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May 1, 2023

Honorable Jeffrey V. Brown
United States District Court, S.D. Texas
601 Rosenberg Ave., Room 613
Galveston, Texas 77550

RE: No. 3:22-cv-0057; *Terry Petteway, et al v. Galveston County, et al.*

Dear Judge Brown:

Defendants and Commissioner Holmes (“Holmes”) submit this dispute letter, for which Plaintiffs also submit a position, over six entries on the privilege log Holmes produced on April 25, 2023.

Defendants’ Position¹

Attorney-Client/Work Product Privileges (Items 10, 11, 19)

Three entries on the privilege log are withheld based on attorney-client/work product privileges. Item 19 is an email from Chad Dunn, counsel for the Petteway Plaintiffs, to Holmes and others. No attorney-client/work product privilege applies to communications with **opposing** counsel; this assertion of privilege should be rejected. Exhibit 2 at 5. Additionally, items 10-11 are Holmes’ handwritten notes from conference calls with counsel for the County. *Id.* at 3. Even if privileged, the privilege is the *County’s*. No attorney-client privilege prevents disclosure of notes regarding redistricting taken during meetings with County counsel *to the County* in this case.

Legislative Privilege (Items 1, 2, 11, 19, 27)

The legislative privilege is a “limited, qualified privilege” that must be “strictly construed.” *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov’t*, 849 F.3d 615, 624 (5th Cir. 2017); *See La Union Del Pueblo Entero v. Abbott*, No. SA-21-CV-00844-XR, 2022 WL 1667687, at *4 (W.D. Tex. May 25, 2022) (quotation omitted). As discussed below, none of the documents in Holmes’ privilege log can be withheld from the County based on legislative privilege. Additionally, last October, the NAACP

¹ Six days after the April 19th order overruling Holmes’ objection to a subpoena (Dkt. 140), provided **only** a privilege log listing **1,183 pages** finally agreed to produce **all but 74 pages** of these documents. Exhibit 1 is his original privilege log, and Exhibit 2 is an annotated version highlighting the items now in dispute.

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Plaintiffs engaged in a discovery dispute with Defendants over this privilege, arguing it does not apply to County Commissioners. *See Exhibit 3*. Even if it does apply, documents contradicting ***all Plaintiffs' arguments that the plan was adopted with bad intent*** certainly meet the criteria for disclosure that is applied in this circuit. *Id.* at *2.² Plaintiffs allege Holmes was “shut out of the process[]” or “excluded from discussions.” Petteway Pls.’ SAC ¶99 (Dkt. 42); NAACP Pls.’ FAC ¶53 (Dkt. 38); U.S. FAC ¶¶35, 46, 58 (Dkt. 30). Plaintiffs also allege redistricting counsel “entirely ignored” Holmes’ views and suggested changes. U.S. FAC Dkt. 30 ¶ 48. Holmes cannot assert legislative privilege over documents that could disprove these assertions, especially when he “has stated that throughout that process, he was excluded from discussions” with commissioners. *Id.* ¶46. *See, e.g., Bethune-Hill v. Va. State Bd. of Elections*, 114 F. Supp. 3d 323, 340 (E.D. Va. 2015) (stating that because legislative intent is an element of equal protection claim in redistricting litigation, disclosure of documents concerning legislative intent outweighed assertions of legislative privilege).

Not privileged/Waived. Legislative privilege may protect documents containing opinions, motives, recommendations or advice about legislative decisions. *La Union Del Pueblo Entero*, 2022 WL 1667687, at *2. Nor is it absolute. *Id.* at *4. The privilege is “waived when a state legislator communicates with . . . any outsider.” *Id.* (quotation omitted).

Items 1, 2, 10 and 11 are Holmes’ handwritten notes about redistricting, some from 2011, some from 2021 meetings with County counsel. The individuals present when he took these notes are not identified. To the extent these notes annotate conversations with non-legislators, they are not protected by privilege. Item 27 is a screen shot of a text message with someone called “Annye,” and also does not establish a legislative privilege exists. Nor can these documents be shielded from Holmes’ fellow commissioners. The privilege is meant to protect “legislators from possible prosecution by an unfriendly executive and conviction by a hostile judiciary, and is one means for ensuring the independence of the legislature . . .” *Id.* at *2. It does not stop disclosure to *other legislators* involved in the same redistricting process. *See, e.g., id.* (explaining the privilege applies to “opinions, motives, recommendations or advice about legislative decisions between legislators . . .”). The privilege cannot shield “factually based information used in the decision-making process or disseminated to legislators or committees . . .” *Id.* Therefore, item 18 (email with counsel regarding conversation about census data) is also not shielded from Defendants under a legislative privilege—which is “strictly construed.” *Id.*

² Factors considered to overcome the limited privilege include “(i) the relevance of the evidence sought to be protected; (ii) the availability of other evidence; (iii) the ‘seriousness’ of the litigation and the issues involved; (iv) the role of the government in the litigation; and (v) the possibility of future timidity by government employees who will be forced to recognize that their secrets are violable.” *Id.*

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Commissioner Holmes' Position

Attorney-Client/Work Product Privileges (Items 10, 11, 19)

With respect to Items 10 and 11 (Bates labeled 181 and 181-191), Commissioner Holmes's handwritten notes from his conversations with outside counsel, Paul Ready and Dale Oldham, are privileged. Defendants take the remarkable position that an attorney can subpoena his own clients' privileged notes. "Under . . . federal common law . . . the client, not the client's attorney, holds the privilege." *Alpert v. Riley*, 267 F.R.D. 202, 208 (S.D. Tex. 2010). The County, through its litigation counsel that has taken an adversarial position to Commissioner Holmes, cannot decide to waive on Commissioner Holmes's behalf privileged communications with counsel.

With respect to Item 19 (Bates labeled 319-346), Commissioner Holmes was represented by Attorney Chad Dunn with respect to redistricting matters prior to the adoption of the 2021 redistricting plan. The additional persons involved in the communication in Item 19 were mapping consultants retained by Mr. Dunn to aid in his provision of legal advice to Commissioner Holmes. As Commissioner Holmes explained in meeting and conferring with Defendants, this is the precise issue that is currently before the Court regarding Defendants' assertion of privilege over communications from Dale Oldham and Thomas Bryan to the County. If the Court orders the Oldham and Bryan material produced (and the County does not appeal such an Order), then Commissioner Holmes will likewise produce Item 19.

Legislative Privilege (Items 1, 2, 11, 19, 27)

Bates labeled 001-004, 005-034, 319-346, and 571

The County and the other Commissioners, having apparently waived legislative privilege in this case, seek to force Commissioner Holmes to do the same. But that is not their right. "The legislative privilege is a personal one and may be waived or asserted by each individual legislator." *Perez v. Perry*, No. SA-11-cv-360-OLG, 2014 WL 106927, at *1 (W.D. Tex. Jan. 8, 2014). Courts have recognized that legislative privilege applies to local legislators. See *Lee v. City of Los Angeles*, 908 F.3d 1175, 1187 (9th Cir. 2018) (holding, in racial gerrymandering litigation, that "[s]tate and local legislators may invoke legislative privilege"); *Harding v. County of Dallas, Tex.*, No. 3:15-cv-0131-D, 2016 WL 7426127, at *4-6 (N.D. Tex. Dec. 23, 2016) (ruling that Dallas County Commissioners were protected by legislative privilege in redistricting litigation and could not be deposed).

The County likewise argues that his legislatively privileged materials cannot "be shielded from [his] fellow commissioners" because they are also legislators. First, the other Commissioners have not subpoenaed Commissioner Holmes, the County has. Second, Defendants cite no law for this proposition because there is none—such a rule would

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eviscerate the legislative privilege—a personal privilege that another legislator cannot waive. Defendants’ position is not the law. Political adversaries in a legislative body cannot subpoena their colleagues’ privileged materials.

Defendants also object to legislative privilege with respect to communications with Annye Watson, but she is a member of Commissioner Holmes’s staff and thus within the privilege.

Defendants’ waiver discussion is misplaced; Commissioner Holmes’s handwritten notes are not communications with outsiders; they are his own personal legislative notes.

Finally, if the Court applies the five-factor test cited by Defendants, application of that test does not warrant breaching Commissioner Holmes’s legislative privilege. Defendants contend that they somehow need Commissioner Holmes’s handwritten legislative notes and other materials in order to prove their claim that they involved Commissioner Holmes in the redistricting process and were somehow responsive to him by eliminating the precinct he represents and diluting his own voting power as a Black resident of Galveston County. If this is truly the narrative Defendants intend to weave for the Court, then Defendants have control of the witnesses whom they claim kept Commissioner Holmes involved and adequately responded to him. They can proffer those witness testimonies without rummaging through Commissioner Holmes’ privileged materials.

NAACP Plaintiffs’ Position

NAACP Plaintiffs reserve the right to compel production of any documents that come into the possession of Defendants as a result of the Court’s disposition of this dispute.

Petteway Plaintiffs’ Position

Defendants seek from Commissioner Holmes the exact category of material they are refusing to produce to Plaintiffs on the basis of attorney-client privilege. In discovery, what is good for the goose is good for the gander. Defendants must not be allowed to apply different rules to themselves—the ones who actually created and voted for the plan challenged in this case—than they seek to apply to Commissioner Holmes.

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Sincerely,

/s/ Angie Olalde
Counsel for Defendants

/s/ Randy Howry
Counsel for Commissioner Holmes

/s/ Hilary Harris Klein
Counsel for NAACP/LULAC Plaintiffs

/s/ Mark Gaber
Counsel for Petteway Plaintiffs

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served to all counsel of record via the Court's electronic filing service on May 1, 2023.

/s/ Angie Olalde _____

Exhibit 1

Commissioner Holmes' Privilege Log

Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
000001-000004	Begins 03/29/2011	n/a	n/a	n/a	Holmes handwritten notes from 2011 regarding redistricting	Legislative
000005-000034	Begins 08/02/2011	n/a	n/a	n/a	Holmes handwritten notes on public hearings August 2011	Legislative
000035-000114	Begins 08/28/2014	Jerry Fisher	Mark Henry, Ken Clark, Ryan Dennard, Stephen Holmes, Kevin O'Brien, Tyler Drummond, Bob Oemer, David Delac	multiple	Emails from 2011-2014 regarding voting precincts, early voting locations, redistricting. Includes emails from Texas SOS, DOJ, Galveston County, Gulf Coast Interfaith, and others. Some marked as Privileged.	Attorney client, Legislative
000115-000128	06/04/2020	Cheryl Johnson	Joseph Giusti, Stephen Holmes	FW: Hiring Freeze	(12:05 PM) Commissioner emails regarding hiring freeze and budget talks	Legislative
000129-000143	06/04/2020	Cheryl Johnson	Joseph Giusti, Stephen Holmes	FW: Hiring Freeze	(12:08 PM) Commissioner emails regarding hiring freeze and budget talks	Legislative
000144	08/14/2020	Cheryl Johnson	Stephen Holmes	RE: Requested Budget Request and Revised	Commissioner emails regarding proposed budgets	Legislative
000145	08/14/2020	Stephen Holmes	Cheryl Johnson	RE: Requested Budget Request and Revised	Commissioner emails regarding proposed budgets	Legislative
000146-000166	08/14/2020	Cheryl Johnson	Stephen Holmes, Annye Michelle Watson	Requested Budget Request and Revised	Commissioner emails regarding proposed budgets	Legislative

Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
000167-000180	01/14/2021	Cheryl Johnson	Mark Henry, Darrell Apffel, Joseph Giusti, Stephen Holmes, Ken Clark, Tyler Drummond, Seth Collins, Yesenia Juarez, Annye Michelle Watson, Cheryl Johnson	County Commissioner and JP/Constable Precinct Lists with Current Number Registered Voters	County Tax office list of voters by precinct	Legislative
000181	09/20/2021	n/a	n/a	n/a	Holmes handwritten notes from 09/20/2021 conference call with Dale Oldham and Paul Ready	Attorney client
000181-000191	Begins 09/21/2021	n/a	n/a	n/a	Holmes handwritten notes from 2021 phone calls and meetings regarding redistricting	Attorney client, Legislative
000192	09/10/2021	Linda Liechty	Stephen Holmes, Annye Michelle Watson	Conference Call w/ Dale Oldham & Paul Ready	Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative
000193-000197	09/10/2021	Clint Magee	Recipients BCCed	Texas Legislative Special Session Report 9.10.21	Agenda for third legislative special session. Recipients BCCed. Requested not to forward attachment.	Legislative
000203	09/16/2021	Linda Liechty	Stephen Holmes, Annye Michelle Watson	Conf Call re: Redistricting	Emails with Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative
000204	09/16/2021	Stephen Holmes	Linda Liechty	Re: Conf Call re: Redistricting	Emails with Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative

Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
000205-000206	09/17/2021	Stephen Holmes	Linda Liechty	Re: Conf Call re: Redistricting	Emails with Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative
000207	09/17/2021	Linda Liechty	Stephen Holmes, Paul Ready, Annye Michelle Watson	Re: Conf Call re: Redistricting	Emails with Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative
000236-000237	09/20/2021	Paul Ready	Stephen Holmes, Dale Oldham	2020 Census Data	Ready Law Firm email regarding conversation with Judge's office about census data	Attorney client, Legislative
000319-000346	Begins 11/11/2021	Chad Dunn	Stephen Holmes, Matt Angle, Adrianna	Galveston County – Attorney Client privileged communication	Precinct maps and analysis	Attorney client, Attorney work product
000368-000374	12/09/2021	Paul Ready	Mark Henry, Darrel Apffel, Joseph Giusti, Stephen Holmes, Ken Clark, Veronica Van Horn, Linda Liechty, Tyler Drummond, Nathan Sigler, Jed Webb,	Fwd: Records Preservation Notice	Ready Law Firm email about preservation letter sent to Judge and Commissioners	Attorney client, Legislative
000424-000425	01/21/2022	Darrell Apffel	Chery Johnson, "Commissioners," Kathleen Moreno, Cheryl Johnson	Re: Report on Status and Guidance Needed	Emails between County tax office and Commissioners regarding voter registration certificates	Legislative

Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
000426-000427	01/21/2022	Cheryl Johnson	"Commissioners," Kathleen Moreno, Cheryl Johnson	Report on Status and Guidance Needed	Emails between County tax office and Commissioners regarding voter registration certificates	Legislative
000428-000488	02/08/2022	Paul Ready	Veronica Van Horn	2021 Year-end litigation summaries - PRIVILEGED ATTORNEY-CLIENT COMMUNICATION	Ready Law Firm email with litigation summary for Galveston County	Attorney client, Legislative
000489-000526	03/24/2022	Stephen Holmes	Annye Michelle Watson	FW: U.S. DOJ Correspondence re Galveston County, TX	Holmes forwarding to Watson Ready Law Firm's forward of email – DOJ notice of lawsuit on redistricting plan	Attorney client, Legislative
000527-000564	03/24/2022	Paul Ready	Stephen Holmes	Fwd: U.S. DOJ Correspondence re Galveston County, TX	Ready Law Firm's forward of email – DOJ notice of lawsuit on redistricting plan	Attorney client, Legislative
000567-000568	03/24/2022	Derreck	Stephen Holmes	n/a	Text messages with "Derreck"	Legislative
000571	04/12/2023	Stephen Holmes	Stephen Holmes	Screenshot 2023-04-12 at 3.43.34 PM	Emailed screenshot of text message with "Annye"	Legislative
000622-000887	06/23/2022	Paul Ready	Stephen Holmes	Redistricting litigation documents	Ready Law Firm sending copies of filings from Petteway, et al. lawsuit.	Attorney client, Legislative
000888-001015	07/08/2022	Paul Ready	Stephen Holmes, Veronica Van Horn	Redistricting litigation documents	Ready Law Firm sending copies of filings from Petteway, et al. lawsuit.	Attorney client, Legislative

Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
001016-001058	07/14/2022	Veronica Van Horn	Mark Henry, Darrell Apffel, Joseph Giusti, Robin Armstrong, Stephen Holmes	Legal Contract Spend FY2022 to Date	Judge Henry's office sending attorney/law firm transaction reports	Legislative
001059-001079	07/14/2022	Paul Ready	Stephen Holmes, Veronica Van Horn	Redistricting litigation documents	Ready Law Firm sending copies of filings from Petteway, et al. lawsuit.	Attorney client, Legislative
001080-001129	10/20/2022	Shawn Sheehy	Mark Henry, Tyler Drummond, Joseph Giusti, Stephen Holmes, Robin Armstrong, Zach Davidson, Dwight Sullivan, Jason Torchinsky, Dallin Holt, Joseph Russo, Jordan Raschke, Angela Olalde, Paul Ready, Darrell Apffel, Robin Armstrong, Stephen Holmes, Joseph Giusti, Darrell Apffel	RE: Petteway, et al v. Galveston County et al.	Request for searches of personal emails/devices related to redistricting	Attorney client, Legislative
1182	n/a	Stephen Holmes	Linda Liechty	Accepted: Conf Call w/ Paul Ready & Dale Oldham re: Redistricting	Confirmation of accepted meeting with Linda Liechty (duplicate)	Legislative

Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
1183	n/a	Stephen Holmes	Linda Liechty	Accepted: Conf Call w/ Paul Ready & Dale Oldham re: Redistricting	Confirmation of accepted meeting with Linda Liechty	Legislative

Exhibit 2

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
1.	000001 - 000004	Begins 03/29/2011	n/a	n/a	n/a	Holmes handwritten notes from 2011 regarding redistricting	Legislative
2.	000005 - 000034	Begins 08/02/2011	n/a	n/a	n/a	Holmes handwritten notes on public hearings August 2011	Legislative
3.	000035 - 000114	Begins 08/28/2014	Jerry Fisher	Mark Henry, Ken Clark, Ryan Dennard, Stephen Holmes, Kevin O'Brien, Tyler Drummond, Bob Oemer, David Delac	multiple	Emails from 2011-2014 regarding voting precincts, early voting locations, redistricting. Includes emails from Texas SOS, DOJ, Galveston County, Gulf Coast Interfaith, and others. Some marked as Privileged.	Attorney client, Legislative With drew objections
4.	000115 - 000128	06/04/2020	Cheryl Johnson	Joseph Giusti, Stephen Holmes	FW: Hiring Freeze	(12:05 PM) Commissioner emails regarding hiring freeze and budget talks	Legislative With drew objections
5.	000129 - 000143	06/04/2020	Cheryl Johnson	Joseph Giusti, Stephen Holmes	FW: Hiring Freeze	(12:08 PM) Commissioner emails regarding hiring freeze and budget talks	Legislative With drew objections

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
6.	000144	08/14/2020	Cheryl Johnson	Stephen Holmes	RE: Requested Budget Request and Revised	Commissioner emails regarding proposed budgets	Legislative With drew objections
7.	000145	08/14/2020	Stephen Holmes	Cheryl Johnson	RE: Requested Budget Request and Revised	Commissioner emails regarding proposed budgets	Legislative With drew objections
8.	000146 - 000166	08/14/2020	Cheryl Johnson	Stephen Holmes, Annye Michelle Watson	Requested Budget Request and Revised	Commissioner emails regarding proposed budgets	Legislative With drew objections

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
9.	000167 - 000180	01/14/2021	Cheryl Johnson	Mark Henry, Darrell Apffel, Joseph Giusti, Stephen Holmes, Ken Clark, Tyler Drummond, Seth Collins, Yesenia Juarez, Annye Michelle Watson, Cheryl Johnson	County Commissioner and JP/Constable Precinct Lists with Current Number Registered Voters	County Tax office list of voters by precinct	Legislative With drew objections
10.	000181	09/20/2021	n/a	n/a	n/a	Holmes handwritten notes from 09/20/2021 conference call with Dale Oldham and Paul Ready	Attorney client
11.	000181 - 000191	Begins 09/21/2021	n/a	n/a	n/a	Holmes handwritten notes from 2021 phone calls and meetings regarding redistricting	Attorney client, Legislative

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
12.	000192	09/10/2021	Linda Liechty	Stephen Holmes, Annye Michelle Watson	Conference Call w/ Dale Oldham & Paul Ready	Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative With drew objections
13.	000193 - 000197	09/10/2021	Clint Magee	Recipients BCCed	Texas Legislative Special Session Report 9.10.21	Agenda for third legislative special session. Recipients BCCed. Requested not to forward attachment.	Legislative With drew objections
14.	000203	09/16/2021	Linda Liechty	Stephen Holmes, Annye Michelle Watson	Conf Call re: Redistricting	Emails with Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative With drew objections
15.	000204	09/16/2021	Stephen Holmes	Linda Liechty	Re: Conf Call re: Redistricting	Emails with Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative With drew objections
16.	000205 - 000206	09/17/2021	Stephen Holmes	Linda Liechty	Re: Conf Call re: Redistricting	Emails with Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative With drew objections

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
17.	000207	09/17/2021	Linda Liechty	Stephen Holmes, Paul Ready, Annye Michelle Watson	Re: Conf Call re: Redistricting	Emails with Judge's assistant setting up meeting with Commissioners Dale Oldham and Paul Ready	Legislative With drew objections
18.	000236 - 000237	09/20/2021	Paul Ready	Stephen Holmes, Dale Oldham	2020 Census Data	Ready Law Firm email regarding conversation with Judge's office about census data	Attorney client, Legislative With drew objections
19.	000319 - 000346	Begins 11/11/2021	Chad Dunn	Stephen Holmes, Matt Angle, Adrianna	Galveston County – Attorney Client privileged communication	Precinct maps and analysis	Attorney client, Attorney work product

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
20.	000368 - 000374	12/09/2021	Paul Ready	Mark Henry, Darrel Apffel, Joseph Giusti, Stephen Holmes, Ken Clark, Veronica Van Horn, Linda Liechty, Tyler Drummond, Nathan Sigler, Jed Webb,	Fwd: Records Preservation Notice	Ready Law Firm email about preservation letter sent to Judge and Commissioners	Attorney-client , Legislative With drew objections
21.	000424 - 000425	01/21/2022	Darrell Apffel	Chery Johnson, "Commission ers," Kathleen Moreno, Cheryl Johnson	Re: Report on Status and Guidance Needed	Emails between County tax office and Commissioners regarding voter registration certificates	Legislative With drew objections
22.	000426 - 000427	01/21/2022	Cheryl Johnson	"Commission ers," Kathleen Moreno, Cheryl Johnson	Report on Status and Guidance Needed	Emails between County tax office and Commissioners regarding voter registration certificates	Legislative With drew objections

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
23.	000428 - 000488	02/08/2022	Paul Ready	Veronica Van Horn	2021 Year-end litigation summaries - PRIVILEGE D ATTORNEY-CLIENT COMMUNICATION	Ready Law Firm email with litigation summary for Galveston County	Attorney-client, Legislative With drew objections
24.	000489 - 000526	03/24/2022	Stephen Holmes	Annye Michelle Watson	FW: U.S. DOJ Correspondence re Galveston County, TX	Holmes forwarding to Watson Ready Law Firm's forward of email – DOJ notice of lawsuit on redistricting plan	Attorney-client, Legislative With drew objections
25.	000527 - 000564	03/24/2022	Paul Ready	Stephen Holmes	Fwd: U.S. DOJ Correspondence re Galveston County, TX	Ready Law Firm's forward of email – DOJ notice of lawsuit on redistricting plan	Attorney-client, Legislative With drew objections
26.	000567 - 000568	03/24/2022	Derreck	Stephen Holmes	n/a	Text messages with "Derreck"	Legislative With drew objections
27.	000571	04/12/2023	Stephen Holmes	Stephen Holmes	Screenshot 2023-04-12 at 3.43.34 PM	Emailed screenshot of text message with "Annye"	Legislative

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
28.	000622 - 000887	06/23/2022	Paul Ready	Stephen Holmes	Redistricting litigation documents	Ready Law Firm sending copies of filings from Petteway, et al. lawsuit.	Attorney-client, Legislative Withdrew objections
29.	000888 - 001015	07/08/2022	Paul Ready	Stephen Holmes, Veronica Van Horn	Redistricting litigation documents	Ready Law Firm sending copies of filings from Petteway, et al. lawsuit.	Attorney-client, Legislative Withdrew objections
30.	001016 - 001058	07/14/2022	Veronica Van Horn	Mark Henry, Darrell Apffel, Joseph Giusti, Robin Armstrong, Stephen Holmes	Legal Contract Spend FY2022 to Date	Judge Henry's office sending attorney/law firm transaction reports	Legislative Withdrew objections
31.	001059 - 001079	07/14/2022	Paul Ready	Stephen Holmes, Veronica Van Horn	Redistricting litigation documents	Ready Law Firm sending copies of filings from Petteway, et al. lawsuit.	Attorney-client, Legislative Withdrew objections

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
32.	001080 - 001129	10/20/2022	Shawn Sheehy	Mark Henry, Tyler Drummond, Joseph Giusti, Stephen Holmes, Robin Armstrong, Zach Davidson, Dwight Sullivan, Jason Torchinsky, Dallin Holt, Joseph Russo, Jordan Raschke, Angela Olalde, Paul Ready, Darrell Apffel, Robin Armstrong, Stephen Holmes, Joseph Giusti, Darrell Apffel	RE: Petteway, et al v. Galveston County et al.	Request for searches of personal emails/devices related to redistricting	Attorney-client, Legislative <u>With drew objections</u>

No.	Bates No.	Date	From	To	Email subject line	General description of content	Privilege asserted
33.	1182	n/a	Stephen Holmes	Linda Liechty	Accepted: Conf Call w/ Paul Ready & Dale Oldham re: Redistricting	Confirmation of accepted meeting with Linda Liechty (duplicate)	Legislative With drew objections
34.	1183	n/a	Stephen Holmes	Linda Liechty	Accepted: Conf Call w/ Paul Ready & Dale Oldham re: Redistricting	Confirmation of accepted meeting with Linda Liechty	Legislative With drew objections

Exhibit 3

October 31, 2022

Via Electronic Mail

To: Dallin B. Holt (dholt@holtzmanvogel.com)
Jason B. Torchinsky (jtorchinsky@holtzmanvogel.com)
Shawn T. Sheehy (ssheehy@holtzmanvogel.com)
Counsel for Defendants

Re: Defendants' Response to NAACP Plaintiffs' First Request for Interrogatories in *Petteway v. Galveston*, Case No. 3:22-cv-57 (lead case), Case No. 3:22-cv-117 (Consolidated, NAACP Plaintiffs) (S.D. Tex. 2022)

Counsel:

We received and have had the opportunity to review Defendants' Objections to the NAACP Plaintiffs' First Set of Interrogatories (the "Objections" to the "Requests"). Below we have outlined several areas of concern in your responses that we raise here in an effort to resolve these issues without the need to involve the Court. We also provide clarification on the Requests where requested in the Objections and where we believe it would help facilitate the exchange of discoverable information.

1. In paragraph 3 of your General Objections (Objections p. 3) you object to the Requests to the extent they "seek to elicit information or evidence otherwise protected by . . . the legislative privilege." Neither the Supreme Court nor the Fifth Circuit has held that legislative privilege applies to County Commissioners, and thus *NAACP* Plaintiffs do not understand this privilege to constitute a valid basis for withholding responsive documents. ***Please specify your basis for asserting legislative privilege applies to the County Commissioners in this matter.***

Even if it did apply to County Commissioners, the legislative privilege is qualified, and 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. Health Care Ctrs., Inc. v. Jefferson Par. Gov't*, 849 F.3d 615, 624 (5th Cir. 2017) (emphasis added, quoting *Perez v. Perry*, No. SA-11-CV-360, 2014 U.S. Dist. LEXIS 1838, at *17 (W.D. Tex. Jan. 8, 2014)). Accordingly, if this privilege is found to apply, Plaintiffs reserve the right to raise additional objections after Defendants have produced their privilege logs.

2. In response to Interrogatory No. 1, Defendants asserted the terms "indirectly," "drew" and "any iterations of the adopted map" are vague and that Defendants would respond to "identify individuals whose work is reflected on computer renditions of maps" and "concerning work with respect to the adopted map upon completion of review."

- a. In this context, “indirect” involvement in map-drawing would include involvement that was “not straightforward and open.” See Merriam-Webster, “Indirect” (definition (b)).¹ “Drew” is the past tense of “draw,” which, in this context, means to “create a likeness or a picture in outlines.” See Merriam-Webster, “Draw” (definition 7).² ***Please confirm Defendants responses will include identifying individuals all individuals that participated in drawing either directly or indirectly.*** To be clear, this should include those directly involves, as well as those who provided input for the purpose of informing or influencing how specific Commissioners districts would be drawn, where this information was reviewed and used by the individuals directly involved in or directing the map-drawing.
 - b. *Second, NAACP Plaintiffs lack sufficient information to know whether Defendants’ limitation to just “computer renditions of maps” is appropriate. Please disclose whether Defendants are aware of any non-“computer renditions of maps,” such as hard-copy sketches or oral or written descriptions, used during the map-drawing process.*
 - c. *Finally, Defendants’ have responded they will “respond concerning work with respect to the adopted map upon completion of review.” Request 1, however, requests information concerning both the adopted map and Map Proposal 1. Please confirm Defendants will be providing this information for both the enacted map and Map Proposal 1, as requested.*
3. In response to Interrogatory No. 2, Defendants again asserted the terms “indirectly” and “drew” are vague as well as the phrases “in anticipation of or based on” and “any iteration.” Defendants asked whether Plaintiffs are “only interested in computer renditions of maps.”
- a. Plaintiffs refer Defendants to the above clarifications regarding the terms “indirectly” and drew.” “Any iteration” means any “version” or “incarnation” of the maps. See Merriam-Webster, “iteration” (definition 1).³
 - b. In this context, “in anticipation of or based on” the 2020 Census refers to any maps that were drawn before or after the 2020 Census numbers were released, as Plaintiffs have the general understanding it would be anticipated by those involved in redistricting that the 2020 Census would require re-drawing of the Commissioners Precinct maps due to population changes from the 2010 Census.
 - c. In response to Defendants’ question, Plaintiffs are NOT “only interested in computer renditions of maps,” especially to the extent that non-computer renditions

¹ Available at [https://www.merriam-webster.com/dictionary/indirect#:~:text=a\(1\)%20%3A%20deviating%20from,to%20an%20absurdity%20or%20contradiction](https://www.merriam-webster.com/dictionary/indirect#:~:text=a(1)%20%3A%20deviating%20from,to%20an%20absurdity%20or%20contradiction).

² Available at <https://www.merriam-webster.com/dictionary/draw#:~:text=Definition%20of%20draw,by%20the%20fire%20%3A%20such%20as>.

³ Available at <https://www.merriam-webster.com/dictionary/iteration#:~:text=1%20%3A%20version%2C%20incarnation%20the%20latest,closer%20to%20a%20desired%20result>.

of maps were used or referenced in the redistricting process. As requested above in paragraph 2(b), ***please disclose whether Defendants are aware of any non-“computer renditions of maps,” such as hard-copy sketches or oral or written descriptions, used during the map-drawing process.***

4. In response to Interrogatory No. 3, Defendants assert the term “contact” is vague and object to the Request to the extent it “violates the Texas Speech or Debate Clause or the deliberative process privilege.”

a. In this context, “contact” means “an establishing of communication with someone.” Merriam-Webster, “Contact (definition 2(c)).”⁴

b. Defendants’ objection under the Texas Speech or Debate Clause is improper. In federal court, privilege in civil cases under federal law is governed by the federal common law. *See* Fed. R. Evid. 501; *see also United States v. Craig*, 528 F.2d 773, 776 (7th Cir. 1976) (identifying federal common law as the source of any legislative privilege for state legislators rather than applying the state constitution’s speech or debate clause); *Bd. of Educ. v. Memphis City Bd. of Educ.*, No. 2:11-cv-02101, 2012 U.S. Dist. LEXIS 170387, at *15 (W.D. Tenn. Nov. 30, 2012) (finding Tennessee Constitution’s Speech and Debate Clause did not “prohibit the discovery requests in the instant case” because they are neither “ensconced in federal common law nor is their application in federal proceedings ‘compelled by principles of federalism rooted in our constitutional structure.’” (quoting *United States v. Gillock*, 445 U.S. 360, 366–71 (1980)); *cf. Gilby v. Hughs*, 471 F. Supp. 3d 763, 766 (W.D. Tex.) (“Legislative privilege is an evidentiary privilege ‘governed by federal common law, as applied through Rule 501 of the Federal Rules of Evidence.’” (quoting *Jefferson Cmty. Health Care Ctrs., Inc.*, 849 F.3d at 624)); *Bethune-Hill v. Va. State Bd. of Elections*, 114 F. Supp. 3d 323, 333 (E.D. Va. 2015). The Texas Speech or Debate Clause, a state constitutional provision, cannot justify withholding the identities of the persons requested in Interrogatory No. 3 in this federal case. ***Please confirm Defendants are not withholding any otherwise discoverable information on the basis of the Texas Speech or Debate Clause.***

c. Defendants’ assertion of the deliberative-process privilege is likewise improper, for the following reasons:

First, the deliberative-process privilege is an executive privilege that may only be asserted by executive-branch officials, such as the Governor. *LULAC v. Abbott*, No. EP-21-CV-00259, 2022 U.S. Dist. LEXIS 143005, at *7–8 (W.D. Tex. Aug. 10, 2022) (citing *U.S. Fish & Wildlife Serv. V. Sierra Club, Inc.*, 141 S. Ct. 777, 785 (2021)); *see also Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, No. 11 C 5065, 2011 U.S. Dist. LEXIS 117656, at *24 (N.D. Ill. Oct. 12, 2011) (“[T]he deliberative process privilege applies to the executive branch, not the

⁴ Available at <https://www.merriam-webster.com/dictionary/contact>.

legislature.”). ***Please specify your basis for asserting that deliberative-process privilege applies to the County Commissioners in this matter.***

Second, even if it did apply to the Commissioners, “the deliberative-process privilege has been held to not apply” in cases where “a plaintiff’s cause of action turns on the government’s intent,” including this matter, where the County Commissioners’ intent is an element of *NAACP* Plaintiffs’ First and Third Counts. *Memphis City Bd. of Educ.*, 2012 U.S. Dist. LEXIS 170387, at *15–16 (internal citation omitted) (holding deliberative-process privilege does not apply and cannot be invoked to prevent disclosure where intent was at issue). As the Requests are directly relevant to *NAACP* Plaintiffs’ intent-based claims, this privilege would not apply even if it were available to County Commissioners.

Finally, even if the above factors were not true, the deliberative-process privilege applies to only a narrow set of internal documents within the “executive,”⁵ and thus would not be relevant to the third-party communications requested in this Request, which asks for Defendants to “[i]dentify all persons who made contact . . . outside of a public hearing” in reference to the adopted map and Map Proposal 1. Accordingly, Plaintiffs reserve the right to raise additional objections on this, and any other available bases, once Defendants have produced their privilege logs.

NAACP Plaintiffs would be happy to meet and confer regarding the above concerns and clarifications at a time convenient for Defendants. ***NAACP Plaintiffs respectfully request that Defendants provide the confirmations requested in this letter within one week, by November 7, 2022.***

Kind regards,

/s/ Hilary Harris Klein

Hilary Harris Klein

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⁵ See *Gilby v. Hughs*, 471 F. Supp. 3d at 767–68; *LULAC v. Abbott*, No. EP-21-CV-00259, 2022 U.S. Dist. LEXIS 143005, at *11–12 (W.D. Tex. Aug. 10, 2022).