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INTRODUCTION

Pursuant to Rule 45, Plaintiffs served document and deposition subpoenas on nine legislators and one staff member¹ (collectively, “the Legislators”). These individuals—all of whom held leadership positions during Tennessee’s redistricting process or were actively involved in the work done by the legislature’s redistricting committees—possess relevant information related to Plaintiffs’ intentional discrimination and racial gerrymandering claims.² The document subpoenas and topics for deposition testimony are narrowly focused on basic factual questions related to the challenged redistricting plans, including which entities and/or individuals drew the state senate and the congressional maps, what software was used to draw the maps and the inputs and criteria utilized therein, and whether other proposals or draft maps were considered by the Tennessee Legislature. The subpoenas also seek information concerning communications between certain Legislators and third parties, such as their constituents and consultants, that touch on similarly relevant topics. This requested discovery is likely to shed light on the Tennessee Legislature’s intent and motivation behind its decision to pass the districts that are the subject of this litigation.

The information sought by the subpoenas is fundamental to the parties’ dispute. Plaintiffs not only need answers to these questions to better understand the redistricting process and prove their claims; without it, they simply have no way to test Defendants’ affirmative contentions that the Tennessee Legislature’s motives were purely partisan and therefore legally compliant. *See* Defs’ Motion to Dismiss, Dkt. 43, p. 1 (“[T]he Republican-controlled General Assembly did what virtually all political bodies do . . . [i]t drew maps that maximized the electoral prospects of the

¹ The nine legislators subpoenaed thus far are Curtis Johnson, Dawn White, Gary Hicks, Jack Johnson, Kevin Vaughan, Pat Marsh, Patsy Hazlewood, Paul Rose, and William Lamberth and the staff member is Doug Himes.

² *Moore, et al. v. Lee, et al.*, No. 22-0287-IV (Tenn.).

majority party[.]”), p. 13 (“The challenged districts lawfully maximize Republican seats in Congress and the State Senate.”).³ To date, however, Defendants have not been able (or willing) to provide this information themselves and have informed Plaintiffs that the answers to their questions are not in their possession. Accordingly, the Legislators appear to represent the only source of discovery available to Plaintiffs.

Nevertheless, counsel for the Legislators, the same attorneys representing Defendants in this action, have taken the position that all relevant documents and information possessed by the Legislators are covered by the legislative privilege. The Legislators have also refused to produce a privilege log so that those claims may be challenged by Plaintiffs or, if appropriate, subjected to an *in camera* review. This broad invocation of the legislative privilege is unsupported under federal common law: contrary to the Legislators’ position, the legislative privilege is qualified, not absolute, and may be overcome by a showing of necessity, including the inability to obtain the relevant materials from other sources, which is precisely the situation here.

Determining whether the privilege applies involves a flexible approach that balances the need for the information while still protecting legislative sovereignty and minimizing any direct intrusion into the legislative process. Courts in this Circuit have applied a five-factor balancing test in determining the scope of the privilege, and applying the balancing test here demonstrates that the factors weigh heavily in favor of targeted discovery of the Legislators who were involved in the redistricting process. The alternative being proposed by the Legislators and Defendants—that Plaintiffs receive essentially no discovery with respect to Tennessee’s redistricting process

³ Defendants here are Governor William B. Lee, Secretary of State Tre Hargett, Coordinator of Elections Mark Goins, and the members of the State Election Commission Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce.

and the legislature's intentions in adopting the maps it did—would severely prejudice Plaintiffs' ability to prove their case or rebut Defendants' affirmative representations.

Accordingly, Plaintiffs respectfully request that this Court order the Legislators to produce documents responsive to Plaintiffs' requests, produce a privilege log, and sit for targeted depositions.

FACTUAL BACKGROUND

A. Rule 45 Subpoenas to the Legislators

1. Legislator Document Subpoenas

In March 2024, Plaintiffs served on the Legislators document subpoenas that sought documents related to the origination or source of any redistricting proposal; drafts of the redistricting plans and the challenged districts and their development over time; the rationale for and background behind the plans' passage; academic articles or materials relied upon in formulating or passing the redistricting plans; and any communications between the Legislators and third parties relating to the redistricting plans and process. Ex. 1 (Rule 45 Doc. Subpoenas to Legislators).⁴ On April 8, the Legislators asserted blanket legislative privilege objections to every single request and categorically refused to produce any responsive documents in the Legislators' possession.⁵ Ex. 2 (Letter from Ryan N. Henry and Objs. to Subpoenas).

The parties met and conferred on April 10, during which counsel for the Legislators stated that they would have to confirm whether they were indeed asserting that all documents in the Legislators' possession were subject to the legislative privilege or whether Legislators would

⁴ The document subpoenas for the nine Legislators were sent on March 20, and the subpoena for Mr. Himes was sent on March 28.

⁵ *See, e.g.*, Ex. 2 (Letter from Ryan N. Henry and Objs. to Subpoenas) at 8, 9, 10, 13, 16 (asserting the legislative privilege over Plaintiffs' requests 1(h), 2(d), 2(e), 5, and 9. These requests generally sought academic materials on which the Legislators may have relied, correspondence with third-party consultants, constituents, and other non-privileged actors like lobbyists.).

consider agreeing to produce a narrowed set of documents that were relevant to this case and a privilege log. At Plaintiffs' request, the parties met and conferred again on April 12, and counsel for the Legislators confirmed their position that all documents were subject to the privilege and that they were refusing to produce a privilege log. Following that conferral, and in an effort to further narrow the potential discovery dispute, Plaintiffs emailed counsel on April 15 to clarify, among other things, whether the Legislators had conducted any search and review before invoking legislative privilege and whether the invocation of privilege would expand over third-party communications or documents already produced in a separate state court litigation. Ex. 3 (April 15, 2024, 1:24 PM Email). To date, counsel for the Legislators have not been willing or able to represent that they reviewed any documents in Legislators' possession in connection with the subpoenas served by Plaintiffs; instead, they reaffirmed their position that the Legislators "are asserting a privilege over all non-public and previously unproduced materials," which includes "communications with third parties." The only exception to that blanket invocation of the legislative privilege comprised a small number of third-party communications which were in the possession of the Secretary of State Defendants, were produced in the state court litigation, and were subsequently produced to Plaintiffs in this case by Defendants. Ex. 3 (April 15, 2024, 5:12 PM Email).

2. Legislator Deposition Subpoenas

On March 28, 2024, Plaintiffs' counsel initiated conversations regarding their intention to serve deposition notices on at least some of the Legislators, asking whether Defendants' counsel would accept service and whether any Legislators receiving deposition notices would agree to sit for a deposition. Ex. 4 (April 2, 2024 Email; April 8, 2024 Email). After Defendants' counsel confirmed that they would accept service and indicated they would object wholesale to any such notices, Plaintiffs sent them subpoenas directed to nine Legislators and one staffer—along with

specific topics informing the Legislators about the information about which Plaintiffs intended to inquire. Ex. 5 (Rule 45 Dep. Subpoenas to Legislators). The topics are narrow and include public statements made by the Legislators and the factual support for those statements relating to the redistricting; awareness and understanding of constituent submissions and testimony relating to the redistricting; communications and written correspondence between the Legislators and offices of the governor, lieutenant governor, secretary of state, and attorney general relating to the redistricting; any communications with third parties relating to the redistricting; the Legislators' understanding of the requirements of the Voting Rights Act, U.S. Constitution, and Tennessee Constitution relating to redistricting; their knowledge of traditional redistricting plans; and their knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33. The deposition topics did not include any communications between the Legislators themselves or the Legislators and their staff. Ex. 5 (Rule 45 Dep. Subpoenas to Legislators).

B. Discovery from Defendants to Date

Since the inception of this litigation, Defendants have made three productions—on February 2, 2024, February 16, 2024, and April 5, 2024—totaling 866 documents.⁶ Most of the documents provide no insight into the legislative process that led the Tennessee Legislature to pass the maps containing the challenged districts in this litigation. A majority of the documents are public meeting agendas, press releases or newsletters regarding the census data delay, or high-level meeting minutes. Of note, however, Defendants' productions did include a very small number of

⁶ On November 14, 2023, the parties exchanged Rule 26 initial disclosures. Defendants' disclosures provided little substantive information. Of note, it did not name a single individual who may have discoverable information but reserved the right to supplement based on the Supreme Court's decision in *Alexander*. The disclosures justified this position by noting, “[t]he presumption of legislative good faith places the burden on Plaintiffs to prove their claims.” Ex. 6 (Defs.' Initial Disclosures).

communications between the Legislators and certain third parties on the topic of redistricting, indicating that neither Defendants nor Legislators considered such communications to be covered by the legislative privilege. *See, e.g.*, Ex. 7, (DEFS_HARGETT-GOINS-0000482–84 at 82–83, emails from legislators to a reporter at *The Dickson Herald* regarding comments made about congressional redistricting plans); Ex. 8, (DEFS_HARGETT-GOINS-0000487, email from Kevin Vaughan to a reporter at *Axios* discussing redistricting process). Although Plaintiffs and Defendants are still attempting to reach agreement on an appropriate set of search terms, Defendants’ repeated assertions that they played no role in the redistricting process necessarily mean that it is the Legislators who are in possession of documents going to the central issue of legislative intent and motivation underlying the redistricting process. (In an attempt to ascertain where they might obtain this necessary information, Plaintiffs served interrogatories on Defendants seeking the identities of those individuals who would possess it; Defendants, through their counsel, responded that they did not know). Ex. 9 (Defs.’ Resps. & Objs.).

ARGUMENT

The Court should permit discovery of the Legislators in this case. Plaintiffs’ discovery requests and proposed deposition topics encompass information which is central to this case and to which the legislative privilege does not apply or has been waived. Furthermore, even if the legislative privilege could be properly invoked as to some of the information called for by Plaintiffs’ requests, the five-factor balancing test laid out in *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 100 (S.D.N.Y. 2003) still weighs in favor of disclosure. The documents and narrow testimony sought are relevant to Plaintiffs’ claims; no other alternative sources possess the information that legislators possess here; the litigation involves serious constitutional claims under the Fourteenth and Fifteenth Amendments; the subpoenaed Legislators played a direct role in the development and passage of the challenged districts and the subpoenaed Legislators possess information that

would shed light on the motivations of the legislature as a whole; and any chilling effect on the Legislators by conducting limited discovery is outweighed by Plaintiffs' need to obtain this information.

The Court should also order the Legislators to produce a privilege log so that Plaintiffs may evaluate the Legislators' assertions of legislative, attorney-client, and work product privileges. Without a log, it would be impossible for Plaintiffs to determine the Legislators' reasons for invoking the privilege as to certain documents.

I. APPLICABLE LEGAL STANDARDS

If a person or party fails to produce documents sought under Rule 34, the party seeking discovery may move to compel the production of documents, Fed. R. Civ. P. 37(a)(3), "including an order compelling discovery from a nonparty." *McPherson v. Vignobles Sullivan, LLC*, 2022 WL 815061, at *2 (M.D. Tenn. Mar. 16, 2022) (citing Fed. R. Civ. P. 37(a)(1)). "An evasive or incomplete disclosure, answer, or response is considered a failure to disclose, answer, or respond." *Coats v. McDonough*, 2022 WL 801507, at *2 (M.D. Tenn. Mar. 15, 2022) (quoting Fed. R. Civ. P. 37(a)(4)) (internal quotation marks omitted).

Rule 26(b) defines the scope of discovery, including for subpoenas issued pursuant to Rule 45. *McPherson*, 2022 WL 815061, at *2. Rule 26(b) allows a party to obtain discovery concerning any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case; such matter need not be admissible to be discoverable. Fed. R. Civ. P. 26(b). Evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without the evidence. Fed. R. Evid. 401. Proportionality is determined based on "the importance of the issues at stake in the action, . . . the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R.

Civ. P. 26(b). The district court, within its sound discretion, may limit the scope of discovery. *McDonough*, 2022 WL 801507, at *2; Fed. R. Civ. P. 26(b)(2)(C)(iii).

For state legislators involved in federal question cases, legislative privilege protects state legislators and their legislative staff from compelled disclosure of documentary or testimonial evidence relating to actions taken within the scope of legitimate legislative activity. *Favors v. Cuomo*, 285 F.R.D. 187, 209 (E.D.N.Y. 2012) (citing *Kay v. City of Rancho Palos Verdes*, 2003 WL 25294710, at *9–11 (C.D. Cal. Oct. 10, 2003) and *Rodriguez*, 280 F. Supp. 2d at 93–95). The privilege, however, is not absolute. *Id.*

State legislators are afforded only a qualified legislative privilege. *See Nashville Student Org. Comm. v. Hargett*, 123 F. Supp. 3d 967, 969 (M.D. Tenn. 2015). The privilege may be set aside where important federal interests are at stake. *Id.* Federal courts routinely apply a qualified legislative privilege in cases involving constitutional challenges to state legislation in cases involving intent claims. *See, e.g., S.C. State Conf. of NAACP v. McMaster*, 584 F. Supp. 3d 152 (D.S.C. 2022), *argued sub nom, Alexander v. S.C. State Conf. of NAACP* (U.S. Oct. 11, 2023) (No. 22-807); *Bethune-Hill v. Va. State Bd. of Elections*, 114 F. Supp. 3d 323, 336–37 (E.D. Va. 2015); *N. C. State Conf. of NAACP v. McCrory*, 2014 WL 12526799, at *2 (M.D.N.C. Nov. 20, 2014) (“[L]egislative privilege is not absolute, but rather requires a flexible approach that considers the need for the information while still protecting legislative sovereignty and minimizing any direct intrusion into the legislative process.”); *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 2011 WL 4837508, at *7 (N.D. Ill, Oct. 12, 2011). Courts presiding over such cases have found that the qualified legislative privilege does not shield state legislators from producing at least some responsive records or deposition testimony. *E.g., Nashville Student Org. Comm.*, 123 F. Supp. 3d at 969 (citations omitted).

Furthermore, Courts have generally held that, “like all evidentiary privileges,” the legislative privilege “must be ‘strictly construed’ and accepted ‘only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth.’” *Nashville Student Org. Comm.*, 123 F. Supp. 3d at 969 (quoting *Comm. for a Fair & Balanced Map*, 2011 WL 4837508, at *7).

II. PLAINTIFFS ARE ENTITLED TO DISCOVERY FROM THE LEGISLATORS

Plaintiffs requested documents, a privilege log, and depositions from the Legislators, but the Legislators claimed that a blanket legislative privilege shields them from all discovery—regardless of what specifically has been requested. This blanket assertion of privilege is inappropriate. Plaintiffs’ discovery requests seek documents and information to which the legislative privilege does not apply, such as third-party communications,⁷ public records,⁸ and public commentary.⁹ The Court should compel the production of this information, particularly given that Defendants have already produced a limited subset of such information and thus implicitly recognized that it is not protected by the legislative privilege. Additionally, applying the five-factor balancing test, the Court should permit discovery of other, arguably privileged materials as Plaintiffs’ claims involve issues of intent and motivation and necessarily require discovery into the direct statements of the Legislators.

⁷ *See, e.g.*, Ex.1 (Rule 45 Doc. Subpoenas to Legislators) at 14 (requesting “all correspondence with constituents”).

⁸ *See, e.g., id.* at 15 (requesting public notices about Redistricting Plan hearings and schedules).

⁹ *See, e.g., id.* at 14 (requesting social media posts containing public commentary about the redistricting process).

A. Legislative Privilege Does Not Apply to All of the Documents Requested by Plaintiffs.

Plaintiffs' requests encompass documents and information to which the legislative privilege does not apply which, therefore, must be produced regardless of whether the privilege should be overcome here. The Legislators' communications with third parties such as constituents, lobbyists, and consultants are not privileged. *See, e.g., Plain Local Sch. Dist. Bd. of Educ. v. DeWine*, 464 F. Supp. 3d 915, 922 (S.D. Ohio 2020) (explaining that state legislators are entitled "to even less protection [than federal legislators] under the [legislative] privilege," which "underscores that its protection does not prevent disclosure of communications between Movants and third parties, such as constituents or lobbyists"); *Mich. State A. Philip Randolph Inst.*, 2018 WL 1465767, at *7 ("communications between legislators or their staff and any third party are not protected by the legislative privilege."); *Baldus v. Members of the Wis. Gov't Accountability Bd.*, 2011 WL 6122542, at *2 (E.D. Wis. Dec. 8, 2011); *Comm. for a Fair & Balanced Map*, 2011 WL 4837508, at *10 ("noting that third-party groups "could not vote for or against the Redistricting Act, nor did they work for someone who could[,] [thus] the legislative privilege does not apply."). And to the extent the Legislators shared documents that would otherwise be privileged with third parties or the public at large, that privilege is waived. *Mich. State A. Philip Randolph Inst.*, 2018 WL 1465767, at *7.

The Legislators doubtless possess such non-privileged, third-party communications. Indeed, as previously detailed, a limited number of third-party communications involving some of the Legislators were produced in the state-court litigation and ultimately reproduced by Defendants in this case. *See supra* at 5–6. The Legislators should be required to search for and produce all other non-privileged, responsive communications with third parties, particularly given their

implicit recognition that such communications do not fall within the scope of the legislative privilege.

Similarly, at least one court in this circuit has held that “[f]act-based documents and communications” are not protected by legislative privilege. *See League of Women Voters Mich.*, 2018 WL 2335805, at *6. Accordingly, the Legislators should be required to produce responsive, fact-based information requested by Plaintiffs. *See, e.g.*, Ex. 1 (Rule 45 Doc. Subpoenas to Legislators) at 17–18 (requesting “[a]ll Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States Citizenship . . .”).

Finally, “[d]ocuments and communications created after the date of enactment” are not covered by legislative privilege. *League of Women Voters Mich.*, 2018 WL 2335805, at *6; *see also Bethune-Hill*, 114 F. Supp. 3d at 343 (“The privilege only protects ‘integral steps’ in the legislative process and does not extend to commentary or analysis following the legislation’s enactment.”). Plaintiffs’ requests extend beyond the date when the challenged redistricting plans were enacted. *See, e.g.*, Ex. 1 (Rule 45 Doc. Subpoenas to Legislators) at 11 (“Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.”). Thus, regardless of whether legislative privilege can be overcome in this case, the Legislators should nonetheless be required to search for and produce all non-privileged, post-enactment documents.

B. The Five-Factor Balancing Test Weighs in Favor of Disclosure of Documents and Deposition Testimony.

Federal courts in this Circuit use a five-factor balancing test to determine whether the legislative privilege should apply on a case-by-case basis. The factors considered are: (1) the relevance of the evidence sought to be protected; (2) the availability of other evidence; (3) the

“seriousness” of the litigation and the issues involved; (4) the role of government in the litigation; and (5) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable. *See e.g., Nashville Student Org. Comm.*, 123 F. Supp. 3d at 969 (citing *Rodriguez*, 280 F. Supp. 2d at 101); *League of Women Voters Mich.*, 2018 WL 2335805, at *2–4; *Mich. State A. Philip Randolph Inst.*, 2018 WL 1465767, at *5–6.

1. The First Factor Weighs in Favor of Disclosure as the Evidence Sought Is Relevant to Plaintiffs’ Claims.

The documents and deposition testimony Plaintiffs seek are highly relevant to their claims. Here, intent—whether the Legislature intentionally discriminated when passing the challenged districts—is at the heart of the case. Plaintiffs bear the burden of proving the *Arlington Heights* factors—and, ultimately, that race was a motivating factor in the enactment of the challenged districts. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–68 (1977). In *Arlington Heights*, the Supreme Court outlined three categories of direct and circumstantial evidence courts should consider in *determining whether discriminatory intent existed* in cases involving the Equal Protection Clause of the Fourteenth Amendment: (1) the impact of the challenged action; (2) the historical background or sequence of events leading up to the action; and (3) the legislative history of the action. *Id.* at 264–68. The Court held that the legislative history of an action taken by lawmakers “may be highly relevant” to determine whether “invidious discriminatory purpose was a motivating factor” for the action, “especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports.” *Id.* at 266–68.

Plaintiffs’ initial burden of establishing relevance is easily met. Plaintiffs’ claims concern the Tennessee Legislature’s process, motivation, and involvement in the contested redistricting. Accordingly, documents relating to those issues as well as relating to race and related topics are

necessary for Plaintiffs to be able to prove the intent element of this litigation. *See S.C. State Conf. of NAACP*, 584 F. Supp. 3d at 163 (finding the evidence sought was “highly relevant to the intentional discrimination claims at the heart of the complaint, because the Legislature’s decision making process itself is the case”).

Proof of the legislature’s motivation and intent, particularly vis-à-vis traditional redistricting principles and any partisanship defenses, is also relevant for Plaintiffs’ racial gerrymandering claims. In cases involving racial gerrymandering, testimony from legislators has been highly probative to determining whether racial considerations predominated over traditional redistricting principles. *See, e.g., Miller v. Johnson*, 515 U.S. 900, 919–20 (1995). In *Miller*, the Court relied on the statements of a legislative staffer who operated the redistricting software as well as on the admissions of various state officials to find that the legislature had designed the district at issue along racial lines, and race data was accessible to the mapdrawer at the precinct level. *Id.* at 918. Testimony from the mapdrawer and key legislators in *Cooper v. Harris* also demonstrated that the “State’s mapmakers, in considering a specific congressional district, purposefully established a racial target: African-Americans should make up no less than a majority of the voting-age population” and “Senator Rucho and Representative Lewis were not coy in expressing that goal.” 581 U.S. 285, 299 (2017). Similarly, the cartographer who drew the South Carolina congressional map in *South Carolina State Conference v. Alexander* provided testimony that he used the “least change” approach with respect to all the districts except the Charleston district, as to which he “admitted he abandoned his least change approach” and moved “over 30,000 African Americans in a single county from Congressional District No. 1 to Congressional District No. 6” to produce “the desired partisan tilt.” 649 F. Supp. 3d 177, 188, 189–90 (D.S.C. 2023).

In fact, in the South Carolina case, the three-judge panel permitted discovery of state legislators and key staff members, noting as to the first factor that the “documents containing the opinions and subjective beliefs of legislators or their key advisors are relevant to the broader inquiry into legislative intent and the possibility of racially motivated decisions that were not adequately tailored to a compelling government interest.” *S.C. State Conf. of NAACP*, 584 F. Supp. 3d at 163 (internal citation omitted). The court recognized that the plaintiffs’ burden of persuasion underscored the importance of the requested materials, *i.e.*, “they [the plaintiffs] cannot be expected to make this showing in the dark.” *Id.* at 164.

Plaintiffs have worked with Defendants to narrow the scope of their discovery requests to focus on the most relevant documents and would do so here as well so as to alleviate any burden on the Legislators. The same is true of deposition testimony. The topics for depositions are tailored to public statements made by or known to the Legislators in connection with the creation and passage of the redistricting plans, their communications about the redistricting plans with third parties outside the Legislature, including consultants, and the Legislators’ awareness and knowledge of the legal requirements under federal and state law and the communities of interest in the challenged districts. All nine Legislators from whom discovery is sought were part of the redistricting committees in 2021 and made decisions with respect to passing the unlawful districts. Mr. Himes drew the state house map, which is not challenged in this litigation, but in the absence of any information on the map-drawers from Defendants, Mr. Himes will possess some knowledge as to which parties drew the state senate and congressional maps, how they balanced the traditional redistricting principles, and whether racial considerations predominated in achieving the Legislature’s alleged partisan goals. *See, e.g., Cooper v. Harris*, 581 U.S. at 291. This information is highly probative of the Legislature’s motivation and therefore, is relevant to Plaintiffs’ claims.

For these reasons, the first factor weighs in favor of disclosure of these documents.

2. The Second Factor Weighs in Favor of Disclosure Because, as Defendants Have Admitted, No Alternative Means Exist for Plaintiffs to Obtain Direct Evidence of the Legislature’s Intent.

The second factor—availability of other evidence—highlights the importance of disclosure of documents and deposition testimony. Here, as in *South Carolina State Conference of NAACP*, no other evidence, including the evidence produced by Defendants thus far, “would be as probative of an unlawful legislative motive as potential direct or circumstantial evidence which could be obtained through the disclosure of the requested legislative materials” and the questioning of the Legislators at deposition. *S.C. State Conf. of NAACP*, 584 F. Supp. 3d at 164. In building their affirmative case, Plaintiffs will be relying on the analyses of their experts to develop circumstantial evidence of discriminatory purpose, but “while circumstantial evidence is valuable, it is not a substitute for the ability to depose a witness and obtain *direct* evidence of motive and intent, thus avoiding the potential ambiguity of circumstantial evidence.” *Id.* (quoting *Benisek v. Lamone*, 241 F. Supp. 3d 566, 576 (D. Md. 2017)). The discovery sought here is likely the only way to obtain direct evidence of discriminatory intent as underscored by the lack of relevant evidence from Defendants’ document productions and responses to interrogatories.¹⁰ *See id.* at 164. Additionally, such discovery may very well shed important light on whether race was the predominant motivation behind the challenged redistricting.

The Legislators may contend that such evidence (such as public testimony and the text of the amendments and bills themselves) was publicly available. But the availability of this extremely limited subset of “other evidence does not render evidence regarding the Legislators’ direct

¹⁰*See, e.g.*, Ex. 9 (Defs.’ Resps. & Objs) at 6, 34, 92–97 asserting that “Defendant[s]” did not implement the Tennessee Senate map or the congressional map for the 2022 primary and general elections,” repeatedly averring to “[have] no knowledge responsive” to the interrogatories or being “not aware” of individuals with knowledge of the sought after information.

deliberations irrelevant ‘given the practical reality that officials seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate’ against a particular group.” *League of Women Voters*, 2018 WL 2335805, at *5 (quoting *Bethune-Hill*, 114 F. Supp. 3d at 341). “In other words, the availability of alternate evidence will only supplement—not supplant—the evidence sought by the Plaintiffs.” *Bethune-Hill*, 114 F. Supp. 3d at 341. Given that intent is a critical element of Plaintiffs’ claims, the second factor weighs in favor of disclosure.

Finally, and critically, Defendants themselves have essentially admitted that the information sought by the subpoenas is not available from other sources. Specifically, their interrogatory responses aver under penalty of perjury that they do not possess such information and are unaware of any individuals or entities that do. Ex. 9 (Defs.’ Resps. & Objs) at 6, 34, 92–97. Given those representations, Plaintiffs simply have no choice but to obtain the requested discovery from the Legislators themselves.

3. The Third Factor—Seriousness of the Litigation—Weighs in Favor of Disclosure.

It is beyond dispute that the Plaintiffs’ claims involve significant issues of constitutional law. Plaintiffs’ complaint includes detailed allegations of intent, including that Congressional District 5 (which for decades has included all of Nashville and Davidson County) was intentionally dismantled in order to splinter Black voters and other voters of color into three separate congressional districts, CD-5, 6, and 7. Compl. ¶¶ 112–13. As for Senate District 31, the complaint alleges that over the past decade the district grew to include a significant Black and Hispanic voter population that came close to electing a candidate of choice in 2018, but then found itself splintered after the 2021 redistricting process. Compl. ¶¶ 147–49.

The right to vote free from discrimination is indispensable to individual liberty and enshrined within our Constitution. “The erosion of that right takes aim at the very heart of our democracy.” *S.C. State Conf. of NAACP*, 584 F. Supp. 3d at 165. At some juncture, state interests must give way “when they conflict with the constitutionally guaranteed fundamental right to vote free from racial discrimination.” *Id.*

4. The Fourth Factor Weighs in Favor of Disclosure Because the Legislature Played a Direct Role in the Redistricting Process.

The fourth factor looks to the role of the legislature in effecting the alleged constitutional violations in the case. *Id.* at 165. This factor “looks beyond mere ‘state action’ and requires the court to consider whether ‘the legislature—rather than the legislators—are the target of the remedy and legislative immunity is not under threat.’” *Id.* (quoting *Bethune-Hill*, 114 F. Supp. 3d at 341). It is undisputed that the Legislature enacted the district maps at issue. Plaintiffs are not targeting random individual legislators here but seek some insight into the process by obtaining relevant documents and testimony from the Legislators who were in leadership positions. The Legislators subpoenaed here are a narrowly tailored and carefully chosen group who held leadership positions on the various redistricting committees assembled in the state house and state senate.

5. The Fifth Factor—Potential Chilling Effect on the Legislators—Is Outweighed by Plaintiffs’ Need for Discovery.

The privilege “guard[s] legislators from the burdens of compulsory process” and protects their independence. *S.C. State Conf. of NAACP*, 584 F. Supp. 3d at 165 (quoting *Bethune-Hill*, 114 F. Supp. 3d at 341). And courts in this Circuit have recognized that discovery into the legislative process likely would chill legislator communications to some extent, but that on balance, the plaintiffs’ showing of need and important federal interests at stake counsel against applying a blanket legislative privilege. *League of Women Voters Mich.*, 2018 WL 2335805, at *5–6; *S.C. State Conf. of NAACP*, 584 F. Supp. 3d at 165 (noting “it is no doubt true that

conversations between and among legislators play a vital role in crafting the substance of legislation,” and “the privilege exists to prevent such conversations from becoming chilled”).

Although Plaintiffs acknowledge a Circuit split exists with respect to whether the balancing test applies, courts in the Sixth Circuit routinely apply the balancing test recognizing the importance of disclosure especially in intent cases, and this court should follow suit. *Nashville Student Org. Comm.*, 123 F. Supp. 3d at 969–70; *League of Women Voters*, 2018 WL 2335805, at *2–4; *Mich. State A. Philip Randolph Inst.*, 2018 WL 1465767, at *5–6; *Glowgower v. Bybee-Fields*, 2022 WL 4042412, at *9 (E.D. Ky. Sept. 2, 2022); *but see Pernell v. Fla. Bd. of Governors of State Univ.*, 84 F.4th 1339, 1343–44 (11th Cir. 2023); *LUPE v. Abbott*, 68 F.4th 228, 239–40 (5th Cir. 2023); *In re N.D. Legis. Assembly*, 70 F.4th 460, 465 (8th Cir. 2023); *Am. Trucking Ass’ns v. Alviti*, 14 F.4th 76, 88–89 (1st Cir. 2021).

Plaintiffs do not treat the Legislators’ assertions of privilege lightly. However, as the caselaw in this Circuit clarifies, the privilege must bend in the face of reasonable and necessary discovery, particularly that aimed at vindicating the fundamental constitutional rights held by those legislators’ constituents. Moreover, there are methods by which this Court can guard against unnecessary interference with the privilege, including filing the deposition transcripts under seal for *in camera* review. *See Nashville Student Org. Comm.*, 123 F. Supp. 3d at 971–72. Specifically, the Court may permit the Legislators’ counsel to interpose objections to specific questions at the deposition on legislative privilege grounds, but require the deponent to answer the question, with the answer being sealed, subject to determination by the Court as to the validity of the objection at a future date.

C. Plaintiffs Are Entitled to a Privilege Log.

Courts in this Circuit routinely exercise their discretion to compel production of a privilege log to evaluate assertions of attorney-client privilege or work-product protection,¹¹ as well as to evaluate invocations of legislative privilege. *See, e.g., Bybee-Fields*, 2022 WL 4042412, at *8 (holding that “[f]or the Court to respect ... assertions of [legislative] privilege,” the Chief Clerk of the Kentucky House of Representatives “must provide Plaintiffs’ counsel and the Court with a sufficiently detailed privilege log”) (internal citation omitted); *League of Women Voters*, 2018 WL 2335805, at *7 (ordering third-party legislative personnel and legislative bodies to produce certain relevant redistricting documents, but to create a privilege log for information withheld under the legislative privilege “that is unrelated to the introduction, consideration, or passage of the . . . Redistricting Legislation.”).

There is no reason why the Legislators should be exempted from a requirement faced routinely by litigants seeking to shield otherwise responsive documents from discovery. Conversely, Plaintiffs would be severely prejudiced by such an exemption, which would make it impossible for them to evaluate and assess the Legislators’ claims of privilege.

¹¹*See Mark A. G’Francisco v. GoFit, LLC*, 2015 WL 247873 at *3 (M.D. Tenn. Jan. 20, 2015) (granting plaintiff’s motion to compel defendants to produce a privilege log describing responsive information and documents withheld upon claims of privilege); *Jones v. ACE Cheer Co. LLC*, 2022 WL 969720, at *4 (W.D. Tenn. Mar. 30, 2022) (ordering production of a privilege log of documents withheld under attorney-client privilege alongside production of non-privileged documents). Indeed, parties must provide the requisite information describing the withheld documents and any privileges asserted at peril of waiving that privilege entirely. *See John B. v. Goetz*, 879 F. Supp. 2d 787, 890 (M.D. Tenn. 2010) (waiving privileges not asserted on defendants’ privilege log because “a party’s failure to assert a privilege on a privilege log constitutes a waiver of that privilege.”) (collecting cases); *CommonSpirit Health v. HealthTrust Purchasing Grp. L.P.*, 2022 WL 19403855, at *2 (M.D. Tenn. Oct. 17, 2022) (collecting cases).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court compel the Legislators to produce the relevant documents in response to Plaintiffs' requests and to provide deposition testimony.

Dated: April 24, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2024, the undersigned filed the foregoing document via this Court’s electronic filing system, which sent notice of such filing to the following counsel of record:

COUNSEL OF RECORD	PARTY REPRESENTED
<p>ADAM K. MORTARA (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>RYAN NICOLE HENRY (BPR# 40028) Assistant Attorney General</p> <p>WHITNEY HERMANDORFER (BPR# 041054) Assistant Solicitor General</p> <p>MIRANDA H. JONES (BPR# 036070) Senior Assistant Attorney General</p> <p>PHILIP HAMMERSLEY Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 ryan.henry@ag.tn.gov whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov</p>	<p>Defendants William B. Lee, Tre Hargett, Mark Goins, State Election Commission, Donna Barrett, Judy Blackburn, Greg Duckett, Jimmy Eldridge, Mike McDonald, Tom Wheeler, Kent Younce</p>

EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Deputy Speaker Curtis Johnson 425 Rep. John Lewis Way N., Suite 612 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Table with 2 columns: Place (Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (04/22/2024 5:00 pm)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

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

Date: 03/20/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Handwritten signature of Phillip Cramer

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Tennessee State Conference of the NAACP, et al., Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Curtis Johnson, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR
INFORMATION: STIPULATED ESI ORDER**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT
for the
Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Senator Dawn White
425 Rep. John Lewis Way N., Suite 752 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following
documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the
material: see Attachment A

Table with 2 columns: Place and Date and Time. Place: Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203. Date and Time: 04/22/2024 5:00 pm

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or
other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party
may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time. Both fields are currently empty.

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

Date: 03/20/2024

CLERK OF COURT

OR

Handwritten signature of Phillip Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)
Tennessee State Conference of the NAACP, et al., who issues or requests this subpoena, are:
Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Dawn White, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR
INFORMATION: STIPULATED ESI ORDER**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Representative Gary Hicks
425 Rep. John Lewis Way N., Suite 608 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203	Date and Time: 04/22/2024 5:00 pm
---	--

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

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

Date: 03/20/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____
Tennessee State Conference of the NAACP, et al., _____, who issues or requests this subpoena, are:
Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Gary Hicks, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Doug Himes, House Ethics Counsel 425 Rep. John Lewis Way N., 638 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Table with 2 columns: Place (Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (05/01/2024 5:00 pm)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (both empty)

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

Date: 03/28/2024

CLERK OF COURT

OR

Handwritten signature of Phillip Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Tennessee State Conference of the NAACP, et al., Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server’s signature

Printed name and title

Server’s address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Doug Himes, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

35. These requests do not seek any documents protected by the attorney-client privilege.

36. These requests do not seek any documents already produced by Defendants in this action.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR
INFORMATION: STIPULATED ESI ORDER**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Senator Jack Johnson
425 Rep. John Lewis Way N., Suite 702 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203	Date and Time: 04/22/2024 5:00 pm
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Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

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

Date: 03/20/2024

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____
Tennessee State Conference of the NAACP, et al., _____, who issues or requests this subpoena, are:
Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Jack Johnson, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)
OF THE NAACP et al.,)
)
Plaintiffs,)
)
v.)
)
WILLIAM B. LEE, et al.,)
)
Defendants.)
)

No. 3:23-cv-00832

JUDGE ELI RICHARDSON
JUDGE ERIC E. MURPHY
JUDGE BENITA Y. PEARSON

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR
INFORMATION: STIPULATED ESI ORDER**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Representative Kevin Vaughan 425 Rep. John Lewis Way N., Suite 622 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Table with 2 columns: Place (Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (04/22/2024 5:00 pm)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: Place and Date and Time (empty)

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

Date: 03/20/2024

CLERK OF COURT

OR

Handwritten signature of Phillip Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Tennessee State Conference of the NAACP, et al., Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Kevin Vaughan, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR
INFORMATION: STIPULATED ESI ORDER**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Speaker Pro Tempore Pat Marsh
425 Rep. John Lewis Way N., Suite 610 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203	Date and Time: 04/22/2024 5:00 pm
---	--

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

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

Date: 03/20/2024

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____
Tennessee State Conference of the NAACP, et al., _____, who issues or requests this subpoena, are:
Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Pat Marsh, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed
Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR
INFORMATION: STIPULATED ESI ORDER**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT
for the
Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Representative Patsy Hazlewood
425 Rep. John Lewis Way N., Suite 606 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following
documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the
material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or
other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party
may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

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

Date: 03/20/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)
Tennessee State Conference of the NAACP, et al., who issues or requests this subpoena, are:
Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Patsy Hazlewood, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR
INFORMATION: STIPULATED ESI ORDER**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Senator Paul Rose
425 Rep. John Lewis Way N., Suite 734 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203	Date and Time: 04/22/2024 5:00 pm
---	--

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

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

Date: 03/20/2024

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____

Tennessee State Conference of the NAACP, et al., _____, who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to Paul Rose, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR
INFORMATION: STIPULATED ESI ORDER**

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

Plaintiff

v.

William B. Lee, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Representative William Lamberth
425 Rep. John Lewis Way N., Suite 602 Cordell Hull Bldg., Nashville, TN 37243

(Name of person to whom this subpoena is directed)

Production: **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203	Date and Time: 04/22/2024 5:00 pm
---	--

Inspection of Premises: **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

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

Date: 03/20/2024

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____
Tennessee State Conference of the NAACP, et al., _____, who issues or requests this subpoena, are:
Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

INSTRUCTIONS AND DEFINITIONS

1. “You” and “Your” shall refer to William Lamberth, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission; and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

DOCUMENTS REQUESTED

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:
 - a. the origination or source of any redistricting proposal related to the Redistricting Plans;
 - b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
 - c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
 - d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
 - e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users’ posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

h. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

i. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

j. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

k. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

l. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

m. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

n. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

o. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the

Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate for the Tennessee House or

Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the

VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

IT IS HEREBY ORDERED that:

I. Overview

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

II. Definitions

- A. “Defendant” as used herein shall mean William B. Lee, in his official capacity as Governor of the State of Tennessee; Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee; the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the Tennessee State Conference of the NAACP; League of Women Voters of Tennessee; the Equity Alliance; Memphis A. Philip Randolph Institute; African American Clergy Collective of Tennessee; Judy Cummings; Brenda Gilmore; Ophelia Doe; Freda Player; and Ruby Powell-Dennis.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

III. Custodians

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

IV. Preservation and Production of Documents

A. Preservation

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

B. Limitations on Obligations to Preserve. For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
 - a) Delivery or read receipts of e-mail;
 - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies¹ of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

¹ “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

V. Production Format for ESI

A. Production Format and Numbering

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).

C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

- N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI. If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.
- O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.
- P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.
- Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

VI. Production Format for Hard Copy Documents

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

VII. Production Specifications

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
 - a) A unique and logical document identification number;
 - b) Date the document was prepared or created;
 - c) Document type;
 - d) Name and title of author(s)
 - e) Custodian;
 - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
 - g) Name and title of any attorney(s) included in the communication;
 - h) The privilege or protection asserted;
 - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
 - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

X. Costs

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson
ELI RICHARDSON
UNITED STATES DISTRICT JUDGE

s/ Eric E. Murphy
ERIC E. MURPHY
UNITED STATES CIRCUIT JUDGE

s/ Benita Y. Pearson
BENITA Y. PEARSON
UNITED STATES DISTRICT JUDGE

APPENDIX A

Field Name	Definition
Begin_Bates	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
End_Bates	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
Begin_Attach	<u>Only</u> for document families, ² provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
End_Attach	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
PgCount	The number of images produced for this document (1 for placeholder).
All Custodians	Name of all custodians who had a copy of the document before deduplication.
From	“From” field in email.
To	“To” field in email.
CC	“CC” field in email.
BCC	“BCC” field in email.
Subject	“Subject” field in email.
Attachments	File names of the attachments.
DateSent	DateSent field from email (format: 9/28/2012).

² Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

TimeSent	TimeSent field from email (format 1:16 or 13:16:34).
Redacted	“Yes” if the document has been redacted.
Confidential	Confidential Designation (if any).
MD5Hash	The MD5 hash value calculated when the file was collected or processed.
Orig_File Paths	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
NATIVELINK	The path to the native file on the production media.
Native_filename	Original name of the native file when the file was collected or processed.
Text File Path	Path to the text file on the production media.
Date File Created	The date the ESI was created.
Time File Created	The time the file was created (format 1:16 or 13:16:34).
Date File Last Modified	The date the ESI was last modified.
Time Modified	The time the ESI was last modified (format 1:16 or 13:16:34).
File Size	The file size in bytes.
File Ext.	The file extension associated with the file.
Confidentiality	Confidential treatment requested.
Redacted	Indicates where a record contains redactions.

EXHIBIT 2

Office of the Attorney General



JONATHAN SKRMETTI
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

April 8, 2024

SENT VIA EMAIL

Pooja Chaudhuri
Lawyers' Committee for Civil Rights Under Law
1500 K Street NW, Suite 900
Washington, DC 2005
pchaudhuri@lawyerscommittee.org

CC: mitchellbrown@scsj.org; erosenberg@lawyerscommittee.org;
jeffloperfido@scsj.org; gmastoris@winston.com; mtuma@winston.com;
adavis@lawyerscommittee.org; pcramer@sperling-law.com; adrienne@scsj.org;
jgreenbaum@lawyerscommittee.org;

RE: **Subpoenas Duces Tecum and for Deposition of Members of the General Assembly and House Ethics Counsel Dough Himes.**

Dear Pooja,

We are in receipt of the subpoenas duces tecum issued to nine legislators and House Ethics Counsel Doug Himes. Upon service, Counsel Mitchell Brown inquired as to whether the named legislative officials would agree to sit for depositions in this case. We object to the subpoenas duces tecum and any future subpoenas for testimony of these officials as barred by legislative privilege. The legislative officials will move to quash all such subpoenas on that ground.

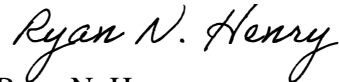
After reviewing the applicable rules, it is our understanding that we need to meet and confer about any motion to quash but the case management order does not require a joint discovery dispute statement since these subpoenaed officials are non-parties. Please let us know the range of times when you would be available for a meet-and-confer and whether you have a different understanding of the procedural requirements.

In the interest of efficiency, we would like to file one motion to quash all subpoenas directed to non-party legislative officials. Accordingly, at our meet-and-confer we will ask that Plaintiffs agree to an extension of our deadlines to file motions to quash the subpoenas duces

tecum. For the legislators and Counsel Himes, those deadlines are April 22, 2024 and May 1, 2024 respectively. *Olmstead v. Fentress Cnty., Tennessee*, No. 2:16-CV-00046, 2018 WL 6198428, at *2 (M.D. Tenn. Nov. 28, 2018) (“A motion to quash is timely if it is filed before compliance with the subpoena is required.”). We intend to move for an extension of these deadlines to a reasonable time after service of the subpoenas for testimony, which will allow for consolidated briefing.

Written objections to the subpoenas dated March 20, 2024 and March 28, 2024 are attached in accordance with Rule 45 of the Federal Rules of Civil Procedure. Thank you for your consistent willingness to collaborate on these tricky matters of timing and procedure.

Sincerely,



Ryan N. Henry
Assistant Attorney General
Telephone: 615-532-2935
Facsimile: 615-741-7327
Ryan.Henry@ag.tn.gov

Attachments:

Subpoenaed Legislators’ Objections to Subpoenas Duces Tecum

Counsel Himes’s Objections to Subpoena Duces Tecum

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**NON-PARTY LEGISLATORS' OBJECTIONS TO PLAINTIFFS'
SUBPOENAS TO PRODUCE DOCUMENTS, INFORMATION OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

Pursuant to Rules 45 of the Federal Rules of Civil Procedure, Deputy Speaker Curtis Johnson, Sen. Dawn White, Rep. Gary Hicks, Sen. Jack Johnson, Rep. Kevin Vaughan, Rep. Pat Marsh, Rep. Patsy Hazlewood, Sen. Paul Rose, and Leader William Lamberth (“the Subpoenaed Legislators”) object to Plaintiffs’ Subpoenas to Produce Documents or Information dated March 20, 2024 (“Subpoenas”).

GENERAL OBJECTIONS

1. The Subpoenaed Legislators object to any express or implied instruction or definition that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. The Subpoenaed Legislators object to every request in the Subpoenas because the requests seek information protected by legislative privilege. The Subpoenaed Legislators further object

to the Subpoenas to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the official documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, legislative immunity, and/or any other applicable privilege.

3. The Subpoenaed Legislators object to the requests because Plaintiffs did not take reasonable steps to avoid imposing undue burden as required by Fed. R. Civ. P. 45(d)(1). Specifically, the scope of the obligation resulting from the combination of Instructions #1, 2, 4, 20, and 21 with Requests #2, 5, and 7 is overbroad and unduly burdensome. When taken together, these instructions and requests require the Subpoenaed Legislators to provide documents and communications exchanged between at least 194 individuals and entities.

4. The Subpoenaed Legislators object to Plaintiff's definitions and directions in Instructions #1, 4, 20, and 21, to the extent that they include "persons or entities . . . purporting to act" on behalf of the Subpoenaed Legislators without their approval, knowledge, or authority.

5. The Subpoenaed Legislators object to the definition of "relating to" in Instruction #6 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

6. The Subpoenaed Legislators object to the request in Instruction #19 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which [they] have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for three reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand.")

(citations omitted)). Second, by requesting any documents that the Subpoenaed Legislators' attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of the Subpoenaed Legislators and are subject to attorney-client privilege. *See e.g., In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term "other agents" is vague and overly broad as it is not confined to agents of the Subpoenaed Legislators.

7. The Subpoenaed Legislators object to Instruction #29 for exceeding the requirements of Fed. R. Civ. P. 45. The Subpoenaed Legislators do not agree to undertake any production efforts that exceed the requirements of Fed. R. Civ. P. 45.

8. The Subpoenaed Legislators object to Instruction #31 to the extent that it requires them to identify responsive documents no longer in their possession, custody, or control, that they never knew existed or that they do not remember.

9. The Subpoenaed Legislators object to Instruction #32 for exceeding the requirements of Fed. R. Civ. P. 45. The Subpoenaed Legislators do not agree to undertake a duty to supplement responses when Fed. R. Civ. P. 45 does not require it.

10. The Subpoenaed Legislators reserve the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

11. The Subpoenaed Legislators expressly incorporate these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

- a. the origination or source of any redistricting proposal related to the Redistricting Plans;
- b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
- c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
- d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
- e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #1 to

the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators object to Request #1 to the extent that it seeks production of documents that are protected attorney-client privilege and the work-product doctrine. The Subpoenaed Legislators object to Request 1(g) as vague because it does not define the term “core preservation.” The Subpoenaed Legislators object to 1(h) as vague because “litigation materials” and “litigation documents” are undefined. The Subpoenaed Legislators object to Request #1(i) as overly broad because it asks for information “relating to any effect or impact of the Redistricting proposals of any kind.”

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users' posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written
- h. testimony and comments received by mail, email, legislative portal, or by other means;
- i. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;
- j. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;
- k. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;
- l. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other

- minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;
- m. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with
 - n. redistricting proposals, the Redistricting Plans, or the drawing of any district(s);
 - o. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;
 - p. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;
 - q. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to

Plaintiffs. The Subpoenaed Legislators object to Request #2 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

r. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #3 on the grounds that it is overly broad, vague, unduly burdensome, and seeks information not relevant to this litigation. Request #3 seeks “All Documents Relating to any legislation discussed, considered or passed,” without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state.

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #4 as vague in that it provides no definition for “rules, legislative counsel rules, procedural memos, and guidelines.” The Subpoenaed Legislators further object because the request for procedural documents from four

separate committees and subcommittees without any limitation on the topics those documents may encompass is overly broad, unduly burdensome, and seeks information not relevant to this litigation. The Subpoenaed Legislators object to Request #4 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #5 to the extent it seeks

documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators object to Request #5 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators object to Request #6 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any

national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators object to Request #7 to the extent that it seeks production of documents protected attorney-client privilege and the work-product doctrine.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing

on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in their possession, custody, or control, The Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #17. The Subpoenaed Legislators object to Request #8 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #9 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. To the extent that this request seeks information not in their possession, custody, or control, The Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators further object to Request #10 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators further object to this request as overly broad and unduly burdensome for seeking all documents produced at any time in any other litigation relating to Tennessee's redistricting process, regardless of the nature of the litigation. The Subpoenaed Legislators object to Request #10 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Non-Party Legislators

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

COUNSEL OF RECORD	PARTY REPRESENTED
<p>Phillip F. Cramer Sperling & Slater 150 3rd Avenue South, Suite 1100 Nashville, TN 37201 Tel.: 312-224-1512 pcramer@sperling-law.com</p> <p>Jon Greenbaum* Ezra D. Rosenberg* Pooja Chaudhuri* Lawyers' Committee for Civil Rights Under Law 1500 K Street NW, Suite 900 Washington, DC 20005 Tel.: 202-662-8600 jgreenbaum@lawyerscommittee.org erosenberg@lawyerscommittee.org pchaudhuri@lawyerscommittee.org</p> <p>Jeffrey Loperfido* Mitchell D. Brown* Southern Coalition for Social Justice 1415 West Highway 54, Suite 101 Durham, NC 27707 Tel.: 919-323-3380 jeffloperfido@scsj.org mitchellbrown@scsj.org</p> <p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166</p>	<p>Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis</p>

<p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166 Tel.: 212-294-6700 gmastoris@winston.com mtuma@winston.com</p>	
<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ _____

Counsel for Non-Party Legislators

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**NON-PARTY DOUG HIMES’S OBJECTIONS TO PLAINTIFFS’
SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

Pursuant to Rules 45 of the Federal Rules of Civil Procedure, Doug Himes—Tennessee House Ethics Counsel—objects to Plaintiffs’ Subpoena to Produce Documents or Information.

GENERAL OBJECTIONS

1. Counsel Himes objects to any express or implied instruction or definition that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Due to Instruction #35, Counsel Himes submits these objections with the understanding that Plaintiffs are not seeking any documents covered by attorney-client privilege. Should Plaintiffs seek attorney-client privileged documents in the future, Counsel Himes reserves the right to assert attorney-client privilege over all such documents.

3. Counsel Himes objects to every request in the Subpoena because the requests seek information protected by legislative privilege. Counsel Himes further objects to the Subpoena to the extent it seeks information that is protected from disclosure by any statute governing the confidentiality of information or by the deliberative-process privilege, the official documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, legislative immunity, and/or any other applicable privilege.

4. Counsel Himes objects to the requests because Plaintiffs did not take reasonable steps to avoid imposing undue burden as required by Fed. R. Civ. P. 45(d)(1). Specifically, the scope of the obligation resulting from the combination of Instructions #1, 2, 4, 20, and 21 with Requests #2, 5, and 7 is overly broad and unduly burdensome. When taken together, these instructions and requests require Counsel Himes to provide documents and communications exchanged between at least 194 individuals and entities.

5. Counsel Himes objects to Plaintiff's definitions and directions in Instructions #1, 4, 20, and 21, to the extent that they include "persons or entities . . . purporting to act" on behalf of the Counsel Himes without his approval, knowledge, or authority.

6. Counsel Himes objects to the definition of "relating to" in Instruction #6 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

7. Counsel Himes objects to the request in Instruction #19 to produce *not only* documents in his actual possession, custody, or control *but also* "such documents which [he has] the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for three reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed

to be within the ‘possession, custody or control’ for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand.” (citations omitted)). Second, by requesting any documents that Counsel Himes’s attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Counsel Himes and are subject to attorney-client privilege. *See e.g., In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Counsel Himes.

8. Counsel Himes objects to Instruction #29 for exceeding the requirements of Fed. R. Civ. P. 45. Counsel Himes does not agree to undertake any production efforts that exceed the requirements of Fed. R. Civ. P. 45.

9. Counsel Himes objects to Instruction #31 to the extent that it requires him to identify responsive documents no longer in his possession, custody, or control, that he never knew existed or that he does not remember.

10. Counsel Himes objects to Instruction #32 for exceeding the requirements of Fed. R. Civ. P. 45. Counsel Himes does not agree to undertake a duty to supplement responses when Fed. R. Civ. P. 45 does not require it.

11. Counsel Himes reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

12. Counsel Himes expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

- a. the origination or source of any redistricting proposal related to the Redistricting Plans;
- b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
- c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
- d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
- e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #1 to the extent it seeks documents in the

possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #1 to the extent that it seeks production of documents that are protected by the work-product doctrine. Counsel Himes objects to Request 1(g) as vague because it does not define the term “core preservation.” Counsel Himes objects to 1(h) as vague because “litigation materials” and “litigation documents” are undefined. Counsel Himes objects to Request #1(i) as overly broad because it asks for information “relating to any effect or impact of the Redistricting proposals of any kind.”

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social

media account or since archived or deleted and including any comments made by you on your own posts or other social media users' posts);

f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

h. testimony and comments received by mail, email, legislative portal, or by other means;

i. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

j. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

k. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

l. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

- m. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with
- n. redistricting proposals, the Redistricting Plans, or the drawing of any district(s);
- o. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;
- p. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;
- q. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #2 to the extent that it seeks production of documents protected by the work-product doctrine.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

r. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects Request #3 on the grounds that it is overly broad, vague, unduly burdensome, and seeks information not relevant to this litigation. Request #3 seeks “All Documents Relating to any legislation discussed, considered or passed,” without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state.

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #4 as vague in that it provides no definition for “rules, legislative counsel rules, procedural memos, and guidelines.” Counsel Himes further objects because the request for procedural documents from four separate committees and subcommittees without any limitation on the topics those documents may encompass is overly broad, unduly burdensome, and seeks information not relevant to this litigation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the

Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #5 to the extent that it seeks production of documents protected by the work-product doctrine.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #6 to the extent that it seeks production of documents protected by the work-product doctrine.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in his possession, custody,

or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #7 to the extent that it seeks production of documents protected the work-product doctrine. Counsel Himes objects to Request #7 as overly broad.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #17. Counsel Himes objects to Request #8 to the extent that it seeks production of documents protected by the work-product doctrine.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #9 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #10 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes further objects to this request as overly broad and unduly burdensome for seeking all documents produced at any time in any other litigation relating to Tennessee’s redistricting process, regardless of the nature of the litigation. Counsel Himes objects to Request #10 to the extent that it seeks production of documents protected by the work-product doctrine.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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/s/ Miranda Jones

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Counsel for Non-Party Legislators

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

COUNSEL OF RECORD	PARTY REPRESENTED
<p>Phillip F. Cramer Sperling & Slater 150 3rd Avenue South, Suite 1100 Nashville, TN 37201 Tel.: 312-224-1512 pcramer@sperling-law.com</p> <p>Jon Greenbaum* Ezra D. Rosenberg* Pooja Chaudhuri* Lawyers' Committee for Civil Rights Under Law 1500 K Street NW, Suite 900 Washington, DC 20005 Tel.: 202-662-8600 jgreenbaum@lawyerscommittee.org erosenberg@lawyerscommittee.org pchaudhuri@lawyerscommittee.org</p> <p>Jeffrey Loperfido* Mitchell D. Brown* Southern Coalition for Social Justice 1415 West Highway 54, Suite 101 Durham, NC 27707 Tel.: 919-323-3380 jeffloperfido@scsj.org mitchellbrown@scsj.org</p> <p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166</p>	<p>Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis</p>

<p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166 Tel.: 212-294-6700 gmastoris@winston.com mtuma@winston.com</p>	
<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ _____

Counsel for Non-Party Legislators

EXHIBIT 3

From: [Tuma, Michelle](#)
To: [Miranda H. Jones](#); [Ryan N. Henry](#); [Pooja Chaudhuri](#)
Cc: [mortara](#); [Whitney Hermandorfer](#); [Philip Hammersley](#); [Ezra Rosenberg](#); [Mitchell D. Brown](#); [Jeff Loperfido](#); [Mastoris, George](#); [Alexander Davis](#); [Phillip Cramer](#)
Subject: RE: Redistricting Case - Second Document Production
Date: Monday, April 15, 2024 5:17:00 PM
Attachments: [image005.jpg](#)
[image006.png](#)
[image007.jpg](#)
[image008.jpg](#)
[image009.png](#)
[image010.jpg](#)

Thanks very much Miranda. Much appreciated. We will review and let you know if we have any further comments/suggestions.

Best,
Michelle

Michelle Tuma

Associate Attorney

Winston & Strawn LLP
200 Park Avenue
New York, NY 10166-4193

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Pronouns: She, Her, Hers



From: Miranda H. Jones <Miranda.Jones@ag.tn.gov>
Sent: Monday, April 15, 2024 5:12 PM
To: Tuma, Michelle <MTuma@winston.com>; Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>
Subject: RE: Redistricting Case - Second Document Production

Good Afternoon Michelle,

I hope it is as sunny and warm a day in New York as it is here in Tennessee right now.

Attached are the proposed narrowed search terms as well as a draft joint motion for a briefing schedule.

Subpoenaed non-party documents. We appreciate and share your interest in clarity and efficiency. We are asserting a privilege over all non-public and previously unproduced materials possessed by the members of the General Assembly that you have subpoenaed. And, upon information and belief, the privileged documents include communications with third parties. Third party communications in the possession of the Secretary of State defendants secondary to *Moore et al. v. Lee et al.* have been produced to you in this matter. However, because the state-court case involved a different type of redistricting challenge, we do not know whether the documents produced in that case are the full world of third-party communications that may be relevant here.

Shapefiles. We will try to find an answer to your questions about the shapefiles located at <https://capitol.tn.gov/house/archives/112ga/committees/Redistricting.aspx>. We are actively pinning down who might possess or control the remaining data you have requested. To clear up a misunderstanding, we believe that our discovery responses are accurate, and none of the Defendants possess this data. We do not know whether or to what extent any other state official or agency may possess or control this data, but we believe we will have this information shortly.

We echo your hope to continue productively collaborating on these points and will await your thoughts on the attached documents.

Regards,

Miranda H. Jones

Senior Assistant Attorney General
Law Enforcement and
Special Prosecutions Division
Office of the Tennessee Attorney General
P.O. Box 20207, Nashville, TN 37202-0207
Phone: 615.521.0417
Email: Miranda.Jones@ag.tn.gov



From: Tuma, Michelle <MTuma@winston.com>

Sent: Monday, April 15, 2024 1:24 PM

To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>

Subject: RE: Redistricting Case - Second Document Production

Hi Ryan,

Thank you again for your time on Friday.

As noted on the call, we plan to get the deposition subpoenas out by tomorrow. We will be watching for your modified search terms for our RFPs to Defendants today and the draft of the joint statement by Wednesday.

First, during Friday's call, it was unclear whether or to what extent your team has reviewed the legislators' documents before invoking legislative privilege. We now have some additional questions:

- What searches were conducted to collect these documents?
- Did you conduct a document by document review to assess privilege or are you asserting a blanket privilege over these materials?
- Do the documents over which you are asserting the privilege include communications with third parties?
 - Relatedly, were those communications between the legislators and third parties already produced in the state court litigation?

Can you please provide the answers to these questions? As we mentioned, we are eager to have more clarity on scope and basis for your privilege invocation *before* the commencement of motions practice on this issue to ensure that we fully understand your position and to make sure we are presenting the dispute to the court both clearly and efficiently.

Second, we found a set of shapefiles on the House Redistricting Committee's webpage here: <https://capitol.tn.gov/house/archives/112ga/committees/Redistricting.aspx>.

Could you please confirm that these are the final, correct shapefiles for the maps passed in 2022, and if so, confirm that you won't be raising any objections to their accuracy or authenticity in this matter?

We are also still waiting for your confirmation of whether you can provide the following data we discussed on Wednesday's call:

- precinct shapefiles for the state senate and congressional districts from 2022 and every prior year before that, going back to 2012 when last decade's maps were passed;
- the voter file with a 2022 snapshot

This is data we typically obtain from defendants in redistricting cases as a matter of course. On the call, we understood your position to be that no one we have subpoenaed to date (party or non-party) possesses this data and that you are actively investigating who in Tennessee

government has possession, custody, or control of it.

We hope that we can work with you to access it here.

Best,
Michelle

Michelle Tuma

Associate Attorney

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Pronouns: She, Her, Hers



From: Ryan N. Henry <Ryan.Henry@ag.tn.gov>

Sent: Thursday, April 11, 2024 5:49 PM

To: Tuma, Michelle <MTuma@winston.com>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>

Subject: RE: Redistricting Case - Second Document Production

Hi Michelle,

The attached forms from Secretary Hargett, Coordinator of Elections Goins, and Commissioner Barrett verify the discovery responses forwarded to your team on January 16, 2024.

The proposed search terms are being finalized and will be forwarded as soon as completed.

We look forward to speaking with your team tomorrow, and you should have received a Teams invite for the meeting earlier this afternoon.

Best,

Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
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P: (615)532-2935



From: Tuma, Michelle <MTuma@winston.com>
Sent: Thursday, April 11, 2024 12:57 PM
To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>
Subject: RE: Redistricting Case - Second Document Production

Hi Ryan,

I'm writing to check in on a few outstanding issues.

First, can you please provide the status of your proposed modified search terms. Last Friday, you stated that you anticipated having them ready early this week so we were wondering when we can expect to see them.

Second, it appears our team does not have the executed verification pages on the discovery responses from Barrett, Hargett, or Goins from back in January. Can you please resend them?

Finally, we agreed to meet and confer **tomorrow at 2pm CST**. If that still works for you, please let us know if your team plans to send out an invite or if we should handle.

Many thanks,
Michelle

Michelle Tuma
Associate Attorney
Winston & Strawn LLP

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F: +1 212-294-4700

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Pronouns: She, Her, Hers



From: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Sent: Friday, April 5, 2024 2:41 PM
To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>
Subject: RE: Redistricting Case - Second Document Production

—
Hi Pooja,

A third round of document production has been uploaded to the FTP site (<https://ftp.ag.tn.gov/login>). The zip file is titled “DEFS_HARGETT-GOINS_VOL03”. Your FTP login information is the same, and the zip file password is “fDhmg2QT8U4XAcwdSktyuZ”. Please remember to use an unzipping utility like WinZip or the free 7-Zip to extract the contents of the production deliverable before inspecting.

We anticipate having proposed search terms and a response regarding depositions of the legislators early next week.

Best,
Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
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UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935



From: Ryan N. Henry
Sent: Friday, February 16, 2024 5:48 PM

To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Miranda H. Jones <Miranda.Jones@AG.TN.GOV>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@AG.TN.GOV>; Philip Hammersley <Philip.Hammersley@AG.TN.GOV>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>

Subject: Redistricting Case - Second Document Production

Pooja,

A second round of production has been uploaded to the FTP site (<https://ftp.ag.tn.gov/login>). The zip files are titled “2024-02-16_DEFS_HARGETT-GOINS_VOL02” and “DEFS_COMMISSIONERS_VOL01.” Your FTP login information is the same, and please remember to use an unzipping utility like WinZip or the free 7-Zip to extract the contents of the production deliverable before inspecting.

Enjoy the weekend!

Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
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315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935



From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Sent: Wednesday, February 14, 2024 10:03 AM

To: Miranda H. Jones <Miranda.Jones@ag.tn.gov>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>

Subject: Re: Redistricting Case - First Document Production (1 of 2 emails)

Thanks for the update, Miranda! Much appreciated.

--

Pooja Chaudhuri (*pronouns: she/her*)

Counsel, Voting Rights Project

Lawyers' Committee for Civil Rights Under Law

1500 K Street, NW, Suite 900

Washington, D.C. 20005

Dir: 202-662-8319 | Cell: 415-726-1414

www.lawyerscommittee.org

From: Miranda H. Jones <Miranda.Jones@ag.tn.gov>

Sent: Wednesday, February 14, 2024 10:49 AM

To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>

Subject: RE: Redistricting Case - First Document Production (1 of 2 emails)

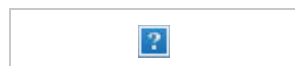
Good Morning Pooja,

Thanks for touching base. We hope to have our next set of documents out to you all this Friday. Regarding search terms, we are almost at the stage to assess whether the number of hits resulting from the terms suggests the terms need to be narrowed. We should know more early next week and will reach out if we need a meet and confer on this point.

Regards,

Miranda H. Jones

Senior Assistant Attorney General
Law Enforcement and
Special Prosecutions Division
Office of the Tennessee Attorney General
P.O. Box 20207, Nashville, TN 37202-0207
Phone: 615.521.0417
Email: Miranda.Jones@ag.tn.gov



From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Sent: Wednesday, February 14, 2024 8:56 AM
To: Miranda H. Jones <Miranda.Jones@ag.tn.gov>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>
Subject: Re: Redistricting Case - First Document Production (1 of 2 emails)

Hi, Miranda - thanks for sending these! Any update on where the State is with respect to the search terms and the rest of the production? As to the terms, we are happy to meet and confer if it would be helpful.

thanks,

Pooja

--

Pooja Chaudhuri (*pronouns:* she/her)

Counsel, Voting Rights Project

Lawyers' Committee for Civil Rights Under Law

1500 K Street, NW, Suite 900

Washington, D.C. 20005

Dir: 202-662-8319 | Cell: 415-726-1414

[https://link.edgepilot.com/s/dbb4a829/5JD0Nv-UJkm4pQ4DIBmChQ?
u=http://www.lawyerscommittee.org/](https://link.edgepilot.com/s/dbb4a829/5JD0Nv-UJkm4pQ4DIBmChQ?u=http://www.lawyerscommittee.org/)

From: Miranda H. Jones <Miranda.Jones@ag.tn.gov>
Sent: Friday, February 2, 2024 5:08 PM
To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>

Subject: Redistricting Case - First Document Production (1 of 2 emails)

[EXTERNAL EMAIL] This email originated outside the organization. Do not click any links or open any attachments unless you can verify the legitimacy.

Good Afternoon Pooja,

As promised, we have our first set of documents ready to produce. They are located in an FTP site (<https://link.edgepilot.com/s/99a848cf/-7MF95pnv06dyG58JeUxPg?u=https://ftp.ag.tn.gov/login>) in a zip file titled "DEFS_HARGETT-GOINS_VOL01." I will be sending login information for that site and the password to open the zip file in a separate email. Please be sure to open the zip file using an unzipping utility like WinZip or the free 7-Zip (<https://link.edgepilot.com/s/29bec9c8/cGdl56twsEanfjqkA1A--A?u=https://www.7-zip.org/download.html>) to extract the contents of the production deliverable before inspecting.

Because the documents in this production were primarily paper documents that were scanned and produced in a prior state court case, the metadata reflects how this information was processed in that state court litigation. Please let me know if you run into any issues accessing the FTP site.

I have also attached the interrogatory and RFP responses for Commissioner Bennie Smith. There was a delay in our ability to finalize these. I apologize for any inconvenience.

Hope you have a pleasant weekend.

Regards,

Miranda H. Jones

Senior Assistant Attorney General
Law Enforcement and
Special Prosecutions Division
Office of the Tennessee Attorney General
P.O. Box 20207, Nashville, TN 37202-0207
Phone: 615.521.0417
Email: Miranda.Jones@ag.tn.gov



Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

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EXHIBIT 4

From: [Ryan N. Henry](#)
To: [Mitchell D. Brown](#); [Pooja Chaudhuri](#); [mortara](#)
Cc: [Whitney Hermandorfer](#); [Miranda H. Jones](#); [Philip Hammersley](#); [Ezra Rosenberg](#); [Jeff Loperfido](#); [Mastoris, George](#); [Tuma, Michelle](#); [Alexander Davis](#); [Phillip Cramer](#); [Adrienne Spoto](#)
Subject: RE: [External]RE: Redistricting Case Discovery Responses
Date: Monday, April 8, 2024 1:21:23 PM
Attachments: [image002.png](#)
[image003.png](#)
[04.08.24 Letter to OC.pdf](#)
[Objections to Document Subpoena of Doug Himes-signed.pdf](#)
[Objections to Document Subpoenas of Legislators-signed.pdf](#)



Mitchell & Pooja,

Attached please find a letter outlining our position regarding the third-party subpoenas directed to members of the General Assembly and Counsel Doug Himes as well as objections to the same in accordance with Rule 45 of the Federal Rules of Civil Procedure. Please provide a few times this week that your team is available to meet and confer.

Thanks,
Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935



From: Mitchell D. Brown <mitchellbrown@scsj.org>
Sent: Tuesday, April 2, 2024 1:51 PM
To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; mortara <mortara@lawfairllc.com>
Cc: Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>
Subject: Re: [External]RE: Redistricting Case Discovery Responses

Hi Ryan,

Thank you for accepting service of the subpoena to Doug Himes. As for the deposition subpoenas, we would appreciate you checking with all those to whom we have issued subpoenas for documents so far:

- Curtis Johnson
- Dawn White
- Gary Hicks
- Jack Johnson
- Kevin Vaughan
- Pat Marsh
- Patsy Hazlewood
- Paul Rose
- William Lamberth
- Doug Himes

As we mentioned, we want to confirm both that you are authorized to accept service of deposition subpoenas and also that the legislators (and Doug Himes) will agree to sit for depositions.

Thank you,

Mitchell D. Brown
Southern Coalition for Social Justice
Senior Counsel, Voting Rights Section
SOLVE Network Coordinator
PO BOX 51280
Durham, NC 27717
919-323-3380 ext. 116

**Licensed in North Carolina and New York*

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From: "Ryan N. Henry" <Ryan.Henry@ag.tn.gov>

Date: Monday, April 1, 2024 at 2:34 PM

To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>, mortara <mortara@lawfairllc.com>, "Mitchell D. Brown" <mitchellbrown@scsj.org>

Cc: Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>, "Miranda H. Jones" <Miranda.Jones@ag.tn.gov>, Philip Hammersley <Philip.Hammersley@ag.tn.gov>, Ezra Rosenberg <erosenberg@lawyerscommittee.org>, Jeff Loperfido <jeffloperfido@scsj.org>, "Mastoris, George" <GMastoris@winston.com>, "Tuma, Michelle" <MTuma@winston.com>, Alexander Davis <adavis@lawyerscommittee.org>, Phillip Cramer <pcramer@sperling-law.com>, Adrienne Spoto <Adrienne@scsj.org>
Subject: RE: [External]RE: Redistricting Case Discovery Responses

Hi Pooja,

I hope you enjoyed the Easter weekend! We are accepting service of the subpoena to Doug Himes as of today, April 1st. Please let us know which legislators you intend to issue deposition subpoenas, and we will follow up with them regarding service.

As a quick point of clarification - discovery in this case opened on November 9, 2023, and we received Plaintiffs' first set of written requests on December 1, 2023. Only document production and the scheduling of depositions was postponed until January 15, 2024.

Thanks!
Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935



From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Sent: Friday, March 29, 2024 1:16 PM
To: mortara <mortara@lawfairllc.com>; Mitchell D. Brown <mitchellbrown@scsj.org>
Cc: Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>
Subject: Re: [External]RE: Redistricting Case Discovery Responses

Hi, Adam - it was certainly not our intention to disturb anyone's Easter observance. Many of us in this group observe the holiday ourselves.

We look forward to receiving a response from you after the holiday weekend. As for the timing of discovery, as you know, we agreed to pause discovery until January 15. As discovery is now finally underway, we hoped our discovery needs would be met through the documents produced by the State on a rolling basis, but given the documents we've received so far, we believe we will need to pursue some legislator discovery.

Thanks! Enjoy the weekend!

Pooja

--

Pooja Chaudhuri (*pronouns:* she/her)

Counsel, Voting Rights Project

Lawyers' Committee for Civil Rights Under Law

1500 K Street, NW, Suite 900

Washington, D.C. 20005

Dir: 202-662-8319 | Cell: 415-726-1414

www.lawyerscommittee.org

From: Adam Mortara <mortara@lawfairllc.com>

Sent: Thursday, March 28, 2024 6:27 PM

To: Mitchell D. Brown <mitchellbrown@scsj.org>

Cc: Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>

Subject: Re: [External]RE: Redistricting Case Discovery Responses

Hi Mitchell,

We will have to get back to you on these questions after the Easter period. Tomorrow is a major holiday, so is Sunday, and so is Monday for many of us.

I will note that if plaintiffs wanted things “teed up” in a timely way, they sure have a funny way of showing it by waiting, what is it, five months or more since discovery opened to even ask about depositing legislators or sending subpoenas to them?

Happy Easter to all who celebrate His Resurrection.

Adam

Adam K. Mortara, Manager
Lawfair LLC
40 Burton Hills Blvd. Suite 200
Nashville, TN 37215
M: +1 773.750.7154

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On Mar 28, 2024, at 16:57, Mitchell D. Brown <mitchellbrown@scsj.org> wrote:

Good Evening Ryan,

Thank you for accepting service of those subpoenas. We are attaching one additional subpoena, for Doug Himes. Please let us know if you will accept service of this subpoena or if we will need to serve him separately.

Also, we anticipate that we will be issuing deposition subpoenas for at least some of the legislators previously served. Can you confirm that you are authorized to accept service of deposition subpoenas as well and that the legislators will agree to sit for depositions in this matter? If any of the legislators are intending to oppose providing testimony, we'd like to get that issue teed up now rather than when attempting to schedule depositions later this spring.

Thank you,

Mitchell D. Brown
Southern Coalition for Social Justice
Senior Counsel, Voting Rights Section
SOLVE Network Coordinator

PO BOX 51280
Durham, NC 27717
919-323-3380 ext. 116

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From: "Ryan N. Henry" <Ryan.Henry@ag.tn.gov>
Date: Monday, March 25, 2024 at 12:42 PM
To: "Mitchell D. Brown" <mitchellbrown@scsj.org>, Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>, Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>, "Miranda H. Jones" <Miranda.Jones@ag.tn.gov>, Philip Hammersley <Philip.Hammersley@ag.tn.gov>, Ezra Rosenberg <erosenberg@lawyerscommittee.org>, Jeff Loperfido <jeffloperfido@scsj.org>, "Mastoris, George" <GMastoris@winston.com>, "Tuma, Michelle" <MTuma@winston.com>, Alexander Davis <adavis@lawyerscommittee.org>, Phillip Cramer <pcramer@sperling-law.com>, Adrienne Spoto <Adrienne@scsj.org>
Subject: RE: [External]RE: Redistricting Case Discovery Responses

Mitchell,

The Office of the Tennessee Attorney General will be representing legislators Curtis Johnson, Dawn White, Gary Hicks, Jack Johnson, Kevin Vaughan, Pat Marsh, Patsy Hazlewood, Paul Rose and William Lamberth in relation to the attached third-party subpoenas. We are accepting service of the same as of today, March 25th.

Best,
Ryan

Ryan Nicole Henry | Assistant Attorney General

Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935

<image001.png>

From: Mitchell D. Brown <mitchellbrown@scsj.org>
Sent: Thursday, March 21, 2024 1:42 PM
To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>
Subject: Re: [External]RE: Redistricting Case Discovery Responses

Thank you!

Mitchell D. Brown
Southern Coalition for Social Justice
Senior Counsel, Voting Rights Section
SOLVE Network Coordinator
PO BOX 51280
Durham, NC 27717
919-323-3380 ext. 116

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From: "Ryan N. Henry" <Ryan.Henry@ag.tn.gov>
Date: Thursday, March 21, 2024 at 2:39 PM
To: "Mitchell D. Brown" <mitchellbrown@scsj.org>, Pooja Chaudhuri

<pchaudhuri@lawyerscommittee.org>

Cc: mortara <mortara@lawfairllc.com>, Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>, "Miranda H. Jones" <Miranda.Jones@ag.tn.gov>, Philip Hammersley <Philip.Hammersley@ag.tn.gov>, Ezra Rosenberg <erosenberg@lawyerscommittee.org>, Jeff Loperfido <jeffloperfido@scsj.org>, "Mastoris, George" <GMastoris@winston.com>, "Tuma, Michelle" <MTuma@winston.com>, Alexander Davis <adavis@lawyerscommittee.org>, Phillip Cramer <pcramer@sperling-law.com>, Adrienne Spoto <Adrienne@scsj.org>

Subject: RE: [External]RE: Redistricting Case Discovery Responses

Received. Thanks, Mitchell. We will follow up on Monday with an answer as to each legislator.

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935

<image002.png>

From: Mitchell D. Brown <mitchellbrown@scsj.org>

Sent: Wednesday, March 20, 2024 3:57 PM

To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>; Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>

Subject: Re: [External]RE: Redistricting Case Discovery Responses

Good Afternoon Ryan and All,

Attached are Plaintiffs' third-party subpoenas to the following legislators:

- Curtis Johnson
- Dawn White
- Gary Hicks

- Jack Johnson
- Kevin Vaughan
- Pat Marsh
- Patsy Hazlewood
- Paul Rose
- William Lamberth

Please let us know if you are accepting service of each of the subpoenas or if we will need to serve any of the legislators separately.

Thank you,

Mitchell D. Brown
Southern Coalition for Social Justice
Senior Counsel, Voting Rights Section
SOLVE Network Coordinator
PO BOX 51280
Durham, NC 27717
919-323-3380 ext. 116

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From: "Ryan N. Henry" <Ryan.Henry@ag.tn.gov>
Date: Monday, March 11, 2024 at 9:53 AM
To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>, Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>, "Miranda H. Jones" <Miranda.Jones@ag.tn.gov>, Philip Hammersley <Philip.Hammersley@ag.tn.gov>, Ezra Rosenberg <erosenberg@lawyerscommittee.org>, "Mitchell D. Brown" <mitchellbrown@scsj.org>, Jeff Loperfido <jeffloperfido@scsj.org>, "Mastoris, George" <GMastoris@winston.com>, "Tuma, Michelle" <MTuma@winston.com>, Alexander Davis <adavis@lawyerscommittee.org>, Phillip Cramer <[Case 3:23-cv-00832 Document 59-4 Filed 04/24/24 Page 10 of 24 PageID #: 964](mailto:pcramer@sperling-</p></div><div data-bbox=)

[law.com](#)>, Adrienne Spoto <Adrienne@scsj.org>

Subject: [External]RE: Redistricting Case Discovery Responses

Good morning,

Thank you for letting us know that you intend to send third party subpoenas to members of the General Assembly. Please forward each subpoena to the members of this litigation team, and we will determine which TNAG will accept service and represent the legislator.

Best,
Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935

<image003.png>

From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Sent: Thursday, March 7, 2024 1:34 PM

To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>

Subject: Re: Redistricting Case Discovery Responses

Hi, Ryan - I sent an invite for 10 AM CT tomorrow! Let me know if you did not receive it.

Also, prior to tomorrow's meeting, we'd like to request a few items to facilitate a more productive conversation.

- In your email dated 3/1/2024, you stated that the AG's Office ran the requested search terms on the SOS's custodians' documents. And in your email dated 1/19/2024, you said that the SOS's office had identified relevant custodians and started gathering .pst files.
 - Before tomorrow's meeting, please provide us with the names and emails

- of those relevant custodians.
- Please also clarify the date range of the collection and whether you searched the custodians' emails only or whether you searched any other platforms such as text messages or slack messages.
 - In your email dated 1/19/2024, you also mentioned that the AGs office was discussing the search process for individual commissioners and the state election commission.
 - Please identify the custodians for the commissioners and provide their names and emails.

Look forward to chatting more tomorrow.

thanks,
Pooja

--

Pooja Chaudhuri (pronouns: she/her)

Counsel, Voting Rights Project

Lawyers' Committee for Civil Rights Under Law

1500 K Street, NW, Suite 900

Washington, D.C. 20005

Dir: 202-662-8319 | Cell: 415-726-1414

www.lawyerscommittee.org

From: Ryan N. Henry <Ryan.Henry@ag.tn.gov>

Sent: Wednesday, March 6, 2024 2:17 PM

To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>;

Tuma, Michelle <MTuma@winston.com>; Alexander Davis
<adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>;
Adrienne Spoto <Adrienne@scsj.org>
Subject: RE: Redistricting Case Discovery Responses

No rush! Thanks, Pooja. Just wanted to make sure I blocked off time on the correct day.

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935

<image003.png>

From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Sent: Wednesday, March 6, 2024 1:14 PM
To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer
<Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>;
Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg
<erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>;
Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>;
Tuma, Michelle <MTuma@winston.com>; Alexander Davis
<adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>;
Adrienne Spoto <Adrienne@scsj.org>
Subject: Re: Redistricting Case Discovery Responses

I haven't sent it yet. Thinking for Friday at 10 am ct/11 am et. I've been on the road this past week for work, hence the delay. Will send out the invite as soon as I can get to my computer!

Thanks! Pooja

From: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Sent: Wednesday, March 6, 2024 1:09:25 PM
To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer
<Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>;
Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg
<erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>;
Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>;
Tuma, Michelle <MTuma@winston.com>; Alexander Davis

<adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>;
Adrienne Spoto <Adrienne@scsj.org>

Subject: RE: Redistricting Case Discovery Responses

Hi Pooja,

I didn't receive a calendar invite. Would you mind resending? And were you thinking tomorrow or Friday?

Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935

<image003.png>

From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Sent: Monday, March 4, 2024 12:33 PM
To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>
Subject: Re: Redistricting Case Discovery Responses

Thanks, Ryan. I'll send an invite for 10 am central.

From: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Sent: Friday, March 1, 2024 1:30 PM
To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>;

Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>

Subject: RE: Redistricting Case Discovery Responses

Hi Pooja,

We are available for a meet and confer before 11am CT on Thursday and before 12pm CT on Friday. Feel free to send a calendar invitation.

And, yes, we ran the requested search terms on the Secretary of State custodians' documents. The corpus totaled 541,447 documents, and the search terms generated 85,470 hits. The hit counts per term are detailed in the attached spreadsheet, and the overinclusive terms are highlighted in yellow. We conducted a spot-review of the overinclusive terms to identify word combinations consistently producing irrelevant documents, and included that information as well. Hopefully it will be helpful as we try to narrow the scope of the results to something manageable! If you'd like to send over a revised list of terms by Wednesday, we can return an updated hit count sheet before the meet and confer.

Best,
Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935

<image003.png>

From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Sent: Friday, March 1, 2024 5:48 AM

To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>

Cc: mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>; Adrienne Spoto <Adrienne@scsj.org>

Subject: Re: Redistricting Case Discovery Responses

Hi, Ryan! Happy Friday! Query below.

On, 1/19, we sent a list of search terms your way and requested that the AG's

office send a list of custodians who were searched. The AGs office acknowledged that it was in receipt of the search terms and stated it would provide a list of custodians and the number of hits. Can you please confirm you ran these terms, the names of custodians, and provide the hit counts?

We would propose a meet and confer to discuss the current set of documents, including the custodians, terms used to identify documents, etc. Please let us know when you are available on Thursday or Friday next week.

Thanks,

Pooja

From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Sent: Friday, January 19, 2024 6:21:54 PM
To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Cc: Adam Mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>
Subject: Re: Redistricting Case Discovery Responses

Thanks, Ryan! Will discuss with my team and follow up next week with any other questions or concerns we may have or if we feel we need to have a call. weekend!

From: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Sent: Friday, January 19, 2024 6:03 PM
To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Cc: Adam Mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>
Subject: RE: Redistricting Case Discovery Responses

Pooja,

We're doing our best to stay warm! It's been quite a chilly few days.

I apologize for the faulty links. These should work for Interrogatory #5 ([House Redistricting Committee – TN General Assembly](#); [House Redistricting Committee – TN General Assembly \(archive.org\)](#)) and Interrogatory #6 ([senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate Redistricting - TN General Assembly \(archive.org\)](#)). Let me know if you run into any other link-related issues.

The initial document search for the Secretary of State focused on gathering documents relevant to this litigation and produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.). Many, if not all, of the 3,000+ pages were gathered from the General Assembly in hard copy. Given the unique nature of the documents, we had to conduct a preliminary review to determine whether a privilege applied that would require a meet and confer. The preliminary review process and internal discussions required a significant amount of the team's bandwidth. Ultimately, we determined that no privilege applies to the majority of the documents. The relevant documents will be produced to you on a rolling basis starting on February 2nd. Though not in strict compliance with the joint stipulation, I hope the demonstrated effort alleviates any concern that we have just now begun a document search.

As a point of clarification, the Secretary of State's Office provides administrative support to the State Election Commission. The State Election Commission is comprised solely of the commissioners. The Secretary of State's Office has identified the relevant custodians and started gathering .pst files. We will certainly communicate the number of hits, and any unusually large universes, as soon as the terms are applied to the data sets. We are discussing the search process for individual commissioners with our clients.

Please let me know if you have further questions. I am happy to coordinate a call next week if you'd like to discuss.

Best,
Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935

<image003.png>

From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Sent: Friday, January 19, 2024 11:42 AM

To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Cc: Adam Mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Mitchell D. Brown <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>
Subject: Re: Redistricting Case Discovery Responses

Hi, Ryan – hope you're staying warm! Questions and clarifications below.

First, for Secretary Hargett's and Coordinator Goins's ROGs, the hyperlinks provided in the responses to ROGs 5 and 6, do not work. Can you please send us links that work?

Second, based on our agreement in the joint stipulation and later in the case management order, i.e., ---"Between the date of this stipulation and January 15, 2024, the parties agree to meet and confer regarding the scope of any asserted grounds of privilege or other bases for nondisclosure, custodians, search terms to be used in electronic discovery, running the search terms, and the number of hits produced by agreed-upon searches," --- we were under the impression that the State was going to reach out us prior to Jan. 16 to meet and confer regarding any search terms and hits. It appears that the State has only now begun its search. Do you have a sense of how long it would take for you to review the documents you reference regarding the other redistricting litigation and also additionally run search terms for all the Defendants and relevant custodians?

Third, with respect to the 3000+ pages, can you provide(1) the search terms that were used to identify the universe of 3,000+ pages, (2) the list of custodians who were searched, and (3) whether the searches included a search of emails, text messages, and other electronic forms

of communication like Slack or signal?

Fourth, as requested, I have provided search terms below. Can you list the custodians searched? Can you confirm that you will be searching the relevant custodians for the State Election Commission and its individual members? Can you confirm that you will search emails, text messages, and other electronic forms of communication like Slack or signal? Finally, for each keyword string identified below, can you provide the number of hits?

If you would like discuss by zoom, please let me know. Happy to set up a call next week! Thank you!

Keyword String	# of Hits	Custodians list
(Congress* OR House OR Senat* OR Legislat*) w/20 (districts OR map* OR boundar* OR plan* OR apportion* or reapportion*)		
Redistrict* OR gerrymander* OR reapportion* OR "Redistricting Plan"		
("tabulation district" OR VTD OR precinct) w/10 (split* OR divid* OR cut* OR district* OR map OR boundar* OR border* OR apportion* OR reapportion* OR county OR counties)		
(district* OR redistrict*) w/20 ("Constitution" OR "Voting Rights Act" OR VRA OR "Section 2" OR (discriminat* w/3 intent*) OR (discriminat* w/3 result*) OR (discriminat*		

<p>w/3 purpose) OR RPV OR RBV OR "minority cohes*" OR "geograph*" OR county* OR counties OR compact*")</p>	
<p>(Census OR "population deviation" OR "populat* deviat*" OR "American Community Survey" OR ACS) AND (grow* OR increas* OR drop* OR declin* OR change* OR count OR counts OR enumerat* OR estimat* OR deviat* OR ideal OR race OR racial* OR ethnic* OR national* OR minority OR citizen OR immigrant* OR Black OR African OR Hispanic OR Latin* OR Spanish OR white*)</p>	
<p>"House Bill 1037" OR "HB 1037" OR HB1037 OR "H.B. 1037" OR H1037 OR (House w/2 plan) OR (House w/2 map)</p>	
<p>"House Bill 1034" OR "HB 1034" OR HB1034 OR "H.B. 1034" OR H1034 OR (House w/2 plan) OR (House w/2 map)</p>	
<p>"Senate Bill 780" OR "SB 780" OR SB780 OR "S.B. 780" OR S780 OR (Senate w/2 plan) OR (Senate w/2 map)</p>	
<p>"Senate Bill 781" OR "SB 781" OR SB781 OR "S.B. 781" OR S781 OR (Senate w/2 plan) OR (Senate w/2 map)</p>	

<p>“Congressional District 5” OR “CD 5” OR CD5 OR “District 5” OR “Jim Cooper” OR “Cooper</p>	
<p>(Nashville OR “Davidson County”) w/20 (redist* OR Congress* OR House OR Senate OR plan OR map)</p>	
<p>(Shelby OR “Shelby County”) w/20 (redist* OR Congress* OR House OR Senate OR plan OR map)</p>	
<p>Shapefile* OR shape-file* OR "shape file" OR blockfile OR block-file OR "block file"</p>	
<p>“Dave’s Redistricting” OR “Dave’s”</p>	
<p>(Hearing OR meet* OR witness* OR debat* OR deadline* OR testim* OR testif* OR notice OR process* OR outreach OR press OR comm* OR mark* OR amend* OR sign*) w/20 ((district* w/3 (new OR propos* OR plan*)) OR map OR boundar* OR apportion* OR reapportion*</p>	
<p>Redistr* w/20 (invit* OR request OR consider OR testif* OR testim*)</p>	
<p>(Bill* OR legis* OR propos*) w/20 (race OR racial* OR racis* OR slavery OR "critical race theory" OR CRT OR Black OR African OR Hispanic OR Latin* OR Spanish OR Mexican OR white* OR Anglo* OR ethnic* OR national* OR language OR minority OR</p>	

citizen* OR immigrant* OR pattern* OR election* OR bail* OR undocumented OR (illegal* w/3 immigr*)		
Redistr* w/20 (Republican* OR "Party" OR NRRT OR RPT OR GOP)		
Maptitude OR Mapti*		

--

Pooja Chaudhuri (pronouns: she/her)

Counsel, Voting Rights Project

Lawyers' Committee for Civil Rights Under Law

1500 K Street, NW, Suite 900

Washington, D.C. 20005

Dir: 202-662-8319 | Cell: 415-726-1414

[https://link.edgepilot.com/s/f389f855/sDXYDTmb80u-9E-MCh4FVg?
u=http://www.lawyerscommittee.org/](https://link.edgepilot.com/s/f389f855/sDXYDTmb80u-9E-MCh4FVg?u=http://www.lawyerscommittee.org/)

From: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>
Sent: Tuesday, January 16, 2024 6:10 PM
To: Ryan N. Henry <Ryan.Henry@ag.tn.gov>
Cc: Adam Mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; mitchellbrown@scsj.org <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George

<GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>

Subject: Re: Redistricting Case Discovery Responses

Thanks, Ryan! Confirming receipt. Will send a longer response once we've had a chance to review.

Happy New Year!

Pooja

--

Pooja Chaudhuri (pronouns: she/her)

Counsel, Voting Rights Project

Lawyers' Committee for Civil Rights Under Law

1500 K Street, NW, Suite 900

Washington, D.C. 20005

Dir: 202-662-8319 | Cell: 415-726-1414

[https://link.edgepilot.com/s/f389f855/sDXYDTmb80u-9E-MCh4FVg?
u=http://www.lawyerscommittee.org/](https://link.edgepilot.com/s/f389f855/sDXYDTmb80u-9E-MCh4FVg?u=http://www.lawyerscommittee.org/)

From: Ryan N. Henry <Ryan.Henry@ag.tn.gov>

Sent: Tuesday, January 16, 2024 5:51 PM

To: Pooja Chaudhuri <pchaudhuri@lawyerscommittee.org>

Cc: Adam Mortara <mortara@lawfairllc.com>; Whitney Hermandorfer <Whitney.Hermandorfer@ag.tn.gov>; Miranda H. Jones <Miranda.Jones@ag.tn.gov>; Philip Hammersley <Philip.Hammersley@ag.tn.gov>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; mitchellbrown@scsj.org <mitchellbrown@scsj.org>; Jeff Loperfido <jeffloperfido@scsj.org>; Mastoris, George <GMastoris@winston.com>; Tuma, Michelle <MTuma@winston.com>; Alexander Davis <adavis@lawyerscommittee.org>; Phillip Cramer <pcramer@sperling-law.com>

Subject: Redistricting Case Discovery Responses

[EXTERNAL EMAIL] This email originated outside the organization. Do not click any links or open

any attachments unless you can verify the legitimacy.

Pooja,

Attached please find discovery responses for Secretary Hargett, Coordinator Goins, the State Election Commission, and Commissioners Barrett, Blackburn, Eldridge, McDonald, Meadows, and Younce. We met with Commissioner Smith regarding the requests and are waiting for him to return his responses.

The weather in Tennessee has much of the State homebound, so a few of the responses are without an executed verification page. We will forward verifications as soon as they are received. We appreciate your understanding on this front!

Documents produced in other litigation regarding redistricting may be responsive to requests for production directed to Secretary Hargett and Coordinator Goins. We have been actively reviewing those documents, which amount to 3,000+ pages, for responsiveness and protections. Additionally, a search of Secretary Hargett's, Coordinator Goins', and custodians' inboxes may reveal discoverable documents. Would you mind forwarding a list of search terms you would like to be applied to electronic documents?

Thanks,
Ryan

Ryan Nicole Henry | Assistant Attorney General
Education and Employment Division
Office of the Tennessee Attorney General
UBS Building, 18th Floor
315 Deaderick Street, Nashville, Tennessee 37243
P: (615)532-2935

<image003.png>

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

<Himes Subpoena Package.pdf>

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF)		
THE NAACP et al.,))	
))	
<i>Plaintiffs,</i> )	)	No. 3:23-cv-00832
))	
v. )	)	JUDGE ELI RICHARDSON
)	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al., )	)	JUDGE BENITA Y. PEARSON
))	
<i>Defendants.</i>))	
))	

NOTICE OF DEPOSITION

To: Deputy Speaker Curtis Johnson, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Deputy Speaker Curtis Johnson by stenographic means on **May 13, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

**LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW**

Ezra D. Rosenberg, *admitted*
Pooja Chaudhuri, *admitted*
Alexander S. Davis, *pro hac vice*
1500 K Street NW, Suite 900
Washington, D.C. 20005
Tel. (202) 662-8600
erosenberg@lawyerscommittee.org
pchaudhuri@lawyerscommittee.org
adavis@lawyerscommittee.org

**SOUTHERN COALITION FOR SOCIAL
JUSTICE**

Jeffrey Loperfido, *pro hac vice*
Mitchell D. Brown, *pro hac vice*
P.O. Box 51280
Durham, NC 27717
Tel: (919) 323-3380
jeffloperfido@scsj.org
mitchellbrown@scsj.org

WINSTON & STRAWN LLP

George E. Mastoris, *pro hac vice*
Michelle D. Tuma, *pro hac vice*
200 Park Avenue
New York, NY 10166
Tel. (212) 294-6700
gmastoris@winston.com
mtuma@winston.com

Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,)

Plaintiff)

v.)

Civil Action No. 3:23-cv-00832

William B. Lee, in his official capacity as Governor of)
the State of Tennessee, et al.,)

Defendant)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Deputy Speaker Curtis Johnson, by and through his counsel Ryan Henry
Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

See Attachment A for the list of topics to be covered during the deposition

Table with 2 columns: Place (Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (05/13/2024 9:00 am)

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR

Handwritten signature of Phillop Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Tennessee State Conference of the NAACP, et al., who issues or requests this subpoena, are:

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF)	
THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>)	No. 3:23-cv-00832
)	
v.)	JUDGE ELI RICHARDSON
)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	
)	

NOTICE OF DEPOSITION

To: Senator Dawn White, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Senator Dawn White by stenographic means on **May 14, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

**LAWYERS' COMMITTEE
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mtuma@winston.com

Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Senator Dawn White, by and through her counsel Ryan Henry
Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

See Attachment A for the list of topics to be covered during the deposition

Table with 2 columns: Place (Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (05/14/2024 9:00 am)

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR

Handwritten signature of Phillop Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Tennessee State Conference of the NAACP, et al., who issues or requests this subpoena, are:

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF)		
THE NAACP et al.,))	
))	
<i>Plaintiffs,</i> )	)	No. 3:23-cv-00832
))	
v. )	)	JUDGE ELI RICHARDSON
)	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al., )	)	JUDGE BENITA Y. PEARSON
))	
<i>Defendants.</i>))	
))	

NOTICE OF DEPOSITION

To: Doug Himes, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Doug Himes by stenographic means on **May 15, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

**LAWYERS' COMMITTEE
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adavis@lawyerscommittee.org

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gmastoris@winston.com
mtuma@winston.com

Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Doug Himes, by and through his counsel Ryan Henry
Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

See Attachment A for the list of topics to be covered during the deposition

Table with 2 columns: Place (Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (05/15/2024 9:00 am)

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR

Handwritten signature of Phillop Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Tennessee State Conference of the NAACP, et al., who issues or requests this subpoena, are:

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
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(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

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

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

(g) Contempt.

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For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF) THE NAACP et al.,) <i>Plaintiffs,</i>) v.) WILLIAM B. LEE, et al.,) <i>Defendants.</i>))	No. 3:23-cv-00832 JUDGE ELI RICHARDSON JUDGE ERIC E. MURPHY JUDGE BENITA Y. PEARSON
--	--

NOTICE OF DEPOSITION

To: Representative Gary Hicks, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Representative Gary Hicks by stenographic means on **May 16, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

**LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW**

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Pooja Chaudhuri, *admitted*
Alexander S. Davis, *pro hac vice*
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Tel. (202) 662-8600
erosenberg@lawyerscommittee.org
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**SOUTHERN COALITION FOR SOCIAL
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Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Representative Gary Hicks, by and through his counsel Ryan Henry
Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

See Attachment A for the list of topics to be covered during the deposition

Table with 2 columns: Place (Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (05/16/2024 9:00 am)

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR

Handwritten signature of attorney

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Tennessee State Conference of the NAACP, et al., who issues or requests this subpoena, are:

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF) THE NAACP et al.,) <i>Plaintiffs,</i>) v.) WILLIAM B. LEE, et al.,) <i>Defendants.</i>))	No. 3:23-cv-00832 JUDGE ELI RICHARDSON JUDGE ERIC E. MURPHY JUDGE BENITA Y. PEARSON
--	--

NOTICE OF DEPOSITION

To: Senator Jack Johnson, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Senator Jack Johnson by stenographic means on **May 20, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

**LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW**

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adavis@lawyerscommittee.org

**SOUTHERN COALITION FOR SOCIAL
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gmastoris@winston.com
mtuma@winston.com

Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,)

Plaintiff)

v.)

Civil Action No. 3:23-cv-00832

William B. Lee, in his official capacity as Governor of)
the State of Tennessee, et al.,)

Defendant)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Senator Jack Johnson, by and through his counsel Ryan Henry
Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

See Attachment A for the list of topics to be covered during the deposition

Table with 2 columns: Place (Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (05/20/2024 9:00 am)

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR

Handwritten signature of Phillop Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
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(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
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(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

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

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

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

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

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

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

)	
TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	

ATTACHMENT A: DEPOSITION TOPIC LIST

1. Public statements made by the deponent during public legislative hearings concerning the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781) (collectively, the “Redistricting Plans”), and the factual support for those statements.
2. Public statements made by the deponent in any other public setting concerning the Redistricting Plans, and the factual support for those statements.
3. The deponent’s awareness and understanding of public comments, including testimony (written or spoken), constituent submissions, and social media posts, concerning the Redistricting Plan, including how those public comments were considered in connection with the creation of the Redistricting Plans.
4. Communications, including written correspondence, between the deponent and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans.
5. Communications, including written correspondence, between the deponent and any other third-party organizations, third-party individuals, or third-party consultants concerning the Redistricting Plans.
6. The deponent’s knowledge and/or understanding of the requirements of the Voting Rights Act, as well as the United States and Tennessee Constitutions, with regard to redistricting generally and the Redistricting Plans in particular.

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF)		
THE NAACP et al.,))	
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<i>Plaintiffs,</i>))	No. 3:23-cv-00832
))	
v.))	JUDGE ELI RICHARDSON
))	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,))	JUDGE BENITA Y. PEARSON
))	
<i>Defendants.</i>))	
))	

NOTICE OF DEPOSITION

To: Representative Kevin Vaughan, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Representative Kevin Vaughan by stenographic means on **May 21, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

**LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW**

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erosenberg@lawyerscommittee.org
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Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT
for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,

Plaintiff

v.

William B. Lee, in his official capacity as Governor of
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Civil Action No. 3:23-cv-00832

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respond to this subpoena and the potential consequences of not doing so.

Date: 04/16/2024

CLERK OF COURT

OR

Handwritten signature of Phillop Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

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Civil Action No. 3:23-cv-00832

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

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(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF)		
THE NAACP et al.,))	
))	
<i>Plaintiffs,</i> )	)	No. 3:23-cv-00832
))	
v. )	)	JUDGE ELI RICHARDSON
)	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al., )	)	JUDGE BENITA Y. PEARSON
))	
<i>Defendants.</i>))	
))	

NOTICE OF DEPOSITION

To: Tennessee Speaker Pro Tempore Pat Marsh, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Speaker Pro Tempore Pat Marsh by stenographic means on **May 22, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

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Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Speaker Pro Tempore Pat Marsh, by and through his counsel Ryan Henry Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

See Attachment A for the list of topics to be covered during the deposition

Table with 2 columns: Place (Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (05/22/2024 9:00 am)

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR

Handwritten signature of Phillop Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Tennessee State Conference of the NAACP, et al., who issues or requests this subpoena, are:

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF) THE NAACP et al.,) <i>Plaintiffs,</i>) v.) WILLIAM B. LEE, et al.,) <i>Defendants.</i>)))	No. 3:23-cv-00832 JUDGE ELI RICHARDSON JUDGE ERIC E. MURPHY JUDGE BENITA Y. PEARSON
---	--

NOTICE OF DEPOSITION

To: Representative Patsy Hazlewood, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Representative Patsy Hazlewood by stenographic means on **May 28, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

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gmastoris@winston.com
mtuma@winston.com

Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Representative Patsy Hazlewood, by and through her counsel Ryan Henry Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

See Attachment A for the list of topics to be covered during the deposition

Place: Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

05/28/2024 9:00 am

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR

[Handwritten signature]

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Tennessee State Conference of the NAACP, et al.,

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

)	
TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	

ATTACHMENT A: DEPOSITION TOPIC LIST

1. Public statements made by the deponent during public legislative hearings concerning the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781) (collectively, the “Redistricting Plans”), and the factual support for those statements.
2. Public statements made by the deponent in any other public setting concerning the Redistricting Plans, and the factual support for those statements.
3. The deponent’s awareness and understanding of public comments, including testimony (written or spoken), constituent submissions, and social media posts, concerning the Redistricting Plan, including how those public comments were considered in connection with the creation of the Redistricting Plans.
4. Communications, including written correspondence, between the deponent and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans.
5. Communications, including written correspondence, between the deponent and any other third-party organizations, third-party individuals, or third-party consultants concerning the Redistricting Plans.
6. The deponent’s knowledge and/or understanding of the requirements of the Voting Rights Act, as well as the United States and Tennessee Constitutions, with regard to redistricting generally and the Redistricting Plans in particular.

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF) THE NAACP et al.,) <i>Plaintiffs,</i>) v.) WILLIAM B. LEE, et al.,) <i>Defendants.</i>))	No. 3:23-cv-00832 JUDGE ELI RICHARDSON JUDGE ERIC E. MURPHY JUDGE BENITA Y. PEARSON
--	--

NOTICE OF DEPOSITION

To: Senator Paul Rose, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Senator Paul Rose by stenographic means on **May 29, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

**LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW**

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JUSTICE**

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Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,

Plaintiff

v.

William B. Lee, in his official capacity as Governor of the State of Tennessee, et al.,

Defendant

Civil Action No. 3:23-cv-00832

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Senator Paul Rose, by and through his counsel Ryan Henry
Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

Table with 2 columns: Place (Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203) and Date and Time (05/29/2024 9:00 am)

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR

Handwritten signature of Phillop Cramer

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Tennessee State Conference of the NAACP, et al., who issues or requests this subpoena, are:

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

)	
TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	

ATTACHMENT A: DEPOSITION TOPIC LIST

1. Public statements made by the deponent during public legislative hearings concerning the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781) (collectively, the “Redistricting Plans”), and the factual support for those statements.
2. Public statements made by the deponent in any other public setting concerning the Redistricting Plans, and the factual support for those statements.
3. The deponent’s awareness and understanding of public comments, including testimony (written or spoken), constituent submissions, and social media posts, concerning the Redistricting Plan, including how those public comments were considered in connection with the creation of the Redistricting Plans.
4. Communications, including written correspondence, between the deponent and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans.
5. Communications, including written correspondence, between the deponent and any other third-party organizations, third-party individuals, or third-party consultants concerning the Redistricting Plans.
6. The deponent’s knowledge and/or understanding of the requirements of the Voting Rights Act, as well as the United States and Tennessee Constitutions, with regard to redistricting generally and the Redistricting Plans in particular.

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF) THE NAACP et al.,) <i>Plaintiffs,</i>) v.) WILLIAM B. LEE, et al.,) <i>Defendants.</i>)))	No. 3:23-cv-00832 JUDGE ELI RICHARDSON JUDGE ERIC E. MURPHY JUDGE BENITA Y. PEARSON
---	--

NOTICE OF DEPOSITION

To: Representative William Lamberth, by and through Defendants’ Counsel Ryan Henry, Office of Tennessee Attorney General, P.O. Box 20207, Nashville, Tennessee 37202

PLEASE TAKE NOTICE that Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis (collectively, “Plaintiffs”) will take the oral deposition of Tennessee Representative William Lamberth by stenographic means on **May 30, 2024, beginning at 9:00 a.m. at Sperling & Slater, at 1221 Broadway, Suite 2140, Nashville, TN 37203** (with the option for remote attendance via Zoom) in accordance with Federal Rules of Civil Procedure 30 and 45, and Middle District of Tennessee Local Rule 45.01(c).

Dated: April 16, 2024

SPERLING & SLATER

By: /s/ Phillip F. Cramer

Phillip F. Cramer
1221 Broadway, Suite 2140
Nashville, TN 37203
Tel. (312) 224-1512
pcramer@sperling-law.com

**LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW**

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Attorneys For Plaintiffs

UNITED STATES DISTRICT COURT
for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.,)

Plaintiff)

v.)

William B. Lee, in his official capacity as Governor of)
the State of Tennessee, et al.,)

Defendant)

Civil Action No. 3:23-cv-00832

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Representative William Lamberth, by and through his counsel Ryan Henry
Office of Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202

(Name of person to whom this subpoena is directed)

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

See Attachment A for the list of topics to be covered during the deposition

Place: Sperling & Slater, 1221 Broadway, Suite 2140, Nashville, TN 37203	Date and Time: 05/30/2024 9:00 am
---	--------------------------------------

The deposition will be recorded by this method: Stenographic

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

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

Date: 04/16/2024

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillop Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

Notice to the person who issues or requests this subpoena

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

Civil Action No. 3:23-cv-00832

PROOF OF SERVICE

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

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

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

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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

(c) Place of Compliance.

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

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

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

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
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(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

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

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

(g) Contempt.

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

)	
TENNESSEE STATE CONFERENCE)	
OF THE NAACP et al.,)	
)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
<i>Defendants.</i>)	

ATTACHMENT A: DEPOSITION TOPIC LIST

1. Public statements made by the deponent during public legislative hearings concerning the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781) (collectively, the “Redistricting Plans”), and the factual support for those statements.
2. Public statements made by the deponent in any other public setting concerning the Redistricting Plans, and the factual support for those statements.
3. The deponent’s awareness and understanding of public comments, including testimony (written or spoken), constituent submissions, and social media posts, concerning the Redistricting Plan, including how those public comments were considered in connection with the creation of the Redistricting Plans.
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6. The deponent’s knowledge and/or understanding of the requirements of the Voting Rights Act, as well as the United States and Tennessee Constitutions, with regard to redistricting generally and the Redistricting Plans in particular.

7. The deponent's knowledge and/or understanding of the extent to which the Redistricting Plans adhere to traditional redistricting criteria (including population, compactness, respecting political boundaries, maintaining communities of interest).
8. The deponent's knowledge and/or understanding of communities of interest in the areas covered by current Congressional Districts 5, 6, and 7 and State Senate Districts 29, 30, 31, 32, and 33.

EXHIBIT 6

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF)	
THE NAACP et al.,)	
)	
Plaintiffs,	)	No. 3:23-cv-00832
)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
)	
Defendants.)	
)	

DEFENDANTS’ RULE 26(a)(1) INITIAL DISCLOSURES

Pursuant to Fed. R. Civ. P. 26(a)(1), counsel for Defendants, Governor William B. Lee, Secretary of State Tre Hargett, Coordinator of Elections Mark Goins, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith, and Kent Younce, in their official capacities as members of the State Election Commission, make the following disclosures. Defendants make these initial disclosures based on the information reasonably known to them at this time and reserve the right to amend or supplement these disclosures at any time permitted by the tribunal or Federal Rules of Civil Procedure.

- (i) **Name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment:**

The presumption of legislative good faith places the burden on Plaintiffs to prove their claims. Defendants incorporate by reference any individual that Plaintiffs

list on their initial disclosures. Defendants reserve the right to supplement these disclosures in light of the Supreme Court's decision in *Alexander*. Defendants further reserve the right to supplement these disclosures with the names of witnesses identified in the course of discovery likely to have discoverable information that Defendants may rely upon to support their claims or defenses.

(ii) A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment:

1. Maps underlying House Bill 1034, House Bill 1037, Senate Bill 0780, and Senate Bill 0781 as transmitted to Defendants from the Tennessee General Assembly or retrieved from tn-cot.maps.arcgis.com.

Defendants reserve the right to supplement these disclosures if they become aware of additional documents during the course of discovery that they may rely upon to support their claims or defenses.

(iii) damages: N/A

(iv) insurance agreements: N/A

Dated: November 14, 2023

ADAM K. MORTARA (BPR# 40089)
Lawfair LLC
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Nashville, TN 37215
(773) 750-7154
mortara@lawfairllc.com

Respectfully submitted,

/s/ Ryan Henry
RYAN NICOLE HENRY (BPR# 40028)
Assistant Attorney General
WHITNEY DOWNS HERMANDORFER
(BPR# 041054)
Assistant Solicitor General
MIRANDA H. JONES (BPR# 036070)
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2023, the undersigned filed the foregoing document via this Court's electronic filing system, which sent notice of such filing to the following counsel of record:

COUNSEL OF RECORD	PARTY REPRESENTED
<p>Phillip F. Cramer Sperling & Slater 150 3rd Avenue South, Suite 1100 Nashville, TN 37201 Tel.: 312-224-1512 pcramer@sperling-law.com</p> <p>Jon Greenbaum Ezra D. Rosenberg Pooja Chaudhuri Lawyers' Committee for Civil Rights Under Law 1500 K Street NW, Suite 900 Washington, DC 20005 Tel.: 202-662-8600 jgreenbaum@lawyerscommittee.org erosenberg@lawyerscommittee.org pchaudhuri@lawyerscommittee.org</p> <p>Jeffrey Loperfido Mitchell D. Brown Southern Coalition for Social Justice 1415 West Highway 54, Suite 101 Durham, NC 27707 Tel.: 919-323-3380 jeffloperfido@scsj.org mitchellbrown@scsj.org</p>	<p>Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis</p>

<p>George E. Mastoris Michelle D. Tuma Winston & Strawn LLP 200 Park Avenue New York, NY 10166 Tel.: 212-294-6700 gmastoris@winston.com mtuma@winston.com</p>	
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/s/ Ryan Nicole Henry
RYAN NICOLE HENRY (BPR# 040028)
Assistant Attorney General

Counsel for Defendants

EXHIBIT 7

Doug Himes

From: Kevin Vaughan
Sent: Thursday, November 4, 2021 11:14 AM
To: Gadd, Chris
Subject: Re: District 5, Dickson County, upcoming change

Hi Chris:

Thanks for the question. Right now, it is too early to speculate on the Congressional lines. Our efforts are consumed with trying to hammer out a State Rep map that will be both fair and constitutional. I see that discussion beginning once we get our own house (pun intended) in order.

At this point there are no preconceived notions. However, I do realize that there is a great deal of speculation.

Kevin Vaughan | State Representative | District 95
425 5th Avenue North, Suite 442 | Nashville, TN 3724
O: 615.741.1866 | C: 901.292.3210 | rep.kevin.vaughan@capitol.tn.gov

From: "Gadd, Chris" <cgadd@dicksonherald.com>
Date: Thursday, November 4, 2021 at 7:37 AM
To: Kevin Vaughan <rep.kevin.vaughan@capitol.tn.gov>
Subject: FW: District 5, Dickson County, upcoming change

Rep. Vaughan,

Can you comment on the likelihood of Dickson County moving out of Congressional District 5? And then likely moving into District 7? As you can see below, DC GOP Chair Garrett commented on this.

I understand you are heading up the Middle TN redistricting.

(Side note: I used to be Collierville Appeal editor about 15 years ago...and am a U of M grad).

Thanks,

Chris Gadd

From: jimgarr@bellsouth.net <jimgarr@bellsouth.net>
Sent: Wednesday, November 3, 2021 9:16 PM
To: Gadd, Chris <cgadd@dicksonherald.com>
Subject: RE: District 5, Dickson County, upcoming change

Chris,

Good evening. My comments were based upon three factors I saw. The first was simply the population numbers I saw. The second was a knowledge that the western counties were deficient in population, thus their area would have to increase, thus their boundaries would be moving eastward. This will cause

District 7 to move eastward. The third is the knowledge counties of a multiple county district have to be continuous - i.e. connected.

The target population of a congressional district is: 767,871 (with a 5% variance the number could be between 729,478 and 806,264).

The population of Davidson County is 715,884 which is 51,987 short of the target.

The population of Cheatham County is 41,072 which combined with Davidson Co. would meet the target.

The population of Dickson County is 54,315 which, if combined with Davidson and Cheatham, would be about 5,000 over the maximum target value. Thus the three counties would not be combined – at a minimum Dickson County would have to be split.

Now the second factor comes into play. The western boundary of District 7 will probably be moving eastward. Thus, the eastern boundary will need to be modified. In all likelihood this would involve Dickson County.

These factors enter into why I made my prediction as I did.

I hope this helps. Let me know if you get a response.

BTW, you may want to ask Representative Kevin Vaughan this question or for his comments on this matter. He is the House Middle Tennessee Coordinator on redistricting.

**Jim Garrett
Chairman, DCRP**

From: Gadd, Chris <cgadd@dicksonherald.com>

Sent: Wednesday, November 3, 2021 5:18 AM

To: rep.william.lamberth@capitol.tn.gov; Katie.Feldhaus@mail.house.gov; chairman gopnashville.org

chairman@gopnashville.org; rep.michael.curcio@capitol.tn.gov

Subject: District 5, Dickson County, upcoming change

Good morning legislators,

Reading recent comments from Chairman Garrett and listening to comments from a recent Dickson County Commission meeting, it appears likely that Dickson County will be drawn out of Congressional District 5 in the coming months. I also understand that the likely "landing place" is District 7.

Can anyone comment on this at this time? What the objective might be? What's expected to happen?

Thank you,

Chris

Chris Gadd

Editor

The Dickson Herald

EXHIBIT 8

Doug Himes

From: Kevin Vaughan
Sent: Tuesday, December 14, 2021 2:24 PM
To: Nate Rau
Subject: Re: Questions for an upcoming story

Hi Nate!

Other than hearing Congressman Cooper's thoughts in our public meeting, I have not heard from any other member of Congress. Of course, I would welcome them sharing their thoughts with me, should they desire.

We have been focusing on the TN House maps to date. We are planning to release our suggested version of that map to our fellow members soon.

Once we conclude that process, we will begin to focus on the Congressional maps.

Kevin Vaughan | State Representative | District 95
425 5th Avenue North, Suite 442 | Nashville, TN 3724
O: 615.741.1866 | C: 901.292.3210 | rep.kevin.vaughan@capitol.tn.gov

From: Nate Rau <nate.rau@axios.com>
Date: Tuesday, December 14, 2021 at 1:46 PM
To: Kevin Vaughan <rep.kevin.vaughan@capitol.tn.gov>
Subject: Questions for an upcoming story

Hello Rep. Vaughan,

I am working on a story about the redistricting process. I covered earlier meetings where Congressman Cooper expressed his thoughts on how the district lines should be drawn.

However, I am wondering if Congressman Green, Desjarlais or Rose have talked to you about what they'd like to see done with their districts? Will their thoughts on this issue be factored into the decision? I am asking because as I understand it you are the redistricting committee's designee for Middle Tennessee.

Have the congressmen besides Cooper submitted maps or public comments about redistricting that you could please share?

I am looking to file my story by tomorrow afternoon. I am happy to discuss if you'd like, my number is below.

Many thanks... Nate

--
Nate Rau
Reporter, Axios Nashville
nate.rau@axios.com

615.498.5202



EXHIBIT 9

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT DONNA BARRETT'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Donna Barrett, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling local election commission vacancies in certain counties located in CD-5, CD-6, CD-7. Defendant is not responsible for filling local election commission vacancies in in SD-29, SD-30, SC 31, or SD-32.

Defendant engaged in the above activities in preparation for the 2022 primary and general elections. Defendant anticipates engaging in the same activities to prepare for the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant is not aware of any complaints regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

VERIFICATION

I, Donna Barrett, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF _____)

Subscribed and sworn before me this ____ day of _____, 2024.

NOTARY PUBLIC

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

ADAM K. MORTARA (BPR# 40089)
Lawfair LLC
40 Burton Hills Blvd., Suite 200
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/s/ Ryan N. Henry
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

COUNSEL OF RECORD	PARTY REPRESENTED
<p>Phillip F. Cramer Sperling & Slater 150 3rd Avenue South, Suite 1100 Nashville, TN 37201 Tel.: 312-224-1512 pcramer@sperling-law.com</p> <p>Jon Greenbaum* Ezra D. Rosenberg* Pooja Chaudhuri* Lawyers' Committee for Civil Rights Under Law 1500 K Street NW, Suite 900 Washington, DC 20005 Tel.: 202-662-8600 jgreenbaum@lawyerscommittee.org erosenberg@lawyerscommittee.org pchaudhuri@lawyerscommittee.org</p> <p>Jeffrey Loperfido* Mitchell D. Brown* Southern Coalition for Social Justice 1415 West Highway 54, Suite 101 Durham, NC 27707 Tel.: 919-323-3380 jeffloperfido@scsj.org mitchellbrown@scsj.org</p> <p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166</p>	<p>Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis</p>

<p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166 Tel.: 212-294-6700 gmastoris@winston.com mtuma@winston.com</p>	
<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT DONNA BARRETT'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Donna Barrett, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust ("NRRT"), Fair Lines America,

or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting

Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT JUDY BLACKBURN'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Judy Blackburn, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is not responsible for filling local election commission vacancies in counties located in CD-5, CD-6, CD-7, SD-29, SD-30, SC 31, or SD-32.

Defendant engaged in the above activities in preparation for the 2022 primary and general elections. Defendant anticipates engaging in the same activities to prepare for the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant is not aware of any complaints regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

VERIFICATION

I, Judy Blackburn, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

Judy Blackburn
STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF Hamilton)

Subscribed and sworn before me this 16 day of Jan, 2024.

Teresa West
NOTARY PUBLIC



My commission expires 3/31/27

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT JUDY BLACKBURN'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Judy Blackburn, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust ("NRRT"), Fair Lines America,

or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting

Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant possesses a laminated map of the current Congressional districts and

Tennessee Senate districts. She will allow inspection of this map at a time and location agreeable to the parties. Aside from this map, Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information

disproportionate to the needs of this case by asking for “All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or "VTDs" for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT JIMMY ELDRIDGE'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Jimmy Eldridge, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is not responsible for filling local election commission vacancies in CD-5, CD-6, CD-7, SD-29, SD-30, SC 31, or SD-32.

Defendant joined the State Election Commission in April 2021 and engaged in the above activities in preparation for the 2022 primary and general elections. Defendant anticipates engaging in the same activities to prepare for the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant is not aware of any complaints regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

VERIFICATION

I, Jimmy Eldridge, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.


STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF Madison)

Subscribed and sworn before me this 12 day of January, 2024.


NOTARY PUBLIC



**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT JIMMY ELDRIDGE'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Jimmy Eldridge, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- b. all correspondence between or among Defendants Relating to the Redistricting Plans;
- c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust ("NRRT"), Fair Lines America,

or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting

Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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ls/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**MARK GOINS'S RESPONSE
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Mark Goins, in his official capacity as Tennessee Coordinator of Elections, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 in that it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the instruction that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan, and SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the 2022 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32, and will not implement the 2024 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32.

Tennessee has a decentralized system for conducting elections and thus most of the preparation for elections is conducted at the local level by the county election commissions ([Tennessee Secretary of State: Division of Election: Election Commissions \(tnsos.org\)](https://www.tnsos.org)).

However, pursuant to Tenn. Code Ann. § 2-11-201(a)(1), as the Coordinator of Elections for the State of Tennessee, Defendant has the duty to “[g]enerally supervise all elections” and thus, in addition to the duties set forth in Tenn. Code Ann. § 2-11-201, performs certain activities in preparation for state and federal elections, including but not limited to the following:

- Receive and review nominating petitions from Presidential Preference Primary candidates not certified by the chair of a statewide political party;
- Receive and review nominating petitions from delegate-candidates in the Presidential Preference Primary;
- Review and approve sample ballots from each county for the March Presidential Preference Primary and County Primary elections;
- Ensure that absentee ballots are timely mailed to military & overseas voters;
- Publicly examine the returns from the March Presidential Preference Primary and County primary and declare who has been nominated for office;
- Review and approve sample ballots from each county for the August State and Federal Primary and County General elections;
- Receive and review nominating petitions filed by Independent Presidential candidates;
- Receive and review nominating petitions filed by US House of Representatives and US Senate Candidates;
- Publicly examine the returns from the August State and Federal Primary Elections and declare who has been nominated for office.

Interrogatory 2:

Describe generally any complaints received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant objects to this interrogatory as vague as it does not identify *who* received the complaints. Defendant interprets this interrogatory as directed at any complaints he received.

Although Defendant did not implement the new congressional districts in CD-5, CD-6, or CD-7 for the 2022 primary and general elections, some organizations and individuals complained to Defendant about counties misassigning voters in congressional districts for the 2022 general election. In fact, the League of Women Voters and two others sued the Davidson County Election Commission, Jeff Roberts (the Administrator of Elections for Davidson County), Governor Lee, Secretary Hargett, and Defendant in Chancery Court in Davidson County over misassignment of voters in Davidson County. Aside from the Plaintiffs in that litigation, Defendant cannot recall a specific individual who complained to him about the implementation of a new congressional district. It is possible that a search of Defendant's email would identify additional complaints.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) the Tennessee Senate Plan—for SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) the Congressional Plan—for CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

As the Coordinator of Elections, Defendant “[g]enerally supervise[d]” the county election commissions’ preparation for elections in accordance with Tenn. Code Ann. § 2-11-201. Thus, Defendant engaged in routine conversations regarding election preparedness with staff in the

Coordinator of Elections' office, Secretary Hargett, and county election commissioners across Tennessee. Defendant does not recall specific conversations regarding the "implementation of" SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 7:¹

Identify each legislator who served on the House Select Committee on Redistricting during the 2022 legislative session of the Tennessee General Assembly, and, if known to You, describe all steps and the process the House Select Committee on Redistricting undertook to implement and adopt the Tennessee State House of Representatives Redistricting Guidelines. This interrogatory should identify all individuals who worked on the implementation of Tennessee State House of Representatives Redistricting Guidelines, including all individuals who participated in implementing the redistricting plans, including all staff members, consultants, attorneys, or any other third-party individuals.

Answer: Defendant objects to Interrogatory #7 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #7 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #7 as overly broad because it asks Defendant to describe "all steps" the House Select Committee took to implement and adopt the redistricting guidelines and to identify "all individuals" who worked on or participated in in implementing the redistricting guidelines.

Subject to the foregoing objections, Defendant responds as follows:

¹ Defendant notes that Plaintiffs First Set of Interrogatories did not include Interrogatories numbered 5 or 6. Defendant has numbered his responses to match Plaintiffs' numbering.

Defendant has no knowledge responsive to Interrogatory #7 beyond what is publicly available on the General Assembly's website and archives ([House Redistricting Committee - TN General Assembly](#); [House Redistricting Committee - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 8:

Identify each legislator who served on the Senate Ad Hoc Committee on Redistricting during the 2022 legislative session of the Tennessee General Assembly, and if known to you, describe all steps and the process the Senate Ad Hoc Committee on Redistricting undertook to implement and adopt its version of the Redistricting Guidelines. This interrogatory should identify all individuals who worked on the implementation of the Tennessee Senate's version of the Redistricting Guidelines, including all individuals who participated in implementing the redistricting plans, including all staff members, consultants, attorneys, or any other third-party individuals.

Answer: Defendant objects to Interrogatory #8 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #8 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #8 as overly broad because it asks Defendant to describe "all steps" the Senate Ad Hoc Committee took to implement and adopt the redistricting guidelines and to identify "all individuals" who worked on or participated in in implementing the redistricting guidelines and redistricting plans.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #8 beyond what is publicly available on the General Assembly's website and archives ([senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate](#)

[Redistricting - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 9:

Identify and list the dates for any and all hearings, including hearings convened and held by (1) the House Select Committee and (2) the Senate Ad Hoc Committee, concerning the redistricting plans for the Tennessee Senate (HB 1037/SB 780) and U.S. Congress (HB 1034/SB 781). Also identify any such hearings in which members of the public were invited to comment on the proposed redistricting plans and/or submit draft maps for legislative consideration. This interrogatory response should include hearings permitting only limited public comment and should include the duration, scheduled and actual date of each hearing and the time allotted for public comment.

Answer: Defendant objects to Interrogatory #9 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #9 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #9 beyond what is publicly available the General Assembly's website and archives ([House Redistricting Committee - TN General Assembly](#); [House Redistricting Committee - TN General Assembly \(archive.org\)](#); [senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate Redistricting - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 10:

Identify each legislator who served on the Senate Judiciary Committee during the 2022 legislative session of the Tennessee General Assembly.

Answer: Defendant objects to Interrogatory #10 because it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #8 because it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #10 beyond what is publicly available the General Assembly's website ([Senate Judiciary Committee - TN General Assembly](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 11:

Identify and describe any and all proposed amendments to the Congressional Plan—for CD-5, CD-6, and CD-7. This interrogatory response should describe all steps You undertook, and factors You considered, in assessing and evaluating such amendments.

Answer: Defendant objects to Interrogatory #11 because it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #11 because it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory

#11 to the extent it assumes a contested fact—that Defendant took steps or considered factors in assessing or evaluating proposed amendments to for CD-5, CD-6, and CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not assess or evaluate any proposed amendments to CD-5, CD-6, and CD-7. Defendant has no knowledge responsive to Interrogatory #11 beyond what is publicly available the General Assembly’s website (HB 1034 - [Tennessee General Assembly Legislation \(tn.gov\)](https://www.tn.gov); SB 0781 - [Tennessee General Assembly Legislation \(tn.gov\)](https://www.tn.gov)), contained in Defendant’s prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs’ Requests for Production.

Interrogatory 12:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #12 because it refers to 14 interrogatories but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #12 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered interrogatories 1-4 and is not aware of any other individuals with knowledge of the answers to these interrogatories.

To the extent there are individuals mentioned in the previously identified, publicly available information on the General Assembly's website or archives or referenced in documents to be produced in response to Plaintiffs' Requests for Production that may be responsive to Interrogatories #7-11, Defendant would refer Plaintiffs to those resources. Aside from the information contained in those resources and Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, Defendant is not aware of any other individuals with knowledge of the answers to interrogatories #7-11.

VERIFICATION

I, Mark Goins, in my capacity as Tennessee Coordinator of Elections, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

TENNESSEE COORDINATOR OF ELECTIONS

STATE OF TENNESSEE)
COUNTY OF _____)

Subscribed and sworn before me this ____ day of _____, 2024.

NOTARY PUBLIC

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

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Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**MARK GOINS'S RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Mark Goins, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks “All Documents Relating to any legislation discussed, considered or passed,” without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant is not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as overly broad and seeking irrelevant information. The entire scope of Defendant's legislative agenda and legislative priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent that it

seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for “All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE: Defendant is not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or "VTDs" for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Aside from the publicly available documents that Defendant identified in response to Plaintiffs' interrogatories, which Plaintiffs have the same ability to obtain as Defendant, Defendant noted that documents that will be produced in response to these requests for production may also contain information responsive to Plaintiffs' interrogatories.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT MIKE MCDONALD'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Mike McDonald, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling local election commission vacancies in certain counties located in CD-5, CD-6, and CD-7. Defendant is not responsible for filling local election commission vacancies in SD-29, SD-30, SC 31, or SD-32.

Defendant's duties are ongoing and he performed them before the 2022 primary and general elections and before the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant does not remember receiving any complaints for the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

VERIFICATION

I, Mike McDonald, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

Michael Ray McDonald

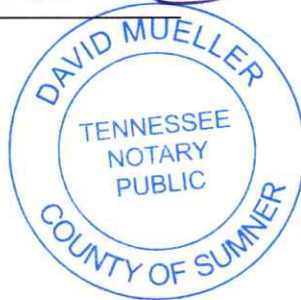
STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF SUMNER)

Subscribed and sworn before me this 12 day of January, 2024.

David Mueller

NOTARY PUBLIC



**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT MIKE MCDONALD'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Mike McDonald, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust ("NRRT"), Fair Lines America,

or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting

Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT SECONDRA MEADOWS'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Secondra Meadows, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling local election commission vacancies in certain counties located in CD-6. Defendant is not responsible for filing local election commission vacancies in CD-6, CD-7, SD-29, SD-30, SC 31, or SD-32.

Defendant's duties are ongoing and she performed them before the 2024 primary and general elections. Defendant was not a State Election Commissioner when the Commission was preparing for the 2022 elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant does not remember receiving any complaints for the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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<p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166 Tel.: 212-294-6700 gmastoris@winston.com mtuma@winston.com</p>	
<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

VERIFICATION

I, Secondra Meadows, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

Secondra Meadows

STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF Hamilton)

Subscribed and sworn before me this 12 day of January, 2024.

Tobin Smith

NOTARY PUBLIC

commission exp. Aug 12, 2026



**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT SECONDR A MEADOWS'
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Secondra Meadows, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust ("NRRT"), Fair Lines America,

or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting

Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**TRE HARGETT'S RESPONSE
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Tre Hargett, in his official capacity as Tennessee Secretary of State, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 in that it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the instruction that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the 2022 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32, and will not implement the 2024 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32.

Additionally, other than generally supervising the State Election Coordinator pursuant to Tenn. Code Ann. § 2-11-201(a), he did not prepare for the 2022 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32 and will not prepare for the 2024 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Although Defendant did not implement the new congressional districts in CD-5, CD-6, or CD-7 for the 2022 primary and general elections, some organizations and individuals complained to Defendant about counties misassigning voters in congressional districts for the 2022 general election. In fact, the League of Women Voters and two others sued the Davidson County Election Commission, Jeff Roberts (the Administrator of Elections for Davidson County), Governor Lee, Defendant, and Coordinator Goins in Chancery Court in Davidson County over misassignment of voters in Davidson County. Aside from the Plaintiffs in that litigation, Defendant cannot recall a specific individual who complained to him about the implementation of a new congressional district. It is possible that a search of Defendant's email would identify additional complaints.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) the Tennessee Senate Plan—for SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) the Congressional Plan—for CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Because Defendant generally supervises the State Election Coordinator pursuant to Tenn. Code Ann. § 2-11-201(a), defendant does have occasional conversations with the Coordinator of Elections regarding election preparedness. Defendant does not recall specific conversations regarding the “implementation of” SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

Identify each legislator who served on the House Select Committee on Redistricting during the 2022 legislative session of the Tennessee General Assembly, and, if known to You, describe all steps and the process the House Select Committee on Redistricting undertook to implement and adopt the Tennessee State House of Representatives Redistricting Guidelines. This interrogatory should identify all individuals who worked on the implementation of Tennessee State House of Representatives Redistricting Guidelines, including all individuals who participated in implementing the redistricting plans, including all staff members, consultants, attorneys, or any other third-party individuals.

Answer: Defendant objects to Interrogatory #5 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #5 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #5 as overly broad because it asks Defendant to describe “all steps” the House Select Committee took to implement and adopt the redistricting guidelines and to identify “all individuals” who worked on or participated in in implementing the redistricting guidelines.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #5 beyond what is publicly available on the General Assembly’s website and archives ([House Redistricting Committee - TN General](#)

[Assembly; House Redistricting Committee - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 6:

Identify each legislator who served on the Senate Ad Hoc Committee on Redistricting during the 2022 legislative session of the Tennessee General Assembly, and if known to you, describe all steps and the process the Senate Ad Hoc Committee on Redistricting undertook to implement and adopt its version of the Redistricting Guidelines. This interrogatory should identify all individuals who worked on the implementation of the Tennessee Senate's version of the Redistricting Guidelines, including all individuals who participated in implementing the redistricting plans, including all staff members, consultants, attorneys, or any other third-party individuals.

Answer: Defendant objects to Interrogatory #6 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #6 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #6 as overly broad because it asks Defendant to describe "all steps" the Senate Ad Hoc Committee took to implement and adopt the redistricting guidelines and to identify "all individuals" who worked on or participated in implementing the redistricting guidelines.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #7 beyond what is publicly available on the General Assembly's website and archives ([senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate Redistricting - TN General Assembly \(archive.org\)](#)) or contained in Defendant's prior briefing in this

litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 7:

Identify and list the dates for any and all hearings, including hearings convened and held by (1) the House Select Committee and (2) the Senate Ad Hoc Committee, concerning the redistricting plans for the Tennessee Senate (HB 1037/SB 780) and U.S. Congress (HB 1034/SB 781). Also identify any such hearings in which members of the public were invited to comment on the proposed redistricting plans and/or submit draft maps for legislative consideration. This interrogatory response should include hearings permitting only limited public comment and should include the duration, scheduled and actual date of each hearing and the time allotted for public comment.

Answer: Defendant objects to Interrogatory #7 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #7 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #7 beyond what is publicly available the General Assembly's website and archives ([House Redistricting Committee - TN General Assembly](#); [House Redistricting Committee - TN General Assembly \(archive.org\)](#); [senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate Redistricting - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 8:

Identify each legislator who served on the Senate Judiciary Committee during the 2022 legislative session of the Tennessee General Assembly.

Answer: Defendant objects to Interrogatory #8 because it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #8 because it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #8 beyond what is publicly available the General Assembly's website ([Senate Judiciary Committee - TN General Assembly](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 9:

Identify and describe any and all proposed amendments to the Congressional Plan—for CD-5, CD-6, and CD-7. This interrogatory response should describe all steps You undertook, and factors You considered, in assessing and evaluating such amendments.

Answer: Defendant objects to Interrogatory #9 because it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #9 because it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #9 to the extent it assumes a contested fact—that Defendant took steps or considered factors in assessing or evaluating proposed amendments to for CD-5, CD-6, and CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not assess or evaluate any proposed amendments to CD-5, CD-6, and CD-7. Defendant has no knowledge responsive to Interrogatory #9 beyond what is publicly available the General Assembly's website (HB 1034 - [Tennessee General Assembly Legislation \(tn.gov\)](https://www.tn.gov); SB 0781 - [Tennessee General Assembly Legislation \(tn.gov\)](https://www.tn.gov)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 10:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #10 because it refers to 14 interrogatories but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #10 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered interrogatories 1-4 and is not aware of any other individuals with knowledge of the answers to these interrogatories.

To the extent there are individuals mentioned in the previously identified, publicly available information on the General Assembly's website or archives or referenced in documents to be produced in response to Plaintiffs' Requests for Production that may be responsive to Interrogatories

#5-9, Defendant would refer Plaintiffs to those resources. Aside from the information contained in those resources and Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, Defendant is not aware of any other individuals with knowledge of the answers to interrogatories #5-9.

VERIFICATION

I, Tre Hargett, in my capacity as Tennessee Secretary of State, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

TENNESSEE SECRETARY OF STATE

STATE OF TENNESSEE)
COUNTY OF _____)

Subscribed and sworn before me this ____ day of _____, 2024.

NOTARY PUBLIC

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**SECRETARY HARGETT'S RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Secretary of State Trey Hargett, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks “All Documents Relating to any legislation discussed, considered or passed,” without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant is not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as overly broad and seeking irrelevant information. The entire scope of Defendant's legislative agenda and legislative priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent that it

seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for “All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant is not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or "VTDs" for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the

Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Aside from the publicly available documents that Defendant identified in response to Plaintiffs' interrogatories, which Plaintiffs have the same ability to obtain as Defendant, Defendant noted that documents that will be produced in response to these requests for production may also contain information responsive to Plaintiffs' interrogatories.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
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I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT BENNIE SMITH'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Bennie Smith, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling vacancies in SD-29, SD-30, SC 31, and SD-32. Defendant is not responsible for filling vacancies in CD-5, CD-6, or CD-7.

Defendant's duties are ongoing and he anticipates performing them before the 2024 primary and general elections. Defendant was not a State Election Commissioner when the Commission was preparing for the 2022 elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant does not remember receiving any complaints for the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections. Defendant was not a State Election Commissioner when the Commission was preparing for the 2022 elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7 in his capacity as a State Election Commissioner.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

VERIFICATION

I, Bennie Smith, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.


STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF Shelby)

Subscribed and sworn before me this 1 day of February, 2024.


NOTARY PUBLIC



Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Miranda Jones
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Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT BENNIE SMITH'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Bennie Smith, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., In re Terrorist Attacks on Sept. 11, 2001, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. *See Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); *see also New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant

objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental

entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Defendant owns and maintains a public website that provides analytics of voter turnout data on an interactive platform ("dashboard"). The website and embedded dashboard may be accessed, respectively, at <https://www.benniesmith.com> and <https://benniesmith.com/analytics/>. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Defendant owns and maintains a public website that provides analytics of voter turnout data on an interactive platform ("dashboard"). The website and embedded dashboard may be accessed, respectively, at <https://www.benniesmith.com> and <https://benniesmith.com/analytics/>. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state

legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

- a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or

the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE: Defendant does not have possession, custody, or control of any documents responsive to this Request that are not being produced in response to other Requests 1-8 and 10-13.

10. All Documents Relating to the voting districts or "VTDs" for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d)

2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Defendant owns and maintains a public website that provides analytics of voter turnout data on an interactive platform ("dashboard"). The website and embedded dashboard may be accessed, respectively, at <https://www.benniesmith.com> and <https://benniesmith.com/analytics/>. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

COUNSEL OF RECORD	PARTY REPRESENTED
<p>Phillip F. Cramer Sperling & Slater 150 3rd Avenue South, Suite 1100 Nashville, TN 37201 Tel.: 312-224-1512 pcramer@sperling-law.com</p> <p>Jon Greenbaum* Ezra D. Rosenberg* Pooja Chaudhuri* Lawyers' Committee for Civil Rights Under Law 1500 K Street NW, Suite 900 Washington, DC 20005 Tel.: 202-662-8600 jgreenbaum@lawyerscommittee.org erosenberg@lawyerscommittee.org pchaudhuri@lawyerscommittee.org</p> <p>Jeffrey Loperfido* Mitchell D. Brown* Southern Coalition for Social Justice 1415 West Highway 54, Suite 101 Durham, NC 27707 Tel.: 919-323-3380 jeffloperfido@scsj.org mitchellbrown@scsj.org</p> <p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166</p>	<p>Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis</p>

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<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Miranda Jones
MIRANDA JONES (BPR# 036070)
Senior Assistant Attorney General
Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT THE STATE ELECTION COMMISSION'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant the State Election Commission, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to all interrogatories because the State Election Commission is not a “person” who is subject to litigation under 42 U.S.C. § 1983. *See Reese v. Indus. Comm’n of Ohio*, 3 F. App’x 340, 342 (6th Cir. 2001) (“[S]tate agencies, such as the defendants in this case, are not considered a “person” for purposes of liability under § 1983). Thus, Defendant should be dismissed as a party and should not be required to participate in discovery due to its sovereign immunity. *See United States ex rel. Cutler v. Cigna Corp.*, No. 3:21-CV-00748, 2023 WL 2552340, at *3 (M.D. Tenn. Mar. 3, 2023); *CHS/Cnty. Health Sys., Inc. v. Med. Univ. Hosp. Auth.*, No. 3:20-CV-00163, 2021 WL 5863598, at *3 (M.D. Tenn. Jan. 4, 2021); *Lunsford v. Davidson Cnty. Sheriff’s Off.*, No. 3:19-CV-00079, 2019 WL 6037003, at *3 (M.D. Tenn. Nov. 14, 2019).

4. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

5. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

6. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

7. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

8. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

9. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

10. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

11. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The Defendant’s duties are those performed by the individual Commissioners. The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant is not aware of any complaints regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary

election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implement the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map general elections for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.


Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.


VERIFICATION

I, Jimmy Eldridge, in my official capacity as State Election Commissioner and Chair of the State Election Commission, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.


STATE ELECTION COMMISSIONER &
CHAIR OF THE STATE ELECTION
COMMISSION

STATE OF TENNESSEE)
COUNTY OF Madison)

Subscribed and sworn before me this 12th day of January, 2024.


NOTARY PUBLIC



Respectfully submitted,

JONATHAN SKRMETTI
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I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT THE STATE ELECTION COMMISSION'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant the State Election Commission, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to all requests because the State Election Commission is not a “person” who is subject to litigation under 42 U.S.C. § 1983. *See Reese v. Indus. Comm’n of Ohio*, 3 F. App’x 340, 342 (6th Cir. 2001) (“[S]tate agencies, such as the defendants in this case, are not considered a “person” for purposes of liability under § 1983). Thus, Defendant should be dismissed as a party and should not be required to participate in discovery due to its sovereign immunity. *See United States ex rel. Cutler v. Cigna Corp.*, No. 3:21-CV-00748, 2023 WL 2552340, at *3 (M.D. Tenn. Mar. 3, 2023); *CHS/Cnty. Health Sys., Inc. v. Med. Univ. Hosp. Auth.*, No. 3:20-CV-00163, 2021 WL 5863598, at *3 (M.D. Tenn. Jan. 4, 2021); *Lunsford v. Davidson Cnty. Sheriff’s Off.*, No. 3:19-CV-00079, 2019 WL 6037003, at *3 (M.D. Tenn. Nov. 14, 2019).

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #1, 18, and 19, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definition of “relating to” in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

6. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

7. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* “such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all

documents that they and their counsel and other agents have actually reviewed.” This request is improper for four reasons. First, Sixth Circuit has yet to adopt the “practical ability” test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) (“Moreover, federal courts have consistently held that documents are deemed to be within the ‘possession, custody or control’ for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand.” (citations omitted)). Second, by requesting any documents that Defendant’s attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege. *See e.g., In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. *See Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); *see also New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

8. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant's possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

9. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

10. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

11. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with

planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative

bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the

U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including

but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National

Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

- a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or "VTDs" for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the

Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Ryan N. Henry

Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT KENT YOUNCE'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Kent Younce, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling local election commission vacancies in counties located in CD-5. Defendant is not responsible for filling local election commission vacancies in CD-6, CD-7, SD-29, SD-30, SC 31, or SD-32.

Defendant's duties are ongoing and he performed them before the 2022 primary and general elections and before the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant does not remember receiving any complaints for the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

COUNSEL OF RECORD	PARTY REPRESENTED
<p>Phillip F. Cramer Sperling & Slater 150 3rd Avenue South, Suite 1100 Nashville, TN 37201 Tel.: 312-224-1512 pcramer@sperling-law.com</p> <p>Jon Greenbaum* Ezra D. Rosenberg* Pooja Chaudhuri* Lawyers' Committee for Civil Rights Under Law 1500 K Street NW, Suite 900 Washington, DC 20005 Tel.: 202-662-8600 jgreenbaum@lawyerscommittee.org erosenberg@lawyerscommittee.org pchaudhuri@lawyerscommittee.org</p> <p>Jeffrey Loperfido* Mitchell D. Brown* Southern Coalition for Social Justice 1415 West Highway 54, Suite 101 Durham, NC 27707 Tel.: 919-323-3380 jeffloperfido@scsj.org mitchellbrown@scsj.org</p> <p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166</p>	<p>Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis</p>

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<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ Ryan N. Henry

Counsel for Defendants

VERIFICATION

I, Kent Younce, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

Kent D Younce
STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF CAMPBELL)

Subscribed and sworn before me this 12th day of JAN, 2024.

David Reynolds
NOTARY PUBLIC
EXPIRES
5-16-25



**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT KENT YOUNCE'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Kent Younce, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

1. Defendant objects to any express or implied special instruction that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

10. Defendant expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, political affiliation, political party, or perceived electoral advantage;

c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;

d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;

e. all Documents Relating to negotiations regarding any of the Redistricting Plans including any redistricting proposals and/or drafts related to the Redistricting Plans;

f. any concept maps or other pre-drafting Documents;

g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans.

h. any academic, expert or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;

i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;

j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and

k. all communications involving or correspondence to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

2. All Documents Relating to the redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

a. all correspondence within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to the National Republican Redistricting Trust ("NRRT"), Fair Lines America,

or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

f. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written testimony and comments received by mail, email, legislative portal, or by other means;

g. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

h. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

i. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting

Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

j. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

m. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

n. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:
 - a. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Ryan N. Henry

Counsel for Defendants