

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

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

Plaintiffs,

v.

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

Defendant.

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

**PLAINTIFFS' PROPOSED DEPOSITION TOPICS AND QUESTIONS FOR
RYAN NEWMAN**

Pursuant to the Court's Order Requiring Plaintiffs to File Proposed Questions, Dkt. No. 150, Plaintiffs are filing this set of proposed deposition questions for Ryan Newman, Governor Ron DeSantis's General Counsel. The Plaintiffs seek to ask Mr. Newman questions concerning his efforts to convince the Florida legislature to support the Governor's maps as well as several documents that he authored (or likely authored) concerning Governor's veto and request for an advisory opinion from the Florida Supreme Court. These questions go to the

unprecedented efforts of the Governor to intervene in the redistricting process as well as the attempts by the Governor to rationalize these efforts.

As with the Mapmaker and Legislator filings, the Plaintiffs seek to ask questions about education, qualifications, and preparation for the deposition, beyond that, each filing goes into specific deposition questions that the Plaintiffs seek to ask for these witnesses.

PROPOSED DEPOSITION QUESTION TOPICS

In this suit, the Plaintiffs allege that the Governor, his staff, and the Florida legislature violated the Constitution by enacting a congressional map that intentionally discriminates against Black Floridians—by, for example, destroying a functional crossover district for Black voters in Northern Florida (CD-5). Dkt. No. 131 at ¶¶120–128. To establish this violation, the Plaintiffs must demonstrate that discriminatory purpose was a motivating factor in passing the maps under the framework from *Vill. of Arlington Heights v. Metro Housing Dev. Corp.*, 429 U.S. 252, 265 (1977). To determine whether there is discriminatory intent, courts look at factors like substantive and procedural departures in the lawmaking process as well as the legislative history behind the challenged action. *Id.* at 266–68.

Mr. Newman has argued that he knows nothing that Mr. Kelly does not know and that there is no need to question him. Dkt. No. 128 at 27, 29. But Mr. Kelly is not a lawyer, and he disclaimed any legal expertise concerning the

Governor's position. *See* Ex. 2 at 12:3–4 (Transcript of Hearing of the Florida Senate Committee on Reapportionment, April 19, 2022 Special Session) (“I should note, as a map drawer, I’m not an attorney.”).¹ That legal understanding came from Mr. Newman. All the topics set forth below are ones about which Mr. Newman has knowledge, not Mr. Kelly.

As the Governor's general counsel, Mr. Newman was deeply involved in the Governor's efforts to persuade the Legislature that CD 5, as approved by the Florida Supreme Court and as required by the Florida Fair Districts Amendments, was nonetheless unconstitutional under the Fourteenth Amendment to the U.S. Constitution. The public record indicates that what one Republican legislator called the Governor's “novel theory”, *see* Ex. 7 at 24:6-15 (Transcript of Hearing of the Florida House Redistricting Committee, February 25, 2022), both originated in the Governor's office and was apparently instrumental in the sudden reversal in policy by the Legislature in the Congressional map enacted in the special session—specifically with the destruction of CD-5. However, very little is publicly known about the circumstances surrounding how the theory entered the debate over CD-5. The Plaintiffs propose deposing Mr. Newman concerning his efforts to convince the legislators to acquiesce to the Governor's position. The Plaintiffs would also

¹ References are made to the exhibits attached to the Declaration of Alvin Li in Support of the Plaintiffs' Proposed Deposition Topics and Questions (“Ex.”).

ask Mr. Newman questions—not covered by the attorney-client privilege—on a veto memorandum that he drafted as well as the Governor’s request for an advisory opinion to the Florida Supreme Court that he likely also drafted; both documents attempt to rationalize the Governor’s efforts to destroy CD-5. The documents also embody unusual yet critical procedural steps in the legislative process resulting in the destruction of CD-5. Plaintiffs are entitled to ask these questions for the reasons discussed in the Plaintiffs’ opposition to the motions to quash, Dkt. No. 134.

1. Mr. Popper’s Testimony

As the Plaintiffs’ explained in their opposition to the motions to quash, Mr. Newman was the point person in bringing in Mr. Robert Popper to testify in favor of the Governor’s position to destroy CD-5 at a February 18, 2022, legislative hearing. Dkt. No. 134 at 39. Mr. Newman brought in Mr. Popper after the Florida Supreme Court refused to issue an advisory opinion on the constitutionality of CD-5 a week earlier on February 10, 2022. *See Advisory Opinion to Governor re: Whether Article III, Section 20(a) of the Florida Constitution Requires the Retention of a District in Northern Florida*, 2022 WL 405381 (Fla. 2022) (per curiam).

The recruitment of Mr. Popper and the discussion of his testimony are not privileged; the Plaintiffs learned about Mr. Newman’s role through public records

requests from American Oversight, *see* Dkt. No. 135 Exs. 2–3, and obtained further information through a subpoena to Judicial Watch, Mr. Popper’s employer. Those productions from Judicial Watch indicate that there was at least one call between Mr. Popper and Mr. Newman and his team. Ex. 8. Plaintiffs seek to ask Mr. Newman questions about his interactions with Mr. Popper concerning Mr. Popper’s testimony to the legislature, including how and why Mr. Newman came to recruit Mr. Popper, since these interactions go towards how the Governor rationalized his efforts to destroy CD-5, whether those rationalizations were pretextual, and the extent that he understood that destroying CD-5 would violate existing state and federal law.

2. The February 18, 2022 Letter

On February 18, 2022, the same day as Mr. Popper’s testimony, Mr. Newman sent a letter to Representative Sirois, Chairman of the Congressional Redistricting Subcommittee, laying out his legal objections to a proposed map that largely retained CD-5. Ex. 9. Plaintiffs do not seek to ask Mr. Newman any questions implicating the attorney-client privilege with respect to this letter, such as any interactions he may have had with the Governor about it. But there is no work product privilege with respect to this letter. The Plaintiffs have a draft version of the letter that was produced as part of a public records request to American Oversight. Ex. 10.

Plaintiffs seek to ask Mr. Newman non-privileged questions about the drafting of the letter. We wish to learn how much time Mr. Newman spent in drafting the letter, whether any other persons assisted him in the drafting and in what capacity. We would like to learn whether Mr. Newman consulted any legal sources in drafting the letter, other than those cited in the letter itself. The
Plaintiffs also seek to ask Mr. Newman about the differences between the two versions of the letter to Chairman Sirois and how they came to be made.

3. Communications with Legislators From March 29, 2022 to April 19, 2022

Plaintiffs also seek to ask Mr. Newman questions concerning the period between the Governor's veto of the Legislature's congressional maps on March 29, 2022 and the special legislative session that started on April 19, 2022. As explained in greater detail in the separate filing of proposed questions for the Legislators, between the veto and the special session, the Republican Legislators went from strenuously advocating for the preservation of a Black crossover district in Northern Florida—as required by the Florida Constitution—to acquiescing to its destruction—without any real basis in the public record for their change of position. Mr. Newman drafted the veto memorandum that justified the Governor's position on destroying CD-5 (discussed below). We wish to inquire whether he was involved in oral efforts to persuade the legislators to acquiesce. See, e.g., Ex.

11 at EOG Prod_2900 (memo from Senator Rodrigues indicating that “the Governor’s staff briefed me on their submission”). Therefore, the Plaintiffs seek to ask Mr. Newman questions concerning communications from him and his staff with legislators between March 29 and April 19, 2022.

4. Mr. Newman’s Efforts in Drafting the Veto Memorandum

The Plaintiffs also seek to ask Mr. Newman questions on his role in drafting the March 29, 2022 veto memorandum that are not covered by attorney-client privilege. Mr. Newman drafted this memorandum to accompany the Governor’s veto of the 8019 primary and 8015 backup congressional maps passed by the legislature. Ex. 12 (memorandum from Ryan Newman regarding veto). The memo purports to provide the legal basis for the Governor’s veto of the proposed maps. Plaintiffs seek to demonstrate that those reasons were pretextual. To that end, as with the February 18, 2022 letter, Plaintiffs seek to ask questions—not covered by the attorney-client privilege—concerning how much time Mr. Newman and his team put into drafting the veto memo, what sources he and his team consulted in drafting the memo, and who Mr. Newman and his team consulted in drafting the memo.

Further, Mr. Newman testified, without restrictions, about this analysis in front of the Florida Legislature during the special session. *See* Ex. 3 at 63:20–69:17 (Transcript of Hearing of the Florida House Congressional Redistricting

Subcommittee, April 19, 2022 Special Session). Such unrestricted testimony constitutes a waiver of any objection to further questioning about his analysis.

Plaintiffs seek to ask Mr. Newman about his legal analysis and its basis.

5. Mr. Newman's Efforts in Drafting the Request for an Advisory Opinion to the Florida Supreme Court

Finally, the Plaintiffs seek to ask Mr. Newman questions about his role in drafting Governor DeSantis's request for an advisory opinion from the Florida Supreme Court on the constitutionality of CD-5. The request is signed by the Governor, but the Plaintiffs believe that Mr. Newman, as Governor's general counsel, was likely responsible for drafting the advisory opinion request. Plaintiffs would like to determine if Mr. Newman was the author and, if so, much as with the other memoranda, the Plaintiffs seek to ask questions on topics not covered by the attorney-client privilege including how much time Mr. Newman and his team put into drafting the request, what sources he and his team consulted in drafting the request, and who Mr. Newman and his team consulted in drafting the request.

CONCLUSION

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

Respectfully submitted,

/s/ Gregory L. Diskant

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Date: May 19, 2023

CERTIFICATE OF SERVICE

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

/s/ Gregory L. Diskant
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