

INTRODUCTION

Private plaintiffs in these consolidated cases join the United States in the pursuit to depose three sitting legislators before deposing anyone else. The legislators already moved to quash or modify subpoenas served by the United States, or in the alternative for a protective order. ECF 259 (“Mot.”); ECF 277 (“Reply”). For the same reasons, the legislators request the same relief for subpoenas served by the private plaintiffs, which seek to depose the same legislators on the same dates. *See* Ex. A (Rep. Guillen subpoena); Ex. B (Rep. Landgraf subpoena); Ex. C (Rep. Lujan subpoena). The legislators’ privilege arguments are no more “remarkable”¹ than binding Supreme Court precedent on the subject or decisions by courts of appeals abiding by that precedent. Legislative privilege and immunity safeguard the legislative process—safeguards “so essential” that they were written into state and federal constitutions. *Tenney v. Brandhove*, 341 U.S. 367, 372-75 (1951). Legislators engaged “in the sphere of legitimate legislative activity” are protected “not only from the consequences of litigation’s results but also from the burden of defending themselves.” *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967). For that reason, even in cases involving allegations of intentional discrimination, other courts of appeals have “concluded that the plaintiffs are generally barred from deposing legislators, even in ‘extraordinary circumstances.’” *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187-88 (9th Cir. 2018); *accord Am. Trucking Ass’n, Inc. v. Alvitti*, 14 F.4th 76, 90-91 (1st Cir. 2021); *In re Hubbard*, 803 F.3d 1298, 1315 (11th Cir. 2015).

BACKGROUND

Private plaintiffs brought the following suits, since consolidated, to enjoin redistricting legislation for congressional, senate, house, and/or State Board of Education (SBOE) districts:

- **The LULAC plaintiffs** (3:21-cv-259) challenge congressional, senate, house, and SBOE redistricting legislation. LULAC Second-Am. Compl., ECF 237. Among other allegations, they allege that legislation violates §2 of the VRA and the Fourteenth Amendment for failing to maximize majority-Latino house and congressional districts in certain locales and for

¹ Pls. Opp’n to Legislator’s Mot. to Quash United States’ Subpoenas 2, ECF 272 (“Pls. Opp’n”).

weakening Latino voting strength in HD 31, 37, 90, and 118. *Id.* ¶¶7, 134-40, 142-45, 163-68. Their complaint also includes a malapportionment claim for house districts in West Texas, while averring that the aggregate population deviation of the house plan is less than 10%. *Id.* ¶¶148-50, 182-85; *but see Brown v. Thomson*, 462 U.S. 835, 842 (1983) (“apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations”); *White v. Regester*, 412 U.S. 755, 764 (1973) (“we cannot glean an equal protection violation from the single fact that two legislative districts in Texas differ from one another by as much as 9.9% when compared to the ideal district”). Defendants have until May 18, 2022, to answer or move to dismiss.

- **The MALC plaintiffs** (1:21-cv-988) challenge congressional, house, and SBOE redistricting legislation. MALC First-Am. Compl., ECF 247. With respect to congressional districts, MALC challenges CD 15 and 23, even though both districts exceed 50% HCVAP. *Id.* ¶¶156, 160. MALC also alleges that certain Dallas/Tarrant and Harris County districts should be redrawn to increase Latino voting strength. *Id.* ¶¶163-66. With respect to house districts, MALC challenges the failure to add opportunity districts in different locales and the configuration of El Paso house districts, mirroring the United States’ allegations. *Id.* ¶¶89-97. MALC also challenges HD 31, 37, 80, 90, 118, and 145, all of which MALC avers maintain HCVAP exceeding 66%, 77%, 77%, 49%, 56%, and 55% respectively. *Id.* ¶¶101, 110, 117, 126, 131, 140; *see also id.* ¶120 (conceding that legislation “would *not* make HD 80 unwinnable by the Latino/Spanish language community candidate of choice” (emphasis added)). MALC further alleges that the number of majority-Latino congressional, house, and senate districts is disproportionate to the Latino citizen voting age population. *Id.* ¶¶167, 176-79; *but see* 52 U.S.C. §10301(b) (“nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population”). The complaint concludes that the congressional, house, and SBOE districts violate §2 and the Fourteenth and Fifteenth Amendments, *id.* ¶¶238-45, and that house districts are unconstitutionally malapportioned, *id.* ¶¶246-49. Defendants have until May 18, 2022, to answer or move to dismiss.
- **The Brooks plaintiffs** (1:21-cv-991) challenge changes to SD 10, as well as HD 54, 55, and 118, and congressional districts in Dallas/Fort Worth and Houston. Brooks First-Am. Compl., ECF 236. The complaint alleges that SD10, HD 54, HD55, and HD 118 violate §2 of the VRA and the Fourteenth and Fifteenth Amendments, *id.* ¶¶211-26, 236-52, and that the failure to create a congressional coalition district and another majority-Latino congressional district violates §2, *id.* ¶¶227-35. This Court denied plaintiffs’ preliminary injunction motion regarding SD 10. ECF 176, 258. Defendants have until May 18, 2022, to answer or move to dismiss.
- **The Voto Latino plaintiffs** (1:21-cv-965) allege that congressional and house redistricting legislation violates §2. Voto Latino First-Am. Compl., ECF 235. The complaint does not include intentional discrimination claims. *Id.* ¶¶155-63. They challenge the resulting concentration of Latino voters in CD 15, 16, 20, 21, 23, 27, 28, 34, and 35 as either too high or too low. *Id.* ¶¶78-89. They fault the legislation for failing to create additional majority-minority or coalition districts in Dallas, Houston, and Tarrant County, *id.* ¶¶90-101, and for failing to disperse (and thereby maximize) Latino votes in Harris County, *id.* ¶¶102-06. Defendants have until May 18, 2022, to answer or move to dismiss.
- **The Texas State Conference of the NAACP** (1:21-cv-1006) has filed a complaint premised on the theory that redistricting legislation can violate §2 for failure to maximize voting strength

for “people of color” generally, or “POC CVAP.” NAACP Compl. ¶¶27-28, No. 1:21-cv-1006, ECF 1. The complaint alleges in conclusory terms that “[t]he vast majority of voters of color in Texas vote cohesively” and that §2 prohibited “add[ing] more white voters” to districts. *Id.* ¶¶96, 101. Reciting the number of representatives by race, the complaint alleges that myriad senate, house, and congressional districts with majority “POC CVAP” are disproportionate to the overall population. *Id.* ¶¶106-204; *but see* 52 U.S.C. §10301(b) (disclaiming proportionality as basis for claim). The complaint concludes that senate, house, and congressional redistricting legislation violates §2 and the Fourteenth and Fifteenth Amendments, including for failure to create “minority coalition districts.” *Id.* ¶¶205-30. Defendants’ motion to dismiss, including for lack of standing and for failure to state a claim, is pending. *See* ECF 82, 107, 117.

- **The Fair Maps Texas Action Committee plaintiffs** (1:21-cv-1038) allege that the congressional, senate, and house redistricting legislation “discriminate[s] against voters of color by failing to create additional districts that afford opportunities for voters of color to elect their candidates of choice, whether by single racial or ethnic group or by voting in coalition....” Fair Maps Compl. ¶83, No. 1:21-cv-1038, ECF 1. The complaint describes “imbalance in representation” and states that “Black, Latino, and AAPI voters continue to be proportionality [*sic*] underrepresented in the Texas legislature and congressional delegation.” *Id.* ¶¶85, 110, 112, 147; *but see* 52 U.S.C. §10301(b) (“nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population”). The complaint concludes that congressional, senate, and house redistricting legislation violates §2, including for failure to maximize majority-minority districts and for failure to create coalition districts, as well as the Fourteenth and Fifteenth Amendments. *Id.* ¶¶151-61. Defendants’ motion to dismiss the complaint, including for lack of standing and failure to state a claim, is pending. *See* ECF 181, 191, 193.
- **Plaintiff Fischer** (3:21-cv-306) challenges only CD 35 as a violation of §2 and the Equal Protection Clause. *See* Fischer First-Am. Compl. ¶¶92, 139, ECF 217 (“Plaintiff is *only* challenging the enacted configuration of CD 35 in SB 6.”). Defendants’ motion to dismiss Rep. Fischer’s amended complaint is pending. ECF 233, 260, 267.
- **The Escobar plaintiffs** (3:22-cv-22) challenges neighboring CD 16 and 23 as violating §2 and the Equal Protection Clause. Escobar Compl., No. 3:22-cv-22, ECF 1. After Defendants moved to dismiss the complaint, plaintiffs filed a motion to amend. ECF 223, 229. The motion has been granted but the amended complaint has not yet been re-docketed. Defendants have until May 18, 2022, to answer or move to dismiss.
- **Plaintiff-Intervenors** allege that CD9, 18, and 30 violate §2 and the Equal Protection Clause based in part on allegations of retrogression. Johnson First-Am. Compl., ECF 209. Defendants have moved to dismiss, including because the complaint does not allege that Black voters are unable to elect their candidate of choice in those congressional districts. ECF 225.

Until late last month, there was relatively little discovery of third-party legislators by the private plaintiffs. A few weeks ago, the LULAC plaintiffs issued subpoenas for legislative documents, and subpoena recipients will be producing non-privileged, responsive documents and invoking applicable

privileges for others. The NAACP has since issued similar subpoenas. Then last week—before the ink was dry on the document subpoenas and after the United States issued deposition subpoenas for Texas House Representatives Ryan Guillen, Brooks Landgraf, and John Lujan—the private plaintiffs issued their own deposition subpoenas for the same representatives. *See* Exs. A-C.

Counsel have met and conferred. Counsel for the legislators asked what basis there could be for deposing a sitting legislator now and whether plaintiffs would be open to alternatives. *See* Ex. D at 6-7 (5/9/22 email from J. DiSorbo). In response, Plaintiffs stated they believe depositions should proceed on May 24 and 25 even without a ruling from this Court, unless this Court issues an interim stay. *Id.* at 2 (5/12/22 email from T. Meehan). Plaintiffs further stated that they plan to ask legislators otherwise-privileged questions about what motivated them during the redistricting process, about the *Gingles* standard, and other topics that plaintiffs could not enumerate during the parties' meet and confer. *Id.* at 1-2 (5/12/22 email from T. Meehan; 5/13/22 email from D. Fox). Meanwhile, Plaintiffs filed a brief in support of the United States' opposition to the legislators' motion to quash the United States' deposition subpoenas. *See generally* Pls. Opp'n, ECF 272. In that brief, they distinguished their intent claims from the United States' effect claims, endorsed a non-binding multi-factor balancing test that has evaded appellate review, and suggested that an adverse inference would be appropriate if legislators invoke privilege. *Id.* at 4-5, 7-11.

ARGUMENT

The legislators incorporate by reference the arguments made in their pending motion (ECF 259) and reply brief (ECF 277) regarding the United States' deposition subpoenas. As an initial matter, the legislators request interim relief postponing the depositions to allow for adequate time to brief and decide the pending motions. *See* Reply 2-3. Plaintiffs' insistence that depositions proceed even without a ruling from this Court transgresses Rule 45's requirement that they take reasonable steps to avoid undue burden and cost and risks mooting the issues pending before this Court. *Id.*

On the merits, the legislators have not asked for a categorical ban on legislator depositions for cases of all types and in all circumstances, contrary to plaintiffs' arguments (Pls. Opp'n 3-4). The legislators have instead moved for orders quashing or modifying the subpoenas in light of the particular circumstances here. *See* Reply 1-2. Among other reasons, plaintiffs must pursue alternative means of discovery before attempting the "extraordinary" step of deposing sitting legislators. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977); *see, e.g., Austin Lifecare, Inc. v. City of Austin*, 2012 WL 12850268, at *2 (W.D. Tex. Mar. 20, 2012) (quashing deposition subpoenas based, in part, because "Plaintiffs have alternative methods for discovering the information they seek," including the public record); *see In re Perry*, 60 S.W.3d 857, 861-62 (Tex. 2001) (relying on *Arlington Heights* for requirement that "all other available evidentiary sources must first be exhausted"). Plaintiffs' first move cannot be legislator depositions. It remains to be decided whether certain plaintiffs have standing or whether certain plaintiffs have even stated a claim; Defendants haven't even had an opportunity to move to dismiss recently amended pleadings, *supra*, let alone know what the rules will be for plaintiffs' redistricting claims after the Supreme Court decides *Merrill v. Milligan*, No. 21-1086. *See* Mot. 7-9. At this time, quashing the deposition subpoenas altogether would be consistent with the practice of other courts abiding by the Supreme Court's privilege precedents. *Id.* at 10-17. At the very least, should any depositions proceed, the legislators request a protective order prohibiting deposing legislators about privileged matters, including matters beyond the public record. *Id.* at 9-10.

I. Intent claims do not trump legislative privilege.

Plaintiffs contend that their allegations of intentional discrimination (as compared to the United States' effects-only claim) allow them to probe what motivated the legislators: "In intent cases, knowledge about what motivated a decisionmaker at the time of the decision is relevant and subject to discovery." Pls. Opp'n 4; *see also* Ex. D at 2 (5/12/22 email from T. Meehan). They wrongly suggest

that refusal to answer questions about intent warrants an adverse inference. Pls. Opp'n 5.² And they wrongly contend that if privilege were to bar intent-based inquiries, that “would effectively bar any court from ‘ever accurately and effectively determin[ing] intent.’” *Id.* (quoting Op. 50 n.14, ECF 258).

A. Legislative privilege no less applies to intentional discrimination claims than it does to other claims. The privilege applies with “full force” even in cases where legislators’ motives are at the “factual heart” of plaintiffs’ claims. *Hubbard*, 803 F.3d at 1310-11, 1315 (quashing subpoenas). Plaintiffs’ “categorical exception whenever a constitutional claim directly implicates the governments intent ... would render the privilege ‘of little value.’” *Lee*, 908 F.3d at 1188; *see Am. Trucking*, 14 F.4th at 90 (describing “inherent challenges of using [deposition] evidence of individual lawmakers’ motives to establish that the legislature as a whole enacted [law] with any particular purpose”). That is consistent with the Supreme Court’s repeated observation that courts generally must “equate[]” protections afforded to federal legislators with protections afforded to state legislators for constitutional claims brought under §1983, Plaintiffs’ constitutional claims included. *Sup. Ct. of Va. v. Consumers Union*, 446 U.S. 719, 732-33 (1980); *see Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998). While legislative privilege must bend for *federal criminal prosecutions*, the Supreme Court has never qualified state legislators’ privilege as plaintiffs would in a civil matter such as this one. *See* Mot. 13-14 (discussing *Gillock*).

B. In these proceedings already, this Court rejected that privilege must bend to claims of intentional discrimination. The Brooks plaintiffs asked this Court to preliminarily enjoin SD 10 based on intentional discrimination claims. *See* Mot. for Prelim. Inj., ECF 39 at 24-43. At the hearing, this Court ruled that a state senator could testify about that “within the public record,” but anything

² Fully explained in the legislators’ reply brief in support of the motion to quash the United States’ deposition subpoenas, any adverse inference would be legal error. Reply 8-10; *see, e.g., In re WR Grace & Co.*, 729 F.3d 332, 348 (3d Cir. 2013) (“A negative inference should not be drawn against Grace merely because it chose to protect the privacy of attorney-client communications.”); *Jaffee v. Redmond*, 51 F.3d 1346, 1358 (7th Cir. 1995) (remanding for new trial after erroneous adverse inference instruction).

beyond the public record would entail a waiver of legislative privilege. PI Tr. 152:1-5 (Vol. 5) (“Senator Huffman will be allowed to testify to everything within the public record; and if she goes outside the public record, she will waive her privilege.”). The Court sustained objections to questions about the senator’s mental impressions or opinions regarding legislation, or what otherwise motivated or informed her or others during the legislative process. *See, e.g.*, PI Tr. 152:2-7 (Vol. 6); PI Tr. 25:6-10 (Vol. 7); PI Tr. 29:6-20 (Vol. 7).

That ruling is consistent with Supreme Court precedent and the approaches taken by the courts of appeals in similar circumstances. *See Tenney*, 341 U.S. at 373-77; *Dombrowski*, 387 U.S. at 85; *see also In re Stone*, 986 F.2d 898, 904 (5th Cir. 1993) (warning officials “could never do their jobs” if subject to such discovery because they would be less willing to explore all options before them, lest they “be subpoenaed for every case involving their agency”). For example, in a recent redistricting challenge involving allegations of race-based intent, the Ninth Circuit followed its general rule that legislators could not be deposed. *See Lee*, 908 F.3d at 1187-88. Similarly, the Eleventh Circuit refused to require legislators to turn over privileged documents precisely *because* the legislators’ privileged subjective intent could not be disentangled from the plaintiffs’ claim. *See Hubbard*, 803 F.3d at 1310-11; *accord Am. Trucking Ass’n*, 14 F.4th at 91 (quashing deposition subpoenas); *Biblia Abierta v. Banks*, 129 F.3d 899, 905 (7th Cir. 1997) (“An inquiry into a legislator’s motives for his actions, regardless of whether those reasons are proper or improper, is not an appropriate consideration for the court.”).³

Plaintiffs disagree, based in part on a footnote in this Court’s preliminary injunction opinion. *See* Pls. Opp’n 4-5. The Court recently said that it was “concerned about the scope of state legislative privilege” because “[s]tate legislative privilege in this context raises serious questions about whether this Court (or any court) could ever accurately and effectively determine intent.” Op. 50 n.14.

³ Plaintiffs have relied on the passing observation in *Jefferson Community Health Care Centers* that legislative privilege is strictly construed—inconsistent with Supreme Court precedent and straying from other appellate courts. That *dictum* does not require anything different of courts in the Fifth Circuit. *See* Reply 5-6.

The Supreme Court has answered those concerns. As a starting point, even “[t]he claim of an unworthy purpose does not destroy the privilege.” *Tenney*, 341 U.S. at 377. “The privilege would be of little value” if legislators could be subject to “the hazard of a judgment against them based upon . . . speculation as to motives.” *Id.* There are instead alternative means for probing legislative purpose, detailed by the Supreme Court in *Arlington Heights*—a case also involving allegations of invidious intent. 429 U.S. at 267-68. Those alternatives include “[t]he historical background of the decision,” the “sequence of events leading up to the challenged decision,” or “legislative or administrative history” including “contemporary statements by members of the decisionmaking body”—all materials from the public record. *Id.* Importantly, the Supreme Court cautioned that proving legislative purpose did not entail probing the minds of decisionmakers except in extraordinary circumstances: “In some extraordinary instances, the members might be called to the stand to testify concerning the purpose of the official action, although *even then such testimony frequently will be barred by privilege.*” *Id.* at 268 (emphasis added); *accord Lee*, 908 F.3d at 1188 (“*Arlington Heights* itself also involved an equal protection claim alleging racial discrimination—putting the government’s intent directly at issue—but nonetheless suggested that such a claim was not, in and of itself, within the subset of ‘extraordinary instances’ that might justify an exception to the privilege”). After all, such “judicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government.” *Arlington Heights*, 429 U.S. at 268 n.18. Simply put—the Supreme Court has already disclaimed that testimony from legislators is necessary to a court’s truth-seeking mission regarding legislative purpose, versus other more reliable alternatives.⁴

⁴ Plaintiffs have argued that *Arlington Heights* doesn’t mean what it says because the decision elsewhere notes that board members were in fact questioned in discovery. Pls. Opp’n 4. *Arlington Heights* does not specify whether such discovery entailed depositions, whether public officials challenged or appealed any such discovery orders, whether there was any privilege waiver, or other relevant factors including whether the calculus would have been different had state legislators been the target of discovery. But here’s what the Court’s decision does say: the district court in *Arlington Heights* “forbade questioning Board members about their motivation at the time they cast their votes.” 429 U.S. at 270 n.20. It is forbidden here too.

There is good reason that any one legislator’s motivations or impressions are protected. The probative value is weak at best, while the affront to federalism and comity is at its zenith. Evidence of any one legislator’s intent cannot be conflated with the legislature’s purpose as a whole. *See Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2349-50 (2021); *accord Am. Trucking*, 14 F.4th at 90 (noting that the “Supreme Court has warned against relying too heavily on such evidence” of “individual lawmakers’ motives to establish that the legislature as a whole [acted] with any particular purpose”). For “[w]hat motivates one legislator to make a speech about a statute,” let alone his internal thoughts and impressions, “is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for [courts] to eschew guesswork.” *United States v. O’Brien*, 391 U.S. 367, 384 (1968). Evidence of legislative purpose is instead divined from the public record, *see Arlington Heights*, 429 U.S. at 267-68, alongside the presumption that legislatures act in good faith, *see Miller v. Johnson*, 515 U.S. 900, 915 (1995); *Abbott v. Perez*, 138 S. Ct. 2305, 2324-25 (2018). Understood in that way, legislative privilege helps ensure that litigation remains focused on that which motivated the legislature as a whole, consistent with the obligation that courts not “strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive” by one or a few. *O’Brien*, 391 U.S. at 383-84.

II. The Court must reject Plaintiffs’ balancing test.

Plaintiffs endorse the flawed balancing test employed by some district courts, which has largely evaded appellate review. *See* Mot. 13-17. It has never been endorsed by the Supreme Court, nor employed by courts of appeals in analogous cases including the Ninth Circuit’s redistricting decision in *Lee*. Illustrated by plaintiffs’ own application of that test, Pls. Opp’n 7-10, it is easily manipulated to reduce privilege to a nullity. Plaintiffs’ balancing of benefits and burdens for deposing legislators looks little different than the balancing that would occur under Rule 45 and other generally applicable federal

discovery rules.⁵ It makes no sense, in light of *Tenney* and progeny, that legislators would be entitled no greater protection than any other target of third-party discovery.

Plaintiffs, moreover, are wrong that *Rodriguez*, the district court decision first adopting the nebulous multi-factored legislative privilege test, used it to justify legislative depositions. Pls. Opp’n 10. Exactly the opposite: the court emphasized that plaintiffs were “*not* seeking any depositions of legislators or their staff.” 280 F. Supp. at 96 (emphasis added); *see also id.* (noting legislators had not moved to dismiss). Even in *Veasey v. Perry*, the privilege dispute initially involved legislators’ documents, not depositions. 2014 WL 1340077, at *1 (S.D. Tex. Apr. 3, 2014). And in *Perez*, the Court refused to apply *Rodriguez* in a way that pierced legislative privilege entirely, contrary to plaintiffs’ demands here. *See* Mot. 14-15 & n.8. At this stage of the proceedings—with motions to dismiss yet to be filed, with the Supreme Court currently considering the metes and bounds of redistricting claims, and with all parties having failed to first exhaust other discovery alternatives, *see* Reply 2 n.3; Ex. D at 2 (5/12/22 email from T. Meehan)—it would be error on top of error to apply *Rodriguez* to justify legislator depositions, let alone depositions exploring legislators’ motivations and impressions regarding redistricting legislation.

CONCLUSION

The legislators respectfully request that the Court issue an interim order postponing depositions pending resolution of these related motions. The legislators further request that the Court quash or modify the subpoenas, or in the alternative enter a protective order.

⁵ *Compare Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 101 (S.D.N.Y. 2003) (first factor considers “relevance of the evidence sought to be protected,”), *with* Fed. R. Civ. P. 26(b)(1) (limiting “scope of discovery” generally to “relevant” material); *compare Rodriguez*, 280 F. Supp. 2d at 101 (second factor considers “availability of other evidence” and third factor considers “‘seriousness’ of the litigation and the issues involved”), *with* Fed. R. Civ. P. 45(d)(1) (requiring parties to avoid undue burden or expense when subpoenaing third parties), *and* Fed. R. Civ. P. 26(b)(1) (considering “importance of the discovery in resolving the issues”).

Date: May 13, 2022

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CERTIFICATE OF CONFERENCE

I certify that counsel conferred with counsel for plaintiffs regarding the subject of this motion. Counsel for plaintiffs indicated they oppose any motion to quash or modify the subpoena, which confirms opposition to the relief sought here.

/s/ Taylor A.R. Meehan
TAYLOR A.R. MEEHAN

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on May 13, 2022, and that all counsel of record were served by CM/ECF.

/s/ Taylor A.R. Meehan
TAYLOR A.R. MEEHAN

EXHIBIT A

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

Plaintiff

v.

Greg Abbott, et al.

Defendant

Civil Action No. 3:21-cv-259-DCG-JES-JVB

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Representative Ryan Guillen
Texas Capitol, 1100 Congress Ave., Room 1W.3, Austin, TX 78701

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action.

Table with 2 columns: Place (Price Daniel Sr. State Office Building, 209 W 14th Street, Austin, Texas 78701) and Date and Time (05/19/2022 9:00 am)

The deposition will be recorded by this method: Stenographic and Audiovisual Recording

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

By May 17, 2022, all documents, if any, that the witness relied on to prepare for the deposition

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/06/2022

CLERK OF COURT

OR

/s Nina Perales

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) on behalf of all consolidated Private Plaintiffs, who issues or requests this subpoena, are:

Nina Perales, Mexican American Legal Defense and Educational Fund (MALDEF); 110 Broadway Suite 300, San Antonio, TX 78205; (210) 845-5147; nperales@maldef.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:21-cv-259-DCG-JES-JVB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT B

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.)

Plaintiff)

v.)

Greg Abbott, et al.)

Defendant)

Civil Action No. 3:21-cv-259-DCG-JES-JVB

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Representative Brooks Landgraf
Texas Capitol Extension, 1100 Congress Ave., Room E1.324, Austin, TX 78701

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

| | |
|--|--------------------------------------|
| Place: Price Daniel Sr. State Office Building 209 W 14th Street Austin, TX 78701 | Date and Time: 05/24/2022 9:00 am |
|--|--------------------------------------|

The deposition will be recorded by this method: Stenographic & Audiovisual Recording

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

By May 23, 2022 all documents, if any, that the witness relied on to prepare for the deposition.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/06/2022

CLERK OF COURT

OR

/s Nina Perales

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____ on behalf of all consolidated Private Plaintiffs _____, who issues or requests this subpoena, are:

Nina Perales, Mexican American Legal Defense and Educational Fund (MALDEF); 110 Broadway Suite 300, San Antonio, TX 78205; (210) 845-5147; nperales@maldef.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:21-cv-259-DCG-JES-JVB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT C

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.)

Plaintiff)

v.)

Greg Abbott, et al.)

Defendant)

Civil Action No. 3:21-cv-259-DCG-JES-JVB

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Representative John Lujan
Texas Capitol Extension, 1100 Congress Ave., Room E1.218, Austin, TX 78701

(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

| | |
|--|--------------------------------------|
| Place: Price Daniel Sr. State Office Building 209 W 14th Street Austin, TX 78701 | Date and Time: 05/25/2022 9:00 am |
|--|--------------------------------------|

The deposition will be recorded by this method: Stenographic & Audiovisual Recording

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

By May 24, 2022 all documents, if any, that the witness relied on to prepare for the deposition.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 05/06/2022

CLERK OF COURT

OR

/s Nina Perales

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____ on behalf of all consolidated Private Plaintiffs _____, who issues or requests this subpoena, are:

Nina Perales, Mexican American Legal Defense and Educational Fund (MALDEF); 110 Broadway Suite 300, San Antonio, TX 78205; (210) 845-5147; nperales@maldef.org

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:21-cv-259-DCG-JES-JVB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

EXHIBIT D

Subject: Re: LULAC (Redistricting): Legislator Deposition Subpoenas
Date: Friday, May 13, 2022 at 9:59:11 AM Central Daylight Time
From: David Fox
To: Taylor Meehan, Samantha Serna
CC: Jack DiSorbo, Kenneth Parreno, timothy.f.mellett@usdoj.gov, daniel.freeman@usdoj.gov, smcaffity@textrial.com, jgonzalez@malc.org, mark@markgaber.com, chad@brazilanddunn.com, noor@scsj.org, Nina Perales, allison@southerncoalition.org, Abha Khanna, Robert@notzonlaw.com, erosenberg@lawyerscommittee.org, garybledsoe@sbcglobal.net, Patrick Sweeten, nas@naslegal.com, martin.golando@gmail.com, Will Thompson, mortara@lawfairllc.com, Courtney Corbello, Ari Herbert, Ryan Kercher, frank@consovoymccarthy.com

Taylor,

Private plaintiffs oppose a motion to quash or for a protective order for the deposition subpoenas private plaintiffs have issued for Reps. Guillen, Landgraf, and Lujan. Regarding alternative means of discovery, private plaintiffs are open to reasonable proposals where possible, and it is certainly not the case that we intend to rely solely on legislative depositions. But there is no alternative that will completely eliminate the need for us to depose legislators who are responsible for enacting the challenged maps or who will run for election in the districts those maps create.

Thanks,

David

David R. Fox
Elias Law Group LLP
(202) 968-4546

CONFIDENTIAL: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). Any unauthorized use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

From: Taylor Meehan <taylor@consovoymccarthy.com>
Date: Thursday, May 12, 2022 at 7:22 PM
To: Samantha Serna <:sserna@MALDEF.org>
Cc: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>, Kenneth Parreno <Kparreno@MALDEF.org>, timothy.f.mellett@usdoj.gov <timothy.f.mellett@usdoj.gov>, daniel.freeman@usdoj.gov <daniel.freeman@usdoj.gov>, smcaffity@textrial.com <smcaffity@textrial.com>, jgonzalez@malc.org <jgonzalez@malc.org>, mark@markgaber.com <mark@markgaber.com>, chad@brazilanddunn.com <chad@brazilanddunn.com>, noor@scsj.org <noor@scsj.org>, Nina Perales <nperales@MALDEF.org>, allison@southerncoalition.org <allison@southerncoalition.org>, Abha Khanna <akhanna@elias.law>, David Fox <dfox@elias.law>, Robert@notzonlaw.com <Robert@notzonlaw.com>, erosenberg@lawyerscommittee.org <erosenberg@lawyerscommittee.org>, garybledsoe@sbcglobal.net <garybledsoe@sbcglobal.net>, Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>, nas@naslegal.com <nas@naslegal.com>, martin.golando@gmail.com <martin.golando@gmail.com>, Will Thompson <Will.Thompson@oag.texas.gov>, mortara@lawfairllc.com <mortara@lawfairllc.com>, Courtney Corbello <Courtney.Corbello@oag.texas.gov>, Ari Herbert <Ari.Herbert@oag.texas.gov>, Ryan Kercher

<Ryan.Kercher@oag.texas.gov>, frank@consovoy MCCarthy.com <frank@consovoy MCCarthy.com>

Subject: Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Counsel:

Thank you for the discussion on today's meet-and-confer.

We will accept service for a revised deposition subpoena to clarify that, at the very least, no depositions are noticed for 5/19. By accepting service, we are not waiving any arguments about the depositions, including whether they can proceed. It is our continuing position that it is inappropriate and inefficient to proceed with depositions on 5/24 or 5/25 if there is no order from the Court at that time. Requiring a legislator to sit for a deposition while there is a pending motion to quash, which asks among other things that plaintiffs pursue alternative means of discovery before taking the extraordinary step of deposing a sitting legislator, is an effort to moot the issues before the Court. And proceeding with such a deposition without an order wastes resources, contrary to a party's obligation under Rule 45 to avoid undue burden or expense for third-party discovery. We do hope you'll reconsider and that we can work together to find an agreed-upon time and place, if necessary, for any future depositions after we have a ruling.

Relatedly, counsel for DOJ and the private plaintiffs have stated that their timing concerns are due to the separate trial in the separate SB1 litigation, beginning in early July and required trial preparation before then. Without conceding that timing issues arising from separate litigation can be deployed to burden the third-party legislators here, if the parties could reach an agreement to extend your requested legislator discovery into August, would you be willing to postpone the legislator depositions at this time, pursue alternative means of discovery in the interim, and re-raise the legislator discovery issues later?

And if not, can private plaintiffs confirm that they oppose a motion to quash, or in the alternative a motion for protective order, for the deposition subpoenas they have issued for Reps. Guillen, Landgraf, and Lujan? Based on last evening's brief and today's call, we understand the private plaintiffs' position is that they may ask the legislators about what motivated them during the redistricting process, and that they plan to use the depositions to pose such questions. We further understand that plaintiffs might ask legislators about the *Gingles* standard and other unenumerated topics. When asked whether plaintiffs were open to alternative means of discovery—for example a 30(b)(6) deposition regarding the public record, deposing other non-legislators in the challenged districts, or expert discovery that always looms large in redistricting cases, or any other less invasive means of discovery than having a legislator sit for hours of deposition—plaintiffs stated they were not open to those alternatives. If that is correct, and we cannot reach any agreement to at least postpone, then we'd like to get something on file quickly so the Court can consider those issues along with the pending motion regarding the United States' subpoenas.

Warm regards,

Taylor

From: Taylor Meehan <taylor@consovoy MCCarthy.com>

Date: Wednesday, May 11, 2022 at 8:48 AM

To: Nina Perales <nperales@MALDEF.org>, Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>

Cc: Samantha Serna <sserna@MALDEF.org>, Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>, Kenneth Parreno <kparreno@MALDEF.org>, "timothy.f.mellett@usdoj.gov" <timothy.f.mellett@usdoj.gov>, "daniel.freeman@usdoj.gov" <daniel.freeman@usdoj.gov>, "smccaffity@textrial.com" <smccaffity@textrial.com>, "jgonzalez@malc.org" <jgonzalez@malc.org>, "mark@markgaber.com"

<mark@markgaber.com>, "chad@brazilanddunn.com" <chad@brazilanddunn.com>, "noor@scsj.org" <noor@scsj.org>, "allison@southerncoalition.org" <allison@southerncoalition.org>, "akhanna@elias.law" <akhanna@elias.law>, "dfox@elias.law" <dfox@elias.law>, "Robert@notzonlaw.com" <Robert@notzonlaw.com>, "erosenberg@lawyerscommittee.org" <erosenberg@lawyerscommittee.org>, "garybledsoe@sbcglobal.net" <garybledsoe@sbcglobal.net>, "nas@naslegal.com" <nas@naslegal.com>, "martin.golando@gmail.com" <martin.golando@gmail.com>, Will Thompson <Will.Thompson@oag.texas.gov>, "mortara@lawfairllc.com" <mortara@lawfairllc.com>, Courtney Corbello <Courtney.Corbello@oag.texas.gov>, Ari Herbert <Ari.Herbert@oag.texas.gov>, Ryan Kercher <Ryan.Kercher@oag.texas.gov>

Subject: Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Nina,

Thursday this week would be great. Could we do 9:30 AM CST or sometime between 1:30 and 4:30 PM CST?

Congratulations on the graduation!

Best,
Taylor

Taylor Meehan

Consovoy McCarthy PLLC

317.408.3650 (cell)

www.consovoymccarthy.com

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

From: Nina Perales <nperales@MALDEF.org>

Date: Tuesday, May 10, 2022 at 9:50 PM

To: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>

Cc: Samantha Serna <:sserna@MALDEF.org>, Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>, Kenneth Parreno <kparreno@MALDEF.org>, "timothy.f.mellett@usdoj.gov" <timothy.f.mellett@usdoj.gov>, "daniel.freeman@usdoj.gov" <daniel.freeman@usdoj.gov>, "smcaffity@textrial.com" <smcaffity@textrial.com>, "jgonzalez@malc.org" <jgonzalez@malc.org>, "mark@markgaber.com" <mark@markgaber.com>, "chad@brazilanddunn.com" <chad@brazilanddunn.com>, "noor@scsj.org" <noor@scsj.org>, "allison@southerncoalition.org" <allison@southerncoalition.org>, "akhanna@elias.law" <akhanna@elias.law>, "dfox@elias.law" <dfox@elias.law>, "Robert@notzonlaw.com" <Robert@notzonlaw.com>, "erosenberg@lawyerscommittee.org" <erosenberg@lawyerscommittee.org>, "garybledsoe@sbcglobal.net" <garybledsoe@sbcglobal.net>, "nas@naslegal.com" <nas@naslegal.com>, "martin.golando@gmail.com" <martin.golando@gmail.com>, Will Thompson <Will.Thompson@oag.texas.gov>, Taylor Meehan <taylor@consovoymccarthy.com>, "mortara@lawfairllc.com" <mortara@lawfairllc.com>, Courtney Corbello <Courtney.Corbello@oag.texas.gov>, Ari Herbert <Ari.Herbert@oag.texas.gov>, Ryan Kercher <Ryan.Kercher@oag.texas.gov>

Subject: Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Patrick, et al.,

Thank you for your email. Do you have any availability on Thursday of this week for both meetings? I am out of the office next Monday-Wednesday for my son's college graduation in NY.

Nina Perales
Vice President of Litigation
Mexican American Legal Defense
and Educational Fund, Inc. (MALDEF)
110 Broadway Suite 300
San Antonio TX 78201
ph (210) 845-5147

On May 10, 2022, at 9:17 PM, Patrick Sweeten <Patrick.Sweeten@oag.texas.gov> wrote:

Samantha,

I am afraid the State Defendants are not going to be able to make the Friday meet and confer work. As you know Judge Rodriguez set a hearing at 3:30 on that date.

Can we reschedule this meet and confer to coincide with the meet and confer you wanted to conduct related to the "State Defendants' privilege log regarding LULAC Plaintiffs' and Texas NAACP's First Set of Requests for Production of Documents (privilege log served May 4, 2022)" ?

We should be available either Monday, May 16th or Tuesday, May 17th. Please suggest times that would work on those dates. Also, we can use this number for the call in: 512-575-4304.

Thank you.

Patrick

From: Samantha Serna <sserna@MALDEF.org>
Sent: Tuesday, May 10, 2022 5:20 PM
To: Nina Perales <nperales@MALDEF.org>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Kenneth Parreno <Kparreno@MALDEF.org>; Timothy.F.Mellett@usdoj.gov; Daniel.Freeman@usdoj.gov; SMcCaffity@textrial.com; jgonzalez@malc.org; mark@markgaber.com; chad@brazilanddunn.com; noor@scsj.org; allison@southerncoalition.org; akhanna@elias.law; dfox@elias.law; robert@notzonlaw.com; erosenberg@lawyerscommittee.org; garybledsoe@sbcglobal.net; nas@naslegal.com; martin.golando@gmail.com
Cc: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Taylor Meehan <taylor@consovoyccarthy.com>; mortara@lawfairllc.com; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>
Subject: Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Hello Jack, Adam and Taylor,

12:30pm CST on this Friday works best for the majority of the Plaintiffs for a meet and

confer.

Please circulate a zoom link at your convenience.

Thank you,
S

--

Samantha Serna Uribe | Staff Attorney

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sserna@maldef.org

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From: Nina Perales <nperales@MALDEF.org>
Date: Monday, May 9, 2022 at 12:55 PM
To: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>, Fatima Menendez <fmenendez@MALDEF.org>, Samantha Serna <sserna@MALDEF.org>, Kenneth Parreno <kparreno@MALDEF.org>, "Timothy.F.Mellett@usdoj.gov" <Timothy.F.Mellett@usdoj.gov>, "Daniel.Freeman@usdoj.gov" <Daniel.Freeman@usdoj.gov>, "SMcCaffity@textrial.com" <SMcCaffity@textrial.com>, "jgonzalez@malc.org" <jgonzalez@malc.org>, "mark@markgaber.com" <mark@markgaber.com>, "chad@brazilanddunn.com" <chad@brazilanddunn.com>, "noon@scsj.org" <noon@scsj.org>, "allison@southerncoalition.org" <allison@southerncoalition.org>, "akhanna@elias.law" <akhanna@elias.law>, "dfox@elias.law" <dfox@elias.law>, "robert@notzonlaw.com" <robert@notzonlaw.com>, "erosenberg@lawyerscommittee.org" <erosenberg@lawyerscommittee.org>, "garybledsoe@sbcglobal.net" <garybledsoe@sbcglobal.net>, "nas@naslegal.com" <nas@naslegal.com>, "martin.golando@gmail.com" <martin.golando@gmail.com>
Cc: Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>, Will Thompson <Will.Thompson@oag.texas.gov>, Taylor Meehan <taylor@consovoymccarthy.com>, "mortara@lawfairllc.com" <mortara@lawfairllc.com>, Courtney Corbello <Courtney.Corbello@oag.texas.gov>, Ari Herbert <Ari.Herbert@oag.texas.gov>, Ryan Kercher <Ryan.Kercher@oag.texas.gov>
Subject: Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Thank you Jack. And it's my pleasure to include Adam and Taylor on these emails. We will find times that work for Plaintiffs on Friday and respond to set a time for the call.

Take care,

Nina Perales
Vice President of Litigation
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fax (210) 224-5382
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From: Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Sent: Monday, May 9, 2022 12:31 PM
To: Nina Perales; Fatima Menendez; Samantha Serna; Kenneth Parreno;
Timothy.F.Mellett@usdoj.gov; Daniel.Freeman@usdoj.gov; SMcCaffity@textrial.com;
jgonzalez@malc.org; mark@markgaber.com; chad@brazilanddunn.com; noon@scsj.org;
allison@southerncoalition.org; akhanna@elias.law; dfox@elias.law; robert@notzonlaw.com;
erosenberg@lawyerscommittee.org; garybledsoe@sbcglobal.net; nas@naslegal.com;
martin.golando@gmail.com
Cc: Patrick Sweeten; Will Thompson; Taylor Meehan; mortara@lawfairllc.com; Courtney Corbello; Ari Herbert; Ryan Kercher
Subject: RE: LULAC (Redistricting): Legislator Deposition Subpoenas

Nina,

Thank you for your email. To give an update, together with OAG, and as indicated in the motion to quash the United States' deposition subpoenas, Taylor Meehan and Adam Mortara (copied here) also represent Representatives Guillen, Lujan, and Landgraf in connection with the subpoenas issued in these redistricting cases. I would ask that you please copy them on future related communications.

As discussed in the pending motion to quash, the Representatives have and will continue to assert legislative privilege and any other applicable privileges and immunities. We do not see any basis for deposing sitting legislators here, whether based on the allegations in the LULAC plaintiffs' amended complaint, any of the other private plaintiffs' amended complaints, or the United States' complaint.

The private plaintiffs each allege that legislators acted with discriminatory intent; but these are largely legal conclusions and do not articulate concrete facts so as to warrant questioning in a deposition. Even if such allegations were sufficiently pled, it is not a basis for deposing legislators. During the preliminary injunction hearing, the Court already ruled that questions of a testifying legislator would be limited to that "within the public record" unless the legislator chose to waive her legislative privilege. That ruling is consistent with binding Supreme Court precedent, as well as the approach of various circuit courts. In light of that ruling, we cannot see the basis for deposing sitting legislators here, whether about their legislative intent or anything else. If, for one example, it is your intent to ask about that "within the public

record,” consistent with the Court’s ruling, then our hope is that we can work together to find alternatives to deposing sitting legislators for such material.

We would appreciate the opportunity to meet and confer on these subpoenas so we can better understand what relevant, non-privileged information plaintiffs believe could warrant depositions of legislators here. This week is rather busy for us (as I imagine it is for you as well, given the close of the discovery period in the SB1 litigation). We do, however, have some availability on this Friday, and would propose a time between 9:00 am and 2:00 pm.

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: Nina Perales <nperales@MALDEF.org>
Sent: Friday, May 6, 2022 10:31 PM
To: Timothy.F.Mellett@usdoj.gov; Daniel.Freeman@usdoj.gov; SMcCaffity@textrial.com; jgonzalez@malc.org; mark@markgaber.com; chad@brazilanddunn.com; noor@scsj.org; allison@southerncoalition.org; akhanna@elias.law; dfox@elias.law; robert@notzonlaw.com; erosenberg@lawyerscommittee.org; garybledsoe@sbcglobal.net; nas@naslegal.com; martin.golando@gmail.com; Samantha Serna <sserna@MALDEF.org>; Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Eric Hudson <Eric.Hudson@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>
Cc: Samantha Serna <sserna@MALDEF.org>; Kenneth Parreno <kparreno@MALDEF.org>
Subject: LULAC (Redistricting): Legislator Deposition Subpoenas

Counsel,

Please see attached Private Plaintiffs' deposition subpoenas for State Representatives Guillen, Lujan and Landgraf. These subpoenas note the same dates, times and locations as those in the DOJ subpoenas.

Thank you,

Nina Perales
Vice President of Litigation
Mexican American Legal Defense

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