

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

BLACK VOTERS MATTER  
CAPACITY BUILDING  
INSTITUTE, INC., et al.,

Plaintiffs,

v.

Case No: 2022 CA 0666

CORD BYRD, in his official capacity as  
Florida Secretary of State, et al.,

Defendants.

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**DEFENDANT SECRETARY OF STATE'S RESPONSE  
TO PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION**

The Secretary of State responds to Plaintiffs' first requests for production, filed July 20, 2022.

The Secretary answers the requests as follows:

**General Objections to Instructions and Definitions**

The Secretary generally objects to the definitions and instructions, in that they impose obligations different from, or additional to, the Florida Rules of Civil Procedure. For example, instruction 4 imposes different and additional obligations than Florida Rule of Civil Procedure 1.280(b)(6).

The Secretary objects to paragraph 8, in that it is ambiguous. The instruction purports to require the production of electronically stored information both in native format and as single-page TIFF files. The Secretary need not produce electronically stored information in more than one form. The Secretary will produce electronically stored information in the form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

The Secretary objects that the production of metadata would impose undue burden and expense and that the burden or expense of the discovery of metadata outweighs its likely benefit. For the same reason, the Secretary objects to the instruction to OCR documents.

The Secretary objects to paragraph 13, in that it is overbroad. It should be noted that the U.S. Census Bureau released apportionment-related data in late April 2021. A more appropriate timeframe is from September 2021, when the Florida Legislature's first interim committee week occurred, to April 22, 2022, when Governor DeSantis signed the Enacted Map into law.

The Secretary objects to paragraphs 14 and 15. The paragraphs are ambiguous. Paragraph 14 is ambiguous because it is unclear whether the Secretary should apply the definitions that Plaintiffs provided or instead “the broadest meaning permitted under the Federal Rules of Civil Procedure.” Paragraph 15 is ambiguous to the extent it provides that “no definition is intended as exclusive,” which leaves the Secretary in doubt as to the meaning of the terms defined in Plaintiffs’ requests. The Secretary attributes to all defined terms only the meanings set forth in the definitions provided by Plaintiffs.

The Secretary objects to Plaintiffs’ definitions of particular redistricting plans to the extent those definitions include “drafts or precursors.” Drafts and precursors to redistricting plans are not relevant to the subject matter of this action. Moreover, the reference to “drafts or precursors” is vague to the extent any redistricting plan was not developed in an insulated, linear process.

**Request for Production No. 1:** All documents and communications related to your response to each interrogatory in Plaintiffs' First Interrogatories to Defendant Secretary of State.

**Response:** Given that the parties agreed that the Secretary can file his response to the first set of interrogatories on April 26, 2022, the Secretary can provide a more fulsome explanation and response to this request for production in his response to the first set of interrogatories.

That said, the Secretary objects to this request. It violates separation-of-powers principles in article II, section 3 of the Florida Constitution, and the request seeks documents and communications that come under legislative privilege, executive privilege, deliberative process privilege, attorney-client privilege, and the work-product doctrine.

Any consultations, directions, and discussions with the legislative branch are covered under the legislative privilege. Any consultations, directions, and discussions with high-ranking Executive Office of Governor officials are covered under the executive privilege. Any intra-office consultations, directions, and discussions are covered under the deliberative-process privilege. Any consultations, directions, and discussions with counsel are covered under the attorney-client privilege and work-product doctrine. Given these categorical objections, a privilege log need not be produced. *See, e.g., Nevin v. Palm Beach Cnty. Sch. Bd.*, 958 So. 2d 1003, 1008 (Fla. 1st DCA 2007) (a privilege log need not be produced "where assertion of the privilege is not document-specific, but category specific and the category itself is plainly protected").

That said, any non-privileged documents or communications will be produced on a rolling basis. The appropriate timeframe is September 1, 2021 to April 22, 2022, for the reasons discussed in the objection to paragraph 13. Because discovery is ongoing, we reserve the right to supplement our responses, objections, and production.

**Request for Production No. 2:** All documents and communications relating to the Fair Districts Amendments, including but not limited to all documents or communications regarding the applicability of or compliance with the Fair Districts Amendments.

**Response:** The Secretary objects to this request. It violates separation-of-powers principles in article II, section 3 of the Florida Constitution, and the request seeks documents and communications that come under legislative privilege, executive privilege, deliberative process privilege, attorney-client privilege, and the work-product doctrine.

Any consultations, directions, and discussions with the legislative branch are covered under the legislative privilege. Any consultations, directions, and discussions with high-ranking Executive Office of Governor officials are covered under the executive privilege. Any intra-office consultations, directions, and discussions are covered under the deliberative-process privilege. Any consultations, directions, and discussions with counsel are covered under the attorney-client privilege and work-product doctrine. Given these categorical objections, a privilege log need not be produced. *See, e.g., Nevin v. Palm Beach Cnty. Sch. Bd.*, 958 So. 2d 1003, 1008 (Fla. 1st DCA 2007) (a privilege log need not be produced “where assertion of the privilege is not document-specific, but category specific and the category itself is plainly protected”).

That said, any non-privileged documents or communications will be produced on a rolling basis. The appropriate timeframe is September 1, 2021 to April 22, 2022, for the reasons discussed in the objection to paragraph 13. Because discovery is ongoing, we reserve the right to supplement our responses, objections, and production.

**Request for Production No. 3:** All documents and communications discussing, analyzing, or commenting upon any Proposed Plans or the Enacted Plan.

**Response:** The Secretary objects to this request. It violates separation-of-powers principles in article II, section 3 of the Florida Constitution, and the request seeks documents and communications that come under legislative privilege, executive privilege, deliberative process privilege, attorney-client privilege, and the work-product doctrine.

Any consultations, directions, and discussions with the legislative branch are covered under the legislative privilege. Any consultations, directions, and discussions with high-ranking Executive Office of Governor officials are covered under the executive privilege. Any intra-office consultations, directions, and discussions are covered under the deliberative-process privilege. Any consultations, directions, and discussions with counsel are covered under the attorney-client privilege and work-product doctrine. Given these categorical objections, a privilege log need not be produced. *See, e.g., Nevin v. Palm Beach Cnty. Sch. Bd.*, 958 So. 2d 1003, 1008 (Fla. 1st DCA 2007) (a privilege log need not be produced “where assertion of the privilege is not document-specific, but category specific and the category itself is plainly protected”).

That said, any non-privileged documents or communications will be produced on a rolling basis. The appropriate timeframe is September 1, 2021 to April 22, 2022, for the reasons discussed in the objection to paragraph 13. Because discovery is ongoing, we reserve the right to supplement our responses, objections, and production.

DATED: August 19, 2022

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal, on August 19, 2022.

/s/ Mohammad O. Jazil  
Mohammad O. Jazil