January 4, 2023

The Honorable Judge Andrew M. Edison
United States District Court
601 Rosenberg, Seventh Floor
Galveston, TX 77550
Re: Pettewayet. al, v. Galveston County, et al., Civil Action No. 3:22-cv-00057

Dear Judge Edison:

Plaintiffs seek a court order overruling Defendants' assertions of attorney-client privilege regarding communications with Dalton (Dale) Oldham made during the deposition of Galveston County GIS Specialist Nathan Sigler on December 19, 2022. Plaintiffs contend that a prompt ruling is necessary prior to depositions scheduled between January 5, 2023, and January 25, 2023.

This disagreement centers on the nature of Mr. Oldham's role during the 2021 redistricting process and arose during the December 19, 2022, deposition of Mr. Sigler, who disclosed participating in a virtual meeting with Commissioner Ken Clark and Mr. Oldham. See Ex. 1. Counsel for the United States asked "why were you meeting with [Commissioner Clark and] Mr. Oldham?" Defendants' counsel objected and advised Mr. Sigler that he could answer the question but only if in doing so, he did not disclose any communications protected under the attorney-client privilege. Ex. 1. Mr. Sigler took the advice of counsel and declined to answer the question. Id. This issue arose again during the deposition. Exs. 4, 5, and 6. The Parties attempted to resolve the issue first during the December 19th deposition, Exs. 2 and 3, with Plaintiffs providing all Defendants' counsel with an August 12, 2022, Order in League of United Latin American Citizens ("LULAC") v. Abbott, No. 21CV00259, 2022 WL 3353409, at *4 (W.D. Tex. Aug. 12, 2022) ("Exhibit 2"), and again during a telephone conference on December 29th at 11 a.m. At Defendants' request, the Parties agreed to file this dispute letter after Defendants produced their privilege log on December 31, 2022.

I. Plaintiffs' Position

Defendants do not meet their burden of showing that attorney-client privilege protects conversations involving Dale Oldham. Analogous privilege issues have arisen in Texas statewide redistricting litigation, and court decisions there guide the outcome here. Specifically, evidence "concerning advice on political, strategic or policy issues" and "facts within the client's knowledge . . . , even if the client learned those facts through communications with counsel" are not protected by attorney-client privilege. LULAC, 2022 WL 3353409, at *4 (cleaned up). "So too facts within the client's knowledge are not protected by the attorney-client privilege, even if the client learned those facts through communications with counsel." Id. (internal quotations omitted). Defendants' vague explanations about the scope of Mr. Oldham's work for the County do not satisfy their burden. See Ex. 7 at 10 and Ex. 8; LULAC, 2022 WL 3353409, at *4 ("Privilege claims must be detailed"). Defendants attempt to shroud knowledge about the redistricting process behind privilege because a lawyer performed their legislative drafting. But Mr. Sigler's "personal knowledge," "actions (or inaction)," and "empirical features of the redistricting plans," and Mr. Oldham's "technical" or political advice on the impact of redistricting plans are not covered by attorney-client privilege. LULAC v. Abbott, 342 F.R.D. 227, 233, 235 (W.D. Tex. 2022)

EXHIBIT 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*, ***Plaintiffs*,** **EDDIE BERNICE JOHNSON, *et al.*,** ***Plaintiff-Intervenors*,** **v.** **GREG ABBOTT,** *in his official capacity as Governor of the State of Texas*, ***et al.*,** ***Defendants*.**	§ § § § § § § § § § § § §	**EP-21-CV-00259-DCG-JES-JVB** **[Lead Case]** **&** **All Consolidated Cases**

ORDER

The United States moves to compel Thomas Bryan and Eric Wienckowski ("Respondents") to comply with non-party subpoenas. Mot. Compel Wienckowski, ECF No. 384; Mot. Compel Bryan, ECF No. 407; *see also* Reply, ECF No. 411. Respondents are opposed. Resp., ECF No. 390. For the reasons that follow, the Court GRANTS the motions in part and ORDERS Respondents to produce documents and/or a privilege log to the United States within seven days of this Order.

I. BACKGROUND

Respondents' relationship to this litigation starts in the Texas House of Representatives. Texas Representative Todd Hunter hired a law firm, Butler Snow LLP, to assist in redistricting matters.[1] Field Decl., Resp. Ex. 2, ECF No. 390-2 ¶ 2. Butler Snow hired Bryan, who is an

[1] It appears that the formal engagement was through the Texas Legislative Council. Resp. Ex. 2A (Contract Addendum).

expert demographer. Bryan Decl., Resp. Ex. 1, ECF No. 390-1 ¶¶ 1–2, 5. Bryan, in turn, hired Wienckowski. *Id.* ¶ 4.

Butler Snow hired Bryan to work on all four of the maps subject to this litigation. *Id.* ¶ 2–3; Bryan Engagement Letter, Resp. Ex. 1A. Bryan's services were technical:

> We are retaining you as a consulting expert to provide advice and consultation to our firm and our client as needed in state legislative, board of education[,] congressional reapportionment[,] and redistricting matters in the State of Texas, including but not limited to: (1) analysis, interpretation and application of Census data and advice on all data related issues; (2) preparation of benchmark plan and modeling to determine areas of state where most likely change to occur [sic]; (3) data set development for preparing redistricting plans; (4) preparation of draft plans; (5) analysis of draft plans submitted by others; (6) analysis of compliance with traditional redistricting criteria; (7) analysis of the traditional redistricting criterion of compactness, run compactness scores and advice on same; [(8)] any other demographic related issue(s) directed by us.

Bryan Engagement Letter at 1. Because Bryan hired Wienckowski for assistance, his duties were the same or similar. *See, e.g.*, Obj. Subpoena, Resp. Ex. 4, ECF No. 390-4, at 16 ("Mr. Wienckowski is a consulting-only expert who was hired by Butler Snow LLP's consulting-only expert to assist Butler Snow LLP . . . .").

On May 3, 2022, the United States subpoenaed Thomas Bryan for documents in the Eastern District of Virginia. Bryan Subpoena, Resp. Ex. 3, ECF No. 390-3, at 2. The United States subpoenaed Eric Wienckowski on the same day in the Southern District of New York. Wienckowski Subpoena, Resp. Ex. 3, ECF No. 390-3, at 14. Respondents served their objections and responses to the subpoenas on May 17, 2022. Obj. Subpoena at 2–13 (Bryan); *id.* at 14–25 (Wienckowski). Respondents made broad privilege claims and asserted that they would not produce any documents the United States had requested because all of the documents are subject to numerous, overlapping privileges. *See generally id.* at 2–13, 14–25. The deadline to produce documents came and went on June 2, 2022. U.S. Substitute Mem. L. Compel Wienckowski ("U.S. Wienckowski Mem."), ECF No. 392, at 2; U.S. Mem. Supp. Mot. Compel

Bryan ("U.S. Bryan Mem."), ECF No. 408, at 2. Neither Bryan nor Wienckowski produced a privilege log. U.S. Wienckowski Mem. at 2; U.S. Bryan Mem. at 2.

On June 14, 2022, the United States filed a motion to compel Bryan's compliance with its subpoena in the Eastern District of Virginia. *United States v. Bryan*, No. 3:22-mc-00007-MHL, ECF No. 1 (E.D. Va. 2022). The next day, the United States filed a motion to compel Wienckowski's compliance with its subpoena in the Southern District of New York. *United States v. Wienckowski*, No. 7:22-mc-00164-PMH, ECF No. 8 (S.D.N.Y. 2022). The Southern District of New York transferred Wienckowski's case to the Western District of Texas on June 24, 2022. *Wienckowski*, No. 7:22-mc-00164-PMH, ECF No. 15. The Eastern District of Virginia transferred Bryan's case to this Court on July 5, 2022. *Bryan*, No. 3:22-mc-00007-MHL, ECF No. 8. This Court consolidated both cases with the above-captioned action. ECF Nos. 405 (Wienckowski), 406 (Bryan).

II. DISCUSSION

Federal Rule of Civil Procedure 45 authorizes parties to obtain discovery from a non-party by issuing a subpoena. *See, e.g.*, *Leonard v. Martin*, 38 F.4th 481, 486–90 (5th Cir. 2022) (characterizing Rule 45 subpoenas as a discovery tool); *Kendrick v. Heckler*, 778 F.2d 253, 254–58 (5th Cir. 1985) (same). Federal Rule of Civil Procedure 26(b)'s limitations on the scope of discovery apply to discovery under Rule 45. *Kendrick*, 778 F.2d at 257 ("[A] Rule 45 subpoena duces tecum . . . may go to matters within the scope of examination provided by Rule 26(b)." (quotation omitted)); *MetroPCS v. Thomas*, 327 F.R.D. 600, 609–10 (N.D. Tex. 2018).

Discovery rules are permissive. *See Hickman v. Taylor*, 329 U.S. 495, 507 (1947). Under Rule 26(b), discovery is permitted "regarding any nonprivileged matter that is relevant to

any party's claim or defense and proportional to the needs of the case." FED. R. CIV. P. 26(b). In other words, two of the principal limitations on discovery are relevancy and privilege.

A. Relevancy

Relevant information "encompass[es] any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). "A discovery request is relevant when the request seeks admissible evidence or 'is reasonably calculated to lead to the discovery of admissible evidence.'" *Crosby v. La. Health Servs. & Indem. Co.*, 647 F.3d 258, 262 (5th Cir. 2011) (quoting *Wiwa v. Royal Dutch Petrol. Co.*, 392 F.3d 812, 820 (5th Cir. 2004)). Said another way, "[u]nless it is clear that the information sought can have no possible bearing on the claim or defense of a party, the request for discovery should be allowed."[2] *Merrill v. Waffle House, Inc.*, 227 F.R.D. 467, 470 (N.D. Tex. 2005).

Respondents challenge the relevancy of the United States' document requests. Specifically, Respondents say that (1) documents dated after the enactment of redistricting legislation are irrelevant; (2) documents dated before the release of Census data are irrelevant; and (3) three of the United States' document requests that mention "all documents" "necessarily call for irrelevant documents." Resp. at 4. The Court will address each in turn.

Generally, documents dated after the enactment of redistricting legislation are irrelevant. *Perez v. Perry*, No. SA-11-CV-360-OLG-JES-XR, 2014 WL 3359324, at *2 (W.D. Tex. July 9, 2014). But, as the prior panel to hear Texas redistricting challenges said, "where post-enactment documents specifically refer back to the pre-enactment process, those communications may be relevant and must be disclosed." *Id.* We agree and think this approach "is reasonably calculated

[2] There are, of course, other discovery exceptions that may shield the information, such as a privilege. *See generally* Fed. R. Civ. P. 26(b).

to lead to the discovery of admissible evidence." *Crosby*, 647 F.3d at 262 (quotation omitted). While Respondents are generally not required to produce documents created after October 25, 2021, Respondents shall produce responsive documents dated after October 25, 2021, if they specifically refer back to the pre-enactment process.[3]

Documents dated before the U.S. Census Bureau released Census data may be relevant and Respondents must produce them.[4] *See Perez*, 2014 WL 3359324, at *2 ("[Third party] must produce all communication in the[] [described] categories that occurred prior to the enactment of the 2011 plans on July 18, 2011."). As the United States points out, the Texas Legislature worked on redistricting well before the release of Census data. *See, e.g.*, Reply at 1 n.1; Tex. H. Comm. on Redistricting, *Notice of Public Hearing* (Feb. 28, 2019), https://perma.cc/A2W8-H853. Requests for documents dated prior to the release of Census data are "reasonably calculated to lead to the discovery of admissible evidence." *Crosby*, 647 F.3d at 262 (quotation omitted).

Finally, Respondents protest that three of the United States' document requests are overbroad and will necessarily elicit irrelevant documents.[5] Resp. at 4. The burden is on Respondents to "show specifically" how the United States' requests are overbroad. *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (quotation omitted); *Heller v. City of Dallas*, 303 F.R.D. 466, 483–84 (N.D. Tex. 2014) ("[B]oilerplate or unsupported objections . . . are . . . improper and ineffective."). Respondents fail to meet their burden. They provide a single sentence for the Court to work with: "[T]he United States'

[3] The requirement to produce is subject to any privileges or other discovery exceptions.

[4] The requirement to produce is subject to any privileges or other discovery exceptions.

[5] Those document requests are numbers six, seven, and eight. Resp. at 4; *see also* Obj. Subpoena at 10–11, 22–24.

overbroad requests for 'all documents' relating to the redistricting process in Requests 6, 7, and 8 necessarily call for irrelevant documents." Resp. at 4. This is a text-book boilerplate objection.[6] *See, e.g.*, *Heller*, 303 F.R.D. at 490–91 (holding party's "unduly burdensome and overbroad" objections "to almost every discovery request" "were simply boilerplate objections"). The Court thus overrules Respondents overbreadth objections. *See id.* at 483–84. Respondents shall produce documents responsive to the United States' requests.[7]

B. Privilege

1. Failure to Produce a Privilege Log

Under Rule 45, the proponent of a privilege must "(i) expressly make the claim [to privilege]; and (ii) describe the nature of the withheld documents . . . in a manner that . . . will enable the parties to assess the claim." FED. R. CIV. P. 45(e)(2)(A). Rule 26(b)(5)(A) imposes the same requirement. FED. R. CIV. P. 26(b)(5)(A). To comply with this requirement, litigants quite often produce a privilege log. *See, e.g.*, CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2016.1 (3d ed.) (describing privilege log practice as "broad[]"); *Comcast Cable Commc'ns, LLC v. BT Ams., Inc.*, 3:12-CV-1712-M, 2013 WL 12129283, at *1 (N.D. Tex. July 10, 2013) ("A privilege log *must* be produced for any

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[6] While it's true that the United States wrote the words "all documents," its requests are narrower than Respondents suggest. For example, the United States requests:

> All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Chris Gober, The Gober Group, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

Obj. Subpoena at 24 (Request No. 8).

[7] The requirement to produce is subject to any privileges or other discovery exceptions.

documents, communications, or other materials withheld from production on the grounds of attorney-client, work product, or other privilege or immunity." (emphasis added)). Whether a privilege log must be in a certain form (like a chart or index) is up for debate, but what is clear is that an assertion of privilege must be detailed enough so that parties can properly assess the claim. *EEOC v. BDO USA, LLP*, 876 F.3d 690, 697 (5th Cir. 2017) ("[A] privilege log's description of each document and its contents must provide sufficient information to permit courts and other parties to test the merits of the privilege claim." (quotation omitted)).

Take attorney-client privilege as an example. Under federal common law, the party invoking attorney-client privilege "must prove: (1) that he made a *confidential* communication; (2) to a lawyer or his subordinate; (3) for the primary purpose of securing either a legal opinion or legal services, or assistance in some legal proceeding." *Id.* at 695 (quoting *United States v. Robinson*, 121 F.3d 971, 974 (5th Cir. 1997)). The proponent has the burden of "demonstrat[ing] how *each* document satisfies all three elements of the privilege." *SEC v. Microtune, Inc.*, 258 F.R.D. 310, 315 (N.D. Tex. 2009) (emphasis added); *see also Hodges, Grant & Kaufmann v. IRS*, 768 F.2d 719, 721 (5th Cir. 1985) (remanding for determination of "whether *the first document* is shielded by the attorney-client privilege (emphasis added)); *United States v. El Paso Co.*, 682 F.2d 530, 541–42 (5th Cir. 1982) (holding attorney-client privilege waived where "[defendant] failed to *particularize* its assertion of the privilege and prove its case with respect to any *specific* document" (emphasis added)). That is, a party must assert privilege claims with a level of granularity that allows the other parties and the court to determine the exact document(s) for which the party asserts the privilege.

Privilege claims must be detailed. "[S]imply describing a [document] as 'legal,' without more, is conclusory and insufficient to carry out the proponent's burden of establishing attorney-

client privilege." *BDO USA*, 876 F.3d at 696. Moreover, a claim that attorneys worked on or reviewed documents does not alone establish attorney-client privilege. *El Paso Co.*, 682 F.2d at 541 ("A general claim that the tax department funnels tax work through its attorneys will not do."). The Fifth Circuit has been clear about its disapproval of blanket claims of privilege: "Such assertions disable the court and the adversary party from testing the merits of the claim of privilege." *Id.* They are "simply inadequate." *Id.*

This makes sense when one considers that opposing parties and courts have to determine whether *specific* documents are subject to a privilege. Continuing with the attorney-client privilege example: A communication must be for the *primary* purpose of *legal* advice for attorney-client privilege to attach. *BDO USA*, 876 F.3d at 695. So documents that are instead "concerning 'advice on political, strategic or policy issues . . . [are] not [] shielded from disclosure by the attorney-client privilege.'" *Evans v. City of Chicago*, 231 F.R.D. 302, 312 (N.D. Ill. 2005) (quoting *In Re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir. 1998)). So too "[f]acts within the client's knowledge are not protected by the attorney-client privilege, 'even if the client learned those facts through communications with counsel.'" *LUPE v. Abbott*, SA-21-CV-00844-XR, 2022 WL 1667687, at *7 (W.D. Tex. May 25, 2022) (quoting *Thurmond v. Compaq Comput. Corp.*, 198 F.R.D. 475, 483 (E.D. Tex. 2000)); *see also Ohio A. Philip Randolph Inst. v. Smith*, No. 1:18cv357, 2018 WL 6591622, at *3 (S.D. Ohio Dec. 15, 2018) (ordering production of "facts, data, and maps" over assertions of attorney-client privilege). Under Respondents' blanket assertion of privilege, the Court cannot determine whether the documents they are withholding fall into any of these categories.

The United States argues that Respondents waived all claims to privilege. U.S. Bryan Mem. at 5; U.S. Wienckowski Mem. at 4–5. It's true that Respondents' claims to privilege are

strikingly broad. *Every* document is subject to privilege? *E.g.*, Obj. Subpoena at 2–13, 14–25; Resp. at 5 ("[T]here is no document in Respondents' possession that is not privileged."). No one can be sure because Respondents have failed to provide sufficient detail to allow the Court to assess their claims. Respondents have not "prove[n] [their] case with respect to any specific document." *El Paso Co.*, 682 F.2d at 541.

Even still, Respondents have not yet waived their privilege claims. The United States has not argued that Respondents have "[c]ontinually fail[ed] to adhere to Rule 26's prescriptions." *BDO USA*, 876 F.3d at 697; U.S. Bryan Mem. at 5; U.S. Wienckowski Mem. at 4–5.

The Court ORDERS Respondents to produce any documents not subject to privilege and produce a compliant privilege log within seven days of this Order. If Respondents assert privilege, they must have a *good faith basis* for doing so.

2. Work Product Doctrine

Respondents contend that all documents in their possession are covered by the work product doctrine. Resp. at 9. Respondents *repeatedly* assert that their work was done in anticipation of litigation. *Id.* at 2, 9–11. In support, Respondents point to Bryan's engagement letter: "The nature and history of redrawing political boundaries at the statewide level is such that litigation may result in the process and thus we are retaining you in anticipation of litigation." *Id.* at 9; Bryan Engagement Letter at 1.

The work product doctrine only "applies to documents 'prepared in anticipation of litigation.'" *In re Kaiser Aluminum & Chem. Co.*, 214 F.3d 586, 593 (5th Cir. 2000) (quoting FED. R. CIV. P. 26(b)(3)). Nonetheless, documents created in the ordinary course of drafting legislation—including redistricting legislation—are not covered by the work product doctrine, even when "the Legislature may have reasonably believed that litigation would result from its

redistricting efforts." *Baldus v. Brennan*, Nos. 11-CV-562 JPS-DPW-RMD, 11-CV-1011 JPS-DPW-RMD, 2011 WL 6385645, at *2 (E.D. Wis. Dec. 20, 2011) (three-judge court); *Bethune-Hill v. Va. State Bd. of Elections*, 114 F. Supp. 3d 323, 348 (E.D. Va. 2015).[8] That is "because the legislature could *always* have a reasonable belief that *any* of its enactments would result in litigation." *Bethune-Hill*, 114 F. Supp. 3d at 348 (cleaned up).

The legislation exception applies here. The work product doctrine is inapplicable because Respondents created the documents the United States seeks while assisting the Texas Legislature with redistricting legislation. *See Bethune-Hill*, 114 F. Supp. 3d at 348; Bryan Decl. ¶ 2 ("I was retained by the law firm Butler Snow LLP to provide advice and consultation to the firm as a consultant so that it could advise its clients—the Chairman and his staff of the House Redistricting Committee . . . —in state legislative, board of education and congressional reapportionment and redistricting matters in the State of Texas.").

That rule cannot be overcome by the engagement letter. For obvious reasons, the fact that Bryan's engagement letter with Butler Snow says that he was "retain[ed] [] in anticipation of litigation," Bryan Engagement Letter at 1, does not *automatically* render all documents subject to the work product doctrine, *see Sandra T.E. v. S. Berwyn Sch. Dist. 100*, 600 F.3d 612, 620 (7th Cir. 2010) ("[A]n engagement letter cannot reclassify nonprivileged communications . . . ."). Nor does Bryan's declaration of the same fact. Bryan Decl. ¶ 3. Nor do Respondents' repeated blanket assertions.

The Court GRANTS the United States' motions to compel insofar as Respondents assert that the work product doctrine shields their responsive documents from discovery.

[8] *See also El Paso Co.*, 682 F.2d at 542 (work product doctrine does not apply to documents created "in the ordinary course of business").

3. Trial Preparation Exception

Generally, a party cannot obtain discovery regarding "facts known or opinions held by an expert who has been retained or specifically employed by another party in anticipation of litigation or to prepare for trial." FED. R. CIV. P. 26(b)(4)(D). As an initial matter, it's unclear to the Court whether Respondents qualify as experts within the meaning of Rule 26(b)(4)(D) because they were hired to work on redistricting legislation well before litigation ensued. Neither the United States nor Respondents address this point.

In any event, by its plain terms, the trial preparation exception applies only to experts hired by a party to the case. *Id.* (rule applicable to expert "employed by *another party*" (emphasis added)); *Durflinger v. Artiles*, 727 F.2d 888, 891 (10th Cir. 1984) ("The rule is designed to promote fairness by precluding unreasonable access to *an opposing party*'s diligent trial preparation." (emphasis added)); *Ark. River Power Auth. v. The Babcock & Wilcox Co.*, 310 F.R.D. 492, 497–98 (D. Colo. 2015) (noting that neither the proponent nor the court "found[] any case in which a non-party has been permitted to invoke Rule 26(b)(4)(D)"). Respondents are not parties to this case.

Respondents' attempt to shoehorn themselves into party status is unavailing. Respondents insist that they created material for Representative Hunter who is a party to this case by virtue of being a representative of Defendant State of Texas. Resp. at 12. Because of that relationship, Respondents argue, their documents are covered by Rule 26(b)(4)(D). *Id.* The problem Respondents have is that Representative Hunter is a non-party. As we held in a prior order, "[f]or the purposes of party discovery in this redistricting litigation, 'the State of Texas' is made up of state executive agencies or officials . . . ." *LULAC v. Abbott*, EP-21-CV-00259-DCG-JES-JVB, 2022 WL 1540589, at *3 (W.D. Tex. May 16, 2022). Thus, Rule 26(b)(4)(D)

does not protect Respondents' documents. The Court GRANTS the United States' motions to compel insofar as Respondents assert that Rule 26(b)(4)(D) shields their responsive documents from discovery.

III. CONCLUSION

The Court **GRANTS IN PART** the United States' "Motion to Compel Eric Wienckowski's Compliance with Non-Party Subpoena" (ECF No. 384) and "Motion to Compel [Thomas Bryan's] Compliance with Subpoena" (ECF No. 407). The Court grants the motions insofar as Eric Wienckowski and Thomas Bryan assert that the work product doctrine and Rule 26(b)(4)(D) of the Federal Rules of Civil Procedure apply to their responsive documents.

The Court **OVERRULES** Respondents' relevancy objections except to the extent the United States seeks documents created after October 25, 2021 that do not specifically refer back to the pre-enactment process.

The Court **ORDERS** Respondents to produce any documents not subject to privilege and produce a compliant privilege log within **seven days** of this Order. Respondents must have a *good faith basis* for claiming a privilege, lest the claim be waived.

The United States **MAY RENEW** its motions to compel after Respondents produce documents and/or a compliant privilege log or otherwise fail to comply with this Order.

So ORDERED and SIGNED this 12th day of August 2022.

DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Jeffrey V. Brown
United States District Judge
Southern District of Texas

RE: Sigler Deposition Privilege Assertion- Oldham

From: Bernadette Reyes bernadette@uclavrp.org

To: Meza, Catherine (CRT) Catherine.Meza@usdoj.gov, Shawn Sheehy ssheehy@HoltzmanVogel.com, Valencia Richardson VRichardson@campaignlegalcenter.org, Jason Torchinsky jtorchinsky@HoltzmanVogel.com, bob.boemer@co.galveston.tx.us , Angela Olalde aolalde@greerherz.com, Dallin Holt dholt@HoltzmanVogel.com, dloesq@aol.com , trey.trainor@akerman.com , jraschke@greerherz.com , joe@nixonlawtx.com , Joseph Russo jrusso@greerherz.com, Mark Gaber MGaber@campaignlegalcenter.org, neil@ngbaronlaw.com , Simone Leeper SLeeper@campaignlegalcenter.org, sonni@uclavrp.org , Chad Dunn chad@brazilanddunn.com, Silberstein, Andrew ASilberstein@willkie.com, Vall-llobera, Diana DVall-llobera@willkie.com, Hani Mirza hani@texascivilrightsproject.org, Joaquin Gonzalez joaquin@texascivilrightsproject.org, Polizzano, Michelle MPolizzano@willkie.com, Zhu, Molly MZhu@willkie.com, nas@naslegal.com , Mancino, Richard RMancino@willkie.com, schen@texascivilrightsproject.org , Gear, Bruce (CRT) Bruce.Gear@usdoj.gov, Jayaraman, Tharuni (CRT) Tharuni.Jayaraman@usdoj.gov, Newkirk, Zachary (CRT) Zachary.Newkirk@usdoj.gov, Hilary Harris Klein hilaryhklein@scsj.org, Smith, K'Shaani (CRT) K'Shaani.Smith@usdoj.gov, Wake, Brittany (CRT) Brittany.Wake@usdoj.gov, Alexandra Copper ACopper@campaignlegalcenter.org

Date: Mon, Dec 19, 2022, 1:08 PM

2022-08-12 Doc 530 Order Granting in Part and Denying in Part [387] [496] Motions to Compel.pdf 347 KB

Mr. Russo:

The private plaintiffs bring your attention to the attach prior order in the LULAC v. Abbott case (Case 3:21-cv-00259-DCG-JES-JVB) specifically to address your claim of privilege regarding Dale Oldham map drawing work. As you can see from this Order, which Judge Brown joined, a blanket invocation of privilege is unsupported. For example, the order holds: "So documents that are instead “concerning ‘advice on political, strategic or policy issues . . . [are] not [] shielded from disclosure by the attorney-client privilege.’” The order also holds that Mr. Bryan's map mapping work are not work product because it pertains to government adoption of policy for which their is an exception in the work product doctrine.

We would like to avoid the time and expense of reconvening this deposition. Please consider this on-point authority and reconsider barring this witness from testifying about his mapmaking work and communications.

Best,
Bernadete
--
Bernadette Reyes
(she/her/hers)
Voting Rights Counsel
UCLA Voting Rights Project

From: Shawn Sheehy ssheehy@HoltzmanVogel.com
To: Bernadette Reyes bernadette@uclavrp.org, Meza, Catherine (CRT) Catherine.Meza@usdoj.gov, Valencia Richardson VRichardson@campaignlegalcenter.org, Jason Torchinsky jtorchinsky@HoltzmanVogel.com, bob.boemer@co.galveston.tx.us , Angela Olalde aolalde@greerherz.com, Dallin Holt dholt@HoltzmanVogel.com, dloesq@aol.com , trey.trainor@akerman.com , jraschke@greerherz.com , joe@nixonlawtx.com , Joseph Russo jrusso@greerherz.com, Mark Gaber MGaber@campaignlegalcenter.org, neil@ngbaronlaw.com , Simone Leeper SLeeper@campaignlegalcenter.org, sonni@uclavrp.org , Chad Dunn chad@brazilanddunn.com, Silberstein, Andrew ASilberstein@willkie.com, Vall-llobera, Diana DVall-llobera@willkie.com, Hani Mirza hani@texascivilrightsproject.org, Joaquin Gonzalez joaquin@texascivilrightsproject.org, Polizzano, Michelle MPolizzano@willkie.com, Zhu, Molly MZhu@willkie.com, nas@naslegal.com , Mancino, Richard RMancino@willkie.com, schen@texascivilrightsproject.org , Gear, Bruce (CRT) Bruce.Gear@usdoj.gov, Jayaraman, Tharuni (CRT) Tharuni.Jayaraman@usdoj.gov, Newkirk, Zachary (CRT) Zachary.Newkirk@usdoj.gov, Hilary Harris Klein hilaryhklein@scsj.org, Smith, K'Shaani (CRT) K'Shaani.Smith@usdoj.gov, Wake, Brittany (CRT) Brittany.Wake@usdoj.gov, Alexandra Copper ACopper@campaignlegalcenter.org
Date: Mon, Dec 19, 2022, 2:09 PM

Bernadette,

Thank you. First, the opinion you cite is distinguishable as the opinion involved document discovery and

what documents were and were not protected under the attorney-client and attorney work-product privilege. Additionally, the opinion faults the state for not producing a compliant privilege log. By contrast, we intend to produce a compliant privilege log and we are not asserting the same broad objections or similar documents, such as shapefiles of maps and the scheduling of conference calls about redistricting.

Second, this is why Defendants wanted to wait for depositions until after the privilege log was produced so that we could have discussions over what constituted attorney-client privilege and attorney work-product. It was at Plaintiffs' insistence that depositions begin before the privilege log was due.

Even still, Plaintiffs should be able to obtain the information they seek by asking non-objectionable questions.

Thank you,

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2 Emails

EXHIBIT 4

have done.

Q. When you say request for this information, what was Ms. Johnson requesting you to do?

A. I'm not sure. I'm not sure if it was a request.

Q. Did you do anything with the information

contained in the Excel spreadsheet that Ms. Johnson sent to you?

A. Not that I can recall.

MS. JAYARAMAN: Okay. Cathy, can you introduce Tab 31, please.

MR. RUSSO: Hey, counsel, what do you want to do about lunch? I mean, how much more time do you have? It doesn't sound like -- I don't know, are you near being done? If not --

MS. JAYARAMAN: Yeah, so I just want to finish this line of questioning and then I think we can take a lunch break if that's all right.

MR. RUSSO: How much longer in this line?

MS. JAYARAMAN: You know what? We can take a lunch break now if that sounds good. So we can go off the record.

MS. REYES: Actually, before we go off the record -- I'm sorry. Can we go back on the record

really quickly. Hi. Sorry. I got kicked off for a second. I wanted to address Mr. Russo. I sent you an email regarding a prior order from judge brown from the Texas redistricting case. I believe it's an August order. You should have received that in your mail a few minutes ago and I wanted to ask based on your reading of that order, are you still

asserting privilege with regards to questions about Dale Oldham?

MR. RUSSO: Yes. Based upon my reading that while defending the deposition, I don't think that that order provides you access to attorney-client information, you know. So right now we're maintaining that the objection -- we'll review it and if you're -- you know, if we come to a different conclusion, we'll have a discussion about that. But again, what you sent us is discussing a work product privilege and the attorney-client portion deals with documents and generic objection made to production of documents. That's not what we're dealing with here. We're dealing with specific communications between a client and a lawyer.

MS. REYES: Okay. Well, I will give you time to review it like I say over the lunch break as you said you needed to do and we can readdress it. Thank you.

MR. RUSSO: Fair enough.

ZOOM TECH: Okay. If there's nothing else, then we'll go off the record.

(Recess from 12:26 to 1:13)

BY MS. JAYARAMAN:

UNEDITED, UNPROOFREAD, UNCORRECTED, UNCERTIFIED
ROUGH DRAFT

Q. Mr. Sigler, let's take a look at Sigler Exhibit 8, please. And just let me know when you have it up in front of you, please?

A. I have it in front of me.

Q. Great. So I'm showing you what has been marked as Sigler Exhibit 8, which is Bates stamped DEFS00011706 through DFFS00011709. It's an email from Ms. Johnson to you -- sorry, Ms. Johnson to a number of recipients on which you are copied dated November 19th, 2021. Would you agree?

A. Yes.

Q. So the people in the to line are Kristi Saludis who we talked about earlier, then someone named Stephanie berry. Who is Stephanie berry?

A. I do not know.

A. Unless specified to.
Q. So Ms. Van Horn says, "Nate, please see attached," correct?
A. Correct.
Q. So she's specifying for you to look at the attachments, correct?
A. Correct.
Q. So would you have looked at the

attachments to Sigler Exhibit 10?
A. Possibly. I know for a Map 2, Map 1 precincts, the maps I looked at, but the Excel sheet I'm still not positive on. And I'm not quite sure what Galveston Map 2 10_28 is.
Q. Okay. I -- we can look at -- if you'd like to take a look at the attachments again, you can. They're all -- they're all in Sigler Exhibit 10. But just so I'm clear, your testimony is that you did not do anything with the information that you received in Sigler Exhibit 10?
MR. RUSSO: Objection. Asked and answered.
Q. You can still answer.
A. Okay. Could you repeat the question one

more time, please?

Q. Absolutely. So just so I'm clear, your testimony is that you did not do anything with the information that you received in Sigler Exhibit 10?

MR. RUSSO: Same objection.

A. Yes, not that I can recall.

Q. All right. Let's go back to Sigler Exhibit 11, please.

A. Right here?

MS. JAYARAMAN: Counsel, if you're

speaking with Mr. Sigler, if you wouldn't mind speaking loud enough so we could all hear, please.

MR. RUSSO: Yeah, I'm getting him to the document, okay? I mean, are you worried about us secretly putting things on the record? He's trying to maneuver the documents.

MS. JAYARAMAN: No, I'm not worried about anything secretly going on the record. I'd like to just like to --

MR. RUSSO: I'll tell you where the click on the process that you guys have set up for today. It's that simple.

MS. JAYARAMAN: Okay. I appreciate that.

Thank you for assisting him.

Q. Mr. Sigler, do you have Sigler Exhibit 11 in front of you?

A. Yes.

Q. Great. And this is the email we were looking at before. It's an email exchange between yourself and Dale Oldham dated November 1st, 2021, correct?

A. Correct.

Q. In the top email you send Mr. Oldham a Zoom link. Do you see that?

A. Yes.

Q. Did you meet with Mr. Oldham via Zoom on November 1st, 2021?

A. I believe so.

Q. Was anyone else in that meeting?

A. I do not recall.

Q. How long was that meeting?

A. I do not know.

Q. What did you discuss with Mr. Oldham during that meeting?

MR. RUSSO: I'll instruct the witness not to answer based on attorney-client privilege.

MS. JAYARAMAN: Cathy, could we pull up

Tab 19, please.

MS. REYES: I'm sorry. If you don't mind, I'd like to ask some questions about the basis for that privilege.

MR. RUSSO: Sorry. Who's speaking?

MS. REYES: My name is Bernadette Reyes for Petteway plaintiffs. I have some questions about the basis for that privilege.

MR. RUSSO: Okay. There's counsel that has the examination ongoing right now.

MS. JAYARAMAN: Ms. Reyes can ask her questions. I don't mind.

MS. REYES: Are you -- are you saying that

Mr. Oldham was retained as the county's attorney?

MR. RUSSO: He was a represent -- yes. He was an attorney working for the county, retained to assist the county in the redistricting effort.

MS. REYES: Okay. So can you tell us when he retired?

MR. RUSSO: I don't know the date.

MS. REYES: And this general subject matter of his work?

MR. RUSSO: Can we go on with the

deposition and we can have this discussion off the record when we're not wasting the witness's time with this?

MS. REYES: No, I want to make clear for the record the basis of your objection. You're claiming attorney-client privilege --

MR. RUSSO: The basis of my objection is you are getting into an attorney-client privilege. There's -- there's -- and that's it. The guy -- Mr. Oldham was retained by the county to help with the redistricting effort.

MS. REYES: Okay. That's the basis of --

MS. REYES: I understand, Mr. Russo, but the attorney-client privilege isn't just a blanket coverage for anyone who is a lawyer that is -- that

is hired by the county. There must be some basis for the attorney-client privilege. The privilege covered is legal counsel, legal advice. So if Mr. Oldham was involved in mapping and giving data regarding drawing the maps to Mr. Sigler, then those -- those conversations, those communications are not covered by the attorney-client privilege. And I want to get this on the record.

MR. RUSSO: I totally disagree with that.

Mr. Oldham was retained for the purpose of getting redistricting done within the bounds of the law. That was his duty.

MS. REYES: I just want to be clear though that based on what I've just said and based on the earlier ruling containing the decision involving judge brown, it is your position that the communications from Dale Oldham are covered by attorney-client privilege?

MR. RUSSO: That's correct. And again, the case that you sent to us dealt with the attorney-client privilege of a blanket privilege that was asked for documents, not for specific conversations between the attorney and the county.

MS. REYES: It is -- it is our position that those are similar and that the testimony is

akin to the documents.

MR. RUSSO: This is all --

MS. REYES: I am just -- I'm making my -- I'm just saying it for the record, Mr. Russo.

MR. RUSSO: Okay.

MS. REYES: I will pass it back to the Department of Justice.

MR. RUSSO: This is argument for the court. This is not argument for this deposition. Do you want to continue examining the witness or not.

MS. REYES: Yes, we can continue. I just want to make sure I'm understanding the basis of your objection.

MR. RUSSO: Great.

(Exhibit 13 marked)

BY MS. JAYARAMAN:

Q. Okay. So we're going to take a look at Sigler Exhibit 13. And please let me know when you have it in front of you, Mr. Sigler. And if you'd take a look at the second page of Sigler Exhibit 13, it's labeled defendant's first supplemental and amended response to the United States first set of interrogatories. Do you see that?

A. I do.

Q. Okay. And let's turn to the very last page of Sigler Exhibit 13. I believe it's page 39 of 39 in the PDF. And on the last page of Sigler Exhibit 13, you will see a certification from judge Henry that says that he declares under penalty of perjury that the foregoing is true and correct. Do

you see that?

A. I don't recognize -- okay. Let me see.

Q. The very last page of Sigler Exhibit 13. So you can scroll all the way to the end of the document.

A. Okay.

Q. Do you see that there's a certification from judge Henry that says he declares under penalty of perjury that the foregoing is true and correct?

A. I do.

Q. Okay. So now using the printed page numbers on the bottom of Sigler Exhibit 13, let's turn to page 18 of Sigler Exhibit 13.

A. You said number 18? I'm sorry.

Q. Yes, 18 using the printed page numbers and that's page -- yeah, 18. Please let me know when you're there?

MR. RUSSO: The page numbers are on the bottom.

A. Okay. Oh, okay, okay.

MR. RUSSO: Okay. He's ready.

Q. Okay. At the very top of the page, it says on November 1st, 2021, Nathan Sigler and Dale

Oldham scheduled a Zoom call. Upon information and belief, this call concerned the verification of what was posted to the website. Do you see that?

A. Yes.

Q. Would you agree with defendants' assertion that your Zoom call on November 1st, 2021, with Mr. Oldham concerned the verification of what was posted to the Galveston website?

A. Could you repeat that question, please?

Q. Sure. Do you agree with defendants' assertion that your Zoom call on November 1st, 2021, with Mr. Oldham concerned the verification of what was posted to the Galveston website?

A. I believe so.

Q. What do you mean by "I believe so"?

MR. RUSSO: Let me just caution the witness that we're not disclosing conversations other than what is stated in the interrogatories. So if there are other conversations with Mr. Oldham, we're not disclosing that on the basis of privilege. To the extent you can answer her question, you can.

A. And is this regarding commissioner -- the redistricting for commissioner precincts or redistricting for voting precincts?

Q. I do not know. I wanted to know if you agreed with defendants' assertion that your Zoom call on November 1st, 2021, with Mr. Oldham concerned the verification of what was posted to the Galveston County website.

MR. RUSSO: Objection, asked and answered.

A. I don't remember the specifics of what was talked about in that conversation.

Q. When I asked the question a moment ago, you said I believe so. And then I asked what do you mean by believe so, and then I don't believe you answered that. So what did you mean by I believe so?

MR. RUSSO: Again, the witness is being admonished in connection with disclosing conversations that are between the county and an attorney hired to represent them on the basis of attorney-client privilege. To the extent you can answer the question without revealing such other communications, you can answer.

Q. So Mr. Sigler, do you disagree that your November 1st, 2021, Zoom call with Mr. Oldham

concerned what was posted to the Galveston County

website?

A. Can you repeat that question, please?

Q. Absolutely. Do you disagree that your November 1st, 2021, Zoom call with Mr. Oldham concerned what was posted to the Galveston County website?

A. I do not. I don't recall what the specifics of the conversation were.

EXHIBIT 6

election. I don't know.

Q. But if there were elections for JP and constable, they would have used the historic VTDs?

A. Correct.

Q. Is that what that's trying to say. I think that's it. Just one more thing. Did you confer with your attorney on the breaks during this deposition?

A. I'm sorry. Can you repeat that?

Q. Did you confer with your attorney during the breaks on this deposition?

A. I don't know what that means.

Q. Did you discuss the deposition with your attorney at all during the breaks?

A. No.

Q. Okay. And I will, I guess, pass to Ms. Reyes.

MS. REYES: Thank you, Mr. Gonzalez.

plaintiffs. We don't have any further questions for Mr. Sigler at this time, but I do want to clarify that we are not agreeing that the deposition is concluded, specifically we are reserving the right to reconvene the deposition of Mr. Sigler once the

court has ruled on the issue of the attorney-client privilege raised at this deposition, specifically regarding Dale Oldham.

MR. GONZALEZ: And the NAACP plaintiffs will make the same reserves.

MS. JAYARAMAN: And the United States makes the same reservation.

MR. RUSSO: I think most of your arguments are captured so we'll take it up with the court when necessary.

THE REPORTER: Is there anything else for the record?

MR. RUSSO: Yeah, let's go off the record for two minutes.

(Off record from 6:27 to 6:30)

BY MR. RUSSO:

Q. So defense are going to reserve questions for trial. I think that ends the deposition.

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

TERRY PETTEWAY, THE HONORABLE DERRECK ROSE, MICHAEL MONTEZ, SONNY JAMES and PENNY POPE, *Plaintiffs*, v. GALVESTON COUNTY, TEXAS, and HONORABLE MARK HENRY, in his official capacity as Galveston County Judge, *Defendants.*	§	Civil Action No. 3:22-cv-57
UNITED STATES OF AMERICA, *Plaintiff*, v. GALVESTON COUNTY, TEXAS, GALVESTON COUNTY COMMISSIONERS COURT, and HONORABLE MARK HENRY, in his official capacity as Galveston County Judge, *Defendants.*	§	Civil Action No. 3:22-cv-93
DICKINSON BAY AREA BRANCH NAACP, GALVESTON BRANCH NAACP, MAINLAND BRANCH NAACP, GALVESTON LULAC COUNCIL 151, EDNA COURVILLE, JOE A. COMPIAN, and LEON PHILLIPS,	§	Civil Action No. 3:22-cv-117

Plaintiffs,	§
	§
	§
v.	§
	§
GALVESTON COUNTY, TEXAS, HONORABLE MARK HENRY, in his official capacity as Galveston County Judge, and DWIGHT D. SULLIVAN, in his official capacity as Galveston County Clerk	§
	§
	§
	§
	§
	§
Defendants.	§
	§

DEFENDANTS' FIRST SUPPLEMENTAL AND AMENDED RESPONSE TO THE UNITED STATES' FIRST SET OF INTERROGATORIES

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendants Galveston County, Texas, the Galveston County Commissioners Court, and County Judge Mark Henry (collectively "Defendants") respond to Plaintiff U.S. Department of Justice's ("Plaintiff") First Set of Interrogatories to Defendants.

GENERAL STATEMENT AND OBJECTIONS

Defendants make the following general objections to Plaintiff's First Set of Interrogatories, which apply to each interrogatory regardless of whether the general objections are expressly incorporated into the specific objections below:

1. Defendants object to the extent that Plaintiff's definitions and instructions purport to impose obligations different from or additional to the requirements of the Federal Rules of Civil Procedure, or to limit the discretion of responding parties under the Federal Rules of Civil Procedure.

2. Defendants object to the First Set of Interrogatories to the extent they are overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and not proportional to the needs of the case.
3. Defendants object to the First Set of Interrogatories to the extent they seek to elicit information or evidence otherwise protected by the attorney-client privilege, the work-product privilege, the legislative privilege, or any other applicable privilege recognized under Texas or federal law.
4. Defendants object to the First Set of Interrogatories to the extent they seek to elicit information that is in the public domain or already in Plaintiff's possession, and therefore of no greater burden for Plaintiff than for the Defendants to obtain.
5. Defendants object to the First Set of Interrogatories to the extent they seek publicly available information, statements, or documents that speak for themselves and require neither a response nor a denial from any party.
6. Defendants object to the First Set of Interrogatories to the extent that they seek data or information not within their possession, custody, or control, and should be directed to a different party or third-party.
7. Unless otherwise specified, Defendants stand on their General Objections, the following Objections to the Definitions, Objections to the Instructions, and the below-stated specific objections without expressly admitting or denying any fact.

OBJECTIONS TO THE DEFINITIONS

Defendants make the following objections to the "Definitions" section of Plaintiff's First Set of Interrogatories, which apply to each request regardless of whether these objections are expressly incorporated into the specific objections below:

1. Defendants object to Plaintiff's definitions to the extent that they seek to impose any requirements or obligations in addition to or different from those in the Federal Rules of Civil Procedure, the Local Rules of this Court, any stipulation or agreement of the parties, any order of this Court, or any other rules applicable to this action.

OBJECTIONS TO THE INSTRUCTIONS

Defendants make the following objections to the "Instructions" section of Plaintiff's First Set of Interrogatories, which apply to each interrogatory regardless of whether these objections are expressly incorporated into the specific objections below:

1. Defendants object to Plaintiff's instructions to the extent they seek to impose any requirements or obligations in addition to or different from those set forth in the Federal Rules of Civil Procedure, the Local Rules of this Court, any stipulation or agreement of the parties, any order of this Court, or any other rules applicable to this action.
2. Defendants object to the instructions to the extent they purport to require answers based on information in the possession of hundreds of employees, staff, members, officers, directors, agents, or representatives—both "current" and "former"—who happen to have at one time been associated with any of the Defendants.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1

Identify all factors that the Galveston County Commissioners Court considered in adopting the 2021 redistricting plan.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory

that are based upon the review of documents may be made at a later date.

Accordingly, Defendants do not have any facial objections to this interrogatory. Defendants reserve the right to supplement this response with objections that are based upon a further review of the documents.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 1 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants state that the Galveston County Commissioners Court considered the following factors in adopting the 2021 redistricting plan:

1. The first factor considered was compliance with the requirements under the Fourteenth Amendment to the U.S. Constitution and the Voting Rights Act. In particular, the most important factor in crafting the redistricting lines for the Commissioners Court precincts was the equalization of population and to make the four Commissioners Court precincts geographically sound. The northern portion of Galveston County experienced substantial growth during the previous decade and this caused a population imbalance among the four Commissioners Court precincts. The population imbalance needed to be corrected. For example, Commissioners Court Precinct 3 was already underpopulated under the 2012-2021 map. The population growth in the northern part of the county made

Commissioners Court Precinct 3 even more underpopulated. The Commissioners Court wanted to correct this population imbalance and account for the substantial growth in the northern part of the county.

2. The second factor that the Commissioners Court considered was unified representation on Galveston Island and the Bolivar Peninsula. Under the Commissioners Court precinct map from 2012 to 2021, Galveston Island and the Bolivar Peninsula was carved into three Commissioners Court precincts. This caused confusion among the residents of Galveston Island and the Bolivar Peninsula as residents did not know which Commissioner to contact for constituency service purposes. Having Galveston Island and the Bolivar Peninsula under one Commissioner would help both the residents of the Island and Peninsula and the Commissioners Court in addressing the unique issues presented in those locations. DEFS00003811. Additionally, it was important to unify Galveston Island itself and to unify the Island with the Bolivar Peninsula, which are the primary areas involving projects administered by the Texas General Land Office, so that one office, and one Commissioner, can handle the unique issues presented on the Island and Peninsula, such as dune and general environmental protection and conservation, seawall maintenance, beach erosion, and problems posed by oil and gas wellheads.

3. The third factor considered was the compactness of the Commissioners Court precincts. The Commissioners wanted a map that was geographically compact. The goal was to have a map that made geographical sense, a geographically sound map. There was a sense that the prior map looked gerrymandered.

4. The fourth factor considered was minimizing the splitting of voting precincts.

5. The fifth factor considered was once factors one through four were achieved, the Commissioners wanted a precinct that included their residence.

6. The sixth factor considered by Commissioners was the partisan composition of their districts.

Interrogatory No. 2

For each factor identified in response to Interrogatory No. 1, describe in detail how the 2021 redistricting plan serves that factor.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Accordingly, Defendants object that this interrogatory is a contention interrogatory. Defendants object that it calls for the information protected under the attorney-work product doctrine. Defendants will respond to this interrogatory by the close of discovery.

Defendants further object to the extent Interrogatory No. 2 exceeds the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Defendants reserve the right to supplement this response with objections that are based upon a further review of the documents.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 2 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October

13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

Updated Answer: Without waiving any of the objections stated above, Defendants state that Galveston County's 2021 redistricting plan serves the above factors identified in response to Interrogatory No. 1 in the following ways:

When the Commissioners Court began redistricting, the current map in effect from 2012-2021 had a population deviation of 17.9%. This was largely due to the substantial increase in population in the northern part of the county. The Commissioners Court needed to adjust the map to reflect the substantial shifts in population and to correct the population imbalance. The enacted map successfully achieves the first factor because it equalizes the population among the four Commissioners Court precincts. The current population deviation in the enacted map is 1.1%. See DEFS00011898. This map has a lower population deviation than Map Proposal 1 which had a population deviation of 2.5%. See DEFS00011898. The enacted map also accounts for the substantial increase of the population in the northern part of the county.

The enacted map successfully achieves the second factor because it unites Galveston Island with itself and also unites the Island and Bolivar Peninsula into one Commissioners Court precinct, Commissioners Court Precinct 2. Under the prior map, Galveston Island and Bolivar Peninsula were split into Commissioners Court Precincts 1, 2, and 3. Additionally, Map Proposal 1 still split Galveston Island and the Bolivar Peninsula into two Commissioners Court precincts, namely Commissioners Court Precincts 2 and 3. Reducing the split from three to one maintains the community of interest on Galveston Island and Bolivar Peninsula.

The enacted map successfully achieves compactness, the third factor, because it visually makes sense and looks less like a gerrymander than the 2012 map. For example, the current

map does not carve out and separate the middle of Galveston Island from its eastern and western regions.

The enacted map successfully achieves the fourth factor because it splits nine voting precincts out of a total 96 precincts. The enacted map had the same number of splits as Map Proposal 1.

The enacted plan successfully achieves the fifth factor because the Commissioners live in each of their Commissioners Court precincts.

Finally, the enacted plan, to some extent as a consequence of achieving these other factors, reflects the partisan composition of Galveston County. It is therefore the more favorable option of the two.

Interrogatory No. 3

Identify and describe in detail each redistricting proposal, including any map, whether partial or complete, or in any other format, that would have resulted in the modification of any boundary of any commissioners court precinct in the previous plan, either publicly or privately considered or supported on or after January 1, 2020, by any member of the Galveston County Commissioners Court, including, but not limited to, present or past employees or staff or any other persons or entities acting at the direction of or subject to the control of any member of the commissioners court, and explain the reasons, justifications, and rationales, for any such support.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Accordingly, Defendants object that this interrogatory, particularly the portion that requires

a description of any redistricting plan that was "privately considered," requires breaching the Texas Speech or Debate Clause privilege and the deliberative process privilege. It also requires breaching the attorney-client privilege if a redistricting proposal was privately considered with counsel. Defendants object to the term "would have" as vague and ambiguous. Defendants are unsure how something "would have resulted in a modification"—it either did or did not result in a modification. Defendants are not required to answer Interrogatories in a hypothetical setting.

Defendants further object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Defendants reserve the right to supplement this response with objections that are based upon a further review of the documents.

First Supplemental Objection: In addition to the objections outlined above, Defendants assert that the content of the conversations with Mr. Oldham and Mr. Ready identified in the First Supplemental Answer below are privileged and protected under the attorney-client privilege. The content of these communications is also protected under the legislative privilege doctrine and the deliberative process privilege.

Defendants also assert that the conversations held between attorneys at Holtzman Vogel, Mr. Oldham, and Mr. Bryan are protected under the attorney-client privilege and the attorney work-product doctrine.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 3 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond

to and supplement this interrogatory as document review progresses.

First Supplemental Answer:

There were three maps considered by agents of the Commissioners Court and not disseminated to or shared with the Commissioners. The law firm of Holtzman Vogel was officially retained on April 5, 2021. See DEFS00011720 – DEFS00011722. Holtzman Vogel was retained to "provide legal representation and advice regarding redistricting in Galveston County, Texas, including provision of a technical expert to draw the map. The firm will be associated with Dale Oldham, P.C. in representation on this matter."

On or about October 15, 2021, Holtzman Vogel began working with Thomas Bryan to serve as a technical expert to assist Mr. Oldham in the provision of legal advice. See DEFS00011236. Thomas Bryan prepared three initial maps at the direction of Dale Oldham for the primary purpose of assisting Mr. Oldham in conducting legal analysis and rendering legal advice to the Commissioners. These three maps were created on or about October 17, 2021.

The first maps that were shown to the Galveston County Commissioners were named Map Proposal 1 and Map Proposal 2. Mr. Bryan drew the first draft of Map Proposals 1 and 2 on or about October 19, 2021. On or about October 19, 2021, upon information and belief, Mr. Oldham met in person with the Commissioners and showed Map Proposals 1 and 2 to the Commissioners while Mr. Bryan participated remotely. Mr. Oldham solicited feedback from each Commissioner. Each Commissioner met with Mr. Oldham either separately or in pairs of two. If the latter, and upon information and belief, Commissioner Holmes and Commissioner Giusti reviewed the maps together and, at a separate time, Commissioner Clark and Commissioner Apffel reviewed the maps together. This information was used to formulate Mr. Oldham's legal opinions about what was and what was not feasible. This information was then

used to instruct Mr. Bryan in adjusting these two map proposals. See DEFS00016942; DEFS00011245; DEFS00011246; DEFS00011032 – DEFS00011033.

On or about October 21, 2021, Dale Oldham, Tom Bryan, and Phil Gordon held a Zoom call to conduct legal analysis of Mr. Bryan's updated versions of Map Proposal 1 and Map Proposal 2. The title for the meeting was "Take 2." See DEFS00011247, DEFS00011248. Mr. Oldham and Mr. Gordon provided legal analysis of the maps.

On October 22, 2021, Dale Oldham, Paul Ready, Thomas Bryan, Zach Davidson, and Jed Webb held a Zoom conference call to discuss the Commissioners Court precinct redistricting process. See DEFS00018655. On the same day, there appears to have been a Zoom conference call between Commissioner Holmes and Jedd Webb, also to discuss redistricting. See DEFS00016263. Additionally, there appears to have been a Zoom call between Commissioner Clark and Mr. Webb to discuss redistricting. See DEFS00011695.

On or about October 26, 2021, at the direction of Mr. Oldham, Mr. Bryan completed a second draft of Map Proposal 1 and Map Proposal 2. This was shared with redistricting counsel and counsel to Galveston County, Paul Ready. See DEFS00011258 – DEFS00011263.

On October 28, 2021, a Zoom call was held between Tom Bryan, Dale Oldham and Phil Gordon with updated Map Proposal 1 and Map Proposal 2 boundaries. This meeting was held so Mr. Oldham and Mr. Gordon could conduct legal analysis on the proposed maps to ensure both maps were compliant with U.S. constitutional, federal, and Texas legal requirements. See DEFS00011289. Thereafter, on or about October 28, 2021, redistricting counsel submitted both updated Map Proposal 1 and Map Proposal 2 to Galveston County's general counsel Paul Ready. DEFS00011893. This is ultimately what was submitted to Galveston County's GIS Engineering Technician Nathan Sigler for placement on the Galveston County website.

Interrogatory No. 4

Identify and describe in detail every meeting, including telephone conversations and executive sessions, between or among members of the Galveston County Commissioners Court, including, but not limited to, present or past employees or staff or any other persons or entities acting at the direction of or subject to the control of any member of the commissioners court between January 1, 2020, and November 13, 2021, during which redistricting was discussed, including for each such meeting, whether the meeting was held in-person or virtually (*e.g.*, over the telephone or through video conference), the individual(s) who were invited to the meeting, the individual(s) who attended the meeting, and the subject matter discussed during the meeting.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Accordingly, Defendants object that this interrogatory, particularly the portion that requires a detailed description of conversations in executive sessions, requires violating attorney-client privilege. Conversations about redistricting held in executive sessions are to confer with counsel for the commission. Tex. Gov't. Code §551.071. Additionally, this request requires breaching the Texas Speech or Debate Clause privilege and the deliberative process privilege.

Defendants further object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Defendants reserve the right to supplement this response with objections that are based upon a further review of the documents.

First Supplemental Objection: In addition to the objections outlined above, Defendants

assert that the content of the conversations with Mr. Oldham and Mr. Ready identified in the First Supplemental Answer below are privileged and protected under the attorney-client privilege. The content of these communications is also protected under the legislative privilege doctrine and the deliberative process privilege.

Defendants also assert that the conversations held between attorneys at Holtzman Vogel, Mr. Oldham, and Mr. Bryan are protected under the attorney-client privilege and the attorney work-product doctrine.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 4 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental And Amended Answer: Defendants are aware of the following meetings that are responsive to Interrogatory No. 4:

The 2021 Commissioners Court redistricting process proceeded in three stages.

The first stage of meetings concerned the retention of redistricting counsel, Dale Oldham. On December 16, 2020, there was a telephone conference call between Dale Oldham, Galveston County's general counsel Paul Ready, Judge Henry and his Chief of Staff Tyler Drummond to discuss engaging Mr. Oldham's services as redistricting counsel for the 2021 Commissioners Court redistricting cycle. See DEFS00018648 – DEFS00018649; DEFS00018650 – DEFS00018652. Approximately five weeks later on January 25, 2021, at its regularly scheduled meeting, the Galveston County Commissioners Court considered whether

to approve engagement of redistricting counsel based on the 2020 census. See DEFS00027726 – DEFS00027735 (Agenda Item 64(e)). There then appears to have been a telephone conference on or about April 20, 2021 between Paul Ready and Dale Oldham to discuss the legal requirements of Section 2 of the Voting Rights Act. See DEFS00018653 – DEFS00018654.

The second stage of redistricting began on or about August 30, 2021 and went through late September of 2021. During this stage of the 2021 redistricting, Mr. Oldham had telephone conferences with each Commissioner and County Judge Henry. Mr. Oldham used these conference calls as part of his fact-finding to develop a map that complied with the U.S. Constitution and federal law. These telephone conference calls also helped Mr. Oldham provide legal advice to the Commissioners through the redistricting process. These calls lasted approximately 45 minutes to one hour.

The first of these telephone conference calls was held on September 8, 2021 at approximately 10am between Dale Oldham, Paul Ready, Commissioner Apffel, Tyler Drummond, and Judge Henry regarding redistricting. See DEFS00011031.

The second conference call was held on September 13, 2021 at 10am. This telephone conference call was held between Mr. Oldham, Mr. Ready, and Commissioner Joseph Giusti. See DEFS00011029 – DEFS00011030; DEFS00015162; DEFS00017099 – DEFS00017100.

The third telephone conference call was held on September 16, 2021 at 10am. This telephone conference call was between Mr. Oldham, Paul Ready, and Commissioner Ken Clark. DEFS00011693; DEFS00011694.

The fourth telephone conference call was held on September 20, 2021 at 4pm with Commissioner Stephen Holmes, Mr. Oldham, and Paul Ready. See DEFS00016260; DEFS00016258.

Lastly, there was an additional follow-up call between Commissioner Holmes, Mr. Oldham, and Paul Ready on September 23, 2021 at 4pm. See DEFS00016261; DEFS00016262.

Then the Commissioners Court redistricting entered the third phase. On or about October 15, 2021, Thomas Bryan, an expert demographer, began working with Holtzman Vogel to provide technical assistance to Mr. Oldham. See DEFS00011236 – DEFS00011237.

On October 17, 2021, there were two Zoom meetings held between Mr. Oldham, Thomas Bryan, Jason Torchinsky, an attorney at Holtzman Vogel, and Phil Gordon, an attorney at Holtzman Vogel. The first Zoom call was to provide legal advice and conduct legal deliberations with Mr. Bryan to assist Mr. Bryan in drawing the maps. See DEFS00011238 – DEFS00011240. Mr. Bryan and Mr. Oldham held a follow-up discussion later that day at 4:15pm. DEFS00011241 – DEFS00011244. Additionally, on or about October 18, 2021, Mr. Bryan drew the first iterations of Map Proposal 1 and Map Proposal 2, originally called a Minimum Change Plan (Map Proposal 1) and an Optimal Geo Plan (Map Proposal 2).

On or about October 19, 2021, upon information and belief, Mr. Oldham conducted meetings with each of the Commissioners to show them drafts of Map Proposal 1 and Map Proposal 2. See DEFS00016142; DEFS00011246; DEFS00011032 – DEFS00011033. Upon information and belief, Mr. Oldham met in person with each Commissioner while Mr. Bryan appeared remotely. Upon information and belief, Mr. Oldham and Mr. Bryan displayed both Map Proposals 1 and 2 to each Commissioner. See DEFS00011245 . Mr. Oldham solicited feedback from each Commissioner which assisted Mr. Oldham in formulating his legal opinions in continuing the redistricting process. Additionally, the Commissioners met with Mr. Oldham either individually or in groups of two. If the latter, and upon information and belief, Commissioner Holmes and Commissioner Giusti reviewed the maps together and, at a separate

time, Commissioner Clark and Commissioner Apffel reviewed the maps together.

On October 21, 2021, Dale Oldham, Tom Bryan, and Phil Gordon held two Zoom calls to conduct legal analysis of Mr. Bryan's updated versions of Map Proposal 1 and Map Proposal 2. The first call was at 2:30pm central time. The second Zoom call was at approximately 5:30pm central time. The title for the second meeting was "Take 2." See DEFS00011247; DEFS00011248 . Mr. Oldham and Mr. Gordon provided legal analysis of the maps.

On October 22, 2021, Dale Oldham, Paul Ready, Thomas Bryan, Zach Davidson, and Jed Webb held a Zoom conference call to discuss the Commissioners Court precinct redistricting process. See DEFS00018655. On the same day, there appears to have been a Zoom conference call between Commissioner Stephen Holmes and Jedd Webb, also to discuss redistricting. See DEFS00016263. Additionally, there appears to have been a Zoom call between Commissioner Clark and Mr. Webb to discuss redistricting. (497638).

On or about October 26, 2021, at the direction of Mr. Oldham, Mr. Bryan completed a second draft of Map Proposal 1 and Map Proposal 2. This was shared with redistricting counsel and general counsel to Galveston County, Paul Ready. See DEFS00011258-DEFS00011260.

On October 28, 2021, a Zoom call was held between Tom Bryan, Dale Oldham and Phil Gordon with updated Map Proposal 1 and Map Proposal 2 boundaries. This meeting was held so Mr. Oldham and Mr. Gordon could conduct legal analysis on the proposed maps to ensure both maps were compliant with U.S. constitutional, federal, and Texas legal requirements. See DEFS00011289. Thereafter, on or about October 28, 2021, redistricting counsel submitted both updated Map Proposal 1 and Map Proposal 2 to Galveston County's general counsel Paul Ready. See DEFS00011893. This is ultimately what was submitted to Nathan Sigler for placement on the Galveston County website.

On November 1, 2021, Nathan Sigler and Dale Oldham scheduled a Zoom call. Upon information and belief, this call concerned the verification of what was posted to the website. See DEFS00020441 - DEFS00020442; DEFS00018662 – DEFS00018664.

On November 3, 2021, Judge Henry and his Chief of Staff Tyler Drummond met to discuss scheduling a special meeting to vote on the proposed plans. See DEFS00017104 – DEFS00017105.

Finally, on November 12, 2021, the Galveston County Commissioners Court held a special meeting to deliberate and vote on the proposed plans. The public was afforded an opportunity to attend and provide public comment on Map Proposal 1 and Map Proposal 2. Once everyone at the meeting who wanted to speak had spoken, the Commissioners voted 3-1 to adopt Map Proposal 2. See DEFS00011470 – DEFS00011473.

Interrogatory No. 5

Identify and describe in detail every meeting, including telephone conversations, between redistricting counsel and any member of the Galveston County Commissioners Court, including, but not limited to, present or past employees or staff or any other persons or entities acting at the direction of or subject to the control of any member of the commissioners court between January 1, 2020, and November 13, 2021, including for each such meeting, whether the meeting was held in-person or virtually (*e.g.*, over the telephone or through video conference), the individual(s) who were invited to the meeting, the individual(s) who attended the meeting, and the subject matter discussed during the meeting.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory

that are based upon the review of documents may be made at a later date.

Accordingly, Defendants object to this interrogatory in that it expressly asks for a detailed description of all meetings between redistricting counsel and any member of the Galveston County Commissioners Court. These conversations are protected under the attorney-client privilege and the attorney work-product doctrine.

Defendants further object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Defendants reserve the right to supplement this response with objections that are based upon a further review of the documents.

First Supplemental Objection: In addition to the objections outlined above, Defendants assert that the content of the conversations with Mr. Oldham and Mr. Ready identified in the First Supplemental Answer below are privileged and protected under the attorney-client privilege. The content of these communications is also protected under the legislative privilege doctrine and the deliberative process privilege.

Defendants also assert that the conversations held between attorneys at Holtzman Vogel, Mr. Oldham, and Mr. Bryan are protected under the attorney-client privilege and the attorney work-product doctrine.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 5 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants respectfully refer Plaintiffs to their answer in Interrogatory No. 4.

Interrogatory No. 6

Identify and describe in detail every meeting between any member of the Galveston County Commissioners Court and any Galveston County employee, including, but not limited to, present or past employees or staff or any other persons or entities acting at the direction of or subject to the control of any member of the commissioners court, between January 1, 2020, and November 13, 2021, during which redistricting was discussed, including for each such meeting, whether the meeting was held in-person or virtually (*e.g.*, over the telephone or through video conference), the individual(s) who were invited to the meeting, the individual(s) who attended the meeting, and the subject matter discussed during the meeting.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants further object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Accordingly, Defendants object that this interrogatory requires descriptions of meetings that are protected under the Speech or Debate Clause privilege or the deliberative process privilege. Defendants reserve the right to supplement this response with objections that are based upon a further review of the documents.

First Supplemental Objection: In addition to the objections outlined above, Defendants assert that the content of the conversations with Mr. Oldham and Mr. Ready identified in the First

Supplemental Answer below are privileged and protected under the attorney-client privilege. The content of these communications is also protected under the legislative privilege doctrine and the deliberative process privilege.

Defendants also assert that the conversations held between attorneys at Holtzman Vogel, Mr. Oldham, and Mr. Bryan are protected under the attorney-client privilege and the attorney work-product doctrine.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 6 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants respectfully refer Plaintiffs to their answers in Interrogatory Nos. 4 and 5.

Interrogatory No. 7

Identify and describe in detail every meeting between redistricting counsel and any Galveston County employee, including, but not limited to, present or past employees or staff or any other persons or entities acting at the direction of or subject to the control of any member of the Galveston County Commissioners Court between January 1, 2020, and November 13, 2021, including for each such meeting, whether the meeting was held in-person or virtually (*e.g.*, over the telephone or through video conference), the individual(s) who were invited to the meeting, the individual(s) who attended the meeting, and the subject matter discussed during the meeting.

Objection: Per the meet and confer conference call held on October 13, 2022, with

counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Accordingly, Defendants object that this request calls for a detailed description of conversations held between Galveston County redistricting counsel and Galveston County employees. These conversations are protected under the attorney-client privilege and the attorney work-product doctrine. Defendants reserve the right to supplement this response with objections that are based upon a further review of the documents.

First Supplemental Objection: In addition to the objections outlined above, Defendants assert that the content of the conversations with Mr. Oldham and Mr. Ready identified in the First Supplemental Answer below are privileged and protected under the attorney-client privilege. The content of these communications is also protected under the legislative privilege doctrine and the deliberative process privilege.

Defendants also assert that the conversations held between attorneys at Holtzman Vogel, Mr. Oldham, and Mr. Bryan are protected under the attorney-client privilege and the attorney work-product doctrine.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 7 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond

to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants respectfully refer Plaintiffs to their answers in Interrogatory Nos. 4, 5, and 6.

Interrogatory No. 8

Identify and describe in detail all the factors that were considered by any member of the Galveston County Commissioners Court or any Galveston County employee, including, but not limited to, present or past employees or staff or any other persons or entities acting at the direction of or subject to the control of any member of the commissioners court in conducting the special session, including, but not limited to, the date, the time, the location, the set-up (*e.g.*, arrangement of chairs and sound system), security, and the duration of the special session.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants object that this request calls for a detailed description of conversations held between Galveston County redistricting counsel and Galveston County employees. These conversations are protected under the attorney-client privilege and the attorney work-product doctrine.

Defendants object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 1 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of

the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants state that the following issues and factors were considered in scheduling and conducting the special session:

The Secretary of State's notice dated November 1, 2021, imposed on Galveston County a deadline that was unexpected. The Secretary of State required counties to submit their local redistricting maps by November 13, 2021. Between November 1, 2021 and November 13, 2021, there were no regularly scheduled meetings. The Commissioners Court's regularly scheduled meeting was held on November 1, 2021 and then again on November 15, 2021. Thus, by the time the County learned of the November 13, 2021 deadline, it was too late to hold a regularly scheduled meeting. Thus, because of the timing, the Commissioners Court was required to adopt its new map at a special session.

Thus, the date that allowed the public sufficient time to submit public comments concerning Map Proposal 1 and Map Proposal 2, and that could also accommodate the Commissioners' schedules, was November 12, 2021. November 12, 2021 was the earliest the Commissioners Court could meet to satisfy the November 13, 2021 deadline, satisfy the three-days special meeting notice requirement, and have a quorum of the Commissioners Court.

As shown in Defendants' Motion to Dismiss, it is standard practice to hold special meetings at the Calder Road Annex in League City. It would have been an aberration to hold the meeting anywhere else. (ECF No. 46 at 6–7; ECF No. 47 at 6–7; ECF No. 48 at 5–6). In fact, every other special meeting called in 2021 was held at the Calder Road Annex location.

Id. Other than checking the availability of Judge McCumber's courtroom, there was no additional consideration of where the November 12, 2021 special meeting would take place. See DEFS00017101 – DEFS00017102.

It is also standard practice for the Constable's office to provide security at any public meeting held at the Calder Road Annex. See DEFS00018619-DEFS00018621; DEFS00018615 – DEFS00018618 . Because the Calder Road Annex is located in Constable Precinct 4, that is the Constable's office in charge of security for that building. It is also standard practice for the Galveston County Sheriff's Office to provide security at public meetings held at the Galveston County Moody Courthouse.

The Constables and Galveston County Commissioners' Court staff also ensured that everyone who wanted to speak at the meeting was able to speak. This was accomplished by Galveston County Commissioners' Court staff and Constables informing people in the hallway, in the courtroom, and in the overflow room that if they wanted to speak to please sign the sign-in sheet. Everyone who wanted to speak was able to speak.

The room was organized in the same manner as it is for Commissioners Court meetings. The chairs were arranged the same way and the sound system was arranged the same way. There was also an overflow room with a TV screen for people to watch the proceedings. Unfortunately, due to the construction, the television connection to the overflow room was not as reliable as in prior meetings.

Interrogatory No. 9

Identify and describe in detail all the factors used to determine the placement of voting precinct 336 in the 2021 redistricting plan, including the basis for splitting it among several commissioners court precincts.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 9 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer:

Upon information and belief, it appears that voting precinct 336 was split for perhaps two reasons. First, voting precinct 336 is already naturally split by the presence of State Highway 3. Second, voting precinct 336 was overpopulated. The population of voting precinct 336 was then split into what is now voting precincts 196 and 436. These two voting precincts are located in Commissioners Court precincts 1 and 4 respectively.

Interrogatory No. 10

Identify and describe in detail the communities of interest, if any, that are shared between voting precinct 336 and any of the other voting precincts that comprise commissioners court precincts 1 and 4 in the 2021 redistricting plan.

Objection: Per the meet and confer conference call held on October 13, 2022, with

counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 10 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Defendants continue to investigate the claims and defenses in this case. Defendants will amend their response to this interrogatory before the close of discovery.

Interrogatory No. 11

Identify and describe in detail all efforts that Defendants, including, but not limited to, present or past employees or staff or any other persons or entities acting at the direction of or subject to their control undertook to provide County residents with the opportunity to express their views or provide comments and/or suggestions relating to the 2020-2021 redistricting process for the Galveston County Commissioners Court, including any efforts to publicize redistricting proposals, the specific information provided regarding each such proposal, the factors that Defendants considered in determining the most effective manner in which to convey that information to County residents, the dates on which the information was provided, and the format

in which such information was made available to County residents (*e.g.*, shape files, static images).

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants further object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 11 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants state that during the entire 2020-2021 redistricting cycle (and especially in 2021), they received email communications from citizens and groups (e.g., the League of Women Voters of the Bay Area, the Texas Civil Rights Project) detailing their recommendations for redistricting the Commissioners Court Precincts. See DEFS00011034 – DEFS00011039. This feedback was cataloged and considered by the Commissioners as well as County employees and vendors throughout the map-drawing process, as well as when the decision was made to adopt the current map.

Additionally, on October 29, 2021, Defendants distributed Map Proposal 1 and Map

Proposal 2 for posting on the County's webpage, specifically for review and consideration by the public. These maps were posted in reviewable formats (PDF images and later, on or around November 3, 2021, the corresponding shapefiles). See DEFS00011887 – DEFS00011892; DEFS00018656 – DEFS00018661. Throughout the time that these Map Proposals were made available to the public, Defendants also established and maintained an online portal through which citizens and groups would be able to submit their comments and recommendations on the proposed maps. These comments were cataloged and considered by the Commissioners as well as County employees and vendors in the weeks leading up to when the decision was made to adopt the current map. Galveston County employees Tyler Drummond, Nathan Sigler, and Zach Davidson were involved in placing Map Proposal 1 and Map Proposal 2 on the Galveston County website and providing an opportunity for Galveston County residents to provide feedback.

Finally, at the beginning of November 2021, Defendants noticed a meeting of the Commissioners Court where individuals and groups would be able to provide verbal public comments on the maps that were proposed and posted on the County's webpage. Galveston County allows people to sign up for alerts so that they can receive immediate notifications when new meetings are announced. That meeting was held on November 12, 2021, at which time Defendants made themselves available to listen to and consider comments made on the proposed maps by several individuals and representatives of interested organizations. Galveston County Judge's employee Linda Liechty was walking the hallways at the Calder Hall Annex ensuring that everyone who wanted to speak had signed the sign-up sheet so that they could speak. These comments were recorded and reviewed by the Commissioners as well as County employees and vendors as the final decision was made to adopt the current map.

Interrogatory No. 12

Identify and describe in detail all the factors that were considered with respect to the decision to post graphic depictions of Maps 1 and 2 on the Galveston County website, including every individual involved in the decision to post the depictions, the date the decision was made, the date the depictions were posted, the level of access and degree of interactivity of the depictions afforded to members of the public, the number of unique visitors to view the depictions on the county website, the date(s) any updates or changes were made to the posted depictions, what those updates or changes were, and the dates that the depictions were removed from the County website.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants further object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 12 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022 telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants state that they decided to post Map Proposal 1 and Map Proposal 2 on the County

webpage in order to provide the public an opportunity to review the work product of the Commissioners Court and all County employees and vendors who were involved in the redistricting process. Defendants also wished to receive and consider the public's feedback on that work product, so that they would be able to make adjustments to the proposals if needed, and so that they could make a well-informed decision about which map to adopt. The proposed maps were prepared by County employees and vendors, and were posted online in accessible formats (i.e. PDF images and shapefiles) by County employees. See DEFS00011887 – DEFS00011892. The maps were first posted to the County webpage on or about October 29, 2021 in PDF format only. See DEFS00011901 – DEFS00011902. A few days later, on or about November 3, 2021, the website was updated, and the shapefiles were placed on the website in an accessible format. Galveston County does not know the number of unique visitors to that webpage. Zach Davidson, Nathan Sigler, and Tyler Drummond were involved in placing the maps on the website and providing means for the public to submit comment.

The public comments were produced at DEFS00003314-3781.

Interrogatory No. 13

List, in rank order of importance, a detailed description of those factors, including, but not limited to, policy or administrative considerations or legal requirements that the Galveston County Commissioners Court considered when adopting the 2021 redistricting plan.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants further object to the extent Plaintiff has exceeded the permissible number of

interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 13 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022, telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants respectfully refer Plaintiffs to Defendants' First Supplemental Answer to Interrogatory No. 1.

Interrogatory No. 14

Identify every individual appointed or elected to the Galveston County Commissioners Court since January 1, 1999, and for each individual, include the individual's name, race, and ethnicity, term(s) of service, and the commissioners court precinct that the individual represents/represented.

Objection: Per the meet and confer conference call held on October 13, 2022, with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Defendants further object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Answer:

Without waiving any of the objections stated above, Defendants state the following:

1. County Judge

    a. Mark Henry: First elected in 2010, and re-elected in 2014 and 2018. He won re-election in 2022, and his next term begins January 1, 2023. Race/ethnicity is White.

    b. James D. Yarbrough: First elected in 1994, and re-elected in 1998, 2002, and 2006. He was defeated by Mark Henry in 2010, and his term expired on January 1, 2011. Race/ethnicity is White.

2. Commissioner Precinct 1

    a. Darrell Apffel: First elected in 2016, and was re-elected in 2020. His current term expires January 1, 2025. Race/ethnicity is White.

    b. Ryan Dennard: Elected in 2012 and served only one term. His term expired January 1, 2017. Race/ethnicity is White

    c. Patrick Doyle: First elected in 2004, and was re-elected in 2008. He did not seek re-election thereafter, and his term expired on January 1, 2013. Race/ethnicity is White.

    d. Eddie Barr: First elected in 1988, and was re-elected in 1992, 1996, and 2000. He did not seek re-election thereafter, and his term expired on January 1, 2005. Race/ethnicity is White.

3. Commissioner Precinct 2

    a. Joe Giusti: First elected in 2014, and re-elected in 2018. He won re-election in 2022, and his next term begins January 1, 2023. Race/ethnicity is White.

    b. Kevin O'Brien: First elected in 2010, and was defeated in 2014. His term expired

on January 1, 2015. Race/ethnicity is White.

c. Bryan Lamb: First elected in 2006, and was defeated in 2010. His term expired on January 1, 2011. Race/ethnicity is White.

d. Eddie Janek: First elected in 1990, and was re-elected in 1994, 1998 and 2002. He did not seek re-election thereafter, and his term expired on January 1, 2007. Race/ethnicity is White.

4. Commissioner Precinct 3

a. Stephen D. Holmes: First appointed in 1999, and was re-elected in 2000, 2004, 2008, 2012, 2016, and 2020. His current term expires on January 1, 2025. Race/ethnicity is African-American.

5. Commissioner Precinct 4

a. Robin Armstrong: First appointed in 2022, and won re-election in 2022 (his next term begins on January 1, 2023). Race/ethnicity is African-American.

b. Ken Clark: First elected in 1998, and was re-elected in 2002, 2006, 2010, 2014, 2018, and 2020. He died while in office on May 8, 2022. Race/ethnicity is White.

Interrogatory No. 15

Identify and describe in detail every lawsuit filed since January 1, 2000, in federal or state court in which a claim of race, color, or language minority discrimination was made against Galveston County, including against any member of the Galveston County Commissioners Court in their official capacity. For each such lawsuit state the caption, the civil action number, the court in which it was filed, the date the complaint was filed, and the citation of any opinion or order, whether published or unpublished.

Objection: Per the meet and confer conference call held on October 13, 2022 with counsel from all parties present, counsel agreed that Defendants must state any facial objections to interrogatories by October 18, 2022. Counsel agreed that any objections to this interrogatory that are based upon the review of documents may be made at a later date.

Accordingly, Defendants object to this interrogatory as overly broad and unduly burdensome. Defendants also object that the information sought is equally available to Plaintiff.

Galveston County does not have a centralized database that stores all lawsuits filed against the county. Lawsuits filed against the county are sent to various law firms in Galveston County. To respond to this interrogatory, counsel will need to request that multiple outside law firms search their files going back twenty-two years for lawsuits against Galveston County or its officials, and ask those firms to review each suit to ascertain whether the claim involved discrimination based upon race, color, or language minority. Then, counsel will need to use publicly available databases to research the outcomes in these cases and draft a summary. This is overly broad and unduly burdensome. The request is also not proportional to the needs of the case.

These lawsuits are public filings and accessible using publicly available commercial databases such as LexisNexis and Westlaw.

Defendants further object to the extent Plaintiff has exceeded the permissible number of interrogatories allowed under FRCP 33 due to the many discrete subparts requested herein.

Defendants reserve the right to supplement this response with objections that are based upon a further review of the documents.

Answer: Defendants do not have sufficient information to answer Interrogatory No. 15 at this time. Given that Defendants have just begun the process of reviewing documents pursuant to an agreement of the parties, Defendants at this time are not able to identify all of

the facts and information responsive to this interrogatory. Per agreement made on the October 13, 2022 telephone conference with representatives from all Parties, Defendants will respond to and supplement this interrogatory as document review progresses.

First Supplemental Answer: Without waiving any of the objections stated above, Defendants state that, per the agreement reached between all Parties during the October 13, 2022 telephone conference, they have searched for any documents relating to any lawsuits in which a claim of race, color, or language minority discrimination was made against Galveston County. As counsel for Defendants stated in email correspondence with all Parties on October 26, 2022, all lawsuits against the County are served on the County Judge, and Defendants have now reviewed all documents and data from Judge Mark Henry and his staff. Any documents related to the lawsuits described in this interrogatory have been produced in response to Plaintiff's amended Request for Production No. 14.

Interrogatory No. 16

List every election, whether an election for a federal office, an election for a statewide office, or a local election, held in Galveston County since January 1, 2010, including, but not limited to, every primary, primary runoff, general, and special election, regardless of whether the election was contested.

Answer:

Defendants have produced all data and canvassing reports for Galveston County elections going back to the year 2006. Please see Bates numbers:

1. For 2010: DEFS00001842 - DEFS00001964; DEFS00002601 – DEFS00002603.
2. For 2012: DEFS00000005 - DEFS00000161; DEFS00002599 - DEFS00002600; DEFS00003064 - DEFS00003083.

3. For 2014: DEFS00000162 - DEFS00000164; DEFS00000201 - DEFS00000726; DEFS00002571 - DEFS00002598; DEFS00003063.
4. For 2016: DEFS00000727 - DEFS00000943.
5. For 2018: DEFS00002471 - DEFS00002516; DEFS00002606 - DEFS00002875.
6. For 2020: DEFS00000944.

Date: December 14, 2022

HOLTZMAN VOGEL BARAN JOSEFIAK &TORCHINSKY LLC

/s/ Dallin B. Holt
Dallin B. Holt
Attorney in Charge
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**admitted pro hac vice*

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2022, I served the foregoing via email on all counsel of record in this case.

Dallin B. Holt
Dallin B. Holt

CERTIFICATION

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 14, 2022.

Galveston County, Galveston County Commissioners Court, Honorable Mark Henry, in his official capacity as Galveston County Judge, Dwight D. Sullivan, in his official capacity as Galveston County Clerk

By:
Mark Henry
Its: Galveston County Judge, in his official capacity

HVJT PLLC
Attorneys at Law

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January 20, 2021

VIA EMAIL
paul@ready.law
Galveston County, Texas
c/o Paul Ready
Ready Law Firm, PLLC
1300 McGowen Street
Suite 120
Houston, TX 77004

Re: Holtzman Vogel Josefiak Torchinsky PLLC Engagement Letter

Dear Mr. Ready:

We are very pleased to provide legal services to you and to provide this engagement letter which will set forth the current fee arrangement and terms under which Holtzman Vogel Josefiak Torchinsky, PLLC ("Counsel" or the "Firm") will represent Galveston County, Texas ("Client") in connection with legal advice relating to the creation of the Galveston County Commission map.

Specifically, the Firm has been engaged to provide legal representation and advice regarding redistricting in Galveston County, Texas, including provision of a technical expert to draw the map. The firm will be associated with Dale Oldham, P.C. in representation on this matter.

The terms of our engagement, which shall apply to all matters pertaining to this engagement and the relationship between Client and the Firm, are set forth on the following pages. If you approve of the terms, please execute this agreement in the space provided and return it to my office.

At this time, our Texas Bar attorney Phil Gordon (Of Counsel at HVJT), assisted by Dale Oldham and Jason Torchinsky will be primarily responsible for overseeing representation and will serve as your principal contacts with respect to this engagement. Other partners, associates and professional staff will also be engaged to assist as may be appropriate. Please contact us with any questions or concerns that you may have about our work or any other aspect of our representation.

We look forward to working with you and appreciate your confidence in our firm.

Sincerely,

Jill Holtzman Vogel

Commencement of Representation

To protect both Client and Counsel, this agreement will not take effect until Client returns a signed copy of this Agreement.

Legal Fees

Counsel is charging Client a flat fee of Eighty Thousand Dollars ($80,000) plus any authorized expenses for which Counsel will provide the representation set forth above. This one-time flat fee is to be paid on the following schedule:

- $10,000 upon execution of this engagement letter;
- $15,000 per month beginning the month the Texas PL 94 data is released for each of 4 months;
- $10,000 upon adoption of the maps.

Any additional legal work outside the scope of the representation set forth above will be charged at Counsel's usual and customary hourly fees, including legal fees and expenses to be charged for any litigation over the maps. Hourly fees range from $350 per hour for junior associates to $1,300 for senior partners (billed in .25 hour increments). Billable rates are established by the rate for services as measured by the local Washington-area market. Our statements for professional services will be based upon the amount of time spent by partners, associates, paralegals, and other professionals who perform services on your behalf and their respective hourly rates as then in effect

Costs and Expenses

Counsel will bill separately for any out-of-pocket expenses arising out of this agreement, including costs and expenses incurred for computer research, delivery charges, agency costs and filing fees.

Client Discharge or Counsel Withdrawal

Client may discharge Counsel at any time and Counsel may withdraw at any time at Counsel's discretion. In either such circumstance, Client agrees to sign the documents necessary to permit Counsel to withdraw.

Client has been informed that among the events that should be expected to cause Counsel's withdrawal from this matter are Client's breach of any portion of this Agreement (including its payment provisions), Client's refusal to cooperate with Counsel, or to follow Counsel's advice on a material matter, or any other fact or circumstance that would render Counsel's continuing representation unlawful, unethical, or impractical.

Disclaimer of Guarantee

Nothing in this Agreement and nothing in Counsel's statements to Client will be construed as a promise or guarantee regarding any outcome in Client's legal matters.

No advice is given regarding tax consequences, and Counsel specifically is not providing tax advice, although questions relating to tax matters may very well come up during the course of representation. Client agrees to seek tax advice elsewhere, and to hold Counsel harmless from any tax effects.

Effective Date and Severability

This agreement will take effect when Client has performed the conditions stated in paragraph one, but its effective date will be retroactive to the date Counsel first provided services, if earlier. Even if this Agreement does not take effect, Client will be obligated to pay Counsel the reasonable value of any services Counsel may have performed for Client.

The provision of this Agreement is severable. This means that if one or more provisions of this Agreement are found to be void or unenforceable for any reason, the remaining provisions of this Agreement will still apply.

Scope of Client Engagement

Unless otherwise noted, the client for purposes of this representation is the Client , and not any affiliates of such person or entity.

Counsel represents many other companies and individuals in a variety of matters. It is possible that during the course of the representation, other present or future clients will have disputes with you. As a condition to undertaking the current representation, it is agreed that Counsel may continue to represent or in the future undertake to represent existing or new clients in matters not substantially related to the current representation, even if the interests of such other clients are directly adverse to your interests. This consent shall not apply in the event that during the course of representation Counsel has obtained sensitive, proprietary, or other confidential information, of a non-public nature, that could be used to the advantage of such other client or to your disadvantage in any matter for which Counsel is approached for representation by that client.

Termination of Representation

Client has the right at any time to terminate representation upon notice to Counsel. Such termination does not, however, relieve Client of the obligation to pay for all services rendered and expenses paid or incurred on behalf of the client prior to or in connection with such termination.

Conclusion of Representation

The Counsel-client relationship is terminated upon completion of the services that Counsel has been retained to perform. If Counsel is later retained to perform further or additional services, the Counsel-client relationship will be revived subject to these terms of engagement, as they may be supplemented or changed at that time.

Agreed to and Accepted:

Name: Galveston County, Texas

By:

Mark Henry, County Judge

Date: April 5, 2021

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*, ***Plaintiffs*,** **EDDIE BERNICE JOHNSON, *et al.*,** ***Plaintiff-Intervenors*,** **v.** **GREG ABBOTT,** *in his official capacity as Governor of the State of Texas*, ***et al.*,** ***Defendants*.**	§ § § § § § § § § § § § §	**EP-21-CV-00259-DCG-JES-JVB** **[Lead Case]** **&** **All Consolidated Cases**

ORDER

The United States and private Plaintiffs issued deposition subpoenas to certain State Representatives. Citing state legislative privilege, those State Representatives ask the Court to quash the deposition subpoenas, or issue a protective order that would limit the subject matter the United States and private Plaintiffs could inquire about. The Court concludes that issues of state legislative privilege are not yet ripe for decision. Concluding as much, the Court DENIES the motions and outlines procedures for depositions and assertions of legislative privilege.

I. BACKGROUND

Both the United States and private Plaintiffs subpoenaed Texas Representatives Ryan Guillen, Brooks Landgraf, and John Lujan (the "Legislators") to testify at a deposition in this case. Dkts. 259 Exs. B–D and 271 Exs. A–C. The depositions are currently scheduled to take place on May 24 and 25. *Id.*; Dkt. 280 n.1. In response to those subpoenas, and after failed negotiations on the matter, Dkt. 259 Ex. A, the Legislators filed motions to quash or modify the deposition subpoenas or, in the alternative, for a protective order, Dkts. 259 and 278.

II. DISCUSSION

No doubt state legislators enjoy broad immunity from suit for actions they take during the course of their legislative duties. *Tenney v. Brandhove*, 341 U.S. 367, 377–78 (1951). Such an immunity has long been recognized. *E.g.*, *id.* at 372–76; *Bogan v. Scott-Harris*, 523 U.S. 44, 54–55 (1998). But the questions confronting this Court are ones of state legislative privilege, not immunity.

State legislative privilege is a federal common law privilege, "applied through Rule 501 of the Federal Rules of Evidence." *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Parish Gov't*, 849 F.3d 615, 624 (5th Cir. 2017) (quotation omitted). The privilege "is, at best, one which is qualified." *Id.* (quoting *Perez v. Perry*, No. SA-11-CV-360-OLG-JES, 2014 WL 106927, at *2 (W.D. Tex. Jan. 8, 2014)); *see also United States v. Gillock*, 445 U.S. 360, 373 (1980) (recognizing the privilege as limited in the context of a federal criminal prosecution). It "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 the truth." *Jefferson Cmty.*, 849 F.3d at 624 (quoting *Perez*, 2014 WL 106927, at *1).

At this juncture, the Court is not positioned to rule on what information may or may not be the subject of state legislative privilege. Whether state legislative privilege attaches is fact- and context-specific; for the purposes of depositions, "it depends on the question being posed."[1] *Perez v. Perry*, No. SA-11-CV-360-OLG-JES, Dkt. 102 at 5 (W.D. Tex. Aug. 1, 2011). Here, no questions have been asked, and no answers given. Suffice it to say, the privilege is not so broad as to compel the Court to quash the deposition subpoenas, modify them, or enter a protective

[1] It is worth noting that this is consistent with the manner in which depositions normally proceed. Questions are asked, objections are raised, answers are given. *E.g.*, Fed. R. Civ. P. 30(c)(2).

order prohibiting questions about topics that are not strictly within the public record. *See, e.g.*, *Veasey v. Perry*, No. 2:13-cv-193, Dkt. 341, at 1 (S.D. Tex. Jun. 18, 2014); *Texas v. Holder*, 1:12-cv-128-RMC-DST-RLW, Dkt. 84 (D.D.C. Apr. 20, 2012) (refusing to grant blanket protective order); *Perez*, No. SA-11-CV-360-OLG-JES, Dkt. 102.

With respect to questions about the Legislators' motive or intent, which the Legislators vehemently argue will seek information protected by state legislative privilege, *see generally* Dkts. 259 and 278, the Court is of the opinion that those issues are not yet directly raised. As said, state legislative privilege may be limited—that is, it is not coextensive with state legislative immunity. *E.g.*, *Jefferson Cmty.*, 849 F.3d at 624; *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 94–104 (S.D.N.Y. 2003). Whether state legislative privilege applies will depend on more detailed and nuanced facts than those currently before the Court.

It should also be said that the Court recognizes it should proceed with great caution when discussing the intent of *the legislature* through the actions of individual *legislators*. It is true, as the Legislators argue, that "[e]vidence of any one legislator's intent cannot be conflated with the legislature's purpose as a whole." Mot., Dkt. 278 at 9. Individual legislators often have different motivations for voting in favor of a bill. *See, e.g.*, *Brunovich v. DNC*, 141 S. Ct. 2321, 2349–50 (2021); *United States v. O'Brien*, 391 U.S. 367, 383–84 (1968); *Am. Trucking Assocs., Inc. v. Alviti*, 14 F.4th 76, 90 (1st Cir. 2021). But that does not mean evidence of individual motive is necessarily irrelevant to the question of the legislature's motive. *Alviti*, 14 F.4th at 90; *LULAC v. Abbott*, No. 3:21-CV-259-DCG-JES-JVB, 2022 WL 1410729, at *22 n.13 (W.D. Tex. May 4, 2022). If evidence of intent were to come to light, and if it were not subject to state legislative privilege, the Court is well positioned to give that evidence whatever weight it is due. *See LULAC*, 2022 WL 1410729, at *22 n.13.

In any event, there are other purposes for deposing the Legislators. They may have relevant, non-privileged information about topics "such as political behavior, the history of discrimination, and socioeconomic disparities." Resp., Dkt. 271 at 11. They may have "firsthand knowledge of any number of issues—from discrimination within their home districts, to legislator responsiveness to communities of color, to the alternative maps considered during the redistricting process." Resp., Dkt. 272 at 6. Texas contends that even if the Legislators have relevant, non-privileged information, the burden imposed on the Legislators by having to sit for a deposition outweighs the benefit of obtaining that information. Reply, Dkt. 277 at 8 (citing Fed. R. Civ. P. 45(d)(3)(A)(iv)).

The Court is persuaded that there are likely to be relevant areas of inquiry that fall outside of topics potentially covered by state legislative privilege. Furthermore, the Court does not think the burden of having to sit for a deposition outweighs the relevant information the United States and private Plaintiffs may obtain. *Cf. United States v. Gillock*, 445 U.S. 360, 373 (1980) (citing *United States v. Nixon*, 418 U.S. 683 (1974)) ("We recognize that denial of a privilege to a state legislator may have some *minimal* impact on the exercise of his legislative function." (emphasis added)). There is no reason, at this time, to quash or modify the deposition subpoenas, or to issue a protective order placing limits on the subject matter.

Accordingly, the Court adopts the following procedure, originally used by the last three-judge court to hear Texas redistricting cases:

(1) Parties should proceed with depositions and the deponents must appear and testify even if it appears likely that legislative privilege may be invoked in response to certain questions.

(2) Deponents may invoke legislative privilege in response to particular questions, but the deponent invoking the privilege must then answer the question in full. The response will be subject to the privilege.

(3) The portions of deposition transcripts containing questions and answers subject to the privilege shall be deemed to contain confidential information and shall therefore be subject to the "Consent Confidentiality and Protective Order" (Dkt. 202) previously entered in this case.

(4) If a party wishes to use any portion of deposition testimony that is subject to legislative privilege, that party must seal those portions and submit them to the Court for *in camera* review, along with a motion to compel.[2]

(5) Any such motion to compel shall be filed by **August 1, 2022**. Though the Court sets this deadline, it encourages the parties to file earlier, if at all possible.

Perez v. Perry, No. SA-11-CV-360-OLG-JES, Dkt. 102 at 5–6 (W.D. Tex. Aug. 1, 2011).

In adopting this approach, the Court warns the parties that *any* public disclosure of information to which a privilege has been asserted may result in sanctions, including the striking of pleadings. All counsel are ORDERED to spare no effort to ensure that no individual—whether they be counsel, court reporter, videographer, witness, or any other person hearing or having access to information subject to privilege—disseminates information subject to privilege to any person not permitted to handle that information or in any manner (*e.g.*, disclosure to media, posting on social media).

Finally, nothing in this Order should be construed as deciding any issue of state legislative privilege. The Court will be better positioned to make decisions on state legislative privilege if the issue comes more squarely before the Court—that is, if the Court is presented with specific questions and specific invocations of state legislative privilege.

[2] A motion to compel shall be filed for the purpose of asserting why information, to which a privilege objection has been raised, should be disclosed because it is not subject to the privilege, the privilege has been waived, or the privilege should not be enforced.

III. CONCLUSION

The Legislators' "Motion to Quash or Modify Deposition Subpoenas and Motion for Protective Order" (ECF No. 259) and "Motion to Quash or Modify Private Plaintiffs' Deposition Subpoenas and Motion for Protective Order" (ECF No. 278) are **DENIED**.

So ORDERED and SIGNED this 18th day of May 2022.

DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

And on behalf of:

Jerry E. Smith
United States Circuit Judge
U.S. Court of Appeals, Fifth Circuit

-and-

Jeffrey V. Brown
United States District Judge
Southern District of Texas