

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA
Case No. 2022 CA 000666

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

vs.

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

_____ /

MOTION FOR PROTECTIVE ORDER

Pursuant to Florida Rule of Civil Procedure 1.280(c), the non-parties identified below, all of whom are present or former members of the Florida Legislature, move for a protective order pertaining to appearing for defense-scheduled depositions. As explained in this motion, all prospective deponents intend to appear for depositions in a manner that facilitates scheduling, comports with the mandatory legislative stay authorized by Section 11.111, Florida Statutes (2022), and enables all parties and non-parties to coordinate scheduling of Zoom depositions.

1. The Movants are not parties to this action. They have, instead, been caught in the crossfire of litigation concerning the Florida congressional redistricting.

2. The Movants all previously served, or are currently serving, in the Florida Legislature. They are as follows:

- Rep. Dan Daley
- Rep. Daryl Campbell
- Sen. Tracie Davis
- Sen. Geraldine Thompson
- Rep. Yvonne Hinson
- Rep. Christine Hunschosfsky
- Rep. Michael Gottlieb
- Rep. Dotie Joseph
- Rep. Susan Valdes
- Rep. Patricia Williams
- Rep. Angela Nixon
- Rep. Felicia Robinson
- Former Rep. Ramon Alexander
- Former Rep. Kamia Brown
- Former Rep. Ben Diamond

- Former Rep. Nicholas Duran
- Former Rep. Joseph Geller
- Former Rep. Andrew Learned
- Former Rep. Daisy Morales
- Former Rep. Anika Omphroy
- Former Rep. Carlos Smith
- Former Rep. Evan Jenne

3. All the non-party Movants have been cooperating with defense counsel by gathering and producing responsive documents requested by the defense pursuant to subpoenas. Counsel for the Movants have been in communication with defense counsel about agreeing to the scheduling of the depositions by Zoom, but have yet to agree on a deposition schedule despite extensive efforts. The deposition subpoenas *dues tecum* issued by the defendant Secretary of State were not served on the individual Movants and counsel did not agree to accept service of the subpoenas. Nonetheless, the subpoenas direct that each Movant, after already producing extensive documents, appear at the depositions with these materials:

[a]ll communications between you, or your staff, and any member or employee of the Elias Law Group; Perkins Coie LLP; King, Blackwell, Zehnder & Wermuth, P.A.; the

American Civil Liberties Union of Florida; the League of Women Voters of Florida; the League of Women Voters of Florida Education Fund; Common Cause Florida; Florida Rising Together; the Florida State Conference of the National Association for the Advancement of Colored People; Latino Justice; Black Voters Matter Capacity Building Institute; Fair Districts Now; the Democratic Party of Florida; the Democratic Congressional Campaign Committee; the Democratic National Committee; the Equal Ground Education Fund; the National Redistricting Action Fund; the National Democratic Redistricting Committee; the House Minority Office; the Senate Minority Office; or any other member of the Florida Legislature or their staff relating to the Enacted Plan or the Proposed Plans.

Amended Subpoena Duces Tecum with Videotaped Deposition (Feb. 28, 2023) [hereinafter Subpoena].

4. The Movants, recognizing the undue burden that the defense demand places on each of them, have intended to reach agreement on the scheduling of their depositions for actually agreeable dates. Counsel for the Movants proposed dates throughout the month of March to complete the depositions, and are even in discussions for current legislators to not invoke the mandatory legislative stay provided by Section 11.111, Florida Statutes, that otherwise requires the depositions to be stayed during the Legislative Session that begins next week.

5. “Trial courts have broad discretion in controlling discovery and in issuing protective orders.” *2700 N. Ocean, LLC v. Sternberg*, 139 So. 3d 379, 380 (Fla. 3d DCA 2014). Florida Rule of Civil Procedure 1.280(c) provides that, upon good cause shown, the Court may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including that the discovery may be had only on specified terms and conditions, including a designation of the time or place. Fla. R. Civ. P. 1.280(c)(2).

6. Defendants’ effort to require the depositions to occur without reaching agreement with Movants and their counsel is unduly burdensome and unnecessary. Stated quantifiably, each Subpoena demands production of *all* communication with *any* member of a minimum of over *20 entities*. The overly expansive scope of the subpoenas is unjustified and has the potential to unreasonably detract from each of the Movants’ work, including legislative work in preparation for and during the Legislative Session, without justification, resulting in undue burden.

7. Moreover, Defendants could, and should, obtain the information they seek by less intrusive means, be that through

affidavits, declarations, or the like. These alternatives are currently being pursued by the Movants' counsel, and already some affidavits have been prepared for tender to defense counsel. Opting for the most burdensome alternative, depositions, is unnecessary and burdensome.

8. The intended depositions are less necessary in light of available alternatives than they are invasive and burdensome to Movants in light of their impacts.

For these reasons, including the mandatory Legislative Stay authorized by Section 11.111, Movants respectfully request that this Court issue a protective order prohibiting the deposition schedule pending an agreed schedule for the depositions during the month of March 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by email through the State of Florida e-filing system on all counsel of record on March 1, 2023.

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