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IN THE SUPREME COURT OF FLORIDA

THE LEAGUE OF WOMEN VOTERS
OF FLORIDA, et al.,
Appellants,
v.

KEN DETZNER, et al.,
Appellees.

Case No.: SC14-1905
L.T. Nos.: 1D14-3953
2012-CA-00412
2012-CA-00490

NOTICE OF MOTION TO DETERMINE CONFIDENTIALITY

TO: Jason Torchinsky
Shawn Sheehy
Holtzman Vogel Josefiak PLLC
45 North Hill Drive
Suite 100
Warrenton, VA 20186

Please take notice pursuant to Florida Rule of Judicial Administration 2.420(d)(4) that Appellants have filed the attached Motion to Determine Confidentiality in the Supreme Court of Florida to maintain as confidential the documents you produced pursuant to the June 3, 2014, order of the Superior Court of the District of Columbia and any court records identifying those documents. If the motion is denied then the subject material will not be treated as confidential by the clerk. Fla. R. Judicial Admin. 2.420(d)(4)(i).

Respectfully submitted,

MESSER CAPARELLO, P.A.

THE MILLS FIRM, P.A.

/s/ John S. Mills

Mark Herron
Florida Bar No. 199737
mherron@lawfla.com
Robert J. Telfer III
Florida Bar No. 0128694
rtelfer@lawfla.com
2618 Centennial Place
Tallahassee, FL 32308
Telephone: (850) 222-0720
Facsimile: (850) 558-0659

Counsel for Appellants Rene Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan, and Bonita Agan

John S. Mills
Florida Bar No. 0107719
jmills@mills-appeals.com
Andrew D. Manko
Florida Bar No. 018853
amanko@mills-appeals.com
Courtney Brewer
Florida Bar No. 0890901
cbrewer@mills-appeals.com
service@mills-appeals.com (secondary)
203 North Gadsden Street, Suite 1A
Tallahassee, Florida 32301
(850) 765-0897
(850) 270-2474 facsimile

and

KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.

David B. King
Florida Bar No.: 0093426
dking@kbzwlaw.com
Thomas A. Zehnder
Florida Bar No.: 0063274
tzehnder@kbzwlaw.com
Frederick S. Wermuth
Florida Bar No.: 0184111
fwermuth@kbzwlaw.com
Vincent Falcone III
Florida Bar No.: 0058553
vfalcone@kbzwlaw.com P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472
Facsimile: (407) 648-0161

Counsel for Appellants The League of Women Voters of Florida, Common Cause, Brenda Ann Holt, Roland Sanchez-Medina Jr., J. Steele Olmstead,

and Robert Allen Schaeffer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to the following attorneys on November 20, 2014:

Michael B. DeSanctis
Jessica Ring Amunson
Paul Smith
Jenner & Block, Llp
1099 New York Avenue NW
Suite 900
Washington, DC 20001
mdesanctis@jenner.com
jamunson@jenner.com
PSmith@jenner.com

J. Gerald Hebert
191 Somervelle Street, #415
Alexandria, VA 22304
hebert@voterlaw.com

Gerald E. Greenberg
Adam M. Schachter
Gelbert Schachter & Greenberg, P.A.
1441 Brickell Avenue, Suite 1420
Miami, Florida 33131
ggreenberg@gsgpa.com
aschachter@gsgpa.com
dgonzalez@gsgpa.com

Counsel for Coalition Plaintiffs

George T. Levesque
The Florida Senate, 422 The Capitol
Tallahassee, Florida 32399-1300
levesque.george@flsenate.gov
glevesque4@comcast.net

Ronald G. Meyer
Lynn Hearn
Meyer, Brooks, Demma
and Blohm, P.A.
131 North Gadsden Street
Post Office Box 1547
Tallahassee, Florida 32302
rmeyer@meyerbrookslaw.com
lhearn@meyerbrookslaw.com

Counsel for Coalition Plaintiffs

Blaine Winship
Office of the Attorney General
of Florida
The Capitol, Suite PL-01
Tallahassee, Florida 32399-1050
Blaine.winship@myfloridalegal.com
Counsel for Attorney General Pam Bondi

J. Andrew Atkinson
Ashley Davis
Dep. of State, 500 S. Bronough Street
Tallahassee, FL 32399
jandrew.atkinson@dos.myflorida.com
ashley.davis@dos.myflorida.com
Diane.wint@dos.myflorida.com
Counsel for Florida Secretary of State Ken Detzner

Charles T. Wells

everette.shirlyne@flsenate.gov

Michael A. Carvin
Louis K. Fisher
Jones Day
51 Louisiana Avenue N.W.
Washington, D.C. 20001
macarvin@jonesday.com
lkfisher@jonesday.com

Raoul G. Cantero
Jason N. Zakia
Jesse L. Green
White & Case LLP
200 South Biscayne Blvd., Ste. 4900
Miami, FL 33131
rcantero@whitecase.com
jzakia@whitecase.com
jgreen@whitecase.com
ldominguez@whitecase.com
lorozco@whitecase.com

Counsel for Fla. Senate & Senate Pres.

D. Kent Safriet, Esq.
Mohammad O. Jazil, Esq.
Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
kents@hgslaw.com
mohammadj@hgslaw.com

Counsel for Non-Parties Pat Bainter, Matt Mitchell, Michael Sheehan, and Data Targeting, Inc.

George N. Meros, Jr.
Jason L. Unger
Andy Bardos
Gray Robinson, P.A.
301 South Bronough Street, Suite 600
Tallahassee, Florida 32301
Charles.Wells@gray-robinson.com
George.Meros@gray-robinson.com
Jason.Unger@gray-robinson.com
Andy.Bardos@gray-robinson.com
croberts@gray-robinson.com
tbarreiro@gray-robinson.com
mwilkinson@gray-robinson.com

Matthew J. Carson
General Counsel
Florida House of Representatives
422 The Capitol
Tallahassee, Florida 32399-1300
Matthew.carson@myfloridahouse.gov

Counsel for Fla. House and Speaker

Allison J. Riggs, *Pro Hac Vice*
Anita S. Earls
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
anita@southerncoalition.org

Victor L. Goode
Dorcas R. Gilmore
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-3297
vgoode@naacpnet.org
dgilmore@naacpnet.org

Benjamin James Stevenson

ACLU of Florida Foundation
Post Office Box 12723
Pensacola, Florida 32591
bstevenson@aclufl.org

Counsel for NAACP

/s/ John S. Mills
Attorney

IN THE SUPREME COURT OF FLORIDA

THE LEAGUE OF WOMEN VOTERS
OF FLORIDA, et al.,
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Appellees.

Case No.: SC14-1905
L.T. Nos.: 1D14-3953
2012-CA-00412
2012-CA-00490

APPELLANTS' SECOND
MOTION TO DETERMINE CONFIDENTIALITY

Pursuant to Florida Rule of Judicial Administration 2.420(d)(3), Appellants request the Court to determine whether an email chain produced by two national Republican committees (the "Heffley Email") and court records describing its substance should be maintained as confidential and state:

1. This is Appellants' second motion to determine confidentiality under Rule 2.420(d)(3). They filed their first motion (the "*Bainter* Motion") on November 5, 2014. Today, this Court denied that motion, directing Appellants to file a separate brief if Appellants must discuss any of the sealed contents in the *Bainter* Case. Though there are some commonalities, the instant motion is distinct from and in addition to the *Bainter* Motion. The *Bainter* Motion was directed to documents produced by Pat Bainter, his colleagues, and his company Data Targeting, Inc., over a claim of First Amendment associational privilege that is being adjudicated in *Bainter v. League of Women Voters of Florida*, No. SC14-1200 (the "*Bainter* Case").

2. In preparing the initial brief in this matter, which is due to be filed on November 21, 2014, Appellants have realized that in addition to describing and explaining the substance of the documents at issue in the *Bainter* Case (the reason they had to file the *Bainter* Motion), they must also describe and explain the contents of the Heffley Email in their initial brief. They regret overlooking this issue when they prepared the *Bainter* Motion, but believe they have a professional obligation to file this motion before filing their brief addressing the Heffley Email.

3. In their initial brief, Appellants will be arguing (among other things) that the trial court's determination that only two congressional districts needed to be redrawn was too narrow and that the evidence demonstrated that the Legislature was motivated by prohibited partisan intent throughout the entire redistricting process and, specifically for this case, in drawing the entire congressional redistricting map—a violation that should require a de novo redrawing of the map. An important aspect of this argument will be to challenge the trial court's refusal to supplement the record with the Heffley Email, which was produced on the last day of trial testimony.

4. The Heffley Email is an email exchange between Tom Hofeller, a consultant for the Republican National Committee and National Republican Congressional Committee, and Richard Heffley, a consultant for the Republican Party of Florida. (App. 3-4.) The email exchange occurred late on the same day

this Court issued its opinion approving the second reapportionment plan for the State Senate, having previously found the first plan to be unconstitutional on its face. *See In re Senate Joint Resolution of Legislative Apportionment 2-B*, 89 So. 3d 872 (Fla. 2012). A few hours after that opinion was released, Mr. Hofeller sent Mr. Heffley an email stating, in part, "Congratulations on guiding the Senate through the thicket." (App. 4.) Mr. Heffley responded, "Thanks. Big win." (App. 3.) The exchange also highlighted the sizeable advantage the new Senate map maintained for the Republican Party over the Democratic Party. (App. 4.)

5. As they did below, Appellants will contend in their brief that this evidence was highly relevant because it demonstrates that the Legislature colluded with both the national and state Republican Parties so that partisan consultants could secretly "guide" the Legislature through the "thicket" of the FairDistricts Amendments' prohibitions to achieve a prohibited partisan result. While the specific subject of the email exchange was the reapportionment of State Senate districts, the email exchange showing the involvement of the national Republican Party, including its congressional committee, is strong evidence that the same collusion occurred with the congressional redistricting plan.

6. Appellants were prevented from obtaining the Heffley Email until the last day of trial testimony after they had rested and were not in a position to seek its admission until after the evidence was closed. In April 2013, Appellants Rene

Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan, and Bonita Agan (collectively, the "Romo Plaintiffs") issued subpoenas to the Republican National Committee ("RNC") and National Republican Congressional Committee ("NRCC") seeking the same kind of documents that Appellants The League of Women Voters of Florida, Common Cause, Brenda Ann Holt, Roland Sanchez-Medina Jr., J. Steele Olmstead, and Robert Allen Schaeffer (collectively, the "Coalition Plaintiffs") had sought from Mr. Bainter and Data Targeting. (App. 5-10.)

7. Unlike Mr. Bainter and Data Targeting, the RNC and the NRCC timely asserted a claim of privilege under the First Amendment. That resulted in extended proceedings and several orders from the Superior Court of the District of Columbia over the course of several months. (App. 32-35.) On June 3, 2014, that court determined that the First Amendment protected many of the documents the Romo Plaintiffs sought from the RNC and the NRCC, but did not apply to the Heffley Email, which it ordered produced to the Romo Plaintiffs by the next day. (App. 34.) The last sentence of the D.C. court's order states, "The parties should treat the [Heffley Email] consistently with the procedures set forth by the Florida Supreme Court for treatment of the documents produced by Data Targeting, Inc." (App. 34.) This was a reference to this Court's May 27, 2014, decision in *League*

of Women Voters of Florida v. Data Targeting, Inc., 140 So. 3d 510 (Fla. 2014), which provided:

> [T]he circuit court is not precluded from admitting the documents [produced by Data Targeting] into evidence, subject to a proper showing of relevancy, but shall maintain the confidentiality of the documents by permitting any disclosure or use only under seal of the court and in a courtroom closed to the public.

Id. at 514.

8. In a ruling that Appellants are challenging in their brief, the trial court subsequently denied Appellants' motion to reopen the evidence so that the Heffley Email could be considered. (App. 36-37.) The motion, the accompanying exhibits, and the trial court's order were all filed under seal below and appear in the *Bainter* record prepared by the clerk of the lower tribunal. (R83:10,874-10,917; R84:11,086-87.)

9. Most recently, on November 13, 2014, this Court issued its decision in the *Bainter* Case, which provided as follows with regard to the treatment of the documents produced by Data Targeting:

> [I]n accordance with the overriding public interest favoring openness to judicial proceedings and records, we direct that the 538 pages of documents currently under seal should be made part of the public record and that the sealed portions of the trial transcript, ordered sealed by this Court to preserve the status quo during the pendency of the trial and this appeal, should be and hereby are ordered unsealed. Not only is there no legally valid reason at this time for allowing these documents or the testimony admitted at trial under seal to be hidden from public view, but this Court is committed to the principle that "all trials, civil and criminal, are public events and there is a strong

> presumption of public access to these proceedings and their records." *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 114 (Fla. 1988).

Bainter v. League of Women Voters of Florida, No. SC14-1200, 2014 WL 5856169, at *2 (Fla. Nov. 13, 2014). That decision is now final, but this Court has also stayed its decision for ten days to permit the Bainter appellants to seek U.S. Supreme Court review, meaning the documents will remain sealed.

10. It is unclear to Appellants whether this Court's decision to unseal the documents at issue in the *Bainter* Case should equally apply to the Heffley Email. While the RNC and the NRCC, unlike Mr. Bainter, his colleagues, and Data Targeting, did not waive their claim of First Amendment privilege by failing to timely assert it, they did not appeal the D.C. trial court's ruling that the Heffley Email (or any associated court records) is not privileged. Thus, there does not appear to be a basis under Florida law to keep the Heffley Email sealed. Nonetheless, out of respect to the D.C. court's order and recognizing that it could be read to require the Romo Plaintiffs to seek to file the Heffley Email and any court records describing it under seal, Appellants file this motion asking this Court to determine whether they may do that.

11. Florida Rule of Judicial Administration 2.420(d)(3) requires a "filer of a document with the court" to "ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule." If the filer

has a good faith belief that information in the document is confidential, then "the filer shall request that the information be maintained as confidential by filing a 'Motion to Determine Confidentiality of Court Records' under the procedures set forth in subdivision (e), (f), or (g)." *Id.* Subdivision (g) governs requests to determine the confidentiality of appellate court records in non-criminal cases and requires the request to comply with subdivision (e)(1), which this motion does.

12. Subdivision (c)(9) provides for circumstances under which a court record "determined to be confidential in case decision" should be kept confidential. While none of those circumstances appear to Appellants to clearly apply to the Heffley Email, the directive of the D.C. court to treat the document as confidential appears to support the filing of this motion. This should preclude any accusation that the Romo Plaintiffs have not complied with the D.C. court's order, and it will also give the RNC and the NRCC notice and an opportunity to assert any claim to confidentiality they may believe they have under Rule 2.420.

13. Subdivision (e)(1) provides: "Information that is subject to ... a motion [to determine confidentiality] must be treated as confidential by the clerk pending the court's ruling on the motion." Accordingly, the undersigned has conferred with the Clerk of this Court to confirm that this motion, the Heffley Email, and portions of court records addressing the Heffley Email will be

maintained as confidential pending a ruling.[1] Further, Appellants have determined that they can protect the confidentiality of the Heffley Email by filing two versions of their initial brief if this Court has not ruled on the motion by the deadline for filing the initial brief. One version will redact all reference to the Heffley Email with a notation that it is being redacted pursuant to the motion to determine confidentiality filed on this date. After the stay in the *Bainter* Case expires, Appellants will not treat the redacted version as confidential and have so advised the Clerk. They will also file an unredacted version, which they will treat as confidential and so advise the Clerk. They will serve both versions on the parties to this appeal consistent with how the documents in the *Bainter* Case were handled.[2]

14. Undersigned counsel reached out to counsel for appellees to obtain their position on the motion at noon today. But appellees were not able to review the request and provide their position by the time Appellants felt it was necessary to file this motion to give the Court a chance to review it before the initial brief is filed tomorrow.

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[1] The District of Columbia proceedings were conducted under seal and remain under seal, and in any event, this motion could not be prepared without disclosing the contents and nature of the Heffley Email.

[2] Alternatively, if this Court so directs, Appellants can file a separate, additional supplemental brief that addresses the Heffley Email and portions of court records addressing the Heffley Email, as the Court has just directed be done for any references to the materials under seal in the *Bainter* Case.

WHEREFORE, Appellants request an order determining whether the Heffley Email and portions of court records addressing the Heffley Email are to be maintained as confidential

Rule 2.420(e)(1) Certification

The undersigned counsel certify that this motion is made in good faith and is supported by a sound factual and legal basis.

Respectfully submitted,

MESSER CAPARELLO, P.A.

Mark Herron
Florida Bar No. 199737
mherron@lawfla.com
Robert J. Telfer III
Florida Bar No. 0128694
rtelfer@lawfla.com
2618 Centennial Place
Tallahassee, FL 32308
Telephone: (850) 222-0720
Facsimile: (850) 558-0659

Counsel for Appellants Rene Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan, and Bonita Agan

THE MILLS FIRM, P.A.

/s/ John S. Mills
John S. Mills
Florida Bar No. 0107719
jmills@mills-appeals.com
Andrew D. Manko
Florida Bar No. 018853
amanko@mills-appeals.com
Courtney Brewer
Florida Bar No. 0890901
cbrewer@mills-appeals.com
service@mills-appeals.com (secondary)
203 North Gadsden Street, Suite 1A
Tallahassee, Florida 32301
(850) 765-0897
(850) 270-2474 facsimile

and

KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.

David B. King
Florida Bar No.: 0093426
dking@kbzwlaw.com

Thomas A. Zehnder
Florida Bar No.: 0063274
tzehnder@kbzwlaw.com
Frederick S. Wermuth
Florida Bar No.: 0184111
fwermuth@kbzwlaw.com
Vincent Falcone III
Florida Bar No.: 0058553
vfalcone@kbzwlaw.com P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472
Facsimile: (407) 648-0161

Counsel for Appellants The League of Women Voters of Florida, Common Cause, Brenda Ann Holt, Roland Sanchez-Medina Jr., J. Steele Olmstead, and Robert Allen Schaeffer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to the following attorneys on November 20, 2014:

Michael B. DeSanctis
Jessica Ring Amunson
Paul Smith
Jenner & Block, Llp
1099 New York Avenue NW
Suite 900
Washington, DC 20001
mdesanctis@jenner.com
jamunson@jenner.com
PSmith@jenner.com

J. Gerald Hebert
191 Somervelle Street, #415
Alexandria, VA 22304
hebert@voterlaw.com

Ronald G. Meyer
Lynn Hearn
Meyer, Brooks, Demma
and Blohm, P.A.
131 North Gadsden Street
Post Office Box 1547
Tallahassee, Florida 32302
rmeyer@meyerbrookslaw.com
lhearn@meyerbrookslaw.com

David B. King
Thomas A. Zehnder
Frederick S. Wermuth
Vincent Falcone, III
King, Blackwell, Zehnder &
Wermuth, P.A.

Gerald E. Greenberg
Adam M. Schachter
Gelbert Schachter & Greenberg, P.A.
1441 Brickell Avenue, Suite 1420
Miami, Florida 33131
ggreenberg@gsgpa.com
aschachter@gsgpa.com
dgonzalez@gsgpa.com

Counsel for Coalition Plaintiffs

George T. Levesque
The Florida Senate, 422 The Capitol
Tallahassee, Florida 32399-1300
levesque.george@flsenate.gov
glevesque4@comcast.net
everette.shirlyne@flsenate.gov

Michael A. Carvin
Louis K. Fisher
Jones Day
51 Louisiana Avenue N.W.
Washington, D.C. 20001
macarvin@jonesday.com
lkfisher@jonesday.com

Raoul G. Cantero
Jason N. Zakia
Jesse L. Green
White & Case LLP
200 South Biscayne Blvd., Ste. 4900
Miami, FL 33131
rcantero@whitecase.com
jzakia@whitecase.com
jgreen@whitecase.com
ldominguez@whitecase.com
lorozco@whitecase.com

Counsel for Fla. Senate & Senate Pres.

Post Office Box 1631
Orlando, Florida 32802-1631
dking@kbzwlaw.com
tzehnder@kbzwlaw.com
fwermuth@kbzwlaw.com
vfalcone@kbzwlaw.com
aprice@kbzwlaw.com
courtfilings@kbzwlaw.com

Counsel for Coalition Plaintiffs

Blaine Winship
Office of the Attorney General
of Florida
The Capitol, Suite PL-01
Tallahassee, Florida 32399-1050
Blaine.winship@myfloridalegal.com

Counsel for Attorney General Pam Bondi

J. Andrew Atkinson
Ashley Davis
Dep. of State, 500 S. Bronough Street
Tallahassee, FL 32399
jandrew.atkinson@dos.myflorida.com
ashley.davis@dos.myflorida.com
Diane.wint@dos.myflorida.com
Counsel for Florida Secretary of State Ken Detzner

Charles T. Wells
George N. Meros, Jr.
Jason L. Unger
Andy Bardos
Gray Robinson, P.A.
301 South Bronough Street, Suite 600
Tallahassee, Florida 32301
Charles.Wells@gray-robinson.com
George.Meros@gray-robinson.com

Abba Khanna
Kevin J. Hamilton
Perkins Coie, LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
akhanna@perkinscoie.com
rkelly@perkinscoie.com
khamilton@perkinscoie.com
jstarr@perkinscoie.com
rspear@perkinscoie.com

John M. Devaney
Mark Erik Elias
Perkins Coie, LLP
700 Thirteenth Street, NW, Suite 700
Washington, D.C. 2005
jdevaney@perkinscoie.com
melias@perkinscoie.com
efrost@perkinscoie.com
sYarborough@perkinscoie.com

Mark Herron
Robert J. Telfer, III
Angelina Perez
Messer, Caparello & Self, P.A.
Post Office Box 1876
Tallahassee, Florida 32302-1876
mherron@lawfla.com
rtelfer@lawfla.com
aperez@lawfla.com
clowell@lawfla.com
bmorton@lawfla.com
statecourtpleadings@lawfla.com
Counsel for Romo Plaintiffs

Jason.Unger@gray-robinson.com
Andy.Bardos@gray-robinson.com
croberts@gray-robinson.com
tbarreiro@gray-robinson.com
mwilkinson@gray-robinson.com

Matthew J. Carson
General Counsel
Florida House of Representatives
422 The Capitol
Tallahassee, Florida 32399-1300
Matthew.carson@myfloridahouse.gov
Counsel for Fla. House and Speaker

Allison J. Riggs, *Pro Hac Vice*
Anita S. Earls
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
anita@southerncoalition.org

Victor L. Goode
Dorcas R. Gilmore
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-3297
vgoode@naacpnet.org
dgilmore@naacpnet.org

Nancy Abudu
ACLU Foundation of Florida
4500 Biscayne Blvd., Ste. 340
Miami, FL 33137
NAbudu@aclufl.org
Counsel for NAACP

/s/ John S. Mills
Attorney

APPENDIX INDEX

FILED UNDER SEAL

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, an individual; BENJAMIN WEAVER, an individual; et al.,

Plaintiffs,

vs.

KEN DETZNER, in his official capacity as Florida Secretary of State; PAMELA JO BONDI, in her official capacity as Attorney General; et al.,

Defendants.
_____/

CASE NO. 2012-CA-000412

THE LEAGUE OF WOMEN VOTERS OF FLORIDA; THE NATIONAL COUNCIL OF LA RAZA; et al.,

Plaintiffs,

vs.

KEN DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; et al.,

Defendants.
_____/

CASE NO. 2012-CA-000490

DECLARATION OF JOHN M. DEVANEY IN SUPPORT OF PLAINTIFFS' JOINT MOTION TO SUPPLEMENT THE RECORD OR, IN THE ALTERNATIVE, TO RECALL RICHARD HEFFLEY AS A WITNESS

I, John M. Devaney, swear under penalty of perjury that the following is true and correct.

1. I am a partner with the law firm of Perkins Coie LLP in Washington, D.C. I am trial counsel for the Romo Plaintiffs in this matter.

2. Attached as **Exhibit A** is a true and correct copy of an email string (the "Heffley Email") produced by the Republican National Committee and National Republican Congressional Committee pursuant to a June 3, 2014 order of the Superior Court for the District of Columbia.

3. The Heffley Email was produced to the Romo Plaintiffs on June 4, 2014—the last day of trial testimony in this case.

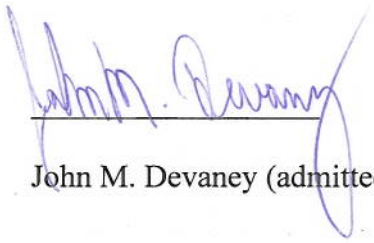
4. I asked counsel for the Legislative Defendants, Andy Bardos, to stipulate to admission of the Heffley Email as evidence in this case. After conferring with other counsel for Defendants, Mr. Bardos refused, citing concerns about the authenticity of the Heffley Email.

5. Attached as **Exhibit B** are true and correct copies of subpoenas served on the Republican National Committee and the National Republican Congressional Committee by the Romo Plaintiffs more than one year ago.

6. Attached as **Exhibit C** is a true and correct copy of Trial Exhibit RP-172.

7. Attached as **Exhibit D** is a true and correct copy of an order issued under seal by the Superior Court for the District of Columbia on June 3, 2014.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief and that this affidavit was executed on the 9th day of June, 2014, in Washington, D.C.



John M. Devaney (admitted *pro hac vice*)

From: Rich Heffley <Rich@heffleyassociates.com>
Sent: Friday, April 27, 2012 5:22 PM
To: Tom Hofeller - Redistricting
Subject: Re: Congrats

Thanks. Big win.

Worse case minus 2. 26-14.

From: Tom Hofeller - Redistricting <thofeller@rnchq.org>
To: Rich Heffley
Sent: Fri Apr 27 17:18:28 2012
Subject: Congrats

Rich:

Congratulations on guiding the Senate through the thicket. Looks as if, so far, the Democrats have not realized the gains they think they were going to get.

Tom

PLAINTIFF'S EXHIBIT
RP-179
2012-ca-00490

RNC-000063

EXHIBIT A

From: Tom Hofeller - Redistricting
Sent: Friday, April 27, 2012 5:18 PM
To: 'Rich Heffley'
Subject: Congrats

Rich:

Congratulations on guiding the Senate through the thicket. Looks as if, so far, the Democrats have not realized the gains they think they were going to get.

Tom

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, an individual; BENJAMIN WEAVER, an individual; et al.,

Plaintiffs,

vs. CASE NO. 2012-CA-000412

KEN DETZNER, in his official capacity as Florida Secretary of State; PAMELA JO BONDI, in her official capacity as Attorney General; et al.,

Defendants.
_____/

THE LEAGUE OF WOMEN VOTERS OF FLORIDA; THE NATIONAL COUNCIL OF LA RAZA; et al.,

Plaintiffs,

vs. CASE NO. 2012-CA-000490

KEN DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; et al.,

Defendants.
_____/

NOTICE OF PRODUCTION FROM NON-PARTIES

Pursuant to Florida Rule of Civil Procedure 1.351(b), Plaintiffs Rene Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan, and Bonita Agan ("Romo Plaintiffs"), hereby provide notice that after ten (10) days from the date of service of this notice if service is by delivery, or fifteen (15) days from the date of this service if service is by mail, and if no objection is received from any party, the undersigned will issue or apply to the Clerk of this Court for issuance

EXHIBIT B

of the attached subpoenas directed to the following, who are not parties, to produce the items listed at the time and place specified in the subpoenas:

1. National Republican Congressional Committee
2. Republican Party of Florida
3. Republican National Committee
4. Republican State Leadership Committee

Dated: April 9, 2013

By:___/s/_*Mark Herron*_____

Mark Herron
Florida Bar No.: 199737
Email: mherron@lawfla.com
Robert J. Telfer III
Florida Bar No.: 128694
Email: rtelfer@lawfla.com
Angelina Perez
Florida Bar No.: 98063
Email: aperez@lawfla.com
MESSER CAPARELLO, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Telephone: (850) 222-0720
Facsimile: (850) 558-0659

Marc Elias (admitted *pro hac vice*)
Kevin J. Hamilton (admitted *pro hac vice*)
John Devaney (admitted *pro hac vice*)
Abha Khanna (admitted *pro hac vice*)
Elisabeth Frost (admitted *pro hac vice*)
PERKINS COIE LLP
700 13th St., N.W., Suite 700
Washington, D.C. 20005-3960
Tel: (202) 654-6200
Fax: (202) 654-6211
Email: MElias@perkinscoie.com
Email: KHamilton@perkinscoie.com
Email: JDevaney@perkinscoie.com
Email: AKhanna@perkinscoie.com
Email: EFrost@perkinscoie.com

Attorneys for the Romo Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Electronic Mail this 9th day of April, 2013 to each of the following parties on the attached service list:

/s/ Mark Herron

Mark Herron
MESSER CAPARELLO, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Telephone: (850) 222-0720
Email: mherron@lawfla.com

SERVICE LIST

Daniel E. Nordby, General Counsel Florida House of Representatives 422 The Capitol 402 South Monroe Street Tallahassee FL 32399-1300 *Primary Email:* daniel.nordby@myfloridahouse.gov *Secondary Email:* Lynn.imhof@myfloridahouse.gov	Charles T. Wells George N. Meros, Jr. Jason L. Unger Andy Bardos GRAY ROBINSON, P.A. Post Office Box 11189 Tallahassee, FL 32302 *Primary Email:* charles.wells@gray-robinson.com george.meros@gray-robinson.com *Secondary Email:* Croberts@gray-robinson.com mwilkinson@gray-robinson.com *Primary Email:* jason.unger@gray-robinson.com andy.bardos@gray-robinson.com *Secondary Email:* tbarreiro@gray-robinson.com
Michael A. Carvin Louis K. Fisher JONES DAY 51 Louisiana Avenue N.W. Washington, D.C. 20001 macarvin@jonesday.com lkfisher@jonesday.com	Miguel A. De Grandy MIGUEL DE GRANDY, P.A. 800 Douglas Road, Suite 850 Coral Gables, FL 33134 mad@degrandylaw.com
George T. Levesque, General Counsel The Florida Senate 404 South Monroe Street Tallahassee, FL 32399-1100 *Primary Email:* levesque.george@flsenate.gov *Secondary Email:*glevesque4@comcast.net carter.velma@flsenate.gov	Ronald G. Meyer Lynn Hearn MEYER, BROOKS, DEMMA & BLOHM. P.A. 131 North Gadsden Street P.O. Box 1547 (32302) Tallahassee, FL 32301 rmeyer@meyerbrookslaw.com lhearn@meyerbrookslaw.com

Jessica Ring Amunson Michael B. DeSanctis Kristen M. Rogers Paul M. Smith Christopher Deal JENNER & BLOCK LLP 1099 New York Ave, N.W., Suite 900 Washington, D.C. 20001 jamunson@jenner.com mdesanctis@jenner.com krogers@jenner.com psmith@jenner.com cdeal@jenner.com	Stephen Hogge STEPHEN HOGGE, ESQ., LLC 117 South Gadsden Street Tallahassee, FL 32301 Stephen@stephenhoggeesq.com
J. Gerald Hebert J. GERALD HEBERT, P.C. 191 Somervelle Street, Unit 405 Alexandria, VA 22304 Hebert@votelaw.com	Charles G. Burr BURR & SMITH, LLP Grand Central Place 442 W. Kennedy Blvd., Suite 300 Tampa, FL 33606 cburr@burrandsmithlaw.com
Allison J. Riggs Anita S. Earls SOUTHERN COALITION FOR SOCIAL JUSTICE 1415 W. Highway 54, Suite 101 Durham, NC 27707 Allison@southerncoalition.org anita@southerncoalition.org	Timothy D. Osterhaus, Deputy Solicitor General Blaine Winship, General Counsel OFFICE OF THE ATTORNEY GENERAL The Capitol, PL-01 Tallahassee, FL 32399 Timothy.osterhaus@myfloridalegal.com Blaine.winship@myfloridalegal.com
Victor L. Goode Dorcas R. Gilmore NAACP 4805 Mt. Hope Drive Baltimore, MD 21215-3297 vgoode@naacpnet.org dgilmore@naacpnet.org	Gerald E. Greenberg Adam M. Schachter GELBER SCHACHTER & GREENBERG, P.A. 1441 Brickell Avenue, Suite 1420 Miami, FL 33131 *Primary Emails:* ggreenberg@gsgpa.com, aschachter@gsgpa.com *Secondary Email:* dgonzalez@gsgpa.com

Harry O. Thomas Christopher B. Lunny RADLEY THOMAS YON & CLARK, P.A. 301 S. Bronough Street, Suite 200 Tallahassee, FL 32301-1722 *Primary Email:* hthomas@radeylaw.com *Secondary Email:* jday@radeylaw.com *Primary Email:* clunny@radeylaw.com *Secondary Email:* cdemeo@radeylaw.com	Jon L. Mills (Miami Office) Karen C. Dyer (Orlando Office Elan M. Nehleber (Orlando Office_ BOIES, SCHILLER & FLEXNER, LLP 100 SE 2nd Street, Ste. 2800 Miami, FL 11313-2144 121 S Orange Avenue, Suite 840 Orlando, 32801-3233 *Primary Emails:* jmills@bsfllp.com enehleber@bsfllp.com ecruz@bsfllp.com
Raoul G. Cantero Jason N. Zakia Jesse L. Green WHITE & CASE, LLP Southeast Financial Center, Ste. 4900 200 South Biscayne Boulevard Miami, FL 33131 *Primary Emails:* rcantero@whitecase.com jzakia@whitecase.com jgreen@whitecase.com	Ashley Davis Assistant General Counsel Florida Department of State R.A. Gray Building 500 S. Bronough Street Tallahassee, FL 32399 Telephone: (850) 245-6536 Cell: (850) 294-8018 Ashley.davis@dos.myflorida.com
D. Kent Safriet Thomas R. Philpot Hopping, Green & Sams, P.A. P.O. Box 6526 Tallahassee, FL 32314 Telephone: (850) 222-7500 Facsimile: (850) 224-8551 kents@hgslaw.com dhealy@davidhealylaw.com	Daniel C. Brown CARLTON FIELDS, P.A. P.O. Drawer 190 Tallahassee, FL 32302-0190 Telephone: (850) 224-1585 *Primary e-mails:* dbrwon@carltonfields.com cthompson@carltonfields.com talecf@cfdom.net

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, an individual; BENJAMIN WEAVER, an individual; et al.,

Plaintiffs,

vs. CASE NO. 2012-CA-000412

KEN DETZNER, in his official capacity as Florida Secretary of State; PAMELA JO BONDI, in her official capacity as Attorney General; et al.,

Defendants.
_____/

THE LEAGUE OF WOMEN VOTERS OF FLORIDA; THE NATIONAL COUNCIL OF LA RAZA; et al.,

Plaintiffs,

vs. CASE NO. 2012-CA-000490

KEN DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; et al.,

Defendants.
_____/

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA

TO: National Republican Congressional Committee
320 First Street SE
Washington, DC 20003
(202) 479-7000

YOU ARE COMMANDED to appear at the place, date, and time specified below, and to have with you at that time and place the documents listed in the attached Addendum.

PLACE	**DATE AND TIME**
Offices of the National Republican Congressional Committee 320 First Street, SE Washington, DC 20003	May 10, 2013 1:00 p.m.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible, one-sided copies of the items to be produced to the attorney whose name appears on this subpoena on or before the date of production. Please provide a copy of this subpoena with your records. You may condition the preparation of the copies upon payment in advance of the reasonable cost of preparation. **You may mail the copies to the attorney whose name appears on this subpoena and thereby eliminate the need to appear at the time and place specified above.** You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION; NO TESTIMONY WILL BE TAKEN**. If you fail to: (1) furnish the records as described above; or (2) object to this subpoena, you may be in contempt of Court. You are subpoenaed by the attorney whose name appears on this subpoena, and unless excused from this subpoena by the attorney or the Court, you shall respond to this subpoena as directed.

DATED on _____, 2013.

For the Court

_____

Subpoena issued by:
Mark Herron
MESSER CAPARELLO, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Tel: (850) 222-0720
Fax: (850) 558-0659
Email: mherron@lawfla.com

Attorneys for the Romo Plaintiffs

ADDENDUM

DEFINITIONS

For purposes of this subpoena, the following definitions apply:

1. The term "document" refers to every tangible thing from which information can be obtained, perceived, reproduced, or communicated, either directly or with the aid of a machine or device, including, but not limited to, any handwritten, typed, printed or graphic materials; any drawing, diagram, list, graph, report, plan, map, analysis, or chart; any photograph, slide, movie, videotape, image or film; any record, correspondence, calendar, document, presentation, PowerPoint, memorandum, note, or other writing; e-mails, instant messages, text messages, voice mails, and social media messages, updates or posts (including, but not limited to, messages, updates, or posts on Facebook or Twitter), however stored or recorded (including, for electronic documents, those in active and inactive drive space, and for example, deleted files in drive slack space and documents stored in recycle bins) on all computers used at any time by you including state owned computers, personal computers, or any other computer to which you have had access, and including all metadata, and all drafts and non-identical copies of the foregoing.

2. The term "communication" means any transmission or communication, whether in person, by telephone, in writing, by facsimile, by e-mail, by voicemail, by instant messaging, by text messaging, by social media (including, but not limited to, by Facebook or by Twitter), or otherwise.

3. The term "2012 Congressional Plan" means the congressional redistricting plan passed by the Florida Legislature on February 9, 2012.

4. The term "Redistricting Majority Project", or "REDMAP" means the program of the Republican State Leadership Committee that is described on the program's website as "dedicated to winning state legislative seats that will have a critical impact on congressional redistricting in 2011." *See* http://www.redistrictingmajorityproject.com/?page_id=2.

DOCUMENTS TO BE PRODUCED

1. Any document in your possession or control that relates to or discusses congressional or state legislative redistricting in Florida following the 2010 census, including, but not limited to, all studies, analyses, commentaries, and other documents concerning the 2012 Congressional Plan or any draft congressional plans.

2. Any document in your possession or control that relates to or discusses this litigation, before or since its commencement.

3. Any document in your possession or control that relates to or discusses the Redistricting Majority Project, or REDMAP, as it relates or refers to Florida.

4. Any communication with any person (including, but not limited to, legislators, legislative staff, consultants, or counsel) about the subjects described in 1, 2, and 3 above.

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Defendants.
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Plaintiffs,

vs. CASE NO. 2012-CA-000490

KEN DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; et al.,

Defendants.
_____/

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA

TO: Republican Party of Florida
420 E. Jefferson Street
Tallahassee, FL 32301
(850) 222-7920

YOU ARE COMMANDED to appear at the place, date, and time specified below, and to have with you at that time and place the documents listed in the attached Addendum.

PLACE	**DATE AND TIME**
Offices of the Republican Party of Florida 420 E. Jefferson Street Tallahassee, FL 32301	May 10, 2013 1:00 p.m.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible, one-sided copies of the items to be produced to the attorney whose name appears on this subpoena on or before the date of production. Please provide a copy of this subpoena with your records. You may condition the preparation of the copies upon payment in advance of the reasonable cost of preparation. **You may mail the copies to the attorney whose name appears on this subpoena and thereby eliminate the need to appear at the time and place specified above.** You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION; NO TESTIMONY WILL BE TAKEN**. If you fail to: (1) furnish the records as described above; or (2) object to this subpoena, you may be in contempt of Court. You are subpoenaed by the attorney whose name appears on this subpoena, and unless excused from this subpoena by the attorney or the Court, you shall respond to this subpoena as directed.

DATED on _____, 2013.

For the Court

_____

Subpoena issued by:
Mark Herron
MESSER CAPARELLO, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Tel: (850) 222-0720
Fax: (850) 558-0659
Email: mherron@lawfla.com

Attorneys for the Romo Plaintiffs

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2. The term "communication" means any transmission or communication, whether in person, by telephone, in writing, by facsimile, by e-mail, by voicemail, by instant messaging, by text messaging, by social media (including, but not limited to, by Facebook or by Twitter), or otherwise.

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3. Any document in your possession or control that relates to or discusses the Redistricting Majority Project, or REDMAP.

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Defendants.
_____/

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA

TO: Republican National Committee
310 First Street, SE
Washington, DC 20003
(202) 863-8500

YOU ARE COMMANDED to appear at the place, date, and time specified below, and to have with you at that time and place the documents listed in the attached Addendum.

PLACE	**DATE AND TIME**
Offices of the Republican National Committee 310 First Street, SE Washington, CD 20003	May 10, 2013 1:00 p.m.

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KEN DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; et al.,

Defendants.
_____/

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

THE STATE OF FLORIDA

TO: Republican State Leadership Committee
1201 F Street, NW, Suite 675
Washington, DC 20004
(202) 448-5169

YOU ARE COMMANDED to appear at the place, date, and time specified below, and to have with you at that time and place the documents listed in the attached Addendum.

PLACE	**DATE AND TIME**
Offices of the Republican State Leadership Committee 1201 F Street, NW, Suite 675 Washington, DC 20004	May 10, 2013 1:00 p.m.

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For the Court

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Attorneys for the Romo Plaintiffs

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Jessica Furst Johnson

Subject:	FLA Leadership Mtg
Location:	Finance Conference Room
Start:	Wed 6/15/2011 4:00 PM
End:	Wed 6/15/2011 4:30 PM
Recurrence:	(none)
Meeting Status:	Accepted
Organizer:	Chris McNulty
Required Attendees:	Jessica Furst; Jackie Barber; Brock McCleary; Adam Kincaid

Speaker Designate Will Weatherford
Senate President Elect Don Gaetz (pronounced Gates)
Kris Money chief of staff to Will Weatherford
Chris Clark chief of staff to Don Gaetz
Frank Terraferma genius map drawer

PLAINTIFF'S EXHIBIT
RP-172
2012-ca-00490

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

RENE ROMO, et al., Plaintiff v. KEN DETZNER, in his official capacity as Secretary of the State of Florida, et al., Defendants	Docket Nos. 2012 CA 009234 2013 CA 002907 2013 CA 002909 Civil 2 Calendar #11 Judge Stuart G. Nash **Filed Under Seal**

ORDER

Pursuant to an oral ruling by this Court earlier today, the Republican National Committee and the National Republican Congressional Committee (collectively "the respondents") have produced, for *in camera* review, approximately 100 pages of documents covered by the privilege log filed last week.

Based on its *in camera* review of the documents, the Court is persuaded that, with two exceptions, all of the documents are covered by the associational privilege.[1] The basis for that finding was articulated orally at the two hearings the Court has held in this matter. For the reasons that follow, the Court finds that there are two documents that are not covered by the privilege: RNC 000063 and RNC 000662.

The Court has applied the test formulated in *Perry v. Schwarzenegger*, 591 F.3d 1147, 1160-61 (9th Cir. 2010), which the Florida court has adopted as the controlling test. According to the *Perry* formulation, a claim of First Amendment privilege is subject to a two-part analysis. First, the party asserting the privilege must demonstrate a prima facie showing of arguable First

[1] As at all prior stages of this litigation, this Court has endeavored to construe the "associational privilege" consistently with how that privilege has been applied by the Florida courts in connection with this litigation, in order to avoid rulings inconsistent with those rendered by the Florida judge presiding over this trial.

EXHIBIT D

Amendment infringement. This prima facie showing requires the party asserting the privilege to demonstrate that enforcement of the discovery requests will result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or "chilling" of, the members' associational rights. If the party asserting the privilege can make this prima facie showing, the evidentiary burden will then shift to the opposing party to demonstrate an interest in obtaining the disclosures it seeks which is sufficient to justify the deterrent effect on the free exercise of the constitutionally-protected right of association.

To implement this standard, a court must balance the burdens imposed on individuals and associations against the significance of the interest in disclosure. This balancing may take into account (1) the importance of the litigation; (2) the centrality of the information sought to the issues in the case; (3) the existence of less intrusive means of obtaining the information; and (4) the substantiality of the First Amendment interests at stake.

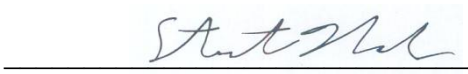
For reasons discussed at the previous hearings, this Court finds that the respondents have made out the requisite prima facie showing with respect to the two documents in question. The documents consist of e-mail communications between Tom Hofeller, an employee of the Republican National Committee, and Rich Heffley, a consultant to the Republican Party of Florida. The Florida court has determined that the Republican National Committee and the Republican Party of Florida comprise a single "association" for purposes of applying the associational privilege, and that the disclosure of internal communications within this association (or between members of the association and their paid consultants) would chill the exercise of First Amendment rights by members of that association. This Court finds that determination to be a reasonable construction of the privilege, and will not second-guess it.

This Court has now proceeded to the second part of the *Perry* analysis by applying the requisite balancing test to each of the documents that was submitted for *in camera* review. On the basis of that review, the Court finds the privilege applicable to all of the documents, except the two referenced above. As to those two documents, there is no real argument that the political strategies of the "association" are implicated in any meaningful fashion. The communications simply involve Mr. Hofeller thanking Mr. Heffley for his "efforts." No "internal political strategies" would be revealed by disclosure of this document. On the other hand, the documents do arguably support plaintiff's main contention in the underlying litigation, that Mr. Heffley made "efforts" on behalf of the respondents and other Republicans to improperly influence the redistricting process.

There is certainly a benign interpretation of the e-mail as well (as a matter of social convention, people are often "congratulated" for bringing about results they had little or nothing to do with), but plaintiffs are not bound to accept that explanation. The fact that the facial language of the e-mail so directly supports plaintiffs' contentions in the underlying litigation is sufficient, in this Court's opinion, when weighed against the negligible disclosure of protected internal strategies, to tip the balancing test heavily in favor of disclosure.

Accordingly, the Court hereby orders disclosure to plaintiffs of documents bearing Bates stamp numbers RNC 000063 and RNC 000662, no later than 10:00 a.m. on Wednesday, June 4, 2014. The parties should treat the documents consistently with the procedures set forth by the Florida Supreme Court for treatment of the documents produced by Data Targeting, Inc.

SO ORDERED.



Stuart G. Nash
Judge
Signed in chambers

Dated: June 3, 2014

Copies provided via Case File Xpress:

John M. Devaney, Esq.
Counsel for Romo Plaintiffs

Jason Torchinsky, Esq.
Counsel for RNC and RNCC

Docketed on: June ___, 2014

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, et al,

Plaintiffs,

vs.

KEN DETZNER and PAM BONDI,

Defendants.
_____/

CASE NO: 2012-CA-412

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, et al,

Plaintiffs,

vs.

KEN DETZNER, et al,

Defendants.
_____/

CASE NO: 2012-CA-490

ORDER UNDER SEAL

ORDER DENYING MOTION TO SUPPLEMENT THE RECORD OR, IN THE ALTERNATIVE, TO RECALL RICHARD HEFFLEY AS A WITNESS

THIS CAUSE was considered upon "Plaintiff's Joint Motion to Supplement the Record or, in the Alternative, to Recall Richard Heffley as a Witness." Having reviewed the motion, Defendants' response and the relevant law, I find the following:

This case went to trial from May 19, 2014 to June 4, 2014 - more than 2 years after it was filed. Plaintiffs informed me of the possibility that the instant motion might be filed during final housekeeping on the last day of trial. The service date on the motion is five calendar days later on June 9, 2014.

As an initial matter, I know of no authority allowing me to supplement the record with this evidence post hoc, particularly over Defendant's objections. In determining whether I should allow Plaintiffs to reopen their case and call and additional witness, I

have considered the relevant factors outlined in *Grider-Garcia v. State Farm Mut. Auto.*, 73 So. 3d 847 (Fla. 5th DCA 2011). Specifically those factors are: "(1) the timeliness of the request, (2) the character of the evidence sought to be introduced, (3) the effect of allowing the evidence to be admitted, and (4) the reasonableness of the excuse justifying the request to reopen." *Id.* at 849.

These factors do not support reopening the case. Factor 1 militates strongly against reopening. Factor 2 militates moderately against reopening the case while factors 3 and 4 militate weakly toward allowing Plaintiffs to reopen. The motion was made five days following a 12 day bench trial. The evidence at issue, while relevant, nonetheless, only tangentially bolsters Plaintiffs case as it does not directly address congressional redistricting but only the Florida Senate. Additionally, there was ample other evidence introduced at trial that Mr. Heffley was working on senate redistricting for the Republican Party of Florida during that time period. The prejudice to the Defendants would be slight. Finally, I am sympathetic to the fact that Plaintiffs did not receive this document until the last day of trial. However, trials must end and litigants generally go to trial with the evidence they have available. The motion is DENIED.

THE CLERK OF COURT SHALL KEEP THIS ORDER UNDER SEAL UNTIL FURTHER ORDER OF THE COURT.

DONE AND ORDERED this 10th day of July, 2014.

TERRY P. LEWIS
Circuit Judge

Copies to:

All Counsel of Record