

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**THE CHRISTIAN MINISTERIAL ALLIANCE, ET AL. PLAINTIFFS**

**vs. NO. 4:23-CV-471-DPM-DRS-JM**

**JOHN THRUSTON, IN HIS OFFICIAL CAPACITY AS  
THE SECRETARY OF STATE OF ARKANSAS DEFENDANT**

**SUPPLEMENT TO JOINT REPORT ON DISCOVERY DISPUTE**

Senator Jane English (“Sen. English”), former Senator Jason Rapert (“Sen. Rapert”), and former Representative Nelda Speaks (“Rep. Speaks”) (collectively, “the Legislators”), respectfully submit this supplement to the Joint Report on Discovery Dispute. *See* ECF No. 46. The Legislators offer this supplement to inform this court of the Supreme Court’s order in *Turtle Mountain Band v. North Dakota Legislative Assembly*, No. 23-847, 2024 WL 3259672 (U.S. July 2, 2024), in which the Supreme Court granted certiorari and vacated the Eighth Circuit’s decision in *In re North Dakota Legislative Assembly*, 70 F.4th 460 (8th Cir. 2023) (“*North Dakota*”), a case cited by the Legislators in the joint report.

The Supreme Court vacated *North Dakota* and remanded the case to the Eighth Circuit with instructions to dismiss the case as moot under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). While *North Dakota* is no longer precedent, *see Los Angeles Cnty. v. Davis*, 440 U.S. 625, n.6 (1979), *Munsingwear* vacatur should not change the outcome here because the Supreme Court’s ruling simply reflects that “happenstance” rendered the *North Dakota* privilege dispute moot on its way to the Supreme Court. *Munsingwear*, 340 U.S. at 40.

Indeed, the Eighth Circuit’s decision in *North Dakota* still reflects the proper framework for analyzing legislative privilege in this case. The Supreme Court vacated, but did not reverse,

the Eighth Circuit’s ruling, which remains persuasive authority. *See County of Los Angeles v. Davis*, 440 U.S. 625, 646, n.10 (1979) (Powell, J., dissenting) (“Although a decision vacating a judgment necessarily prevents the opinion of the lower court from being the law of the case . . . the expressions of the court below on the merits, if not reversed, will continue to have precedential weight and, until contrary authority is decided, are likely to be viewed as persuasive authority if not the governing law of the [ ] Circuit.”); *see also United States v. Betcher*, 534 F.3d 820, 824, n.3 (8th Cir. 2008) (“The [ ] judgment was vacated . . . but the discussion . . . is nonetheless persuasive”); *Simes v. Huckabee*, 354 F.3d 823, 829, n.4 (8th Cir. 2004) (“Though *Robinson* was vacated on other grounds, the rationale underlying the decision remains persuasive”).

Plaintiffs here continue to seek from the Legislators documents and deposition testimony regarding proposed and enacted legislation from the 2021 congressional redistricting process; the Legislators conducted this work<sup>1</sup> “within the sphere of legitimate legislative activity.” *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951). Because the Legislators were functioning in the protected sphere, legislative privilege serves as an “absolute bar to interference.” *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 503 (1975). The Eighth Circuit so ruled in *North Dakota*, shielding state legislators from forced discovery regarding “acts undertaken with respect to the enactment of redistricting legislation.” *North Dakota*, 70 F.4th at 463-64. This view is consistent with the recent decisions of the Fifth and Eleventh Circuits, where those courts of appeal ruled that legislative privilege barred the disclosure of materials pertaining to the legislative process. *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 239-40 (5th Cir. 2023); *Pernell v. Fla. Bd. of*

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<sup>1</sup> Recent depositions have further highlighted Plaintiffs’ desire for testimony on matters protected by privilege. While Plaintiffs claim that they wish to inquire only as to non-privileged matters, in depositions taken the week of July 1, 2024, Plaintiffs used almost their entire allotted time questioning Bureau of Legislative Research staffers on proposed congressional maps and the hypothetical intent behind redistricting legislation.

*Governors of State Univ.*, 84 F.4th 1339, 1345 (11th Cir. 2023). This court should follow suit and quash the subpoenas seeking documents and testimony from the Legislators.

Graham Talley, Arkansas Bar No. 2015159  
**MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, PLLC**  
425 West Capitol Avenue, Suite 1800  
Little Rock, Arkansas 72201  
Phone: (501) 688-8800  
Fax: (501) 688-8807  
Email: gtalley@mwlaw.com