the actual searches that were run.

Lastly, as to relevance, I will reiterate what I said during on Zoom call: Although we dispute the relevance of OOG redistricting communications with third-parties, we ran a search that would have captured these communications, and have not withheld any such communications based on irrelevance. As indicated in the privilege log, the only such communications were with the Census Bureau and Senator Huffman's staff. Further, I believe that those communications have since been produced to Fair Maps. There simply are no other communications.

Thank you,

Jack

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Wednesday, July 20, 2022 6:29 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>

Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrisshenton@scsj.org>; Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>
Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

HIGHLY CONFIDENTIAL – Email contains information subject to Protective Order

Hi Jack,

Redacted

To us, this highlights that third parties were involved throughout the process, and we would like to understand the scope to which that might be true for the State Defendants. I cannot tell you exactly which communications your clients may have had and with whom as you request below because the whole point of Request 5 was an effort to learn this information.

You have asserted below that you have conducted a “search reasonably calculated to find such documents and communications” but have declined on privilege grounds to provide any more details as to that search. The custodian field in the “State_Redistricting” productions do not provide insight into this. We are also not aware of any cover letter that has identified those documents produced that are responsive specifically to Request 5, so do not have that information to inform the scope of your searches either. This, in conjunction with Defendants assertions in your objections that third-party communications are “irrelevant,” has concerned us and sought us to seek assurances as to the scope of your search and that it would have captured third-party communications. We therefore intend to ask the Court to (1) confirm that information about the scope of Defendants searches is not subject to privilege as you contend, and thus can and should be discussed with us as part of a good-faith effort to resolve this dispute and (2) confirm the relevance of the third-party documents requested in Request 5 to inform on the appropriateness of the scope of such a search. We believe this is an appropriate next step and in-line with the overall requirements and objectives of the Federal Rules. *See, e.g., Ruiz-Bueno v. Scott*, No. 2:12-cv-0809, 2013 U.S. Dist. LEXIS 162953, at *16 (S.D. Ohio Nov. 15, 2013) (“[W]hen plaintiffs expressed some skepticism about the sufficiency” of defendants’ responses, “defendants’ counsel should have been forthcoming with information not only about why the results were as they were, but how defendants looked for responsive documents.”).

As for the sealing motion – the above information in the first paragraph of this email (which we intend to include in the motion) is subject to the May 18 Protective Order and thus requires sealing. And as to the word limit, our motion is approximately 13 pages (excluding caption, signature, and certificates), 3.5 of which involve Request 5 and the rest of which include introduction, background, and briefly summarize the 26-page motion at Dkt. 380 for the Court.

If your position on any of these matters has changed, please let me know as soon as possible. We remain concerned about delaying any further, but I can make myself available tomorrow 8:30 – 9:30 am before we file the motion if you would like to discuss further.

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Wednesday, July 20, 2022 6:23 PM
To: Hilary Harris Klein <hilaryhklein@scsj.org>
Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrishenton@scsj.org>; Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>
Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Hello Hilary,

I'm afraid we can't take a position on your motion to seal because we still do not understand your position regarding Request 5. Will you please advise:

- i. Who you believe OOG (or some other state agency) was corresponding with;
- ii. The general subject of the communication; and
- iii. Whose deposition testimony you believe supports this.

We have asked a few times for specific information you believe supports the existence of these communications, and Fair Maps has been unable to point to any such information. Moreover, we have represented that we conducted a search for all relevant custodians that would have identified any such third-party communications. If you contend that our search may not have covered some communications, please identify:

- i. The communication you believe was not covered; and
- ii. The reason why you believe the search did not cover it.

Regarding your motion to exceed the page limit, can you please explain why you need excess pages? We previously discussed that much of the argument would incorporate by reference previous arguments. I do not understand why you would need more than ten pages to file what is largely a redundant brief. In any event, please advise on how much over the 10-page limit you request.

Thank you,

Jack

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Wednesday, July 20, 2022 9:29 AM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrishenton@scsj.org>; Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>
Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Hi Jack,

By way of follow-up regarding Request 5, we intend to include this request in the motion to compel to be filed later today. To address your question, and as discussed in our meet and confer on Monday, [REDACTED] **Redacted**

[REDACTED] Accordingly, we have reason to believe this might also be the case with OOG but, without understanding the scope of your searches or review, are unable to substantiate whether (in light of your relevance objections) Defendants conducted a search reasonably calculated to identify these highly-relevant communications. We appear to be talking in circles, as I understand from the below that you are asserting privilege over the scope of your searches, and we thus will seek direction from the Court on that issue. If your position on privilege has changed, please let me know. We are concerned about timing given the close of discovery and the delay in filing our motion that we have already agreed to for the purposes of meeting and conferring with Defendants, and thus we intend to file no later than this evening if possible.

As I also mentioned in our meet and confer on Monday, we are likely to file this within a motion to seal given the reference to legislator depositions, so please confirm your position on that sealing as previously requested. We also may have to exceed the word limit, and ask for your position on that as well.

Thank you,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Tuesday, July 19, 2022 7:47 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrishshenton@scsj.org>; Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>
Subject: Re: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Thanks for your response Jack. We will be filing the motion, at least as to the privilege and drop box issues. I have to confer with my team as to Request 5. In my experience, sharing custodians and search terms is not unusual in discovery matters, but I see that you may prefer the court weigh in on the issue if you have concerns about privilege, which I understand.

I am available to speak this evening or tomorrow morning before the deposition if there are any other issues to address that have not been discussed already. I appreciate your engaging in this dialogue and that we were able to resolve some of the initial issues we reached out about initially.

Hilary Harris Klein
hilaryhklein@scsj.org

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

Sent: Tuesday, July 19, 2022, 7:31 PM

To: Hilary Harris Klein <hilaryhklein@scsj.org>

Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrishenton@scsj.org>;

Noor Taj <noor@scsj.org>; Ari Herbert <Ari.Herbert@oag.texas.gov>

Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Good evening Hilary,

Thank you for your responses on points one and four.

As to the alleged third-party communications, I can only say so much without revealing attorney-client communications and attorney mental impressions. Subject to that explanation, however, I can confirm that we identified any custodians within OOG that could possibly have documents and communications relating to redistricting. We conducted a fulsome search of documents in their custody, including emails and other messaging applications. All relevant documents and communications were identified and either produced or withheld and listed in the privilege log.

Please let me know if that addresses that subject. I am still a little confused as to what communications exactly you believe may exist. If you can give us a better idea of the bases of your beliefs, we can probably give you a more accurate response as to our knowledge of any such communications.

As to the Dropbox documents, our position remains the same as expressed in the response to the prior motion to compel.

I will be in a deposition (in this case) tomorrow, so I will have limited availability. But please let me know before you file your motion, because there may be subjects to discuss before you do so.

Thank you,

Jack

Jack DiSorbo
Assistant Attorney General, Special Litigation Unit
Office of the Attorney General
Work: (512) 936-1067
Cell: (713) 628-7407
Jack.DiSorbo@oag.texas.gov

From: Hilary Harris Klein <hilaryhklein@scsj.org>
Sent: Tuesday, July 19, 2022 12:21 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>; Chris Shenton <chrishshenton@scsj.org>; Noor Taj <noor@scsj.org>
Subject: RE: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Jack

Thank you for your email. Regarding to your first point, we received the production and will be removing those from the list of documents we seek to compel.

Regarding your second point, during the meet and confer we understood that OOG had confirmed they did not have access to the Dropbox documents. From the below, it sounds like your clients either don't know if they have access / control over such documents or have not tried to find out. Can you please clarify which is accurate? If the latter, the scope of documents includes documents within a party's "control" even if within possession or custody of a non-party. *See Perez v. Perry*, No. SA-11-CV-360-OLG-JES, 2014 WL 1796661, at *1 (W.D. Tex. May 6, 2014).

Regarding your third point, can you provide more detail on how your search was reasonably calculated to find such third-party documents and communications (e.g., custodians and search terms) as you state below? We do not want to move unnecessarily to compel documents that may not exist, but we do not have the information available to us to confirm that is the case without more detail and, given that we are aware third parties were involved in the process more broadly, have a basis for believing these communications do exist according to the information we have currently.

Regarding your fourth point re FOIA, thank you for confirming, we intend to drop this from our motion to compel.

We do not want to delay our motion much more but do want to ensure we have an accurate understanding of your position. We therefore respectfully request the above clarifications by tomorrow (Wednesday) COB.

Kind regards,

Hilary

Hilary Harris Klein
hilaryhklein@scsj.org

From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Monday, July 18, 2022 2:40 PM
To: Hilary Harris Klein <hilaryhklein@scsj.org>; Chris Shenton <chrishshenton@scsj.org>
Cc: Munera Al-Fuhaid <Munera.Al-Fuhaid@oag.texas.gov>
Subject: [External]LULAC v. Abbott, No. 3:21-cv-259 (Redistricting), Meet and confer re OOG documents

Hilary,

This email is to memorialize the meet and confer that we just had. You, me, Munera, and Chris (all copied here) were present.

We discussed the Fair Maps plaintiffs intent to file a motion compel relating to the OOG privilege log, and similar to the motion to compel filed as ECF 380. We agreed that both parties would refer incorporate prior briefing as best practicable.

I clarified several positions on Defendants' behalf.

As indicated in Defendants' response to plaintiffs' motion to compel, ECF 423, we withdrew privilege assertions over the following documents: DOC_0356598, DOC_0356600, DOC_0356606, DOC_0356560, DOC_0356561, DOC_0356586, DOC_0356587, and DOC_0356588. See ECF 423 at 4 n.1. We produced those documents to the LULAC, NAACP, and Abuabara plaintiffs, as well as DOC_0356599 with redactions for OOG internal annotations. We will produce those same documents to you by the end of the day.

Also as indicated in the opposition, ECF 423 at 12–13, OOG does not have possession of the Dropbox documents. They were never downloaded and we are not aware if OOG even can access them.

Regarding your Request 5, I confirm that—other than the entries described in the privilege log—OOG is not withholding any documents and communications relating to third-party conversations. Although we object to the request, we conducted a search reasonably calculated to find such documents and communications, and everything relevant was either produced or withheld and listed in the privilege log.

Regarding our objection relating to FOIA, I confirm that Defendants are not withholding any documents based on this objection.

We also discussed that Fair Maps map move to compel certain third party communications you believe the State Defendants may be in possession. I explained that we are not currently withholding any such documents or communications. We agreed that if Fair Maps intends to move to compel those documents, you would discuss with me first the deposition testimony you may use in support of those arguments.

Separately, I would ask that you please let me know if you intend to pursue any

arguments different than those today. I think we had a productive conversation and we may be able to further limit any dispute presented to the Court.

Sincerely, Jack DiSorbo

Jack DiSorbo
Assistant Attorney General, Special Litigation Unit
Office of the Attorney General
Work: (512) 936-1067
Cell: (713) 628-7407
Jack.DiSorbo@oag.texas.gov

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

LEAGUE OF UNITED LATIN AMERICAN

CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREGORY W. ABBOTT et al.,

Defendants.

Civil Action No. 3:21-cv-00259

(Lead Case)

FAIR MAPS TEXAS ACTION COMMITTEE,

et al.,

Plaintiffs,

v.

GREG ABBOTT et al.,

Defendants.

Civil Action No. 3:21-cv-01038

(Consolidated case)

[PROPOSED] ORDER

Upon consideration of Movants Fair Maps Plaintiffs' Motion to Compel Production of Documents from Defendants, it is hereby

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

ORDERED that Defendants shall produce to Fair Maps documents with the following control numbers within 48 hours of this Order: DOC_356555, 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_0356590, DOC_0356591, DOC_0356592, DOC_0356593,

DOC_0356594, DOC_0356595, DOC_0356596, DOC_0356597, DOC_0356604, DOC_0356609,
and DOC_0356610 and all documents accessible to Defendants via Drop-box as described in
DOC_0356598 and DOC_0356600.

SO ORDERED and **SIGNED** this ____ day of July, 2022

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

On behalf of

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

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