**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF SOUTH CAROLINA**
**COLUMBIA DIVISION**

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| THE SOUTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>THOMAS C. ALEXANDER, *et al.*,<br><br>Defendants. | Case No. 3:21-cv-03302- MBS-TJH-RMG<br><br>**THREE-JUDGE PANEL** |

**PLAINTIFFS' MOTION TO COMPEL PRODUCTION**

## INTRODUCTION

This motion is necessary because Senate Defendants have taken the extraordinary position that this Court's prior discovery orders concerning legislative privilege (ECF 119) and personal email accounts (ECF 221) do not apply to them. In particular, this Court already rejected both House and Senate Defendants' (collectively, "Defendants") arguments (ECF 133 and 134) that legislative privilege is an adequate basis to withhold information that broadly addresses issues of a discriminatory intent during the redistricting cycle.

Although Plaintiffs and Defendants have collaborated productively on several discovery issues, Senate Defendants have drawn two bright lines that should already be resolved. First, they refuse to forego asserting legislative privilege over documents related to congressional redistricting. Second, they are not conducting searches of anyone's personal email accounts for relevant discovery. Considering this Court's prior rulings, and similar holdings by other federal courts, Plaintiffs ask that the Court grant their motion to compel.

## BACKGROUND

On February 10, 2022, after briefing from Plaintiffs and *both* Defendants, this Court ordered House Defendants to produce certain materials they claimed were protected by legislative privilege. After considering oppositions filed by both the Senate and the House Defendants (ECF 133 & 134), the Court found that privilege inapplicable "because the Legislature's decision-making process itself is the case." ECF No. 153 ("February 10 Order") at 12. The Court further announced that the "parties should refer to this order to clarify the permissible scope of discovery, which is hereby limited to documents, communications, and information which broadly address the issue of discriminatory intent in the present redistricting cycle, by individual legislators or the Legislature as a whole." *Id.* at 17.

Two months later, this Court ordered House Defendants to search the personal email accounts of named House Defendants and members of the Ad Hoc Committee on Redistricting and produce any responsive, non-privileged material found there. ECF No. 221 ("April 13 Order") at 3. The Court premised that decision on the information that "one or more of these legislators *may have* received or sent" redistricting-related information from personal email accounts. *Id.* (emphasis added). This Court further instructed House Defendants that any documents "claimed to be privileged" must be disclosed in a privilege log. *Id.* And this Court required each legislator who searched their personal accounts and devices to sign a certification form under penalty of perjury stating that they had done so. *Id.*

After Plaintiffs and House Defendants entered into an agreement to resolve the claims relating to the challenged state House districts, Senate Defendants have stymied reasonable discovery efforts about congressional redistricting in two ways. First, they refuse to acknowledge that this Court's February 10 order applies to them. Instead, Senate Defendants have sought to

revive arguments this Court already rejected. Second, they refuse to even search documents from Senate Defendants' personal email accounts despite the April 13 order.

Plaintiffs relied on these two orders during ongoing discovery discussions. But Senate Defendants have rebuffed Plaintiffs' attempts to resolve both of these issues outside of court.[1] As one example, Senate Defendants informed Plaintiffs in a May 20, 2022 letter that "Senate Defendants reserve the right to take all necessary and appropriate steps to preserve their claim of legislative privilege," and that "Senate Defendants . . . have not searched, and do not intend to search, any personal email accounts at this time." Ex. B (Senate Defs.' May 20, 2022 Letter to John Hindley) at 4-5. As an alternative route to seeking this information, Plaintiffs reached out to Senate Defendants in mid-May seeking deposition dates in late May or early June for certain staff that report to Senate Defendants. But Senate Defendants have refused to schedule depositions of witnesses they represent until June 29th at the earliest. Ex. D (Senate Defs.' June 3, 2022 Email to John Hindley) at 1. Therefore, Plaintiffs have been unable to access needed information via depositions either, forcing this motion instead.[2]

[1] In a May 19, 2022 letter, Plaintiffs asked Senate Defendants to clarify whether Senate Defendants would search custodians' personal accounts, in line with the Court's April 13 Order. Ex. A. The next day, Senate Defendants responded that they "d[id] not intend to search" personal email accounts. Ex. B. The parties discussed the issue of personal emails at a meet-and-confer on May 23, 2022, and Senate Defendants promised to consider the issue. On May 27, 2022, counsel for Senate Defendants wrote in an email, "We look forward to sharing our proposal on . . . personal email searches." Ex. C. However, Senate Defendants never committed to review or produce any documents other than those casually observed to exist during the regular course of making productions of documents from government accounts.

[2] Plaintiffs have satisfied their Local Rule 7.02 requirement through multiple written communications and phone conferences

## ARGUMENT

### I. This Court Has Established the Qualified Nature of Legislative Privilege in this Case

#### A. Law of the Case Doctrine

Senate Defendants refuse to comply with the February 10 Order concerning legislative privilege. But that order is the "law of the case," a doctrine positing that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *TFWS, Inc. v. Franchot*, 572 F.3d 186, 191 (4th Cir. 2009) (quoting *United States v. Aramony*, 166 F.3d 655, 661 (4th Cir. 1999)). The doctrine "serve[s] the goals of finality and predictability in the trial court," and applies "unless (1) a subsequent trial produces substantially different evidence, (2) controlling authority has since made a contrary decision of law applicable to the issue, or (3) the prior decision was clearly erroneous and would work manifest injustice." *TFWS, Inc.*, 572 F.3d at 191 (quoting *United States v. Aramony*, 166 F.3d 655, 661 (4th Cir. 1999)); *Walker v. S.W.I.F.T. SCRL*, 517 F. Supp. 2d 801, 807–08 (E.D. Va. 2007) (citing *Smith v. Bounds*, 813 F.2d 1299, 1304 (4th Cir. 1987)).[3] None of these exceptions applies, and therefore the February 10 Order is the law of the case.

*First*, no "substantially different" evidence has emerged since the Court's February 10 Order. The factual underpinning of Plaintiffs' claims of racial gerrymandering and intentional racial discrimination during the present redistricting cycle remain unchanged. *Compare* Third Am. Comp., ECF No. 267, *with* Second Am. Comp. ECF No. 116. No new evidence has emerged—either from Senate Defendants' productions to date, or from publicly available

[3] District courts in the Fourth Circuit routinely apply the law of the case doctrine and the three-pronged analysis from *TFWS, Inc. v. Franchot* to their own interlocutory orders. *United States v. Duke Energy Corp.*, No. 1:00CV1262, 2014 WL 4659479, at *4 n.5 (M.D.N.C. Sept. 17, 2014) (citing *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514–15 (4th Cir. 2003)).

information regarding the redistricting process—that would call into question this Court's understanding of the facts at the time of its February 10 Order. Indeed, Senate Defendants have not identified anything to suggest otherwise.

*Second*, there is no intervening contrary authority. Instead, since the February 10 order, persuasive authority has been rendered that is consistent with it. As one example, when faced with an analogous situation in *La Union Del Pueblo Entero v. Abbott*,[4] a Texas district court explained that "the privilege accorded to state legislators is qualified." No. SA-21-CV-00844-XR, 2022 WL 1667687, at *2 (W.D. Tex. May 25, 2022) (citing *United States v. Gillock*, 445 U.S. 360, 373 (1980)). *See also League of United Latin Am. Citizens v. Abbott*, No. EP-21-CV-00259-DCG-JES-JVB, 2022 WL 1570858, at *1 (W.D. Tex. May 18, 2022), *cert. denied sub nom. Guillen v. LULAC*, No. 21A756, 2022 WL 1738936, at *1 (U.S. May 31, 2022) (recognizing that legislative privilege "is, at best, one which is qualified.") (internal citations omitted). In response to plaintiff League of United Latin American Citizens' ("LULAC") motion to compel documents and communications withheld by state legislators on the basis of legislative privilege, the court applied a five-factor test analogous to the test the Fourth Circuit applied in *Bethune-Hill*. *Id*. ("The *Rodriguez* court articulated five factors to consider in making such a determination: "(i) the relevance of the evidence sought to be protected; (ii) the availability of other evidence; (iii) the 'seriousness' of the litigation and the issues involved; (iv) the role of the government in the litigation; and (v) the possibility of future timidity by government employees who will be forced

[4] This action arose out of an omnibus voting bill, Senate Bill 1, the State of Texas enacted on August 31, 2021. Plaintiffs, League of United Latin American Citizens *et al*., claim, *inter alia*, that the Texas Legislature enacted Senate Bill 1 with the intent to discriminate against certain racial minorities, including Black and Latinx voters. *See La Union Del Pueblo Entero*, No. SA-21-CV-00844-XR, 2022 WL 1667687 at *1.9

to recognize that their secrets are violable.") (citing *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 100 (S.D.N.Y. 2003))).

The court concluded, *inter alia*, that on balance each factor weighed in favor of disclosure. *Id*. at *6-7 ("the Court finds that the need for accurate fact finding outweighs any chill to the legislature's deliberations.") (citing *Baldus v. Brennan*, No. 11-CV-562, 11-CV-1011, 2011 WL 612542, at *2 (E.D. Wis. Dec. 8, 2011))). Thus, the Texas court granted plaintiffs' motion to compel, ordering state legislators to produce the documents at issue, which included internal documents such as notes and drafts of election legislation as well as communications between the state legislators and their staff. *Id*. at *7-8 (ordering production of all documents, with the exception of one that the court deemed appropriately shielded by attorney-client privilege). The *La Union Del Pueblo Entero* court's order is consistent with this Court's February 10 Order. Plaintiffs are not aware of any controlling authority that counters the Court's February 10 Order, and Senate Defendants have not identified any while justifying their assertion of legislative privilege.

The third exception, regarding clear error or manifest injustice, also does not apply here. "Clear error occurs when [the court is] 'left with the definite and firm conviction that a mistake has been committed.'" *Duke Energy Corp.*, No. 1:00CV1262, 2014 WL 4659479, at *4 (citing *United States v. Woods,* 477 F. App'x 28, 29 (4th Cir. 2012)). "Manifest injustice" is "an error by the court that is direct, obvious, and observable." *Duke Energy Corp.*, No. 1:00CV1262, 2014 WL 4659479, at *5 (citing *Smith v. Waverly Partners, LLC,* No. 3:10-CV-28, 2011 WL 3564427, at *3 (W.D.N.C. Aug. 12, 2011) ("In the context of a motion to reconsider, manifest injustice is defined as 'an error by the court that is direct, obvious, and observable.'"); *see also Register v. Cameron & Barkley Co.,* 481 F. Supp. 2d 479, 480 n. 1 (D.S.C. 2007)). The Court's February 10

Order is consistent with numerous other circuit and district court rulings on this issue, and persuasive authority rendered since the Court's Order is consistent with it, and thus cannot be characterized as a "clear error" or "manifest injustice." *See* ECF No. 119 at 9-10; ECF No. 153 at 11, fn. 4 (listing numerous, consistently held circuit and district court opinions).

None of the three exceptions from *TFWS, Inc. v. Franchot* apply. This Court therefore has no reason to revisit its February 10 Order regarding the defendants' qualified legislative privilege in this case.

### B. Pursuant to the Court's February 10 Order, Senate Defendants are Required to Produce Requested Documents, Communications, and Information which are Relevant to the Broad Issue of Legislative Motivation in the Enactment of S. 865

The Court's February 10 Order should apply to Senate Defendants' duty to produce discoverable documents regarding congressional redistricting. In its Order, this Court recognized that "when cherished and constitutionally rooted public rights are at stake, legislative evidentiary privileges must yield" and established that Defendants' legislative privilege is qualified in this case. ECF No. 153 at 10-17. The Senate Defendants briefed this issue and claimed that "legislative privilege shields South Carolina legislators and their aides from compelled production of documents or of information or testimony 'concerning communications or deliberations involving legislators or their agents regarding their motives in enacting legislation.'" ECF No. 133 (Sen. Defs.' Resp. to Pls.' Mot. to Compel Prod. of Docs. and Info. Requested from House Defs.) at 3-4 (internal citations omitted). The Court explicitly rejected that argument. ECF No. 153 at 8-11. The Senate Defendants have not filed a motion for reconsideration and do not get a second bite at the apple.[5]

[5] If this were a new case against Senate Defendants, collateral estoppel would clearly apply. *See e.g., In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004) ("Applying collateral estoppel 'forecloses the relitigation of issues of fact or law that are identical to issues

As noted, this Court applied the five-factor *Bethune-Hill* balancing test and determined that "each factor weighs in favor of at least some degree of disclosure," and thus "reject[ed] Defendants' broad conception of the legislative privilege, and orders Defendants to produce requested documents, communications, and information which are relevant to the broad issue of legislative motivation." ECF No. 153 at 16-17 (referring to *Bethune-Hill v. Va. State Bd. Of Elections*, 114 F. Supp. 3d 323 (E.D. Va. 2015)).

Specifically, the Court found that "the evidence sought by Plaintiffs is highly relevant to the intentional discrimination claims at the heart of the complaint, because the Legislature's 'decision making process itself is the case' . . . thus, Plaintiffs' request for documents and communications which may demonstrate discriminatory intent by legislators or their key agents is, at a minimum, relevant under the first factor." ECF No. 153 at 12-23 (citing *Bethune-Hill*, 114 F. Supp. 3d at 339). Regarding the second factor, this Court found "no other evidence would be a probative of an unlawful legislative motive as potential direct or circumstantial evidence which could be obtained through the disclosure of the requested legislative materials." *Id*. at 13. Under the third factor, this Court concluded that "{i}t is beyond dispute that the allegations in Plaintiffs' complaint allege serious issues of constitutional law. The right to have one's vote counted is indispensable to individual liberty and enshrined within our Constitution." *Id*. at 14. And that "{i}t is difficult to overstate the importance of securing the fundamental right to vote for every South Carolina citizen in the coming decade." *Id*. at 15. The Court also found that factors four

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which have been actually determined and necessarily decided in prior litigation in which the party against whom [collateral estoppel] is asserted had a full and fair opportunity to litigate.'"); *cf. DBN Holding, Inc. v. Int'l Trade Comm'n*, 755 F. App'x. 993 (Fed. Cir. 2018) ("[W]here we have a continuation of the same proceeding, Investigation Number 338-TA-854, neither issue nor claim preclusion apply. The Commission might have more appropriately referred to the basis of its denial of the petition as barred by the 'law of the case doctrine', rather than generally invoking 'res judicata.'").

and five, on balance, suggest the legislative privilege out to yield and weighed in favor of disclosure. *Id*. at 15-16.

Plaintiffs again seek disclosure of information from state legislators and their staff that may provide evidence of intent related to congressional redistricting. Plaintiffs' claims regarding S. 865—that is, intentional discrimination and racial gerrymandering—are the same as those alleged against House Bill 4493. *See* ECF No. 119 (Pls.' Mot. to Compel Prod. of Documents and Information Requested from House Defs.'). Thus, at a minimum and like with House Defendants, the Court should order that Plaintiffs are entitled to the following discovery in its case against Senate Defendants:

1. Depositions of all legislators, staff (including Map Room staff) and consultants involved in the development, design and/or revisions of S. 865.

2. All versions of maps and related documents produced during the course of the development, design, and/or revisions of S. 865 and sufficient data to determine the date and time such maps were produced and the persons involved in submitting and reviewing them;

3. All documents which relate in any manner to the intent behind any proposed design and/or revision of the S. 865 or any individual district referenced in Plaintiffs' Third Amended Complaint;

4. All documents related to any racially polarized voting analysis utilized in the development, design and/or revision of S. 865;

5. Documents which identify and/or describe any computer software utilized in the development, design and/or revising of S. 865;

6. Any documents produced and/or provided by persons not legislators or staff which relate to the development, design and/or revision of S. 865; and

7. All documents which address any changes in districts from the previously existing Congressional Plan to S. 865.

ECF No. 153 at 17. The Court should find that the documents referenced above shall be produced by Senate Defendants by June 21, 2022—the date by which Senate Defendants have committed to substantial completion of production—or as soon as practically possible. To the extent that there

are any remaining documents for which the Senate Defendants deem protected from production under a theory of legislative privilege, Plaintiffs ask the Court to order Senate Defendants to produce a privilege log listing all of the documents by June 21, 2022 or as soon as practically possible as well.

## II. The Court Should Compel Senate Defendants to Search Personal Emails or Else Certify that None Exist

In addition to improperly refusing to produce documents described above pursuant to legislative privilege, Senate Defendants have thus far refused to collect—much less search, review, and produce—documents from the custodians' personal email accounts. Senate Defendants have also failed to make reasonable inquiries of their clients and their client's agents whether responsive materials exist. Senate Defendants base these decisions on counsel's misguided belief that, under this Court's April 13 Order, personal emails need not be collected or searched absent explicit evidence that those accounts were used to discuss redistricting matters, and that no such evidence has turned up. First, the April 13 Order contains no such requirement. At most, the April 13 Order notes that "the Panel is informed that one or more of these legislators *may have* received or sent" House-related redistricting information via personal accounts. April 13 Order at 3 (emphasis added). That observation in no way requires explicit evidence of personal email use ("may have"), and is not a directive required by the Court's order, which appears independently in the following sentence. *Id.*[6]

Further, even if such evidence were required, counsel have not conducted a proper inquiry into the existence of relevant personal emails and communications. Counsel's position is that they

[6] Senate Defendants' reliance on the April 13 Order is not only misguided but all-too-convenient, given their simultaneous refusal to be bound by the Court's prior order on legislative privilege. *See supra* Part I.A.

have not personally observed any indication of personal email use among Defendants' prior productions. And when counsel asked the two named Senate Defendants whether they ever used their personal accounts, they said they "do not recall". But counsel has not asked Senate Defendants to review their personal emails to verify whether this is true, and (presumably for that reason) they remain unwilling to sign any certification of that fact.[7] Moreover, defense counsel has not made inquiries of any other Senators, Senate staff, or key aides or consultants to the Senate Defendants. The Senate Defendants have also refused to allow Plaintiffs to begin deposing the relevant parties, who could testify under oath with respect to personal email use, until late June and July. This effort falls short of Senate Defendants' obligations under the Federal Rules of Civil Procedure.

If relevant, non-privileged material is contained within custodians' personal emails, Plaintiffs are entitled it. *See Advantage Inspection Int'l, LLC v. Sumner*, No. 6:06-3466-HMH, 2007 WL 2973518, at *4 (D.S.C. Oct. 9, 2007) (ordering defendant to produce all responsive "documents or things" over which he "retains possession . . . or access"). Counsel's belief that no relevant material exists, and committee members' failure to recall, are no substitute for meaningful review of those files for responsive information. *Cf. StoreWorks Techs. v. Aurus, Inc.*, No. 19-cv-1527(HB), 2020 WL 12442099, at *3 (D. Minn. Dec. 23, 2020) ("Attorneys have a duty to oversee their clients' collection of information and documents, especially when ESI is involved . . . . Parties and clients, who are often lay persons, do not normally have the knowledge and expertise to understand their discovery obligations, to conduct appropriate searches, to collect responsive

[7] *See* Ex. B at 4 ("The Senate Defendants are not aware of any evidence that they received or sent information relating to Congressional redistricting on personal email accounts. The Senate Defendants therefore have not searched, and do not intend to search, any personal email accounts at this time.").

discovery"). "Under the federal rules, the burden does not fall on plaintiff to learn whether, how and where defendant keeps relevant documents." *Green v. McClendon*, 262 F.R.D. 284, 290 (S.D.N.Y. 2009) (quoting *Tarlton v. Cumberland Cty. Correctional Facility*, 192 F.R.D. 165, 170 (D.N.J. 2000)). "It is not an excuse that defense counsel [does] not know" that relevant materials exist within their client's possession. *Tarlton*, 192 F.R.D. at 170.

In its April 13, 2022 Order, this Court required House Defendants to produce copies of personal emails, text messages, and instant messages in which House Defendants and members of the Ad Hoc Committee on Redistricting discussed state House reapportionment. *See* ECF No. 221. Moreover, the "use of private email accounts to conduct official business has become commonplace," *Brennan Ctr. for Justice v. U.S. Dep't of Just.*, 377 F. Supp. 3d 428, 436 (S.D.N.Y. 2019),[8] and Senate Defendants have already agreed to review custodians' text messages. Based on this recent experience and the case law above, Plaintiffs respectfully request that the Court order Senate Defendants to conduct a reasonable review of their custodians' personal email accounts, and subsequently either produce relevant, responsive documents contained therein, or sign a certification that no such documents exist.

**CONCLUSION**

For the reasons above, Plaintiffs respectfully request that the Court grant Plaintiffs' motion to compel.

[8] *See also* Daniel Pitcalm & Zoe Grotophorst, *The State of Internal Workplace Communication*, Government Executive (March 5, 2015), https://www.govexec.com/insights/state-internal-workplace-communication/106737/ (reporting that 33% of 412 government employees surveyed used personal email for government business).

Dated: June 16, 2022

Respectfully submitted,

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** Motion for admission Pro Hac Vice forthcoming*
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# Exhibit A

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May 19, 2022

**VIA E-MAIL**

Mr. John Gore
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Re: *South Carolina State Conference of the NAACP v. Alexander*, 3:21-cv-03302-MBS-TJH-RMG (D.S.C.)

Dear Mr. Gore:

Plaintiffs write this letter to describe in more detail their concerns regarding Senate Defendants' discovery to date in the congressional case. Please provide your response in writing before the Parties' meet and confer on Monday, March 23 at 10:00 a.m. EST.

## I. Written Discovery

Plaintiffs have identified a number of deficiencies in Senate Defendants' interrogatory responses.

Interrogatory 1 asks Senate Defendants to "[i]dentify" the individuals who were involved in redistricting-related data analysis and Interrogatory 3 asks Senate Defendants to "provide the name and . . . the address and telephone number of" each person involved creating the congressional map ultimately adopted in S. 865 and predecessor maps. Senate Defendants responded by stating "that various Senate staff and counsel were involved" in the redistricting process, "including Andy Fiffik and Will Roberts." Senate Defs.' Objs. and Resp. to Pls.' First Interrogs. at 4-5. These responses are plainly insufficient, as Senate Defendants admit that Senate staff beyond Mr. Fiffick and Mr. Roberts were involved in the redistricting process and the drafting of the map in S. 865. Nevertheless, Senate Defendants have thus far failed to identify these individuals. Senate Defendants need to identify these individuals by name in order to meet their discovery

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obligations. Senate Defendants obviously know the names of individuals involved in this process, and hiding those names for months while the parties prepare for depositions and a fast approaching trial wastes everyone's time.

Similarly, in Interrogatory 2, Plaintiffs asked Senate Defendants to identify "each person . . . having discoverable information . . . and state the subject matter of the information possessed by that person regarding S. 865 and all Predecessor Maps." Senate Defendants responded by "refer[ing] [Plaintiffs] to Senate Defendants' Initial Disclosures served . . . on March 29, 2022." *Id.* at 4. But Senate Defendants' Initial Disclosures do not identify anyone by name either (making those Initial Disclosures deficient as well). Once again, Senate Defendants need to amend their Interrogatory response by specifically identifying the individuals who have discoverable information and explaining what information these individuals possess responsive to the request.

Senate Defendants' response to Interrogatory 4, where Plaintiffs asked Senate Defendants to identify "each person who shared with You any South Carolina House of Representative amendment to maps in S. 865 or any Processor maps," is similarly non-responsive. *See id.* at 5-6. Senate Defendants once again did not identify any individuals by name. Senate Defendants must amend their response accordingly.

Interrogatories 5-7 ask Senate Defendants to describe various aspects of the redistricting process. Senate Defendants' responses are vague and insubstantial. For example, Interrogatory 6 asks Senate Defendants to "[d]escribe the process" they used "to consider, propose, and review drafts maps adopted in S. 865 and all Predecessor Maps through the Map Room and outside the Map Room." Senate Defendants responded by merely stating that they "used a map-making program called Maptitude" which "generated data, saved files, and allowed the Senate Defendants and staff to draw draft maps." *Id.* at 7. This response does not "describe the process" but merely states one fact about the overall redistricting process. To be sufficient, Senate Defendants' responses to Interrogatories 5-7 require more detail, including but not limited to: who was involved; how many draft maps were created; why drafts changed over time and in response to what input; what if any analyses, such as racially polarized voting analysis or performance analysis, were done; how criteria was used to develop the maps and how criteria were applied to the development of maps; how feedback from legislative members and the public was incorporated into draft maps; and so on.

Interrogatory 8 asks Senate Defendants to "[d]escribe how the information You conveyed to individuals in the Map Room was stored." Senate Defendants responded by stating that the "maps drawn in the Map Room were stored in Maptitude program." *Id.* at 8. The response is only sufficient as it relates to maps but not to other information that

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was conveyed in the Map Room process such as the data and communities of interest that were considered. Plaintiffs need to know what other information was conveyed in the Map Room process. If other information was conveyed, Senate Defendants also need to identify where that information was stored.

Like their responses in Interrogatories 1-4, Senate Defendants failed to identify any individuals in response to Interrogatory 13, which asks Senate Defendants to "[i]dentify the name, title, and professional address of each person consulted by You in answering these Interrogatories . . . ." Instead, Senate Defendants stated that "in-house counsel at the South Carolina Senate" was consulted. *Id.* at 11. Once again, Senate Defendants must specifically identify all the members of the Senate in-house counsel office who were consulted by Senate Defendants. Plaintiffs are not seeking the contents of any privileged communication between Senate Defendants and their in-house counsel; Plaintiffs seek only the names of counsel who were consulted or consultants who were retained through counsel, which are not privileged.

Senate Defendants' response to Interrogatory 14 is also non-responsive. Senate Defendants failed to "[i]dentify and explain" any "legislative inquiries, analyses, reports or findings" as to whether the map in S. 865 would lead to liability under Section 2 of the Voting Rights Act (VRA). Stating that maps in S. 865 were legally sufficient following the 2010 Census is non-responsive and misleading. *See id.* at 12. Plaintiffs ask that Senate Defendants identify and explain the analyses that were done as part of the post-2020 redistricting process. If none exist, Senate Defendants must state so.

Interrogatory 15 asked Senate Defendants whether the standard "to assess a vote-dilution claim under Section 2 of the [VRA] is the same standard used to assess preclearance compliance under Section 5 of the [VRA]" and to "explain and identify the evidence" supporting Senate Defendants' position. Senate Defendants did not answer the question that was asked. *See id.* at 13. Given that, as part of their defense, Senate Defendants argued in their Motion to Dismiss that the map in S. 865 was precleared by the Department of Justice and upheld by reviewing courts, including the United States Supreme Court, *see* ECF 178 at 21-22, it is relevant to know how Senate Defendants view the similarities and differences between Section 2 and Section 5 of the VRA. As a result, Senate Defendants' response to Interrogatory 15 needs to be amended.

## II. Document Production

Senate Defendants have not produced a single document in this case, despite having received Plaintiffs' first set of document requests over 10 weeks ago. As described below, depositions are currently being scheduled, and discovery closes on

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August 12, 2022. Plaintiffs are prejudiced each day they do not receive documents from the Senate Defendants. Plaintiffs want to know when Senate Defendants plan on producing documents, and the schedule for anticipated completion of your production.

Further, Plaintiffs need to know the custodians and sources from which Senate Defendants have collected, or will be collecting, documents. In particular, in addition to the named Defendants, (i) are the Senate Defendants planning to collect materials from (a) staff, aides, and agents of the named Defendants (*e.g.*, Messrs. Fiffick and Roberts and other involved staff), and (b) other legislators central to the process, such as the other members of the Senate Redistricting Subcommittee (Campsen, Young, Sabb, Matthews, Talley, and Harpootlian), and (ii) if Senate Defendants are not collecting from these sources, are you authorized to accept subpoenas for the relevant individuals?

Additionally, Plaintiffs need to know whether Senate Defendants have searched both the governmental and personal emails of custodians. Consistent with our approach with the House Defendants, our position is the Senate Defendants' collection efforts must also include personal emails, text messages, and other non-email messaging apps, such as Signal, Whatsapp, Telegram, and Microsoft Teams, from Defendants, Subcommittee members, and relevant staff. As you know, in its April 13, 2022 Order (ECF No. 221), the Court required House Defendants to produce relevant these types of communications for House Defendants and members of the relevant House Committee.

Moreover, Plaintiffs ask Senate Defendants to confirm the search terms they have applied as part of its production process. If Senate Defendants have not yet conducted their search—which would be a deficiency on its own, given the months that have gone by since they received these requests—Plaintiffs suggest that Senate Defendants apply the search terms contained in **Appendix A**. The House Defendants applied all or some variation of the search terms contained in Appendix A.

In their objections and responses to Plaintiffs requests for production of documents, Senate Defendants stated that they have withhold documents "covered by the attorney-client privilege, the work-product doctrine, legislative privilege or any other applicable privilege or immunity." Senate Defs.' Objs. and Resp. to Pls.' First Request for Documents at 1. Under Federal Rule 26(b)(5), Senate Defendants must produce a log describing any document withheld for any reason. Plaintiffs expect immediate production of that log.

Finally, Plaintiffs would like clarification whether Senate Defendants are withholding or intend to withhold documents on the basis of the legislative privilege, despite the Court's February 10, 2022 Order rejecting the House Defendants' broad

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invocation of the legislative privilege. *See generally* ECF 153. Regardless of the propriety of such an assertion, any documents being withheld for any reason must be logged.

**III. Depositions**

As noted above, Plaintiffs want to begin planning our first round of depositions. We would like to take depositions of the following people during the first or second week of June: Mr. Andy Fiffick, Mr. Will Roberts, and Ms. Paula Benson. Plaintiffs will propose some days for these depositions before our meeting on Monday. We would also like to schedule depositions during the month of June for Sen. Peeler, Sen. Young, Sen. Massey, Sen. Rankin, Sen. Campsen, and Sen. Talley. We also intend to propound a Rule 30(b)(6) notice to the South Carolina Senate to produce witness(es) in the same time frame. And please note that, if relevant documents related to these and other deponents have not been produced by the time of these depositions, Plaintiffs will be forced to hold them open.

* * * *

In the meantime, please let us know if you have any questions. Plaintiffs look forward to discussing the above issues at our March 23, 2022 meet and confer.

Best regards,

*/s/ John Hindley*

John Hindley

cc: Counsel for Plaintiffs
Counsel for Senate Defendants

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**APPENDIX A**

"ad hoc committee"
"Black Voting age population"
"majority minority"
"voting rights act"
"bvap"
"census" /3 map*
collapse
combine
crack!
deviation
district!
gerrymander!
map /3 room
pack!
population
reapportion!
redistrict!
compact!
"communit! of color"
"communit! of interest"
COI
split!
racially polarized vot!"
"bloc voting"
"racial bloc voting"
Criteria
"House criteria"
"Senate criteria"
"Black voters"
NAACP
LWV
LWVSC
ACLU
LDF
"young democrats of south Carolina"
YDSC
"York County Democratic Party"
"Michael Roberts"

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"republican national committee"
RNC
"Republican State Leadership Committee"
RSLC
"National Republican Redistricting Trust"
NRRT
RPV
(Charleston or Beaufort or Richland or Florence or Orangeburg or Sumter or Columbia or "North Charleston" or "West Ashley" or Dorchester) /50 (vot! or line or district! or precinct!)
CD /5 (1 or 2 or 5 or 6) /50 (vot! OR line OR district! OR precinct!)
"congressional district!" /5 (1 or 2 or 5 or 6) /50 (vot! OR line OR district! OR precinct!)

# Exhibit B

JONES DAY

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JMGORE@JONESDAY.COM

PRIVILEGED AND CONFIDENTIAL

May 20, 2022

VIA EMAIL

Mr. John Hindley
Arnold & Porter
601 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Re: *South Carolina State Conference of the NAACP v. Alexander*, 3:21-cv-03302-MBS-TJH-RMG (D.S.C.)

Dear Mr. Hindley:

I write in response to your letter of May 19, 2022. Please note that the Senate Defendants will be sending your team a letter outlining the deficiencies in Plaintiffs' discovery responses within the time provided by Local Civil Rule 37.01.

Your letter raises "concerns regarding Senate Defendants' discovery to date," including alleged "deficiencies" and the timing of Senate Defendants' discovery responses. Letter at 1. At the outset, the Senate Defendants note that your objections to their discovery responses are untimely. Local Civil Rule 37.01 required Plaintiffs to file any motion to compel discovery "within twenty-one (21) days after receipt of the discovery response to which the motion to compel is directed," unless "counsel are actively engaged in attempts to resolve the discovery dispute." Local Civil Rule 37.01(A) (D.S.C.). The Senate Defendants served their responses to Plaintiffs' various discovery requests on April 6, 2022—yet you waited 43 days, and only after the Senate Defendants requested that you state your concerns in writing, to send your letter.

Unfortunately, your letter also contains overheated and baseless allegations against the Senate Defendants. In particular, your letter accuses the Senate Defendants of "hiding" responsive information, of "wast[ing] everyone's time," and of hindering preparations for "a fast[-]approaching trial," Letter at 2, even though trial is more than four months away and you delayed sending your letter until May 19. In any event, your allegations are meritless and do nothing to advance this important case toward resolution.

Nonetheless, in a good-faith effort to move this case along, the Senate Defendants provide the responses below. We look forward to discussing these matters further during our meet-and-confer on Monday, May 23.

## I. Written Discovery

Your letter raises alleged "deficiencies" in the Senate Defendants' responses to Interrogatories 1–8 and 13–15. Letter at 1. The Senate Defendants have provided appropriate responses to all interrogatories and have objected to the interrogatories on various grounds. Moreover, the Senate Defendants' responses to various interrogatories track Plaintiffs' own responses to similar interrogatories propounded by the Senate Defendants.

For example, your letter complains that the Senate Defendants' response to Interrogatory 2 incorporates by reference the Senate Defendants' initial disclosures. *See id.* at 2. But that is precisely how Plaintiffs responded to similar interrogatories propounded by the Senate Defendants. *See* Plaintiff SC NAACP's Responses To Senate Defendants' First Set Of Interrogatories Re Congressional Map at 7–10, 31–34. And your contention that the Senate Defendants' initial disclosures "do not identify anyone by name," Letter at 2, is incorrect. The Senate Defendants' initial disclosures specifically identify "Taiwan Scott," "South Carolina State Conference of the NAACP," and "Brenda Murphy" and incorporate by reference the names of all "persons, individuals, or entities disclosed by any plaintiff [or] defendant . . . in this action." Senate Defendants' Initial Disclosures Regarding Plaintiffs' Challenges To The Congressional Plan at 2.

Similarly, your letter complains that the Senate Defendants' response to Interrogatory 13 states that "in-house counsel at the South Carolina Senate" was consulted on that response. Letter at 3. Plaintiffs' response to a similar interrogatory, however, was no more fulsome. *See* Plaintiff SC NAACP's Responses To Senate Defendants' First Set Of Interrogatories Re Congressional Map at 11. Frankly, we are confused by this "rules for thee and not for me" approach to discovery.

Your other complaints mischaracterize the Senate Defendants' responses and rest on faulty premises. First, you complain that the Senate Defendants' did not provide a longer list of individuals in response to Interrogatories 1 and 3. *See* Letter at 2–3. But the Senate Defendants objected to those interrogatories on a variety of grounds and are not obligated to disclose information already publicly available or known to Plaintiffs. Nonetheless, the Senate Defendants are willing to confer regarding these interrogatories and the information Plaintiffs seek.

Second, you point to the Senate Defendants' response to Interrogatory 4. But by definition, "any South Carolina House of Representatives amendment to maps adopted in S. 865," *id.* at 2,

came from the South Carolina House of Representatives and, thus, is available through the public legislative record and the Senate Redistricting website.

Third, you complain about the Senate Defendants' responses to Interrogatories 5-8, but the robust and ordinary legislative process described in those responses *is* "the process" through which the Senate Defendants considered input regarding S. 865 and the Congressional Plan. *Id.* Further, as the Senate Defendants explained, the map drawers used Maptitude to consider, propose, and review draft maps and to store data regarding draft maps and the Congressional Plan. *See id.* And as for what "data and communities of interest were considered," *id.*, respectfully, such a request is not in any of Plaintiffs' interrogatories. Plaintiffs cannot rewrite their interrogatories and move the goalposts simply because they do not like the response.

Moreover, your complaints about these responses ignore information the Senate Defendants have provided and the overbreadth of your interrogatories. Indeed, as noted above, the Senate Defendants' responses describe how "feedback from . . . the public was incorporated into draft maps." *Id.* at 2. Your assertion that the Senate Defendants must describe "what if any analyses, such as racially polarized voting analysis or performance analysis, was done," *id.*, ignores that the Senate Defendants elsewhere stated "consistent with prior public statements, that no racially polarized voting analysis was conducted regarding S. 865 or any Predecessor Maps," Senate Defendants' Objections And Responses To Plaintiffs' First Set Of Interrogatories at 11. And your remaining complaints ignore either information the Senate Defendants already have provided, *see id.* at 9 (describing the Senate's redistricting criteria), or that your interrogatories seek information protected by legislative privilege, *see, e.g.*, *id.* at 6–9.

Your complaint regarding the Senate Defendants' response to Interrogatory 13 ignores that the response explains the Senate Defendants' view that the Congressional Plan complies with Section 2, that Interrogatory 13 seeks information protected by attorney-client privilege, that the Senate Defendants elsewhere stated that no racially polarized voting analysis was conducted, and that Plaintiffs have not brought a Section 2 claim. *See id.* at 11-12. Finally, your complaint regarding the Senate Defendants' response to Interrogatory 15 overlooks that the interrogatory calls for legal conclusions and positions, not factual information. *See id.* at 13. As the panel made clear in the House Plan litigation, this is not a proper use of written discovery.

## II. Document Production

The Senate Defendants disagree with your self-serving characterization that "depositions are currently being scheduled" because your letter was the first time we have heard from anyone on Plaintiffs' team about scheduling depositions in the Congressional Plan challenge. The Senate Defendants also note that your allegation that "Plaintiffs are prejudiced each day they do not

receive documents from the Senate Defendants," Letter at 4, rings hollow in light of your delay in sending the letter and raising alleged deficiencies in the Senate Defendants' discovery responses. The Senate Defendants also disagree that "any documents being withheld for any reason must be logged," *id.* at 5, since the parties already have agreed that no privilege log is required for attorney-client communications involving outside counsel that postdate the filing of Plaintiffs' original complaint on October 12, 2021.

Nonetheless, the Senate Defendants will make a first production of more than 2,500 documents on May 23, 2022. After investigation and custodial interviews, the Senate Defendants have also collected documents, including any official emails, official text messages, data, draft maps, and handwritten notes, from the following custodians:

Senator Thomas Alexander
Maura Baker
Paula Benson
Madison Faulk
Andy Fiffick
Breeden John
Grayson Morgan
Senator Harvey Peeler
Senator Luke Rankin
Will Roberts
Map Room
Public Redistricting Inbox

The Senate Defendants have applied the search terms listed in Appendix A to identify potentially responsive emails, and their review of the collected documents remains ongoing.

As you know, the Court's prior order directing searches and productions from personal email accounts was premised on evidence that "legislators may have received or sent information relating to House reapportionment on personal email accounts." Dkt. No. 221 at 3. Even then, the Court directed individuals to conduct searches of their own personal email accounts and to sign a certification "stating that they have searched their personal accounts and devices and have produced all communications relating to House reapportionment." *Id.* The Senate Defendants are not aware of any evidence that they received or sent information relating to Congressional redistricting on personal email accounts. The Senate Defendants therefore have not searched, and do not intend to search, any personal email accounts at this time.

Moreover, the Senate Defendants reserve the right to take all necessary and appropriate steps to preserve their claims of legislative privilege. In all events, the Senate Defendants will produce an appropriate privilege log once review of all potentially responsive documents is complete.

Finally, the Senate Defendants have not searched for documents from, and are not authorized to accept subpoenas on behalf of, any other legislators.

**III. Depositions**

The Senate Defendants will work with Plaintiffs on a reasonable and appropriate schedule for conducting depositions within the discovery period for this case. Several discovery issues remain to be resolved, however, before depositions of fact witnesses can commence. Moreover, the Senate Defendants cannot commit to make witnesses available on any of the particular dates requested by Plaintiffs, and do not have control over several of the proposed deponents mentioned in your letter. The Senate Defendants also reserve the right to object to holding any deposition open, particularly if Plaintiffs insist on deposing fact witnesses before document production is complete.

The Senate Defendants believe that there is a more efficient and effective path forward for completing depositions in this case. For their part, the Senate Defendants plan to take the depositions of each of Plaintiffs' putative experts, Ms. Brenda Murphy, Mr. Taiwan Scott, and a Rule 30(b)(6) witness for the South Carolina State Conference of the NAACP. The Senate Defendants believe that, as in the House Plan litigation, the best way forward is to take expert depositions while document productions are ongoing, and then to depose fact witnesses once document productions have been completed. In particular, expert depositions should be scheduled for the month of June and any fact depositions to take place thereafter.

* * * *

We look forward to discussing these issues with your team further during our meet-and-confer on Monday, May 23.

Very truly yours,

John M. Gore

John M. Gore

**APPENDIX A**

Congress* w/3 District*
"Clyburn"
Nancy w/3 Mace
Tom w/3 Rice
Joe w/3 Wilson
Ralph w/3 Norman
Jeff w/3 Duncan
William /3 Timmons
"CD" w/2 1
"CD" w/2 2
"CD" w/2 3
"CD" w/2 4
"CD" w/2 5
"CD" w/2 6
"CD" w/2 7
"SC" w/2 1
"SC" w/2 2
"SC" w/2 3
"SC" w/2 4
"SC" w/2 5
"SC" w/2 6
"SC" w/2 7
"Republican National Committee"
"RNC"
"Republican State Leadership Committee"
"RSLC"
"National Republican Redistricting Trust"
"NRRT"
Act w/3 118
"S. 865"
"S.865"
"S865"
"H. 4492"
"H.4492"
"H4492"
"BVAP"
"Black voting age population"

crack OR cracked OR cracking
pack OR packed OR packing
Gerrymander*
map w/3 room
redistrict* AND criteri*
“community of interest” OR “communities of interest”
COI
“community of color” OR “communities of color”
“racially polarized”
RPV
“bloc voting”
“racial bloc voting”
“voting rights act”
“VRA”
“majority-minority”
“Gullah”

# Exhibit C

**From:** Hindley, John
**To:** Gore, John M.; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J.; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org; Leah Aden; zzz.External.strivedi@aclu.org; zzz.External.aingram@naacpldf.org; zzz.External.jcusick@naacpldf.org; zzz.External.chris@boroughsbryant.com; Colarusso, Gina; zzz.External.acepedaderieux@aclu.org; zzz.External.achaney@aclusc.org; Hirschel, Andrew; Freedman, John A.; Crosland, Stewart; zzz.External.MMoore@nexsenpruet.com; Mathias, Andrew A.; Hollingsworth, Jennifer J.; zzz.External.Mparente@nexsenpruet.com
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer
**Date:** Friday, May 27, 2022 9:31:47 AM
**Attachments:** image001.png

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Mr. Gore:

Thank you for your email and clarifications. Plaintiffs are available Tuesday morning at 10am EST to meet and confer. Please advise if that time works for Senate Defendants.

Document Production/Search Terms

We appreciate that you are formulating a timeline for document production, privilege logs, and personal emails. We look forward to your proposal.

Plaintiffs strongly disagree with your assertion that your search terms are "appropriate" for this case. As reflected in our May 24 email, your search terms do not include frequently used redistricting-related terms (i.e., reapportionment, deviation, split, and census), relevant counties and geographic areas, possibly relevant third parties involved in the mapmaking process, and parties and counsel who submitted proposed maps during the redistricting process. Furthermore, your assertion that Judge Gergel said that parties are not obligated to search geographic terms is not accurate. As you can see in the April 12, 2022 hearing transcript (pp. 45-51), the Court urged counsel for Plaintiffs and House Defendants to come up with an accommodation as to county searches through the use of a "hit report" and different search term configurations. That is what Plaintiffs and House Defendants did. House Defendants provided a hit report on April 28, 2022 using the search terms configurations that Plaintiffs provided. The search terms Plaintiffs provided had connectors that limited the number of possibly irrelevant documents House Defendants would have to review and produce. Plaintiffs hoped that Plaintiffs and Senate Defendants could come to a similar agreement. Unless counsel proposes alternative configurations to the search terms contained in Plaintiffs' May 24 email, it appears that the parties have reached an impasse on this issue.

Privilege Log

Plaintiffs were not suggesting that there was an exception to the attorney-client privilege. Plaintiffs were attempting to reach an accommodation to lessen the burden on both Parties in logging privileged communications and documents. Under Plaintiffs' proposal, similar to the agreement reached with the House Defendants, both Parties would neither have to log privilege communications and documents that were created after the passage of the congressional map nor communications and documents that are exclusively related to litigation strategy. If this or a similar arrangement does not work for Senate Defendants, the Parties can proceed with logging all relevant, privileged communications and documents.

Non-Party Senators

You state that counsel for Senate Defendants "are not authorized to accept service of subpoenas on their behalf." As a follow up question, is counsel for Senate Defendants attempting to obtain authorization? Otherwise, Plaintiffs will plan on serving third-party subpoenas directly to non-party members of the Senate Redistricting Subcommittee.

Interrogatories

You state that Senate Defendants "will not be amending our interrogatory responses." We are at an impasse on this issue.

Depositions

Plaintiffs continue to strongly disagree with your assertion that fact depositions have to wait until the competition of document production. Your assertion is particularly concerning given that Senate Defendants refused to consider a substantial completion date at our Monday meet and confer. Taking depositions in the midst of document production as part of the discovery process is local practice. As Judge Gergel said during the April 12 hearing, "Take their depositions and ask them, Did you communicate in private emails? If they did, request them." (Apr. 12, 2022 Hr'g Tr. 58:1-3). Conducting depositions during document production lessens the likelihood that the Parties will have to engage in 11th-hour motions practice to obtain relevant documents that were previously uncollected. In your May 25 email, you state that no dates the week of June 6 work for Mr. Fiffick, Mr. Roberts, and Ms. Benson because counsel and witnesses are unavailable. Can you please provide availability for these depositions for the week of June 13? In the absence of Senate Defendants providing dates, Plaintiffs plan to notice and proceed with the depositions. Plaintiffs are willing to schedule expert depositions so long as Senate Defendants schedule fact depositions during the same time frame.

Plaintiffs look forward to Tuesday's meet and confer

Regards,
John Hindley

---

**From:** Gore, John M. <jmgore@jonesday.com>
**Sent:** Wednesday, May 25, 2022 7:55 PM
**To:** Hindley, John <John.Hindley@arnoldporter.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>;

zzz.External.MMoore@nexsenpruet.com <MMoore@nexsenpruet.com>; Mathias, Andrew A. <amathias@nexsenpruet.com>; Hollingsworth, Jennifer J. <JHollingsworth@nexsenpruet.com>; zzz.External.Mparente@nexsenpruet.com <Mparente@nexsenpruet.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

External E-mail

Dear Mr. Hindley:

Thank you for your email. We are still looking into the issues you raise but provide the preliminary responses below based upon the information currently available to us. We reserve the right to amend or supplement these responses.

We also believe that another meet-and-confer on these issues would be productive. Our team is available on Tuesday morning, May 31, after the holiday weekend. Will you advise us on your team's availability?

Please note that I have also added House Defendants' counsel to this response.

Document Production, Privilege Log, And Personal Emails: We understand that the search terms we already have applied are broader than the search terms used in the House Plan litigation. We also understand that our search terms are the same search terms that the House Defendants have used in the Congressional Plan litigation. Accordingly, we maintain that those search terms are appropriate and that no further search terms are needed in this case.

The additional search terms you propose below are overbroad and not proportional to the needs of the case. For example, virtually every piece of proposed legislation includes a "Section 2," so we anticipate that that term would generate a large number of unresponsive hits. Similarly, the NAACP and ACLU are active in a variety of legislative arenas, not just redistricting, so searching by those terms also would generate a large number of unresponsive hits. And Judge Gergel already has made clear that there is no obligation to search for county names for the same reason.

Nonetheless, we are looking into the effect of your proposed terms on the size of our review universe. We will be prepared to discuss that further on the meet-and-confer.

We also are formulating a proposal on a timeline and approach to the document production, privilege log, and personal email issues. We will be prepared to discuss that further on the meet-and-confer.

Finally, you asked that attorney-client "communications and documents relating to the redistricting process" be logged if they are "dated on or before the passage of the congressional map." You appear to believe that there is an exception to attorney-client privilege for such documents and communications, even when they were made in anticipation of litigation. **Prior to our meet-and-confer, please provide any cases that recognize this exception to the attorney-client privilege so we can assess them with our client.**

Text Messages: Your email states that counsel has "collected text messages between custodians that relate to redistricting." That is not accurate. Counsel has collected text messages between custodians that may relate to redistricting and the issues in this case.

Other Senators/Miscellaneous: Your email states that we said we "would not accept service of subpoenas" for other members of the Redistricting Subcommittee. That is not accurate. We instead said that we are not authorized to accept service of subpoenas on their behalf.

Moreover, your discovery requests are limited in scope to the Senate Defendants and their staff. They are not broad enough to encompass other members of the Senate or the Redistricting Subcommittee.

Interrogatories: As your email indicates, we already have identified in writing individuals who were involved in the redistricting process. Therefore, we will not be amending our interrogatory responses.

Depositions: For two main reasons, the week of June 6 does not work for depositions of Mr. Fiffick, Mr. Roberts, and Ms. Benson. First, counsel and witnesses are unavailable. Second, fact depositions should not proceed until the anticipated document productions are complete.

Your proposed solution of producing only documents for each deponent is unfortunately unworkable. As your email notes, we are currently reviewing a large collection universe to identify responsive documents. Moreover, documents may be relevant to more than one custodian or witness, which we can only ascertain through a thorough review.

We are committed to continuing to move the case forward. We are open to discussing a schedule for fact depositions as part of the timeline for producing documents and a privilege log (see above). We also believe that, as we explained both in our letter and on the call, the most efficient way forward is to hold expert depositions first because those depositions do not turn on the forthcoming document productions.

We are available to take depositions of Plaintiffs' experts on the following dates. Please let us know your side's availability:

- Imai, Duchin, Liu: June 13, 14, 16, 23, 24, or 27 or July 11-15
- Ragusa: June 15, 16, 28, 29, 30, or July 1.
- Bagley: June 27, 28, 29, and 30 or July 5, 6, 11, and 12

Thanks,
John

John M. Gore
Partner
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Washington, D.C. 20001

Office +1.202.879.3930

---

**From:** Hindley, John <John.Hindley@arnoldporter.com>
**Sent:** Tuesday, May 24, 2022 10:18 AM
**To:** Gore, John M. <jmgore@jonesday.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** sosaki@aclu.org; Leah Aden <laden@naacpldf.org>; strivedi@aclu.org; aingram@naacpldf.org; jcusick@naacpldf.org; chris@boroughsbryant.com; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; acepedaderieux@aclu.org; achaney@aclusc.org; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer



Mr. Gore:

Thank you for participating in yesterday's productive meet and confer. This email serves to memorialize our discussion and summarize the status of certain discovery issues. If you believe that any of the points below are incorrect or inaccurate, please let us know immediately.

Document Production

Counsel for the Senate Defendants confirmed that they would be producing 2,500 documents initially. We have received those documents and are in the process of uploading them. We will let counsel know if we have any questions. In addition, counsel stated that they were in the process of reviewing approximately 50,000 additional documents and plan on making additional productions, although they could not predict the number of productions or provide any sort of schedule for those productions. Plaintiffs noted that counsel's letter did not include search terms they would like applied. To balance Plaintiffs' need for evidence reflecting Senate Defendants' intent when they drafted the map in S. 865 and counsel's desire to not have to review a significant amount of irrelevant documents, Plaintiffs ask that counsel for Senate Defendants apply the below search terms in addition to the terms contained in your May 20 letter:

- Population and (congress! or CD)
- Census /3 map
- Deviation and (congress! or CD)
- Reapportion! and (congress! or CD)
- Split! and (congress! or DC)
- "black voters"
- NAACP
- LWV or LWVSC or "the League" or "League of Women Voters" or "League of Women Voters of SC"
- ACLU

- LDF or "Legal Defense Fund"
- (Charleston or Beaufort or Richland or Florence or Orangeburg or Sumter or Columbia or "North Charleston" or "West Ashley" or Dorchester or Berkeley) /50 (vot! or line or district! or precinct!)
- Dakota /3 foster
- Muscatel
- Heather /3 Harrison
- Sukovich
- Kincaid
- "Fair Lines America" or FLA
- "Magellan Strategies" or Magellan
- Section 2

Please let us know by close of business tomorrow if counsel agrees to applying the above search terms or if counsel proposes alternative configurations.

Counsel also stated that they have not searched the official email accounts of non-named members of the Senate Redistricting Subcommittee (with the exception of Sen. Peeler) and have not asked, and do not intend to ask, for their consent to search their official email accounts.

Counsel also explained that "official text messages" are those that relate to official business/duties and not related to personal affairs. Counsel for Senate Defendants are not searching text messages between custodians or their family/spouses. Counsel has collected text messages exchanged between custodians that relate to redistricting. Counsel confirmed that "official text messages" include messages sent on personal phones and do not necessarily refer only to text messages sent on a phone provided by the Senate to its members/staff.

As to personal emails, counsel stated that they have only collected materials from official email accounts. It is Senate Defendants' position that, according to the Court's April 13 Order (ECF 221), they only have to search personal emails upon knowledge of evidence that those email accounts were used to send or receive official correspondence and counsel for Senate Defendants have not seen any such evidence. Counsel stated that they have asked Senate Defendants if they used personal emails to conduct redistricting-related work and they said that they do not recall. Plaintiffs disagree with counsel's position that counsel only has an obligation to search personal emails if defense counsel is aware of evidence that personal emails were used. As discussed during today's call, Plaintiffs asked whether counsel would be amenable to having Senate Defendants and Mr. Peeler sign a certification that they did not conduct redistricting-related business over personal email. Counsel stated that they would take it under advisement but reiterated their position that counsel does not have an obligation to search personal emails because counsel has not uncovered evidence that personal emails were used. Please let us know by close of business tomorrow if counsel will have Senate Defendants and Sen. Peeler sign a certification that they did not use personal emails to conduct redistricting-related business.

Interrogatories 1-3, 13

Counsel confirmed that the individuals identified as custodians (Maura Baker, Paula Benson, Madison Faulk, Breedon John, and Grayson Morgan) were involved in the redistricting process. Counsel also stated that Ms. Baker and Ms. Faulk are staff attorneys. Ms. Baker had access to redistricting email account and Ms. Faulk oversaw legal interns. Ms. Benson is also a staff attorney. Mr. John and Mr. Morgan worked under Mr. Roberts and served as GIS map-drawing professionals. Counsel for Senate Defendants also confirmed that Ms. Baker, Ms. Benson, and Ms. Faulk were involved in drafting Senate Defendants' interrogatory responses.

Counsel did not commit to amending their interrogatory responses to include the above names but that they would take it under advisement. Please let us know by close of business tomorrow if you plan on amending Senate Defendants' responses to Interrogatories 1-3 and 13 reflecting the information that was discussed at yesterday's meet and confer.

Interrogatories 4-8, 14-15

Counsel stated that they do not plan on amending their responses to Interrogatories 4-8 and 14-15 in light of Plaintiffs' objections in their May 19 letter.

Senate Defendants' response to Interrogatory 14 asserted that Plaintiffs sought information that was protected by the attorney-client privilege. Plaintiffs asked counsel to explain this purported attorney-client relationship. Counsel stated that an attorney-client relationship existed between the client and in-house and outside counsel. Counsel advised that litigation counsel was involved in answering legal questions concerning redistricting during the redistricting process but that they were not involved in drawing or advising on maps.

Privilege Log

Counsel reiterated their position that they would produce a privilege log at the end of document production and that they would not agree to producing privilege logs on a rolling basis. Counsel further stated that they would not be open to producing a rolling privilege log despite House Defendants producing a rolling privilege log throughout the discovery process in Plaintiffs' challenge of the state house maps. Plaintiffs ask that counsel reconsider their position or else they will have to seek relief from the Court to compel the production of a rolling privilege log.

As to whether Senate Defendants will assert legislative privilege over certain documents, counsel did not rule that out. Senate Defendants are reserving the right to assert the legislative privilege in order to preserve their objection. Plaintiffs believe that the Court's February 10 order rejecting House Defendants' legislative privilege claims equally applies to the Senate Defendants and, therefore, are not entitled to the legislative privilege.

The Parties also discussed coming to an arrangement regarding the Parties' obligations to log certain attorney-client communications and documents. The Parties agreed to go back and come up with a workable arrangement that meets the needs of both sides. Plaintiffs recognize the burden of logging all litigation-related communications but also recognize that communications and documents related to the redistricting process, even if involving current counsel, should be logged or produced.

Therefore, Plaintiffs propose that the Parties log or produce attorney-client documents dated on or before the passage of the congressional map (January 21, 2022) that also hit on the search terms to which the parties agree. Please let us know if Senate Defendants agree to this arrangement or would like an additional meet and confer on this issue.

Depositions

Counsel for Senate Defendants were also not amenable to holding depositions of fact witnesses until the completion of document production. Plaintiffs explained that, consistent with the Court's instructions and local practice, depositions of at least some fact witnesses need to take place to ensure Plaintiffs can identify potential additional witnesses and areas where documents need to be collected and produced. For example, depositions will afford Plaintiffs the opportunity to determine if witnesses used personal emails and cells numbers during the redistricting process which necessitate their search and collection.

The parties appear to have reached an impasse on scheduling depositions. Nevertheless, Plaintiffs remain open to scheduling depositions for Mr. Fiffick, Mr. Roberts, and Ms. Benson the week of June 6. As Plaintiffs already shared on Friday, Plaintiffs are available for a deposition of Mr. Fiffick any day the week of June 6, as well as June 6, 7, 8, or 9 for one of Mr. Roberts. And Plaintiffs reiterate their request to schedule Ms. Benson's for a day after Mr. Fiffick's. Please let Plaintiffs know of their availability for the week of June 6. In addition, Plaintiffs propose that, to lessen the likelihood that a deposition would have to re-open, Senate Defendants produce all relevant, non-privileged information for that particular custodian prior to the scheduled deposition, as was done in the state house case. Please let us know if counsel would be amendable to such an arrangement by the end of the week.

Miscellaneous

Counsel for Senate Defendants stated that they represent the SC Senate Judiciary and Redistricting Subcommittee staff (including Mr. Fiffick, Mr. Roberts, Ms. Baker, Ms. Benson, Ms. Faulk, Mr. John, and Mr. Morgan) because Sen. Rankin is a named defendant, but that they do not represent the non-named members of the Redistricting Subcommittee (Sens. Campsen, Young, Sabb, Matthews, Talley, and Harpootlian) and would not accept service of subpoenas for those individuals.

Please let us know if you have any questions or recollections inconsistent with the above.

Regards,
John Hindley

---

**From:** Gore, John M. <jmgore@jonesday.com>
**Sent:** Friday, May 20, 2022 6:26 PM
**To:** Hindley, John <John.Hindley@arnoldporter.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>;

sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

External E-mail

Mr. Hindley:

You sent your letter at 4:45 pm yesterday and only after we requested that you outline your concerns in writing. Your letter requested a response before Monday's meet-and-confer. Your email below now demands a response today.

We trust that the tone of Monday's call will be more productive.

John

John M. Gore
Partner
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51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Office +1.202.879.3930

---

**From:** Hindley, John <John.Hindley@arnoldporter.com>
**Sent:** Friday, May 20, 2022 2:52 PM
**To:** Gore, John M. <jmgore@jonesday.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** sosaki@aclu.org; Leah Aden <laden@naacpldf.org>; strivedi@aclu.org; aingram@naacpldf.org; jcusick@naacpldf.org; chris@boroughsbryant.com; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; acepedaderieux@aclu.org; achaney@aclusc.org; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

** External mail **

Mr. Gore:

Since Plaintiffs sent their May 19 letter regarding Senate Defendants' discovery deficiencies, we have not received word as to whether Senate Defendants plan on responding to that letter. To ensure that the Parties have a productive meet and confer and enough time to understand their respective positions, Plaintiffs expect a response in writing by the close of business today.

Additionally, Plaintiffs would like to offer some dates for the depositions of Mr. Fiffick, Mr. Roberts, and Ms. Benson. My colleague, Leah Aden, is available June 1, 2, 3, 6, 7, 8, 9, or 10 for the deposition of Mr. Fiffick. My other colleague, John Cusick, is available June 1, 2, 3, 6, 7, 8, or 9 for the deposition of Mr. Roberts. Plaintiffs would like to schedule the deposition of Ms. Benson soon after Mr. Fiffick's deposition.

Plaintiffs look forward to your response.

Regards,
John Hindley

---

**From:** Hindley, John
**Sent:** Thursday, May 19, 2022 4:43 PM
**To:** 'Gore, John M.' <jmgore@jonesday.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

Mr. Gore:

Please see the attached letter regarding Senate Defendants' deficient discovery.

Regards,
John Hindley

---

**From:** Gore, John M. <jmgore@jonesday.com>
**Sent:** Wednesday, May 18, 2022 6:20 PM
**To:** Hindley, John <John.Hindley@arnoldporter.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com

**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

External E-mail

Mr. Hindley:

Thanks for reaching out.

Counsel for the Senate Defendants are available between 10 am and noon on Monday, May 23.

We request that, in advance of the meet-and-confer, you describe in writing any concerns regarding any alleged deficiencies in the Senate Defendants' discovery responses to date. Providing this information in writing in advance both comports with local practice and will facilitate a more productive meet-and-confer discussion.

Thanks,
John

John M. Gore
Partner
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Washington, D.C. 20001
Office +1.202.879.3930

---

**From:** Hindley, John <John.Hindley@arnoldporter.com>
**Sent:** Wednesday, May 18, 2022 3:09 PM
**To:** cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com; Gore, John M. <jmgore@jonesday.com>
**Cc:** sosaki@aclu.org; Leah Aden <laden@naacpldf.org>; strivedi@aclu.org; aingram@naacpldf.org; jcusick@naacpldf.org; chris@boroughsbryant.com; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; acepedaderieux@aclu.org; achaney@aclusc.org; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>
**Subject:** SC NAACP v. Alexander - Scheduling Meet and Confer

** External mail **

Counsel:

Plaintiffs would like to schedule a meet and confer to discuss Senate Defendants' discovery thus far in this case. In particular, Plaintiffs would like to discuss Senate Defendants' future document production, responses and objections to Plaintiffs' written discovery, privilege logs, and potential depositions.

Please let us know what times you are available on Friday (5/20) or Monday (5/23) for the meet and confer. Plaintiffs will provide the dial-in information.

Regards,

John Hindley
Associate | Bio

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# Exhibit D

**From:** Gore, John M.
**To:** Hindley, John; Rob Tyson
**Cc:** Cynthia D. Nygord; Kenny, Stephen J.; Savannah Leyton; Lisle Traywick; La"Jessica Stringfellow; zzz.External.sosaki@aclu.org; Leah Aden; zzz.External.strivedi@aclu.org; zzz.External.aingram@naacpldf.org; zzz.External.jcusick@naacpldf.org; zzz.External.chris@boroughsbryant.com; Colarusso, Gina; zzz.External.acepedaderieux@aclu.org; zzz.External.achaney@aclusc.org; Hirschel, Andrew; Freedman, John A.; Crosland, Stewart; zzz.External.MMoore@nexsenpruet.com; Mathias, Andrew A.; Hollingsworth, Jennifer J.; zzz.External.Mparente@nexsenpruet.com
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer
**Date:** Friday, June 3, 2022 9:05:34 PM
**Attachments:** image001.png

External E-mail

Mr. Hindley:

Thank you for your email.

Expert deposition scheduling: Thank you for this information. We would like to schedule the depositions on the dates below. Will you confirm these?

- Bagley: June 29
- Imai: July 26
- Duchin: July 14
- Ragusa: June 28
- Liu: July 12

Fact Deposition Scheduling: On Tuesday's call, you agreed that it would be "reasonable" to conduct the depositions of Will Roberts, Andy Fiffick, and Paula Benson during the week of June 27. While those depositions could take place that week, they would have to take place after the special session on June 28. Those witnesses also are available on various dates in July.

This is the first time we have received your request to depose other fact witnesses. We cannot commit to firm dates for any of those witnesses at this time and need additional information to understand your request.

- For one thing, the federal rules limit the number of depositions you can take. We understand that you are also seeking to depose House witnesses and, therefore, are seeking to conduct depositions in excess of the limit. Will you provide us a list of all witnesses you're planning to depose and an explanation as to how the number of depositions you plan to conduct complies with the rules?
- For another thing, you have not provided us a list of the topics you plan to address with a 30(b)(6) witness. *See* Fed. R. Civ. P. 30(b)(6) (the party seeking the deposition "must describe with reasonable particularity the matters for examination"). We therefore cannot even begin to identify a deponent, let alone schedule a deposition.
- We disagree with your characterization that the parties have to "cram[] numerous depositions into a roughly two-week period" for several reasons.
    - In the first place, the discovery period runs until August 12, which provides plenty of time to conduct discovery on a reasonable schedule.
    - Moreover, you are subject to a limit on depositions, so there are not "numerous"

depositions still to be scheduled.
    - Finally, we disagree that additional discovery requests will be "necessary" following the depositions.
- One reason that no additional discovery will be "necessary" is that your existing discovery requests already are overbroad and capture whatever information you think you may glean from depositions.

Search terms: On Tuesday's call, you agreed that a June 21 substantial completion date is "reasonable." Your assertion below that we "did not make a counter offer" on search terms is incorrect. Our position consistently has been, and remains, that the existing search terms we have applied—which are the same terms the House Defendants have applied—are more than adequate and reasonable to this case. In fact, as we have stated several times now, even those search terms are substantially overbroad as we are identifying a large volume of unresponsive material in our review of documents that hit on those terms.

Moreover, we have no obligation to apply search terms simply because you want us to. Instead, we are required only to undertake reasonable, appropriate, and proportionate efforts under the rules. And your request for additional search terms is premature; at a minimum, you should receive our forthcoming productions before you can determine whether there is any need for any reasonable search expansion.

In all events, as a courtesy, we have run a hit report on the additional search terms you propose below. Unfortunately, applying these terms would nearly double the size of our email review universe. The additional search terms are therefore unreasonable and not appropriate to the case, and we will not be applying them. We have proceeded in good faith on the search term issue and the attorney-client email logging issue below and anticipate that you will do the same here.

I have provided below both the number of documents that "hit" on your search terms and the total number of "family members" of such documents that would require our review. As you will see, this volume is simply too large to be reasonable and cannot be accommodated by June 21. Moreover, many of the terms you have suggested, like the county names, the names of advocacy organizations, and the reference to Section 2 are not specific to redistricting and will undoubtedly yield an overwhelming number of false hits.

- Census /3 map: **90/322**
- Deviation and (congress! or CD): **636/1,532**
- Reapportion! and (congress! or CD): **831/1,735**
- Split! and (congress! or CD): **1,371/2,660**
- "black voters" and (district! or congress! or CD or precinct! or line or vot!): **433/879**
- NAACP: **1,826/3,171**

- LWV or LWVSC or "the League" or "League of Women Voters" or "League of Women Voters of SC": **2,452/4,257**
- ACLU: **723/1,336**
- LDF or "Legal Defense Fund": **446/853**
- (Charleston or Beaufort or Richland or Florence or Orangeburg or Sumter or Columbia or "North Charleston" or "West Ashley" or Dorchester or Berkeley) /50 (vot! or line or district! or precinct!): **6,972/12,892**
- Dakota /3 foster: **76/108**
- Muscatel: **24/34**
- Heather /3 Harrison: **37/57**
- Sukovich: **230/441**
- Kincaid: **32/60**
- "Fair Lines America" or FLA: **1,176/3,553**
- "Magellan Strategies" or Magellan: **23/54**
- Section 2 and (congress! or CD or VRA or vot!): **1,588/4,640**

Logging of attorney-client emails: We remain disappointed that you insist on renegotiating our deal on logging attorney-client emails. We had an agreement, not a "so-called" agreement, as your local counsel confirmed on the call. Moreover, we are not aware of any legal requirement to log these emails; when we ask you to provide case law authority for your position, you acknowledged that you do not have any.

In all events, we will not be logging any litigation-related emails involving counsel since those emails are not responsive to your requests in any event. We also have already begun our review using our search terms and decline your request to apply additional search terms to attorney-client emails. Subject to that understanding, we can agree to change the cutoff date for the logging of these emails to January 20, 2022, the date that the Senate passed the Congressional Plan.

We view this as a significant good-faith move by our side and expect that it will be reciprocated with similar good faith from your side on other discovery issues.

Thanks,
John

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Washington, D.C. 20001
Office +1.202.879.3930

**From:** Hindley, John <John.Hindley@arnoldporter.com>
**Sent:** Thursday, June 2, 2022 12:23 PM
**To:** Rob Tyson <rtyson@robinsongray.com>
**Cc:** Gore, John M. <jmgore@jonesday.com>; Cynthia D. Nygord <cnygord@robinsongray.com>; Kenny, Stephen J. <skenny@jonesday.com>; Savannah Leyton <sleyton@robinsongray.com>; Lisle Traywick <ltraywick@robinsongray.com>; La'Jessica Stringfellow <lstringfellow@robinsongray.com>; sosaki@aclu.org; Leah Aden <laden@naacpldf.org>; strivedi@aclu.org; aingram@naacpldf.org; jcusick@naacpldf.org; chris@boroughsbryant.com; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; acepedaderieux@aclu.org; achaney@aclusc.org; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>; MMoore@nexsenpruet.com; Mathias, Andrew A. <AMathias@nexsenpruet.com>; Hollingsworth, Jennifer J. <JHollingsworth@nexsenpruet.com>; Mparente@nexsenpruet.com
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer



Mr. Gore and Mr. Tyson:

We write to follow-up on a handful of discovery issues. We would appreciate responses by COB tomorrow, so that we can move forward with scheduling and any motion to compel, if necessary.

Expert deposition scheduling

Let us know which of the following dates work for you:

- Bagley: June 29 as the preference but July 5, 6, 11, and 12 work
- Imai: week of July 25 as a possibility because he's traveling out of country
- Duchin: June 16 as the preference but other dates like July 13-15 could work
- Ragusa: June 28, 30, or July 1
- Liu: June 14 as the preference but July 12 works too

Fact deposition scheduling

We're still considering your offer to make Mr. Fiffick, Mr. Roberts, and Ms. Benson available the week of June 27. One issue with scheduling additional depositions beginning on or after July 5 is that doing so only leaves a handful of business days to consider serving additional discovery requests based on information learned from those depositions. That is because we would need to serve these requests at least 30 days before the August 12 discovery deadline to allow for objections and responses. Therefore, would the Senate Defendants be willing to give us (1) firm dates for Sens. Rankin, Peeler, Alexander; other Senate staff that you represent for the purposes of this litigation, including Maura Baker, Madison Fault, and John Breedon; and the 30(b)(6) deposition before July 10th, and/or (2) a stipulation to make the response/objection period to discovery requests shorter?

Perhaps from 30 days to 20 days? If these are not possible, we're concerned that the parties will be unnecessarily cramming numerous depositions into a roughly two-week period for no reason and Plaintiffs won't have sufficient time to serve any discovery requests that are necessary based on information obtained through these depositions because they are being scheduled so late.

Search Terms

You state in your May 27 email that you have "not taken a definitive position on search terms" and, at our meet and confer, that Plaintiffs' proposed search terms nearly doubled the amount of documents Senate Defendants had to review. Senate Defendants, however, did not make a counter offer as to search terms. You suggested that the term "section 2" caused the high amount of hits. Plaintiffs asked whether you could provide a hit report reflecting Senate Defendants burden. You stated that you would take it under advisement but that you considered it work product. Plaintiffs offered to assist in lessening the burden on Senate Defendants. Without a hit report, however, Plaintiffs attempts at adjusting the search terms is like shooting in the dark. Below is a revised list of search terms. Unless Senate Defendants provide a hit report or provide a definitive counteroffer, Plaintiffs insist that Senate Defendants apply at least these additional search terms. We believe that they strike an appropriate balance.

- Census /3 map
- Deviation and (congress! or CD)
- Reapportion! and (congress! or CD)
- Split! and (congress! or CD)
- "black voters" and (district! or congress! or CD or precinct! or line or vot!)
- NAACP
- LWV or LWVSC or "the League" or "League of Women Voters" or "League of Women Voters of SC"
- ACLU
- LDF or "Legal Defense Fund"
- (Charleston or Beaufort or Richland or Florence or Orangeburg or Sumter or Columbia or "North Charleston" or "West Ashley" or Dorchester or Berkeley) /50 (vot! or line or district! or precinct!)
- Dakota /3 foster
- Muscatel
- Heather /3 Harrison
- Sukovich

- Kincaid
- "Fair Lines America" or FLA
- "Magellan Strategies" or Magellan
- Section 2 and (congress! or CD or VRA or vot!)

Logging attorney-client emails

At our meet-and-confer, you said you were still considering our updated agreement regarding attorney-client emails; namely, moving the cutoff to the date of congressional map passage plus applying the search terms we ultimately agree upon. Please let us know if you agree or have a counterproposal. If neither, we'll have to move to compel the review, logging, and/or production of that universe of documents.

Regards,
John

---

**From:** Rob Tyson <rtyson@robinsongray.com>
**Sent:** Wednesday, June 1, 2022 8:34 PM
**To:** Hindley, John <John.Hindley@arnoldporter.com>
**Cc:** Gore, John M. <jmgore@jonesday.com>; Cynthia D. Nygord <cnygord@robinsongray.com>; Kenny, Stephen J. <skenny@jonesday.com>; Savannah Leyton <sleyton@robinsongray.com>; Lisle Traywick <ltraywick@robinsongray.com>; La'Jessica Stringfellow <lstringfellow@robinsongray.com>; zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>; zzz.External.MMoore@nexsenpruet.com <MMoore@nexsenpruet.com>; Mathias, Andrew A. <AMathias@nexsenpruet.com>; Hollingsworth, Jennifer J. <JHollingsworth@nexsenpruet.com>; zzz.External.Mparente@nexsenpruet.com <Mparente@nexsenpruet.com>
**Subject:** Re: SC NAACP v. Alexander - Scheduling Meet and Confer

External E-mail

Mr. Hindley, On yesterday's call, you said you would send us the dates your experts are available. As we mentioned, we'd like to move forward scheduling them. Look forward to getting them. Tks. Rob

Sent from my iPhone

On May 27, 2022, at 1:42 PM, Hindley, John <John.Hindley@arnoldporter.com> wrote:

Mr. Gore:

Plaintiffs are available from 1-2 and 3-5 on Tuesday. Please let us know if any of those times work for you.

Best,
John Hindley

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**From:** Gore, John M. <jmgore@jonesday.com>
**Sent:** Friday, May 27, 2022 12:35 PM
**To:** Hindley, John <John.Hindley@arnoldporter.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>; zzz.External.MMoore@nexsenpruet.com <MMoore@nexsenpruet.com>; Mathias, Andrew A. <amathias@nexsenpruet.com>; Hollingsworth, Jennifer J. <JHollingsworth@nexsenpruet.com>; zzz.External.Mparente@nexsenpruet.com <Mparente@nexsenpruet.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

External E-mail

Mr. Hindley:

Thanks for your response. Unfortunately, I now have an emergency hearing in another matter on Tuesday morning. Will you advise on your team's availability on Tuesday afternoon or Wednesday?

We look forward to sharing our proposal on a timeline for document production, privilege logs, and personal email searches.

Your email contains two material inaccuracies. First, we did not "refuse to consider a substantial completion date" for document productions. To the contrary, we *agreed* to

consider a substantial completion date, which is why we are proposing a timeline.

Second, your statement about logging attorney-client communications is, candidly, revisionist history. We have checked with our team, who confirmed that we already have a deal in place to cut off logging of attorney-client communications with outside counsel as of October 12, 2021, the date plaintiffs filed their original complaint. You are trying to back out of that deal.

We disagree with several other points in your email, as we will discuss at the meet-and-confer. For now, two require responses.

Document Production/Search Terms: Contrary to what you say below, we are not at an "impasse" on this issue since we have not taken a definitive position on it. In all events, as we have explained, we have used the same search terms that the House Defendants have used in the Congressional Plan litigation. We already have produced plans and emails from "parties and counsel who submitted proposed maps during the redistricting process" and will produce any more such emails that we locate and are responsive to your discovery requests.

The issue of additional search terms is premature and unripe since productions are ongoing. In any event, as we noted below, we will provide additional information regarding your search terms at the meet-and-confer.

Depositions: Your citation to Judge Gergel's statement on the record proves our point that fact depositions should not proceed until anticipated document discovery is completed. Judge Gergel said it is appropriate to ask witnesses about personal email use in depositions, not that depositions should proceed before anticipated and forthcoming document productions have been completed. We will not agree to hold depositions open because you insist on taking depositions before receiving document productions that you know are coming.

We also are working with the witnesses you have requested to nail down their availability. A significant complication is the General Assembly's special session, which is scheduled for June and is placing heavy demands on Senate staff. Our proposal will lay out an appropriate timeline for those depositions, which will avoid any need for "11$^{th}$-hour motions practice."

There is no reason for you to court unnecessary motions practice by noticing depositions without coordinating with us. The panel will not look favorably on unilateral notices when it has encouraged you to work with us.

Finally, we note that you have not responded with availability for your expert witnesses on the deposition dates we proposed.

We look forward to the meet-and-confer.

Best,
John

John M. Gore
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Office +1.202.879.3930

---

**From:** Hindley, John <John.Hindley@arnoldporter.com>
**Sent:** Friday, May 27, 2022 9:32 AM
**To:** Gore, John M. <jmgore@jonesday.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** sosaki@aclu.org; Leah Aden <laden@naacpldf.org>; strivedi@aclu.org; aingram@naacpldf.org; jcusick@naacpldf.org; chris@boroughsbryant.com; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; acepedaderieux@aclu.org; achaney@aclusc.org; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>; MMoore@nexsenpruet.com; Mathias, Andrew A. <amathias@nexsenpruet.com>; Hollingsworth, Jennifer J. <JHollingsworth@nexsenpruet.com>; Mparente@nexsenpruet.com
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

** External mail **

Mr. Gore:

Thank you for your email and clarifications. Plaintiffs are available Tuesday morning at 10am EST to meet and confer. Please advise if that time works for Senate Defendants.

Document Production/Search Terms

We appreciate that you are formulating a timeline for document production, privilege logs, and personal emails. We look forward to your proposal.

Plaintiffs strongly disagree with your assertion that your search terms are "appropriate" for this case. As reflected in our May 24 email, your search terms do not include frequently used redistricting-related terms (i.e., reapportionment, deviation, split, and census), relevant counties and geographic areas, possibly relevant third parties involved in the mapmaking process, and parties and counsel who submitted proposed maps during the redistricting process. Furthermore, your assertion that Judge Gergel said that parties are not obligated to search geographic terms is not

accurate. As you can see in the April 12, 2022 hearing transcript (pp. 45-51), the Court urged counsel for Plaintiffs and House Defendants to come up with an accommodation as to county searches through the use of a "hit report" and different search term configurations. That is what Plaintiffs and House Defendants did. House Defendants provided a hit report on April 28, 2022 using the search terms configurations that Plaintiffs provided. The search terms Plaintiffs provided had connectors that limited the number of possibly irrelevant documents House Defendants would have to review and produce. Plaintiffs hoped that Plaintiffs and Senate Defendants could come to a similar agreement. Unless counsel proposes alternative configurations to the search terms contained in Plaintiffs' May 24 email, it appears that the parties have reached an impasse on this issue.

Privilege Log

Plaintiffs were not suggesting that there was an exception to the attorney-client privilege. Plaintiffs were attempting to reach an accommodation to lessen the burden on both Parties in logging privileged communications and documents. Under Plaintiffs' proposal, similar to the agreement reached with the House Defendants, both Parties would neither have to log privilege communications and documents that were created after the passage of the congressional map nor communications and documents that are exclusively related to litigation strategy. If this or a similar arrangement does not work for Senate Defendants, the Parties can proceed with logging all relevant, privileged communications and documents.

Non-Party Senators

You state that counsel for Senate Defendants "are not authorized to accept service of subpoenas on their behalf." As a follow up question, is counsel for Senate Defendants attempting to obtain authorization? Otherwise, Plaintiffs will plan on serving third-party subpoenas directly to non-party members of the Senate Redistricting Subcommittee.

Interrogatories

You state that Senate Defendants "will not be amending our interrogatory responses." We are at an impasse on this issue.

Depositions

Plaintiffs continue to strongly disagree with your assertion that fact depositions have to wait until the competition of document production. Your assertion is particularly concerning given that Senate Defendants refused to consider a substantial completion date at our Monday meet and confer. Taking depositions in the midst of document production as part of the discovery process is local practice. As Judge Gergel said during the April 12 hearing, "Take their depositions and ask them, Did you communicate in private emails? If they did, request them." (Apr. 12, 2022 Hr'g Tr. 58:1-3). Conducting depositions during document production lessens the likelihood that the

Parties will have to engage in 11 -hour motions practice to obtain relevant documents that were previously uncollected. In your May 25 email, you state that no dates the week of June 6 work for Mr. Fiffick, Mr. Roberts, and Ms. Benson because counsel and witnesses are unavailable. Can you please provide availability for these depositions for the week of June 13? In the absence of Senate Defendants providing dates, Plaintiffs plan to notice and proceed with the depositions. Plaintiffs are willing to schedule expert depositions so long as Senate Defendants schedule fact depositions during the same time frame.

Plaintiffs look forward to Tuesday's meet and confer

Regards,
John Hindley

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**From:** Gore, John M. <jmgore@jonesday.com>
**Sent:** Wednesday, May 25, 2022 7:55 PM
**To:** Hindley, John <John.Hindley@arnoldporter.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>; zzz.External.MMoore@nexsenpruet.com <MMoore@nexsenpruet.com>; Mathias, Andrew A. <amathias@nexsenpruet.com>; Hollingsworth, Jennifer J. <JHollingsworth@nexsenpruet.com>; zzz.External.Mparente@nexsenpruet.com <Mparente@nexsenpruet.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

External E-mail

Dear Mr. Hindley:

Thank you for your email. We are still looking into the issues you raise but provide the preliminary responses below based upon the information currently available to us. We reserve the right to amend or supplement these responses.

We also believe that another meet-and-confer on these issues would be productive. Our team is available on Tuesday morning, May 31, after the holiday weekend. Will you advise us on your team's availability?

Please note that I have also added House Defendants' counsel to this response.

Document Production, Privilege Log, And Personal Emails: We understand that the search terms we already have applied are broader than the search terms used in the House Plan litigation. We also understand that our search terms are the same search terms that the House Defendants have used in the Congressional Plan litigation. Accordingly, we maintain that those search terms are appropriate and that no further search terms are needed in this case.

The additional search terms you propose below are overbroad and not proportional to the needs of the case. For example, virtually every piece of proposed legislation includes a "Section 2," so we anticipate that that term would generate a large number of unresponsive hits. Similarly, the NAACP and ACLU are active in a variety of legislative arenas, not just redistricting, so searching by those terms also would generate a large number of unresponsive hits. And Judge Gergel already has made clear that there is no obligation to search for county names for the same reason.

Nonetheless, we are looking into the effect of your proposed terms on the size of our review universe. We will be prepared to discuss that further on the meet-and-confer.

We also are formulating a proposal on a timeline and approach to the document production, privilege log, and personal email issues. We will be prepared to discuss that further on the meet-and-confer.

Finally, you asked that attorney-client "communications and documents relating to the redistricting process" be logged if they are "dated on or before the passage of the congressional map." You appear to believe that there is an exception to attorney-client privilege for such documents and communications, even when they were made in anticipation of litigation. **Prior to our meet-and-confer, please provide any cases that recognize this exception to the attorney-client privilege so we can assess them with our client.**

Text Messages: Your email states that counsel has "collected text messages between custodians that relate to redistricting." That is not accurate. Counsel has collected text messages between custodians that may relate to redistricting and the issues in this case.

Other Senators/Miscellaneous: Your email states that we said we "would not accept service of subpoenas" for other members of the Redistricting Subcommittee. That is not accurate. We instead said that we are not authorized to accept service of subpoenas on their behalf.

Moreover, your discovery requests are limited in scope to the Senate Defendants and their staff. They are not broad enough to encompass other members of the Senate or

the Redistricting Subcommittee.

Interrogatories: As your email indicates, we already have identified in writing individuals who were involved in the redistricting process. Therefore, we will not be amending our interrogatory responses.

Depositions: For two main reasons, the week of June 6 does not work for depositions of Mr. Fiffick, Mr. Roberts, and Ms. Benson. First, counsel and witnesses are unavailable. Second, fact depositions should not proceed until the anticipated document productions are complete.

Your proposed solution of producing only documents for each deponent is unfortunately unworkable. As your email notes, we are currently reviewing a large collection universe to identify responsive documents. Moreover, documents may be relevant to more than one custodian or witness, which we can only ascertain through a thorough review.

We are committed to continuing to move the case forward. We are open to discussing a schedule for fact depositions as part of the timeline for producing documents and a privilege log (see above). We also believe that, as we explained both in our letter and on the call, the most efficient way forward is to hold expert depositions first because those depositions do not turn on the forthcoming document productions.

We are available to take depositions of Plaintiffs' experts on the following dates. Please let us know your side's availability:

- Imai, Duchin, Liu: June 13, 14, 16, 23, 24, or 27 or July 11-15
- Ragusa: June 15, 16, 28, 29, 30, or July 1.
- Bagley: June 27, 28, 29, and 30 or July 5, 6, 11, and 12

Thanks,
John

John M. Gore
Partner
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---

**From:** Hindley, John <John.Hindley@arnoldporter.com>
**Sent:** Tuesday, May 24, 2022 10:18 AM
**To:** Gore, John M. <jmgore@jonesday.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** sosaki@aclu.org; Leah Aden <laden@naacpldf.org>; strivedi@aclu.org;

aingram@naacpldf.org; jcusick@naacpldf.org; chris@boroughsbryant.com; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; acepedaderieux@aclu.org; achaney@aclusc.org; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

** External mail **

Mr. Gore:

Thank you for participating in yesterday's productive meet and confer. This email serves to memorialize our discussion and summarize the status of certain discovery issues. If you believe that any of the points below are incorrect or inaccurate, please let us know immediately.

Document Production

Counsel for the Senate Defendants confirmed that they would be producing 2,500 documents initially. We have received those documents and are in the process of uploading them. We will let counsel know if we have any questions. In addition, counsel stated that they were in the process of reviewing approximately 50,000 additional documents and plan on making additional productions, although they could not predict the number of productions or provide any sort of schedule for those productions. Plaintiffs noted that counsel's letter did not include search terms they would like applied. To balance Plaintiffs' need for evidence reflecting Senate Defendants' intent when they drafted the map in S. 865 and counsel's desire to not have to review a significant amount of irrelevant documents, Plaintiffs ask that counsel for Senate Defendants apply the below search terms in addition to the terms contained in your May 20 letter:

- Population and (congress! or CD)
- Census /3 map
- Deviation and (congress! or CD)
- Reapportion! and (congress! or CD)
- Split! and (congress! or DC)
- "black voters"
- NAACP
- LWV or LWVSC or "the League" or "League of Women Voters" or "League of Women Voters of SC"
- ACLU
- LDF or "Legal Defense Fund"
- (Charleston or Beaufort or Richland or Florence or Orangeburg or Sumter or Columbia or "North Charleston" or "West Ashley" or Dorchester or Berkeley) /50 (vot! or line or district! or precinct!)

- Dakota /3 foster
- Muscatel
- Heather /3 Harrison
- Sukovich
- Kincaid
- "Fair Lines America" or FLA
- "Magellan Strategies" or Magellan
- Section 2

Please let us know by close of business tomorrow if counsel agrees to applying the above search terms or if counsel proposes alternative configurations.

Counsel also stated that they have not searched the official email accounts of non-named members of the Senate Redistricting Subcommittee (with the exception of Sen. Peeler) and have not asked, and do not intend to ask, for their consent to search their official email accounts.

Counsel also explained that "official text messages" are those that relate to official business/duties and not related to personal affairs. Counsel for Senate Defendants are not searching text messages between custodians or their family/spouses. Counsel has collected text messages exchanged between custodians that relate to redistricting. Counsel confirmed that "official text messages" include messages sent on personal phones and do not necessarily refer only to text messages sent on a phone provided by the Senate to its members/staff.

As to personal emails, counsel stated that they have only collected materials from official email accounts. It is Senate Defendants' position that, according to the Court's April 13 Order (ECF 221), they only have to search personal emails upon knowledge of evidence that those email accounts were used to send or receive official correspondence and counsel for Senate Defendants have not seen any such evidence. Counsel stated that they have asked Senate Defendants if they used personal emails to conduct redistricting-related work and they said that they do not recall. Plaintiffs disagree with counsel's position that counsel only has an obligation to search personal emails if defense counsel is aware of evidence that personal emails were used. As discussed during today's call, Plaintiffs asked whether counsel would be amenable to having Senate Defendants and Mr. Peeler sign a certification that they did not conduct redistricting-related business over personal email. Counsel stated that they would take it under advisement but reiterated their position that counsel does not have an obligation to search personal emails because counsel has not uncovered evidence that personal emails were used. Please let us know by close of business tomorrow if counsel will have Senate Defendants and Sen. Peeler sign a certification that they did not use personal emails to conduct redistricting-related business.

Interrogatories 1-3, 13

Counsel confirmed that the individuals identified as custodians (Maura Baker, Paula Benson, Madison Faulk, Breedon John, and Grayson Morgan) were involved in the redistricting process. Counsel also stated that Ms. Baker and Ms. Faulk are staff attorneys. Ms. Baker had access to redistricting email account and Ms. Faulk oversaw legal interns. Ms. Benson is also a staff attorney. Mr. John and Mr. Morgan worked under Mr. Roberts and served as GIS map-drawing professionals. Counsel for Senate Defendants also confirmed that Ms. Baker, Ms. Benson, and Ms. Faulk were involved in drafting Senate Defendants' interrogatory responses.

Counsel did not commit to amending their interrogatory responses to include the above names but that they would take it under advisement. Please let us know by close of business tomorrow if you plan on amending Senate Defendants' responses to Interrogatories 1-3 and 13 reflecting the information that was discussed at yesterday's meet and confer.

Interrogatories 4-8, 14-15

Counsel stated that they do not plan on amending their responses to Interrogatories 4-8 and 14-15 in light of Plaintiffs' objections in their May 19 letter.

Senate Defendants' response to Interrogatory 14 asserted that Plaintiffs sought information that was protected by the attorney-client privilege. Plaintiffs asked counsel to explain this purported attorney-client relationship. Counsel stated that an attorney-client relationship existed between the client and in-house and outside counsel. Counsel advised that litigation counsel was involved in answering legal questions concerning redistricting during the redistricting process but that they were not involved in drawing or advising on maps.

Privilege Log

Counsel reiterated their position that they would produce a privilege log at the end of document production and that they would not agree to producing privilege logs on a rolling basis. Counsel further stated that they would not be open to producing a rolling privilege log despite House Defendants producing a rolling privilege log throughout the discovery process in Plaintiffs' challenge of the state house maps. Plaintiffs ask that counsel reconsider their position or else they will have to seek relief from the Court to compel the production of a rolling privilege log.

As to whether Senate Defendants will assert legislative privilege over certain documents, counsel did not rule that out. Senate Defendants are reserving the right to assert the legislative privilege in order to preserve their objection. Plaintiffs believe that the Court's February 10 order rejecting House Defendants' legislative privilege claims equally applies to the Senate Defendants and, therefore, are not entitled to the legislative privilege.

The Parties also discussed coming to an arrangement regarding the Parties' obligations to log certain attorney-client communications and documents. The Parties agreed to go back and come up with a workable arrangement that meets the needs of both sides. Plaintiffs recognize the burden of logging all litigation-related communications but also recognize that communications and documents related to the redistricting process, even if involving current counsel, should be logged or produced. Therefore, Plaintiffs propose that the Parties log or produce attorney-client documents dated on or before the passage of the congressional map (January 21, 2022) that also hit on the search terms to which the parties agree. Please let us know if Senate Defendants agree to this arrangement or would like an additional meet and confer on this issue.

Depositions

Counsel for Senate Defendants were also not amenable to holding depositions of fact witnesses until the completion of document production. Plaintiffs explained that, consistent with the Court's instructions and local practice, depositions of at least some fact witnesses need to take place to ensure Plaintiffs can identify potential additional witnesses and areas where documents need to be collected and produced. For example, depositions will afford Plaintiffs the opportunity to determine if witnesses used personal emails and cells numbers during the redistricting process which necessitate their search and collection.

The parties appear to have reached an impasse on scheduling depositions. Nevertheless, Plaintiffs remain open to scheduling depositions for Mr. Fiffick, Mr. Roberts, and Ms. Benson the week of June 6. As Plaintiffs already shared on Friday, Plaintiffs are available for a deposition of Mr. Fiffick any day the week of June 6, as well as June 6, 7, 8, or 9 for one of Mr. Roberts. And Plaintiffs reiterate their request to schedule Ms. Benson's for a day after Mr. Fiffick's. Please let Plaintiffs know of their availability for the week of June 6. In addition, Plaintiffs propose that, to lessen the likelihood that a deposition would have to re-open, Senate Defendants produce all relevant, non-privileged information for that particular custodian prior to the scheduled deposition, as was done in the state house case. Please let us know if counsel would be amendable to such an arrangement by the end of the week.

Miscellaneous

Counsel for Senate Defendants stated that they represent the SC Senate Judiciary and Redistricting Subcommittee staff (including Mr. Fiffick, Mr. Roberts, Ms. Baker, Ms. Benson, Ms. Faulk, Mr. John, and Mr. Morgan) because Sen. Rankin is a named defendant, but that they do not represent the non-named members of the Redistricting Subcommittee (Sens. Campsen, Young, Sabb, Matthews, Talley, and Harpootlian) and would not accept service of subpoenas for those individuals.

Please let us know if you have any questions or recollections inconsistent with the above.

Regards,
John Hindley

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**From:** Gore, John M. <jmgore@jonesday.com>
**Sent:** Friday, May 20, 2022 6:26 PM
**To:** Hindley, John <John.Hindley@arnoldporter.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>; Crosland, Stewart <scrosland@jonesday.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

External E-mail

Mr. Hindley:

You sent your letter at 4:45 pm yesterday and only after we requested that you outline your concerns in writing. Your letter requested a response before Monday's meet-and-confer. Your email below now demands a response today.

We trust that the tone of Monday's call will be more productive.

John

John M. Gore
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**From:** Hindley, John <John.Hindley@arnoldporter.com>
**Sent:** Friday, May 20, 2022 2:52 PM
**To:** Gore, John M. <jmgore@jonesday.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>;

sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** sosaki@aclu.org; Leah Aden <laden@naacpldf.org>; strivedi@aclu.org; aingram@naacpldf.org; jcusick@naacpldf.org; chris@boroughsbryant.com; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; acepedaderieux@aclu.org; achaney@aclusc.org; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

** External mail **

Mr. Gore:

Since Plaintiffs sent their May 19 letter regarding Senate Defendants' discovery deficiencies, we have not received word as to whether Senate Defendants plan on responding to that letter. To ensure that the Parties have a productive meet and confer and enough time to understand their respective positions, Plaintiffs expect a response in writing by the close of business today.

Additionally, Plaintiffs would like to offer some dates for the depositions of Mr. Fiffick, Mr. Roberts, and Ms. Benson. My colleague, Leah Aden, is available June 1, 2, 3, 6, 7, 8, 9, or 10 for the deposition of Mr. Fiffick. My other colleague, John Cusick, is available June 1, 2, 3, 6, 7, 8, or 9 for the deposition of Mr. Roberts. Plaintiffs would like to schedule the deposition of Ms. Benson soon after Mr. Fiffick's deposition.

Plaintiffs look forward to your response.

Regards,
John Hindley

---

**From:** Hindley, John
**Sent:** Thursday, May 19, 2022 4:43 PM
**To:** 'Gore, John M.' <jmgore@jonesday.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>

**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

Mr. Gore:

Please see the attached letter regarding Senate Defendants' deficient discovery.

Regards,
John Hindley

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**From:** Gore, John M. <jmgore@jonesday.com>
**Sent:** Wednesday, May 18, 2022 6:20 PM
**To:** Hindley, John <John.Hindley@arnoldporter.com>; cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com
**Cc:** zzz.External.sosaki@aclu.org <sosaki@aclu.org>; Leah Aden <laden@naacpldf.org>; zzz.External.strivedi@aclu.org <strivedi@aclu.org>; zzz.External.aingram@naacpldf.org <aingram@naacpldf.org>; zzz.External.jcusick@naacpldf.org <jcusick@naacpldf.org>; zzz.External.chris@boroughsbryant.com <chris@boroughsbryant.com>; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; zzz.External.acepedaderieux@aclu.org <acepedaderieux@aclu.org>; zzz.External.achaney@aclusc.org <achaney@aclusc.org>; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>
**Subject:** RE: SC NAACP v. Alexander - Scheduling Meet and Confer

External E-mail

Mr. Hindley:

Thanks for reaching out.

Counsel for the Senate Defendants are available between 10 am and noon on Monday, May 23.

We request that, in advance of the meet-and-confer, you describe in writing any concerns regarding any alleged deficiencies in the Senate Defendants' discovery responses to date. Providing this information in writing in advance both comports with local practice and will facilitate a more productive meet-and-confer discussion.

Thanks,
John

John M. Gore
Partner

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**From:** Hindley, John <John.Hindley@arnoldporter.com>
**Sent:** Wednesday, May 18, 2022 3:09 PM
**To:** cnygord@robinsongray.com; rtyson@robinsongray.com; Kenny, Stephen J. <skenny@jonesday.com>; sleyton@robinsongray.com; ltraywick@robinsongray.com; lstringfellow@robinsongray.com; Gore, John M. <jmgore@jonesday.com>
**Cc:** sosaki@aclu.org; Leah Aden <laden@naacpldf.org>; strivedi@aclu.org; aingram@naacpldf.org; jcusick@naacpldf.org; chris@boroughsbryant.com; Colarusso, Gina <Gina.Colarusso@arnoldporter.com>; acepedaderieux@aclu.org; achaney@aclusc.org; Hirschel, Andrew <Andrew.Hirschel@arnoldporter.com>; Freedman, John A. <John.Freedman@arnoldporter.com>
**Subject:** SC NAACP v. Alexander - Scheduling Meet and Confer

** External mail **

Counsel:

Plaintiffs would like to schedule a meet and confer to discuss Senate Defendants' discovery thus far in this case. In particular, Plaintiffs would like to discuss Senate Defendants' future document production, responses and objections to Plaintiffs' written discovery, privilege logs, and potential depositions.

Please let us know what times you are available on Friday (5/20) or Monday (5/23) for the meet and confer. Plaintiffs will provide the dial-in information.

Regards,

John Hindley
Associate | Bio

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