

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

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

Case No.: 2022 CA 000666

Plaintiffs,

v.

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

Defendants.

**RESPONSES AND OBJECTIONS TO PLAINTIFFS' SECOND REQUESTS
FOR PRODUCTION TO DEFENDANT THE FLORIDA SENATE**

Pursuant to Florida Rules of Civil Procedure 1.280 and 1.350, Defendant the Florida Senate hereby responds to Plaintiffs' Second Requests for Production as follows:

GENERAL OBJECTIONS

A. The Florida Senate objects to the Requests to the extent they call for information protected by the attorney-client privilege, the attorney work-product doctrine, legislative privilege, joint defense privilege, or any other privilege or doctrine available under federal or state law, either statutory, regulatory, constitutional, or common law.

B. The Florida Senate objects to the Requests to the extent they impose on the Florida Senate obligations that exceed those imposed by the Florida Rules of Civil Procedure and relevant orders issued in this case.

C. The Florida Senate objects to the Requests to the extent they are overly broad or seek information that is neither relevant to the claim or defense

of any party in this action nor reasonably calculated to lead to the discovery of admissible evidence.

D. The Florida Senate objects to the Requests as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent they purport to require the Florida Senate to search every member's and employee's files, both electronic and those in hard copy or other forms, all computer-generated documents, personal notes, handwritten notes, calendar entries, video and audio recordings, and more, both business and personal, over the course of nearly two years, regardless of whether those members or employees had any material involvement in the congressional redistricting process. The Florida Senate agrees to produce non-privileged, responsive communications and documents from a relevant subset of members and employees to include those individuals who were materially involved in map drawing and map analysis for congressional redistricting on behalf of the Florida Senate.

E. The Florida Senate objects to the Requests to the extent they are duplicative or cumulative.

F. The Florida Senate's failure to object on a particular ground or grounds shall not be construed as a waiver of its rights to object on any additional grounds. In making these objections, the Florida Senate does not in any way waive or intend to waive any additional objections, but rather intends to preserve and does preserve any additional objections should they become appropriate.

G. The Florida Senate responds to the Requests to the best of its present knowledge, information, and belief. The Florida Senate continues to investigate the matters that are the subject of this litigation. The responses set forth herein are at all times subject to additional or different information that discovery or further investigation may disclose.

H. The Florida Senate objects to any Requests seeking information for an improper purpose.

I. The Florida Senate objects to the Requests to the extent they are unduly burdensome or to the extent they seek information that (a) is in the possession, custody, or control of Plaintiffs; (b) is equally available to Plaintiffs; (c) is publicly available to Plaintiffs; or (d) is available from other sources that are more convenient, less burdensome, or less expensive such as other state agencies or entities, and/or production of documents and data in this action.

J. The Florida Senate objects to the introductory definitions to the Requests to the extent they purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific Requests to the extent that such enlargement, expansion, or alteration renders the request vague, ambiguous, unintelligible, overly broad, or uncertain.

OBJECTIONS TO SPECIFIC INSTRUCTIONS

A. The Florida Senate objects to Instruction #1 because it purports to impose on the Florida Senate a duty to obtain documents that are in the possession and control of third parties. The Florida Senate also objects to this Instruction because it requests documents that are protected by the attorney-

client privilege and work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, and other privileges under Florida law. Finally, the Florida Senate objects to this Instruction as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it purports to require the Florida Senate to search every member's and employee's files, both electronic and those in hard copy or other forms, all computer-generated documents, personal notes, handwritten notes, calendar entries, video and audio recordings, and more, both business and personal, over the course of nearly two years, regardless of whether those members or employees had any material involvement in the redistricting process. The Florida Senate agrees to produce nonprivileged, responsive communications and documents from a relevant subset of members and employees to include those individuals who were materially involved in map drawing and map analysis for congressional redistricting on behalf of the Florida Senate.

B. The Florida Senate objects to Instruction #2 because it purports to impose on the Florida Senate a duty to obtain documents that are in the possession and control of third parties. The Florida Senate also objects to this Instruction because it requests documents that are protected by the attorney-client privilege and work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, and other privileges under Florida law.

C. The Florida Senate objects to Instruction #4 to the extent it requests information that is protected by the attorney-client privilege and work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, as well as other privileges under Florida law. The Florida Senate also objects to the extent this Instruction purports to impose obligations or burdens that are in addition to or inconsistent with, the Florida Rules of Civil Procedure, any orders or other rulings the Court has entered or will enter, or any other applicable source of governing law. In addition, the Florida Senate objects to this Instruction to the extent it requires the Florida Senate to produce a privilege log prior to the completion of its rolling production. Once the rolling production of documents has been completed, the Florida Senate will produce a privilege log to Plaintiffs in compliance with the Florida Rules of Civil Procedure.

D. The Florida Senate objects to Instructions #8 and 9 to the extent they require the production of documents in a format that deviates from or is inconsistent with, the requirements of the Florida Rules of Civil Procedure, any orders or other rulings the Court has entered or will enter, or any other applicable source of governing law. The parties have not discussed the format of electronic documents that will be exchanged in response to requests for production, and documents will be produced in the format in which they are kept and maintained in the Florida Senate's regular course of business. The Florida Senate also objects to the extent these Instructions purport to require the Florida Senate to create documents for production.

OBJECTIONS TO SPECIFIC DEFINITIONS

A. The Florida Senate objects to the definitions of “you” or “your” to the extent they purport to refer to or encompass any individual or entity other than the Florida Senate.

B. The Florida Senate objects to the definitions of particular plans to the extent those definitions include undefined “drafts or precursors” as vague and confusing. It is not clear what the Plaintiffs consider to be “drafts, precursors, or direct predecessors” the specifically identified congressional redistricting plans, nor is it clear why Plaintiffs would not simply name those Plans by identification number as opposed to asking for the Florida Senate to guess what other unidentified plans Plaintiffs intend for the Florida Senate to address in response to Requests identifying particular congressional redistricting plans. Where a specific plan is identified in a Request, the Florida Senate will respond to Plaintiffs’ Requests regarding that plan.

C. The Florida Senate objects to the definition of “Proposed Plans” as overly broad, unduly burdensome, and vague to the extent it refers to any congressional district maps that were neither considered by nor proposed by the Florida Senate, the Senate Committee on Reapportionment, or the Senate Select Subcommittee on Congressional Reapportionment.

D. The Florida Senate objects to the rules of construction in paragraph 4.f) to the extent they purport to refer to or encompass individuals or entities other than the Florida Senate. The paragraph attempts to impose on the Florida Senate a duty to obtain information and documents that are in the possession

and control of third parties. The Florida Senate also objects to this paragraph because it enlarges the Requests to refer to information and documents that are protected by the attorney-client privilege and work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, as well as other privileges under Florida law.

Subject to and without waiving these General Objections, the Florida Senate sets forth its responses and objections to the Requests as follows:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 7: All documents and communications related to any testing, analysis, advice, or comments concerning the expected political or partisan performance of any Proposed Plans (or partial maps or individual districts) that were considered or enacted by the Legislature in 2021 or 2022, including but not limited to Plan S035C8060, Plan H000C8015, Plan H000C8019, Plan P000C0079, Plan P000C0094, and the Enacted Plan.

RESPONSE: The Florida Senate objects to the scope of this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Request purports to include mass emails sent to thousands of individuals found on a mailing list or news clipping service. In addition, the Florida Senate objects on the same grounds to the extent this Request seeks documents and communications regarding individuals who did not assist or advise the Senate Reapportionment Committee, the Senate Select Subcommittee on Congressional Reapportionment, or the Florida Senate on the drawing, consideration of, and passage of congressional redistricting plans. The Florida Senate responds only on its own behalf, and not on behalf of the entire Legislature, and will not include any documents or communications in response to this Request that were not specifically and purposefully directed to the subset of relevant members or employees of the Florida Senate.

The Florida Senate further objects to the extent this Request would require disclosure of communications by individual legislators or members of the public during committee meetings or on the Senate Floor on the basis that this information is (a) equally available to Plaintiffs; (b) publicly available to Plaintiffs on the Florida Senate's or the Florida Channel's websites; and (c) available from other sources that are more convenient, less burdensome, or less expensive than forcing the expenditure of resources on this Request.

The Florida Senate also objects to this Request as overly broad, and unduly burdensome to the extent its definition of “Proposed Plans” encompasses congressional district maps that were neither considered by nor proposed by the Florida Senate, the Senate Committee on Reapportionment, or the Senate Select Subcommittee on Congressional Reapportionment.

The Florida Senate objects to the extent this Request is duplicative and seeks documents and communications relating to functional analyses, as Plaintiffs sought in Request Nos. 3, 4, and 6 of Plaintiffs’ First Requests for Production to Defendant Florida Senate. The Florida Senate incorporates its responses and objections to those requests herein.

The Florida Senate objects to the extent the Request seeks documents and communications that are protected by the attorney-client privilege, work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, or other privileges under Florida law. Instead, a privilege log will be produced in compliance with the Florida Rules of Civil Procedure with regard to any such documents.

Subject to and without waiving the foregoing and general objections, the Florida Senate responds as follows: The Florida Senate will conduct a reasonable search for documents and communications that reflect or reference the six congressional redistricting plans referenced in the Request with respect to individual legislators, staff members, and attorneys who assisted or advised the Committee or Senate on the drawing, consideration of, and passage of congressional redistricting plans, and will produce responsive, non-privileged documents identified by that search.

REQUEST FOR PRODUCTION NO. 8: All documents and communications exchanged between Governor Ron DeSantis or the Executive Office of Governor Ron DeSantis and the Legislature, its members, committees, staff, agents, attorneys, or representatives related to congressional redistricting in 2021 and 2022.

RESPONSE: The Florida Senate objects to the extent the Request seeks documents and communications that are protected by the attorney-client privilege, work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, the common-interest or joint-defense privilege, or other privileges under Florida law. Instead, a privilege log will be produced in compliance with the Florida Rules of Civil Procedure with regard to any such documents. The Florida Senate also objects to this Request as overly broad, unduly burdensome, not proportional to the needs of this action, and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks “all documents and communications” for the above listed individuals and entities. The Florida Senate objects on the same grounds to the extent this Request seeks documents

and communications regarding individuals who did not assist or advise the Senate Reapportionment Committee, the Senate Select Subcommittee on Congressional Reapportionment, or the Florida Senate on the drawing, consideration of, and passage of congressional redistricting plans. The Florida Senate responds only on its own behalf, and not on behalf of the entire Legislature, and will not include any documents or communications in response to this Request that were not specifically and purposefully directed to the subset of relevant members or employees of the Florida Senate.

Subject to and without waiving the foregoing and general objections, the Florida Senate responds as follows: The Florida Senate will conduct a reasonable search for documents and communications responsive to this request with respect to individual legislators, staff members, and attorneys who assisted or advised the Committee or Senate on the drawing, consideration of, and passage of congressional redistricting plans, and will produce responsive, non-privileged documents identified by that search.

REQUEST FOR PRODUCTION NO. 9: All documents and communications exchanged between any member, staff member, agent, attorney, or representative of the Florida Senate and any employees, agents, consultants to, or representatives of the Republican National Committee, Republican Party of Florida, National Republican Congressional Committee, Republican State Leadership Committee, Redistricting Majority Project (or REDMAP), National Republican Redistricting Trust, Ballard Partners, Adam Foltz, or any other consultant or agent for the Republican Party related to congressional redistricting in 2021 and 2022.

RESPONSE: The Florida Senate objects to the scope of this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Request purports to include mass emails sent to thousands of individuals found on a mailing list or news clipping service. The Florida Senate also objects to this Request on the same grounds to the extent it seeks “all documents and communications” regarding individuals who did not assist or advise the Senate Reapportionment Committee, the Senate Select Subcommittee on Congressional Reapportionment, or the Florida Senate on the drawing, consideration of, and passage of congressional redistricting plans. The Florida Senate will not include any documents or communications in response to this Request that were not specifically and purposefully directed to the subset of relevant members or employees of the Florida Senate.

Subject to and without waiving the foregoing and general objections, the Florida Senate responds as follows: The Florida Senate will conduct a reasonable search for documents and communications responsive to this request with respect to individual legislators, staff members, and attorneys who assisted or advised the Committee or Senate on the drawing, consideration of, and passage of

congressional redistricting plans, and will produce responsive, non-privileged documents identified by that search.

REQUEST FOR PRODUCTION NO. 10: All documents and communications exchanged between any member, staff member, agent, attorney, or representative of the Florida Senate and any person who was a Member of the United States House of Representatives from the State of Florida or any staff member, campaign staff member, employee, agent, or consultant for any Member of the United States House of Representatives from the State of Florida related to congressional redistricting in 2021 and 2022 between.

RESPONSE: The Florida Senate objects to the scope of this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Request purports to include mass emails sent to thousands of individuals found on a mailing list or news clipping service. The Florida Senate also objects to this Request on the same grounds to the extent it seeks “all documents and communications” regarding individuals who did not assist or advise the Senate Reapportionment Committee, the Senate Select Subcommittee on Congressional Reapportionment, or the Florida Senate on the drawing, consideration of, and passage of congressional redistricting plans. The Florida Senate responds only on its own behalf, and not on behalf of the entire Legislature, and will not include any documents and communications in response to this Request that were not specifically and purposefully directed to the subset of relevant members or employees of the Florida Senate.

The Florida Senate also objects to the extent the Request seeks documents and communications that are protected by the attorney-client privilege, work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, or other privileges under Florida law. Instead, a privilege log will be produced in compliance with the Florida Rules of Civil Procedure with regard to any such documents.

Subject to and without waiving the foregoing and general objections, the Florida Senate responds as follows: The Florida Senate will conduct a reasonable search for documents and communications responsive to this request with respect to individual legislators, staff members, and attorneys who assisted or advised the Committee or Senate on the drawing, consideration of, and passage of congressional redistricting plans, and will produce responsive, non-privileged documents identified by that search.

REQUEST FOR PRODUCTION NO. 11: All documents and communications related to the evaluation, review, analysis, or comments on any Proposed Plan, including but not limited to Plan S035C8060, Plan H000C8015, Plan H000C8019, [Plan] P000C0079, Plan P000C0094, and the Enacted Plan, or on

maps, data, or plans that were used to draft those plans, incorporated into those plans, or adopted as part or all of those plans.

RESPONSE: The Florida Senate objects to the scope of this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Request purports to include mass emails sent to thousands of individuals found on a mailing list or news clipping service. The Florida Senate also objects to this Request on the same grounds to the extent it seeks “all documents and communications” regarding individuals who did not assist or advise the Senate Reapportionment Committee, the Senate Select Subcommittee on Congressional Reapportionment, or the Florida Senate on the drawing, consideration of, and passage of congressional redistricting plans. The Florida Senate responds only on its own behalf, and not on behalf of the entire Legislature, and will not include any documents or communications in response to this Request that were not specifically and purposefully directed to the subset of relevant members or employees of the Florida Senate.

Plaintiffs’ request for “all documents and communications related to the evaluation, review, analysis, or comments” on any Proposed Plan is overbroad and unduly burdensome as written. *See, e.g., Overton v. State*, 976 So. 2d 536, 549 (Fla. 2007). The Florida Senate is comprised of 40 members and hundreds of employees. Requiring the Florida Senate to search every member’s and employee’s files, both electronic and those in hard copy or other forms, all computer-generated documents, personal notes, handwritten notes, calendar entries, video and audio recordings, and more, both business and personal, over the course of nearly two years, regardless of whether those members or employees had any material involvement in the redistricting process, for “all documents and communications” would be unduly burdensome, overly broad, consume an exorbitant amount of time that should be spent on other matters, is not proportional to the needs of this litigation, and is not reasonably calculated to lead to the discovery of admissible evidence.

The Florida Senate also objects to this Request as overly broad, and unduly burdensome to the extent its definition of “Proposed Plan” encompasses congressional district maps that were neither considered by nor proposed by the Florida Senate, the Senate Committee on Reapportionment, or the Senate Select Subcommittee on Congressional Reapportionment.

The Florida Senate further objects to the extent this Request would require disclosure of communications by individual legislators or members of the public during committee meetings or on the Senate Floor on the basis that this information is (a) equally available to Plaintiffs; (b) publicly available to Plaintiffs on the Florida Senate’s or the Florida Channel’s websites; and (c) available from other sources that are more convenient, less burdensome, or less expensive than forcing the expenditure of resources on this Request.

The Florida Senate objects to the extent this Request is duplicative and seeks documents and communications discussing, analyzing, or commenting on Plan P000C0079, Plan P000C0094, or the Enacted Plan, or any draft of Plan P000C0079, Plan P000C0094, or the Enacted Plan, as Plaintiffs sought in Request No. 6 of Plaintiffs' First Requests for Production to Defendant Florida Senate. The Florida Senate incorporates its responses and objections to those requests herein.

The Florida Senate objects to the extent the Request seeks documents and communications that are protected by the attorney-client privilege, work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, or other privileges under Florida law. Instead, a privilege log will be produced in compliance with the Florida Rules of Civil Procedure with regard to any such documents.

Subject to and without waiving the foregoing and general objections, the Florida Senate responds as follows:

The Florida Senate will conduct a reasonable search for documents and communications that reflect or reference the six congressional redistricting plans referenced in the Request with respect to individual legislators, staff members, and attorneys who assisted or advised the Committee or Senate on the drawing, consideration of, and passage of congressional redistricting plans, and will produce responsive, non-privileged documents identified by that search.

REQUEST FOR PRODUCTION NO. 12: All data and information to which the map drawer(s) had access during the process of drawing any Proposed Plan, including but not limited to Plan S035C8060, Plan H000C8015, Plan H000C8019, [Plan] P000C0079, Plan P000C0094, and the Enacted Plan, including but not limited to data or information showing partisan performance, incumbent addresses, and racial demographics.

RESPONSE: The Florida Senate objects to this Request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent this Request seeks documents regarding individuals who did not assist or advise the Senate Reapportionment Committee, the Senate Select Subcommittee on Congressional Reapportionment, or the Florida Senate on the drawing, consideration of, and passage of congressional redistricting plans. The Florida Senate responds only on its own behalf, and not on behalf of the entire Legislature. The Florida Senate also objects to this Request as overly broad and unduly burdensome to the extent Plaintiffs' definition of "Proposed Plan" encompasses congressional district maps that were neither considered by nor proposed by the Florida Senate, the Senate Committee on Reapportionment, or the Senate Select Subcommittee on Congressional Reapportionment.

The Florida Senate further objects to the extent this Request would require data and information that is (a) equally available to Plaintiffs; (b) publicly available to Plaintiffs on the Florida Redistricting website; and (c) available from other sources that are more convenient, less burdensome, or less expensive than forcing the expenditure of resources on this Request.

Subject to and without waiving the foregoing and general objections, the Florida Senate responds as follows:

The Florida Senate identified this data and information in response to Interrogatory No. 10. As identified, all of the data and information identified is available online on the Florida Redistricting website at <https://www.floridaredistricting.gov/> under the “Resources,” “Get Involved,” and “Submitted Plans” pages.

REQUEST FOR PRODUCTION NO. 13: All drafts or final versions of congressional redistricting plans for the State of Florida which contain 28 congressional districts, including precursors of such plans, in your possession, excluding plans publicly submitted to and still available on the Florida Redistricting Website at floridaredistricting.gov.

RESPONSE: The Florida Senate objects to this Request as overly broad, and unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent the Request encompasses congressional district maps that were neither considered by nor proposed by the Florida Senate, the Senate Committee on Reapportionment, or the Senate Select Subcommittee on Congressional Reapportionment.

The Florida Senate also objects to the extent the Request seeks documents and communications that are protected by the attorney-client privilege, work product doctrine, legislative privilege as to documents that are not otherwise subject to disclosure under Florida public records laws, or other privileges under Florida law. Instead, a privilege log will be produced in compliance with the Florida Rules of Civil Procedure with regard to any such documents.

Subject to and without waiving the foregoing and general objections, the Florida Senate responds as follows: All congressional district plans that were proposed or considered by the Florida Senate in Committee or on the Senate Floor are available on the Florida Redistricting website at www.floridaredistricting.gov.

Respectfully Submitted,

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FLORIDA SENATE

/s/ Daniel Nordby
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of October 2022, a copy of the foregoing was filed via electronic means through the Florida Courts E-Filing portal and was served via electronic mail on all counsel of record.

/s/ Daniel Nordby _____
Attorney