

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Common Cause Florida, FairDistricts
Now, Florida State Conference of the
National Association for the
Advancement of Colored People
Branches, Cassandra Brown, Peter
Butzin, Charlie Clark, Dorothy Inman-
Johnson, Veatrice Holifield Farrell,
Brenda Holt, Rosemary McCoy, Leo R.
Stoney, Myrna Young, and Nancy
Ratzan,

Plaintiffs,

v.

Cord Byrd, in his official capacity as
Florida Secretary of State,

Defendant.

Case No. 4:22-cv-109-AW-MAF

**PLAINTIFFS' PROPOSED DEPOSITION TOPICS AND QUESTIONS
FOR THE MAPMAKERS**

Pursuant to the Court's Order Requiring Plaintiffs to File Proposed Questions, Dkt. No. 150, Plaintiffs are filing this set of proposed deposition questions for J. Alex Kelly (Governor Ron DeSantis's Deputy Chief of Staff), Adam Foltz (Contract Mapmaker) and Thomas Bryan (Contract Mapmaker) (together, the "Mapmakers").

Along with this filing, the Plaintiffs are also filing sets of proposed questions for Ryan Newman, Governor Ron DeSantis's General Counsel, as well as for Chris

Sprowls, Wilton Simpson, Thomas Leek, Tyler Sirois, Randy Fine, Kaylee Tuck, Ray Rodrigues, and Jennifer Bradley (the “Legislators”). For all of these witnesses, the Plaintiffs seek to ask questions about education, qualifications, and preparation for the deposition. Beyond that, each filing goes into specific deposition questions that the Plaintiffs seek to ask for these witnesses.

PROPOSED DEPOSITION QUESTION TOPICS

1. Mr. Kelly

Mr. Kelly testified before the Legislature that he drew Congressional map P000C0109 (the “Enacted Plan”), the map giving rise to this action. Dkt. No. 131 ¶ 117. As such, Mr. Kelly is uniquely positioned to provide testimony regarding the facts that are necessary to sustain an intentional discrimination claim. In particular, we wish to examine him regarding how he came to draw the Enacted Plan and the extent to which he considered racial data in doing so. He testified that he did not consider racial data in drawing the map, but we would like to probe that testimony.

Moreover, even if he did not literally consult racial data in drawing the Enacted Plan, Mr. Kelly has a deep understanding of the demographics of Florida from his prior role as the Redistricting Committee Staff Director in the Florida House of Representatives. As a result, he would have no need to consult the census to know, for example, that Blacks compose a near majority of the

population of North Florida and that the Enacted Plan cracks that Black population into multiple districts in which Blacks are a minority. Indeed, in the 2010 redistricting cycle, Mr. Kelly initially drew an East-West configuration of CD-5—the district at the center of this litigation—and deemed such a configuration constitutional. *See League of Women Voters of Fla. v. Detzner* (“*Apportionment VII*”), 172 So. 3d 363, 403–04 (Fla. 2015). Plaintiffs seek to inquire as to the circumstances surrounding the drawing that East-West version of CD-5, as well Mr. Kelly’s independent knowledge of the racial composition of Florida, so as to determine if, notwithstanding his testimony, he was nonetheless aware of and considered the racial effects of the lines he drew.

Rather than providing Plaintiffs unfettered access to the testimony they seek, Mr. Kelly suggests that Plaintiffs should attend the deposition in the *state* case and depose Mr. Kelly pursuant to *state* rules and a *state* court order. Under the state order, as we understand it, the questioning of Mr. Kelly is limited to “any matter already part of the public record and information received from anyone not part of the Governor’s Office.” Ex. 1, State Court’s Order on Privilege.

We respectfully submit that there should be no such limitations on the testimony of Mr. Kelly. There was no such limitation imposed on the questioning of Mr. Kelly when he testified before the Legislature and there should be none now. By so testifying, he essentially waived any argument that some privilege

protected his testimony about the Enacted Plan. We do not need to question Mr. Kelly about his conversations with the Governor, but we seek to inquire about conversations within the Governor’s office about the maps drawn and those considered, including between Mr. Kelly and other staff, to the extent such conversations are not covered by the attorney-client privilege. These include, for example, questions regarding internal deliberations concerning publicly-known matters. Likewise, while the maps created by the Office may be publicly known, the objective facts that formed the basis for those maps may not be, but nevertheless should be fair game for discovery in this particular case.

Plaintiffs also object to sharing Mr. Kelly’s deposition with the plaintiffs in the state case. Defendant states that Mr. Kelly is being deposed on June 7 and 8, 2023. Plaintiffs have no objection to deposing Mr. Kelly on a consecutive day, but believe they should be entitled to their own deposition and not be limited to the deposition in the state case. Plaintiffs require only one full day for Mr. Kelly’s deposition.

2. Mr. Foltz and Mr. Bryan

Mr. Foltz and Mr. Bryan are—according to ProPublica, “How Ron DeSantis Blew Up Black-Held Congressional Districts and May Have Broken Florida Law”—“the go-to mapmakers for the GOP” on behalf of the National Republican

Redistricting Trust.¹ According to Mr. Kelly’s testimony, Mr. Foltz has appeared in multiple states, including Texas. *See* Ex. 2 at 6:20–7:7 (Senate Hr’g Tr.); Ex. 3 17:3–19 (House Hr’g Tr.). Mr. Bryan has also appeared around the country. He was nominated, for instance, by the Republican caucus to draw maps in Virginia. *See* The Virginia Public Access Project, “The Supreme Court to Select Two Redistricting Experts,” <https://www.vpap.org/updates/4091-supreme-court-select-two-redistricting-experts/> (last accessed May 18, 2023). In his Legislative testimony, Mr. Kelly acknowledged working, at least, with Mr. Foltz as a contract map drawer on some earlier versions of the Enacted Plan. *See* Ex. 2 at 6:20–7:7 (Senate Hr’g Tr.); Ex. 3 at 17:3–19 (House Hr’g Tr.). Although only Mr. Kelly has filed a motion to quash, we have served deposition subpoenas on both Mr. Foltz and Mr. Bryan, and we have agreed with them that their depositions would be governed by the rules set by this Court with respect to Mr. Kelly. *See* Exs. 4-5; 19-20.

Plaintiffs therefore seek to ask Mr. Bryan and Mr. Foltz about the terms of their retention, including when they were first retained, their involvement in, and knowledge of, the creation of the Enacted Plan and earlier versions of the Plan, and

¹ ProPublica, “How Ron DeSantis Blew Up Black-Held Congressional Districts and May Have Broken Florida Law,” [How DeSantis Remade Florida's Congressional Districts — ProPublica](#).

their knowledge of, and reliance on, racial information in the creation of the Enacted Plan.

3. District Boundaries

To provide additional context for the Court, we have attached as Exhibit 6 the Expert Report of Matthew Barreto, Ph.D. and Kassra A.R. Oskooii, Ph.D., dated April 3, 2023 (“Barreto-Oskooii Rpt.”). Drs. Barreto and Oskooii are expert demographers and they have carefully analyzed the enacted map and drawn conclusions about the racial gerrymandering that they have observed.

The Plaintiffs seek to ask the Mapmakers detailed questions concerning the Enacted Plan as detailed in the Barreto-Oskooii report, as well as questions about Florida’s previous congressional plan, which the Florida Supreme Court approved in 2015 (the “Benchmark Plan”) and other maps considered by the Legislature.

Plaintiffs intend to ask each proposed deponent about the facts, circumstances, and rationale surrounding the Enacted Plan and/or any other proposed plan that they personally contributed to and/or reviewed. Plaintiffs intend to ask each proposed deponent about the sources of demographic and political data to which they had access.

In particular, Plaintiffs intend to inquire about certain district boundaries that demonstrate the cracking and packing of Black voters:

- CD-5 in the Benchmark Plan compared to CD-2, -3, -4, -5 in the Enacted Plan, which splinters the Black population of North Florida into four majority white districts (*see* Barreto-Oskooii Rpt. ¶¶ 24–27, incl. Figures 1 and 2);
- CD-5 in the Benchmark Plan compared to CD-4 and CD-5 in the Enacted Plan, which cracks the Black population in Jacksonville along the St. John’s River (*see* Barreto-Oskooii Rpt. ¶¶ 24–37);
- CD-13 and CD-14 in the Benchmark Plan compared to CD-13, CD-14, and CD-15 in the Enacted Plan, including the cracking of the Black population in the St. Petersburg-Tampa region (*see* Barreto-Oskooii Rpt. ¶¶ 61–65). Specifically, the Enacted Plan moves a substantial Black population in St. Petersburg from CD-13 into CD-14 without justification, and cracks the Black and Latino population in North Tampa by dividing the populations from within CD-14 and shifting half of the population into CD-15 (*see id.*);
- CD-9 and CD-10 in the Benchmark Plan compared to CD-9, CD-10, CD-11, and CD-18 in the Enacted Plan, including the cracking of the Black and Hispanic populations in and around Orlando (*see* Barreto-Oskooii Rpt. ¶¶ 66–68, incl. Figures 12 and 13). Specifically, the Enacted Plan cracks large Black and Latino communities from CD-10

and shifts them into CD-11; it also splits Black and Hispanic populations from CD-9 away from that district and into CD-18 (*id.*);

- CD-24 and CD-25 in Benchmark Plan compared to CD-24 and CD-26 in the Enacted Plan, which packs Black voters into CD-24 and Hispanic voters into CD-26 (*see* Barreto-Oskooii Rpt. ¶ 78).
- More generally, CD-20, CD-24, CD-26, CD-27, and CD-28 in the Enacted Plan compared to the same areas in South Florida in the Benchmark Map and the adopted 2022 State House map (*see* Barreto-Oskooii Rpt. ¶ 78). Specifically: grouping the Black community dispersed between West Palm Beach, Fort Lauderdale, and near Lake Okeechobee to create an oddly shaped district in CD-20; shifting in the boundary between CD-24 and CD-26 to keep Black population in CD-24 and Hispanic population in CD-26; and cracking a Black community within CD-28 (*see* Barreto-Oskooii Rpt. ¶ 78).

All of the above district boundaries demonstrate racial considerations by the map drawers, cracking and packing Black voters. Plaintiffs intend to ask each proposed deponent about: (1) why the map drawers made their decisions with respect to those lines drawn above; (2) who the map drawers communicated with about these changes and what was said; and (3) what sources the map drawers relied upon in

determining those boundaries, including any relevant conversations with third parties.

CONCLUSION

Plaintiffs respectfully ask the Court to deny Mr. Kelly's motion to quash, to the extent necessary to allow the Plaintiffs to ask the questions outline above.

Respectfully submitted,

/s/ Gregory L. Diskant

Gregory L. Diskant (*pro hac vice*)
H. Gregory Baker (*pro hac vice*)
Jonah M. Knobler (*pro hac vice* forthcoming)
Catherine J. Djang (*pro hac vice*)
Alvin Li (*pro hac vice*)
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, NY 10036
(212) 336-2000
gldiskant@pbwt.com
hbaker@pbwt.com
jknobler@pbwt.com
cdjang@pbwt.com
ali@pbwt.com

Katelin Kaiser (*pro hac vice*)
Christopher Shenton (*pro hac vice*)
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 West Highway 54, Suite 101
Durham, NC 27707
(919) 323-3380
katelin@scsj.org
chrishenton@scsj.org

Janette Louard (*pro hac vice* forthcoming)
Anthony P. Ashton (*pro hac vice* forthcoming)
Anna Kathryn Barnes (*pro hac vice* forthcoming)
NAACP OFFICE OF THE GENERAL COUNSEL
4805 Mount Hope Drive
Baltimore, MD 21215
Telephone: (410) 580-5777
jlouard@naacpnet.org
aashton@naacpnet.org
abarnes@naacpnet.org

Henry M. Coxe III (FBN 0155193)
Michael E. Lockamy (FBN 69626)
BEDELL, DITTMAR, DeVAULT, PILLANS &
COXE
The Bedell Building
101 East Adams Street
Jacksonville, Florida 32202
(904) 353-0211
hmc@bedellfirm.com
mel@bedellfirm.com

Attorneys for Plaintiffs

Date: May 19, 2023

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2023, I electronically filed the foregoing with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Gregory L. Diskant
Gregory L. Diskant