

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.

_____ /

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

The Secretary of State responds to Plaintiffs' second requests for production, filed September 13, 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. 4: All documents and communications exchanged between you and Governor Ron DeSantis or the Executive Office of Governor Ron DeSantis related to congressional redistricting in 2021 and 2022.

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 the executive privilege and deliberative process privilege, as well as attorney-client privilege and the work product privilege. All responsive, non-privileged documents have been produced. In addition, given the 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”).

Request for Production No. 5: All documents and communications exchanged between you and any employees, agents, consultants to, or representatives of the Republican National Committee, Republican Party of Florida, National Republican Congressional Committee, Republican State Leadership Committee, Redistricting Majority Project (or REDMAP), National Republican Redistricting Trust, Ballard Partners, Adam Foltz, or any other consultant or agent for the Republican Party related to congressional redistricting in 2021 and 2022.

Response: As stated in the Secretary's response to the Plaintiffs' first set of interrogatories,

Then-Secretary Lee and the Department of State did not have any contact with any employees, agents, consultants to, or representatives of the Republican National Committee, Republican Party of Florida, National Republican Congressional Committee, Republican State Leadership Committee, Redistricting Majority Project (or REDMAP), National Republican Redistricting Trust, Ballard Partners, or any other consultant or agent for the Republican Party.

As noted in response to interrogatory number 8, Mr. Foltz served as outside consultant to the Secretary of State. He was acting in accordance with the direction given to him by counsel for the Secretary. This instruction is covered by the work product privilege because litigation was either pending or imminent when he undertook his work.

Request for Production No. 6: All documents and communications exchanged between you and any person who was a Member of the United States House of Representatives from the State of Florida or any staff member, campaign staff member, employee, agent, or consultant for any Member of the United States House of Representatives from the State of Florida related to congressional redistricting in 2021 and 2022.

Response: As stated in the Secretary's response to the Plaintiffs' first set of interrogatories,

Then-Secretary Lee and the Department of State did not have any contact with any person who was a Member of the United States House of Representatives from the State of Florida or any staff member, campaign staff member, employee, agent, or consultant for any Member of the United States House of Representatives from the State of Florida.

Sec'y Resp. to Pls. First Set of Ints. at 6. Thus, there are no documents and communications to produce.

Question for Production No. 7: All drafts or final versions of congressional redistricting plans for the State of Florida which contain 28 congressional districts, including precursors of such plans, in your possession, excluding plans publicly submitted to and still available on the Florida Redistricting Website at floridaredistricting.gov.

Response: All final plans were uploaded to the state website. All draft plans are protected by the work product privilege, the executive privilege, and the deliberative process privilege.

Request for Production No. 8: Information or data sufficient to determine the race of the candidate in each statewide and congressional primary and general election from 2012 to 2020.

Response: The Secretary objects to this request as vague and ambiguous; it's unclear what information Plaintiffs deem "sufficient to determine the race of the candidate." The Secretary further objects to this request as it is unduly burdensome and irrelevant. The Plaintiffs seek information or data for *five* different election cycles, with approximately *thirty* races in each cycle, about the demographic information of *each* primary and general election candidate. This request seeks *hundreds* of pieces of information or data—information and data which has nothing to do with the legality of the 2022 Enacted Map. Finally, a candidate's race is irrelevant when qualifying to run for office and so the Secretary does not maintain a log of candidate races. To the extent that any experts the Secretary relies on during the course of this litigation use material to determine the race of candidates, that material will be provided in accordance with the deadlines for expert disclosures as well as the obligations imposed by the Florida Rules of Civil Procedure for expert disclosures.

Request for Production No. 9: Information or data sufficient to determine the Citizen Voting Age Population using the 2015-2019 American Community Survey and/or the 2016-2020 American Community Survey at the block, precinct, and district levels.

Response: The Secretary objects to this request as vague and ambiguous; it's unclear what "information or data" is sufficient from Plaintiffs' perspective "using the 2015-2019 American Community Survey and/or the 2016-2020 American Community Survey at the block, precinct, and district levels." To the extent Plaintiffs seek the American Community Survey data, that is equally available to Plaintiffs. The Secretary further notes that redistricting-related data is also available through www.floridaredistricting.gov.

DATED: October 13, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that the a true and correct copy of the foregoing was served on all parties of record through the Florida Courts E-Filing Portal on October 13, 2022.

/s/ Mohammad O. Jazil
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