

**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
LEGISLATORS**

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 the Legislator Movants. Eight current or former members of the Florida House and Senate (the "Legislators") have been noticed for deposition.

They are:

Name	Role in 2020-2022 Legislature
Former Senator Ray Rodrigues	Chair of Senate Reapportionment Committee
Former Representative Chris Sprowls	House Speaker
Representative Tyler Sirois	Chair of House Congressional Redistricting Subcommittee
Representative Thomas Leek	Chair of House Redistricting Committee
Senator Wilton Simpson	Senate President
Representative Kaylee Tuck	Vice chair of House Congressional Redistricting Subcommittee
Representative Randy Fine	Vice Chair of House Redistricting Committee
Senator Jennifer Bradley	Chair of Senate subcommittee on Congressional Reapportionment

In this suit, the Plaintiffs allege that the Florida Legislature, along with the Governor, violated the Constitution by enacting a congressional map that intentionally discriminates against Black Floridians. Dkt. No. 131, Second Amended Complaint (“SAC”) 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 *Village of Arlington Heights v. Metro Housing Dev. Corp.*, 429 U.S. 252, 265 (1977). When inferring intent, courts accordingly look to numerous factors, including procedural irregularities in the lawmaking process. *Id.* at 266–68.

Although Plaintiffs believe that any claim of legislative privilege should be overcome in this case because of its importance, in order to narrow the issue for the Court we agree to limit our questioning of the Legislators to the central issue in the case: the circumstances surrounding the Legislature’s remarkable flip-flop in

April 2022. After months of affirming that the Fair District Amendment of the Florida Constitution required preserving Congressional District 5 as a Black opportunity district, the Legislature abruptly reversed course in April and acquiesced in the Governor's plan to crack the Black residents of old CD 5 into four overwhelmingly white districts. We propose to confine our questions to understanding how this extraordinary reversal came to be. We begin with some background, in order to contextualize that pivotal moment.

BACKGROUND

In the fall of 2021 and early 2022, the Florida Legislature, guided by the leadership of the Legislators – all of whom played prominent roles in the Congressional redistricting process – was steadfast in its commitment to following the requirements of both the U.S. Constitution and the Fair Districts Amendments, in accordance with the decisions of the Florida Supreme Court construing the Amendments in the 2010 redistricting cycle and creating the Benchmark Plan that the Legislature was tasked with modifying. The Legislature conducted a functional analysis of the Benchmark Plan's electoral performance, identified minority access seats protected from non-diminishment by the FDA, and ensured that the map-drawing process was conducted transparently.

Most notably, both the Florida House and the Florida Senate were clear and forthright about their legal obligation to protect a Black access district in northern Florida, and did so by drawing a district that closely resembled CD-5 in the Benchmark Plan. By January 2022, the Senate passed one map which preserved CD-5, in compliance with this obligation. Then Governor DeSantis inserted himself in the process, indicating he would veto the new map, and seeking an unprecedented advisory opinion from the Florida Supreme Court on the constitutionality of such a district. The Florida Supreme Court rejected that request on February 10, 2022, as premature without a complete record in litigation.

Governor DeSantis nonetheless continued in his attempt to destroy CD-5. At the Governor's request, an outside attorney named Robert Popper testified on February 18 before the Legislature, arguing that the Legislature's preservation of CD-5 would violate the Equal Protection Clause of the U.S. Constitution. During the hearing, various Republican legislators (including several proposed deponents) challenged Mr. Popper's conclusion that their prior map was unconstitutional, and publicly rejected his arguments.

Nonetheless, the Legislature continued working to address the Governor's stated concerns while still complying with the Fair Districts Amendments. This led to the Legislature's unusual passage of not one but two maps, a primary map that

attempted to address the Governor's stated concerns while preserving CD-5's status as a Black opportunity district (8019) and a secondary map that simply tweaked CD-5 in the Benchmark Plan (8015). Unsatisfied, the Governor formally vetoed both maps on March 29, 2022.

At the time, there was pending in this Court a lawsuit asking the Court to draw congressional maps if the Legislature failed to do so. Time was of the essence in order to have maps in place for the 2022 election. A hearing in this Court was scheduled for May 12, 2022, with submissions of proposed maps to begin on April 18, 2022. *See* Dkt. No. 76. Although the Governor had vetoed the Legislature's maps on March 29, 2022, he waited until the last minute and did not schedule the Legislature's special session until April 19, 2022 in a last-ditch effort to enact a map before this Court took hold of the issue.

At the same time, the Governor took the unprecedented step of submitting his own map, drafted entirely by his dedicated staff members. That map splintered the Black population of CD-5, moving the citizens from that cohesive district of persons with shared community interests, below-median income, and below-median educational attainment, into four different, largely white districts characterized by higher income and education levels. Shortly thereafter, with the threat of another veto by the Governor on one hand and the threat of action by this

Court on the other, the Legislature abandoned its unequivocal commitment to preserving a Black opportunity district. The Legislative leaders – the Legislators here – determined not to propose a map of their own and encouraged the Legislature to pass the Governor’s map. The result was the Enacted Plan, passed by the Legislature on April 21, 2022 and signed by Governor into law the next day. It is this unexpected, unexplained flip flop that Plaintiffs seek to understand in these depositions.

The public record contains virtually no explanation of the crucial juncture where the Legislature, including these Legislators, who had repeatedly endorsed and defended a Congressional redistricting map that preserved minority access, abruptly reversed their stance, abdicated their mapmaking responsibilities to the Governor, and ultimately passed a map that destroyed the minority access district they had previously sought to protect. The black box of the Legislature’s Special Session stands in stark contrast to how the Legislature, and Legislators, conducted the redistricting process up to that point, which was characterized by open debate and good-faith deliberations based on a shared and clear understanding of the Legislature’s obligations under state and federal law.

Accordingly, Plaintiffs seek to question the Legislators about the period from the Governor’s veto on March 29, 2022, until the Enacted Plan was passed on

April 21, 2022, exploring both their reasoning and the objective underlying facts, analyses, and considerations they relied upon to take this sudden change of course. Plaintiffs believe that Legislators' deposition testimony is crucial to understanding this key, missing piece of the puzzle.

Plaintiffs will begin with three deposition topics common to all Legislator Movants, and then proceed to topics unique to individual Legislators.

A. Deposition Topics Common to All Legislators

1. The Special Session

Just before the special session, House Speaker Sprowls and Senate President Simpson, whose depositions we seek, took the extraordinary step of announcing that Legislative reapportionment staff would not draft or produce a map for introduction during the special session, and that the Legislature was "awaiting a communication from the Governor's Office with a map that he will support." SAC

¶ 71. Plaintiffs seek to ask the Legislators about the steps that led up to the decision to not propose a map, but instead wait on the Governor's proposal and how that decision was made. Further, Plaintiffs seek to understand the unusual process of the special session and the process through which the Enacted Plan was passed, as well as the facts, analyses, and testimony that were presented or considered during the Legislature's special session.

2. The Governor's Map

Ultimately, the Legislators supported a map that destroyed CD-5, the Black opportunity district in North Florida. That contrasts with three maps that one or both Houses of the Legislature had previously passed that protected a version of CD-5. Plaintiffs seek to understand why the Legislators gave up on preserving CD-5 and shifted to the Governor's map. Specifically, Plaintiffs seek to understand the process through which the Governor's map was passed, the facts and analyses Legislators had available to them in considering the Governor's map, including whether they had analyses of its impact on the minority population in CD-5, especially as compared to plans that the Legislature had previously passed, and what topics were debated in passing the Governor's map.

3. The Governor's Veto Memorandum

Plaintiffs seek to ask the Legislators questions regarding their consideration of the arguments set forth in Mr. Newman's March 29, 2022 memorandum and his accompanying testimony. *See* Ex. 12¹ (memorandum from Ryan Newman regarding veto). The memorandum purported to set forth the legal basis for the Governor's rejection of the 8019 primary and 8015 backup congressional maps passed by the Legislature, and sets forth what one legislator called the Governor's

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.").

“novel theory” that a minority access district in Northern Florida violates the U.S. Constitution. *Id.* Prior to this memorandum, multiple Legislators had noted that a map preserving a minority access district was required by the Florida Constitution. SAC ¶ 66. Plaintiffs therefore seek to inquire about the proposed deponents’ consideration of the veto memorandum, including what facts, analyses, and research the Legislators relied upon in considering the Governor’s constitutional arguments, and whether they conferred with third parties regarding the Governor’s legal claims.

B. Deposition Topics for Specific Legislators

Plaintiffs also seek to ask each of the individual Legislators questions regarding their specific role in the redistricting process.

1. Former Senator Rodrigues

The case for the legislative privilege yielding is especially compelling with respect to Former Senator Rodrigues, who is no longer an acting member of the legislature and can no longer be distracted from legislative duties. Moreover, in his capacity as the Former Chair of the Senate Reapportionment Committee, Mr. Rodrigues repeatedly instructed legislators to preserve all records relevant to the redistricting cycle, including personal records. *See* Ex. 13 at 15:21-17:1 (Transcript of Hearing of the Florida Senate Reapportionment Committee,

September 20, 2021). Mr. Rodrigues nonetheless informed Plaintiffs that he had no responsive records to Plaintiff's document subpoena, notwithstanding his leadership role during the relevant timeframe. Plaintiffs therefore have no recourse other than a deposition to obtain relevant evidence from Mr. Rodrigues.

Throughout the redistricting cycle, Mr. Rodrigues repeatedly rejected the Governor's theories with respect to a Black opportunity district in Northern Florida. Instead, referring to the litigation and decisions of the Florida Supreme Court interpreting the Fair District Amendment during the 2012 redistricting cycle, Mr. Rodrigues argued to his colleagues: "What I said at the outset was we were operating under the parameters that the [State Supreme] court offered in the lawsuits that occurred after the last round of redistricting, and it is clear from those lawsuits that our responsibility in creating these maps is to ensure there's no retrogression," and that therefore the Legislature was required to preserve a Black access district in North Florida.² Nevertheless, on April 19, 2022, Mr. Rodrigues issued a statement to the Senate indicating that he had "determined that [the Governor's map] reflects standards that the Senate can support and filed it as Senate Bill 2-c." *See* Ex. 2 at 3:17-19 (Transcript of Hearing of the Florida Senate

² Mary Ellen Klas, "DeSantis redistricting map ignites intraparty discord," *Tampa Bay Times*, Jan. 20, 2022, <https://www.tampabay.com/news/florida-politics/2022/01/19/desantis-redistricting-map-ignites-intraparty-discord/>.

Committee on Reapportionment, April 19, 2022). The public record does not explain this complete reversal.

Plaintiffs seek to question Former Senator Rodrigues about these statements and this change of heart, including any facts, analyses, or research he might have considered in deciding to approve the Governor’s map; any conversations he might have had with individuals within the Executive Office of the Governor regarding or influencing that decision; and any conversations he might have had with third parties regarding or influencing that decision.

2. Former Representative Sprowls

Former Representative Sprowls served as the House Speaker for the relevant time period. As with Former Senator Rodrigues, he has no legislative duties from which he can be distracted.

Former Representative Sprowls likewise recognized the constitutional obligation to prevent diminishment of Black voting opportunities. Early on, he said “You can probably anticipate that North Florida district that was in the previous House map will be similar or the same.” And it was. Thereafter, in response to the Governor’s objections, he advocated a smaller district in Jacksonville that would, he hoped, preserve a Black seat. He wrote to House members that the House’s map (Plan 8017, later enacted as Plan 8019) “addresse[d] concerns about the shape of Congressional District 5 by creating a

more compact North Florida district that should enable minority voters to elect the candidates of their choice. We believe this solution creates a singular exception to the diminishment standard.” *See* Ex. 17 (memorandum from House Speaker Sprowls to the Florida House). He then voted for both maps 8019 and 8015. On March 29, 2022, following the Governor’s veto of Plan 8019 and backup Plan 8015, he, along with Senate President Simpson jointly issued a statement indicating that it was incumbent upon the Legislature to “exhaust every effort in pursuit of a legislative solution.” *See* Ex. 14 (memorandum from House Speaker Sprowls and Senate President Simpson to the Florida Legislature). Yet, less than two weeks later, he and Senate President Simpson inexplicably announced that the legislative reapportionment staff would not be submitting a proposal for the special session. Sprowls subsequently voted to approve the Governor’s plan.

Plaintiffs seek to question Former Representative Sprowls about these statements and this change of heart, including any facts, analyses, or research he might have considered in deciding to approve the Governor’s map; any conversations he might have had with individuals within the Executive Office of the Governor regarding or influencing that decision; and any conversations he might have had with third parties regarding or influencing that decision.

3. Representative Sirois

Representative Sirois served as Chair of the Congressional Redistricting Subcommittee during the relevant time period. In that capacity, Representative Sirois repeatedly emphasized the Legislature’s obligation to adhere to Florida law on minority representation. *See* Ex. 15 at 128:8-11 (Transcript of Hearing of the Florida House Congressional Redistricting Subcommittee, February 18, 2022). During Mr. Popper’s testimony, one colleague asked why there was “a compelling justification” for valuing compactness over minority representation. *See* Ex. 15 at 91:17-94:23 (Transcript of Hearing of the Florida House Congressional Redistricting Subcommittee, February 18, 2022). Mr. Sirois praised the question as “just cut[ting] to the heart of the matter.” *See* Ex. 15 at 127:17-128:15 (Transcript of Hearing of the Florida House Congressional Redistricting Subcommittee, February 18, 2022). He added, “The process requires us to follow the law. There’s been noise outside of our process dealing with the congressional map. I would encourage all members to put that noise aside. Those external influences need to stay external.” *See* Ex. 15 at 5:20-25 (Transcript of Hearing of the Florida House Congressional Redistricting Subcommittee, February 18, 2022). On March 4, 2022, in response to the Governor’s asserting that he would veto the two maps that preserved a minority access district, Representative Sirois strongly

disagreed, maintaining that the Legislature was correct: “[W]ith all my heart, I believe we are doing the right thing.”³ And he voted for both maps.

Inexplicably, by April 19, 2022, Representative Sirois completely reversed his position, and capitulated to the Governor’s Map. Plaintiffs seek to question Representative Sirois as to those statements and this change of heart, including any facts, analyses, or research he might have considered in deciding to approve the Governor’s map; any conversations he might have had with individuals within the Executive Office of the Governor regarding or influencing that decision; and any conversations he might have had with third parties regarding or influencing that decision.

4. Representative Leek

Representative Leek served as Chair of the House Redistricting Committee during the relevant time period. In that role, he repeatedly defended the Legislature’s two-map plan, noting that Plan 8017 (later 8019) reflected the “House attempt at continuing to protect the minority groups’ ability to elect a candidate of their choice, addressing compactness concerns and working to make sure we bring this process in for landing during the regular session.” *See* Ex. 7 at 24:18-24 (Transcript of Hearing of the Florida House Redistricting Committee,

³ Michael Moline, “Legislature OKS new congressional districts, sparking fight with DeSantis,” *Florida Phoenix*, March 4, 2022, <https://floridaphoenix.com/2022/03/04/legislature-oks-new-congressional-districts-sparking-fight-with-desantis/>.

February 25, 2022). He added that “[t]he primary map is put forward as a way to address the legal theory raised by the Governor while still protecting a Black minority seat in North Florida.” *Id.* at 24:7-10. He voted for both Plans 8019 and 8015.

During the special legislative session, Mr. Leek acknowledged that the Governor’s map would not perform for Black voters’ candidates of choice. *See* Ex. 18 at 34:3-35:6. (Transcript of Hearing of the Florida House Session, April 20, 2022). Mr. Leek nevertheless voted to approve the Governor’s map, with no explanation for why he no longer deemed the preservation of a Black opportunity district necessary.

Plaintiffs seek to question Representative Leek as to those statements and this change of heart, including any facts, analyses, or research he might have considered in deciding to approve the Governor’s map; any conversations he might have had with individuals within the Executive Office of the Governor regarding or influencing that decision; and any conversations he might have had with third parties regarding or influencing that decision.

5. Senator Simpson

Senator Simpson was the President of the Florida Senate during the relevant time period. Early in the redistricting cycle, Senator Simpson called for maps that complied with the Florida FDA. He voted for Plans 8015 and 8019, rejecting the

testimony of Mr. Popper that they were unconstitutional. On March 29, 2022, following the Governor's veto of Plan 8019 and backup Plan 8015, he and House Speaker Sprowls jointly issued a statement indicating that it was incumbent upon the Legislature to "exhaust every effort in pursuit of a legislative solution." *See* Ex 14 (memorandum from House Speaker Sprowls and Senate President Simpson to Legislature). Less than two weeks later, he, along with Speaker Sprowls inexplicably announced that the legislative reapportionment staff would not be submitting a proposal for special session. Senator Simpson subsequently voted to approve the Governor's plan, with no explanation for why he no longer viewed adherence to the FDA as desirable.

Plaintiffs seek to question Senator Simpson about those statements and this change of heart, including any facts, analyses, or research he might have considered in deciding to approve the Governor's map; any conversations he might have had with individuals within the Executive Office of the Governor regarding or influencing that decision; and any conversations he might have had with third parties regarding or influencing that decision.

6. Representative Tuck

Representative Tuck was the Chair of the House Congressional Redistricting Subcommittee during the relevant time period. In that role, she questioned Mr. Popper's defense of the Governor's constitutional arguments with respect to CD-5,

interrogating the legal basis for the Governor’s position and asking whether Mr. Popper “agree[d] that protecting minority voting ability from diminishment is a compelling state interest.” And she then voted for Plans 8019 and 8015.

Nonetheless, she subsequently voted to accept the Governor’s map.

Plaintiffs seek to question Former Representative Tuck as to the circumstances leading to her departure from her prior position on Florida’s congressional map, including any facts, analyses, or research she might have considered in deciding to approve the Governor’s map; any conversations she might have had with individuals within the Executive Office of the Governor regarding or influencing that decision; and any conversations she might have had with third parties regarding or influencing that decision.

7. Senator Bradley

Senator Bradley was the Chair of the Select Subcommittee on Congressional Reapportionment during the relevant time period. She joined her Republican colleagues in voting for Plans 8015 and 8019, which sought to preserve a Black access district in Northern Florida. But then she voted to endorse the Governor’s plan that destroyed the district. By virtue of her leadership role at this time, Senator Bradley likely has unique information regarding the circumstances leading up to the Legislature’s flip flop in April 2022. Moreover, Plaintiffs have exhausted

other avenues — Senator Bradley claimed she had no responsive records to Plaintiff’s public records request.

Plaintiffs seek to question Senator Bradley as to the circumstances leading to her departure from her prior position on Florida’s congressional map, including any facts, analyses, or research she might have considered in deciding to approve the Governor’s map; any conversations she might have had with individuals within the Executive Office of the Governor regarding or influencing that decision; and any conversations she might have had with third parties regarding or influencing that decision.

8. Representative Fine

Representative Fine was the Vice Chair of the House Redistricting Committee during the relevant time period. He voted for Plans 8015 and 8019, which sought to preserve a Black access district in Northern Florida. But then he flip flopped and voted to endorse the Governor’s plan that destroyed the district. By virtue of his leadership role at this time, Representative Fine has unique information regarding the circumstances leading up to the Legislator’s flip flop in April 2022. Indeed, in endorsing the Governor’s map on the record, Representative Fine argued – contrary to his earlier votes to respect the non-diminishment standard – that there was “inherent racism” in the non-diminishment standard, without providing any legal basis or justification for that conclusion.

See Ex. 16 at 67:5-72:4 (Transcript of Hearing of the Florida House Session, April 21, 2022). Moreover, Plaintiff has exhausted other avenues – Representative Fine produced only irrelevant documents or documents duplicative of what is in the sparse public record.

Plaintiffs seek to question Representative Fine as to the circumstances leading to his departure from his prior position on Florida’s congressional map, including any facts, analyses, or research he might have considered in deciding to approve the Governor’s map; any conversations he might have had with individuals within the Executive Office of the Governor regarding or influencing that decision; and any conversations he might have had with third parties regarding or influencing that decision. Plaintiffs also seek to question Representative Fine as to the basis for his assertion that the non-diminishment standard is “inherently racist,” including any facts, analyses, or research he may have considered in reaching that conclusion, or any conversations he may have had with third-parties regarding or influencing that conclusion.

Conclusion

Plaintiffs respectfully ask the Court to deny the Legislators’ 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
Gregory L. Diskant