

Holtzman Vogel

HOLTZMAN VOGEL BARAN TORCHINSKY & JOSEFIAK PLLC

The Honorable Andrew M. Edison
U.S. District Court for the Southern District of Texas
601 Rosenberg Ave., 7th Floor, Galveston, Texas 77550

May 5, 2023

Re: Defendants' Response to Private Plaintiffs' Supplement to their Motion to Compel
Petteway, et al. v. Galveston County, et al., Civil Action No. 3:22-cv-00057

Dear Judge Edison,

This letter is in response to NAACP and Petteway Plaintiffs ("Plaintiffs") May 2, 2023 letter supplementing their Joint Motion to Compel. ECF 159. As discussed in more detail below, Defendants did not waive the attorney-client privilege by pleading certain defenses in their Answers filed with the Court on April 21, 2023. ECF 142, 143.

Background

In their Answers, Defendants raised multiple defenses against Plaintiffs—including that "The County Commissioners precincts were drawn without consideration of race." ECF 142 at 19; ECF 143 at 22. Plaintiffs now claim that, by making this assertion, Defendants have "implicitly waived the privilege" over communications on the topic of "drawing ... the 2021 Enacted Plan." ECF 159 at 3. This is supposedly because, without having access to such privileged communications, Plaintiffs "cannot adequately dispute" whether Defendants did not in fact consider race during the redistricting process. *Id.* Indeed, Plaintiffs urge, the accuracy of Defendants' pleaded defense is already in doubt because of: (1) the content that appears in a clawed-back Excel file from Mr. Tom Bryan, the County's retained map-drawer/technical consultant (ECF 141-5); and (2) Defendants' counsel Mr. Shawn Sheehy's statement to the Court about the contents of withheld shapefiles at the May 1, 2023 Status Conference (ECF 157).

Applicable Law

The implied waiver that Plaintiffs claim has occurred applies only when the *substance* of an attorney-client privileged communication is used against an adversary. *In re Anadarko Petroleum Corp. Sec. Litig.*, No. 4:20-CV-00576, 2023 U.S. Dist. LEXIS 56081, at *9 (S.D. Tex. Mar. 31, 2023) (citing *Willy v Administrative Review Board*, 423 F3d 483, 497 (5th Cir 2005)). This usually happens when a privilege-holder puts otherwise protected material at issue "by some affirmative act" (e.g., making the content of the communication the factual basis of a claim or defense). *Id.* This includes situations in which a party intentionally injects protected information into litigation in a selective, misleading and unfair manner. *RLIS, Inc. v. Cerner Corp.*, No. 3:12-CV-209, 2014 U.S. Dist. LEXIS 190894, at *4 (S.D. Tex. Dec. 24, 2014). However, where only the general nature of attorney-client conversations are disclosed, or where unprivileged information discussed between client and attorney is disclosed, no waiver has occurred. *Apex Mun. Fund v. N-Group Sec.*, 841 F. Supp. 1423, 1430 (S.D. Tex. 1993).

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Fairness is the critical consideration when evaluating whether a party has waived the attorney-client privilege. *Doe I v. Baylor Univ.*, 320 F.R.D. 430, 440 (W.D. Tex. 2017). A court must ask not merely whether a party is simultaneously using privileged materials both as a sword and shield, but also whether it would be fair to allow the privilege-holder to withhold certain details while also releasing others that may be related to an attorney-client communication. *Id.* Put differently, waiver should only apply when a party would not be able to probe the privilege-holder's allegation *except* by having access to the substance of an attorney-client communication. *See Doe I v. Baylor Univ.*, 335 F.R.D. 476, 498 (W.D. Tex. 2020) (holding that a party pointing to its reliance on the advice of counsel may not withhold information about that advice, such as why it was given, what other alternatives were looked at, and why other guidance was rejected).

Analysis

By taking the position that Defendants' pleaded defense cannot be tested without divulging privileged materials, Plaintiffs have manufactured a "sword and shield" scenario that does not actually exist. Defendants' statement that "the County Commissioners precincts were drawn without consideration of race" simply cannot be read as being (or being based on) an attorney-client communication. It is a general observation rooted in non-privileged information that Plaintiffs can—and indeed, have—probed throughout the course of discovery. For example, Plaintiffs were able to ask the Commissioners whether race was a factor in their redistricting deliberations, and they uniformly testified that it was not. *See* Henry Dep. 246:2-11 (attached hereto as Exhibit 1); Giusti Dep. 127:13-128:3 (attached hereto as Exhibit 2); Apffel Dep. 160:7-161:8 (attached hereto as Exhibit 3).¹ Moreover, Plaintiffs received, and have had ample time to review, the underlying shapefiles and spreadsheets that Mr. Bryan used to develop the 2021 map proposals. *See, e.g.*, DEFS00011249–DEFS00011252.

Because Plaintiffs have been able to test the accuracy and strength of Defendants' pleadings without relying on privileged materials, it would not be unfair for Defendants to continue to withhold the privileged materials. There simply is no "sword and shield" scenario here. Moreover, Plaintiffs seem to assume that the Commissioners' non-consideration of race stemmed directly from their interactions with the County's redistricting counsel. But that is an unsubstantiated assumption, and there are a number of reasons *aside from* the advice of counsel that could explain why they did not consider race when developing map proposals (e.g., it was not important to them). Plaintiffs' contention that communications "with counsel regarding the legality of their schemes would have been directly relevant in determining the extent of their knowledge and, as a result, intent" is thus misplaced and overstated. *See* ECF 159 at 2 (quoting *United States v. Bilzerian*, 926 F.2d 1285, 1295 (2d Cir. 1991)).

¹ Commissioner Apffel testified that he quickly glimpsed for "just a second" at the data reflecting the changes Map Proposal 2 made to the racial composition of the Commissioners Precincts. Apffel Dep. 226:9-227:5. But mere consciousness of racial data, or briefly glancing at it, does not mean that race was a consideration in the redistricting process. *See Easley v. Cromartie*, 532 U.S. 234, 253-254 (2001) (holding that the fact that "the legislature considered race, along with other partisan and geographic considerations ... says little or nothing about whether race played a predominant role comparatively speaking").

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Nor should the Court afford any weight to the examples Plaintiffs point to in claiming that Defendants' pleaded defenses are unsupported. First, with respect to the clawed-back Excel file prepared by Mr. Bryan, it is true that it contains racial demographic data. But that is not evidence that Defendants considered race when drawing the maps; indeed, it merely establishes that those data were available on a spreadsheet but nothing in the record shows that Judge Henry or any of the Commissioners ever saw it. Second, it is true that Mr. Sheehy made a statement about the contents of withheld shapefiles at the May 1, 2023 Status Conference. But Plaintiffs conveniently omit that Mr. Sheehy corrected himself at the hearing. Mr. Sheehy accidentally said the shapefiles in question might contain demographic data, but then stated on the record that he meant to say population data. These two examples therefore say little about the strength of Defendant's assertion—and they say even less about whether privilege was waived as to communications related to the redistricting process.

Finally, Plaintiffs again raise the argument that Defendants' conduct with respect to the subpoena of Commissioner Holmes shows "misuse of the attorney-client privilege." ECF 159 at 3. They contend that it is unfair for Defendants to claim "Holmes's communications with a redistricting attorney and map-drawing consultant are nonprivileged while simultaneously contending that their same such communications are privileged." *Id.* This allegation, however, is divorced from the truth. In the course of responding to Commissioner Holmes' privilege assertions arising from his subpoena, Defendants' counsel requested to review the documents at issue *precisely* to determine which communications with the County's attorneys were protected and should not be produced to Plaintiffs. *See* Correspondence with All Counsel Re: Commissioner Holmes' Privilege Log (attached hereto as Exhibit 4). Plaintiffs' claim that Defendants are misusing the attorney-client privilege is entirely fabricated.

* * * * *

For the foregoing reasons, those stated in Defendant's Opposition to Plaintiffs' Motion to Compel (ECF 108), and those raised in the Parties' Joint Motion to Supplement (ECF 141), Defendants respectfully request that the Court deny Plaintiffs' Motion to Compel.

Respectfully Submitted,

By: */s/ Dallin B. Holt*

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

HONORABLE TERRY)
PETTEWAY, et al.)
) Case No. 3:22-cv-00057
VS.)
)
GALVESTON COUNTY, et)
al.)

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY
JANUARY 17, 2023

ORAL AND VIDEOTAPED DEPOSITION OF MARK A. HENRY,
produced as a witness at the instance of the Plaintiff and
duly sworn, was taken in the above styled and numbered
cause on Tuesday, January 17, 2023, from 9:08 a.m. to
6:07 p.m., before Janalyn Elkins, CSR, in and for the
State of Texas, reported by computerized stenotype
machine, via Zoom, pursuant to the Federal Rules of Civil
Procedure and any provisions stated on the record herein.

1 Republican, for example, leaning precinct, he would
2 rather not get it changed be a Democrat leaning
3 precinct.

4 Q. What about Commissioner Holmes? Are you aware
5 of how his precinct, which we've already talked about,
6 was split in the new map between four, how it would be
7 impacted by as far as partisan composition?

8 A. This is going to come back to a conversation
9 from my lawyer to me.

10 Q. So you were aware, but whatever you were aware
11 of came from your attorney, right?

12 MR. RUSSO: Let me object and respond to
13 that to the extent you have to disclose attorney-client
14 privileged communications. And I'm going to instruct
15 him not to answer.

16 Q. (BY MS. KLEIN) So without telling --

17 MS. KLEIN: So I'm going to reserve our
18 prior right to recall him as we've already stated on the
19 record several times.

20 MS. JAYARAMAN: The United States joins.

21 MS. RICHARDSON: Petteway joins.

22 Q. (BY MS. KLEIN) And so without disclosing the
23 content of those conversations, you talked with your
24 counsel about partisan composition?

25 A. I would more accurately describe it as he told

1 me than me asking him.

2 Q. And same thing -- you know, just to go back,
3 close the loop here, same thing with the racial
4 composition.

5 Without disclosing the content of the
6 conversations you had with counsel, you had
7 conversations about racial composition?

8 MR. RUSSO: Counsel, you -- I mean, I don't
9 know. Can you answer that question?

10 THE WITNESS: I can simply say that the
11 information came from them to me.

12 Q. (BY MS. KLEIN) Okay.

13 A. There wasn't a request on my part.

14 Q. Okay. We'll revisit that, I'm sure, in the
15 future.

16 So how did you know all of the
17 commissioners' residences during the redistricting
18 process?

19 A. I believe Dale asked them.

20 Q. Were their addresses publicly disclosed
21 anywhere, to your knowledge, so that if somebody else,
22 for example, wanted to propose a map, they could make
23 sure to also be drawing commissioners in their precinct?

24 A. I -- I do not know. Again, this is an issue
25 for the commissioners. I'm county-wide. It doesn't

1 really affect me.

2 Q. Was preserving the prior district lines
3 considered among potential criteria among this list at
4 any point?

5 A. I didn't see it in there.

6 Q. Do you know if it was ever considered?

7 A. No, I do not.

8 Q. Okay. So we see your signature at the end of
9 this. Do you know if the other commissioners reviewed
10 this before it was submitted?

11 A. I do not know.

12 Q. Did you talk to them about it to make sure this
13 was accurate to them before you signed it?

14 A. Can't do that.

15 Q. Even one on one?

16 A. One on one but only one commissioner. The next
17 time I talk to another commissioner, I'm in violation of
18 the state law.

19 Q. Did you have your staff confirm with them?

20 A. No.

21 Q. Okay. So just you signed this and you didn't
22 ever talk about it with another commissioner in any way?

23 A. I did not.

24 Q. So how do you know -- so going back up to the
25 top, the way -- if we could go back up to the top of

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

HONORABLE TERRY PETTEWAY, *
et al., *

Plaintiffs, *

VS. *

Case No. 3:22-cv-00057

GALVESTON COUNTY, et al., *

Defendants. *

ORAL AND VIDEOTAPED DEPOSITION OF
JOSEPH GIUSTI
JANUARY 6, 2023
(Reported Remotely)

ORAL AND VIDEOTAPED DEPOSITION OF JOSEPH
GIUSTI, produced as a witness at the instance of the
United States and duly sworn, was taken via
videoconference in the above-styled and numbered cause
on the 6th day of January, 2023, from 9:23 a.m. to
6:01 p.m., before Marsha Yarberry, Certified Shorthand
Reporter in and for the State of Texas, reported by
machine shorthand, in Galveston, Texas, pursuant to the
Federal Rules of Civil Procedure.

1 constituents regarding their lack of ability to review
2 the plan data associated with posted plans 1 and 2?

3 A. No, sir. I don't remember any of those.

4 Q. Did you receive any comments posted to your
5 Facebook page, your personal Facebook page, after
6 Maps 1 and 2 were posted?

7 A. There were a couple --

8 MS. OLALDE: Objection; asked and
9 answered.

10 But go ahead.

11 THE WITNESS: Yeah. Asked and answered.
12 There were a couple. What they said I don't recall.

13 Q. (By Mr. Gear) And those were the two or three
14 comments that you --

15 A. Yes.

16 MS. OLALDE: Objection; misstates prior
17 testimony.

18 Go ahead.

19 Q. (By Mr. Gear) And your answer was yes? You
20 can answer. I'd ask that you give a verbal answer.

21 A. Yes. As stated before, the two or three
22 comments that I said were there.

23 Q. Thank you.

24 MS. OLALDE: You just have to say yes or
25 no on the record --

1 THE WITNESS: I know.

2 MS. OLALDE: -- because the court
3 reporter can't take a head nod.

4 Q. (By Mr. Gear) So was it Nathan Sigler that
5 provided you with copies of Maps 1 and 2?

6 A. Nathan did provide copies after they were
7 posted because, like I said, I wanted better maps to
8 see what was where.

9 Q. And if I remember correctly, you don't recall
10 the dates that he provided you with those, but it would
11 have been after the maps were posted?

12 A. Yes, sir. Fairly soon after.

13 Q. Did he provide you with the demographic data
14 for each precinct as well?

15 A. No, sir, not that I recall.

16 Q. Did you ever receive a full set of the
17 demographic data for each of the commissioners court
18 precincts after the maps were posted?

19 A. No, sir. I don't recall that.

20 Q. Were you concerned in any way that you weren't
21 seeing how the demographic data broke down in the
22 individual commissioner court precincts after the Map 1
23 and 2 were posted?

24 A. No, sir.

25 Q. Did you request the demographic data for each

1 of the commissioners court precincts after the maps
2 were posted?

3 A. No, sir.

4 Q. So you testified that you received
5 approximately 40 comments related to the posted plans
6 Map 1 and 2. Do you recall that testimony?

7 A. Yes, sir.

8 Q. Did the commissioners court ever discuss the
9 public comments that were being received from
10 constituents?

11 MS. OLALDE: Objection; form.

12 Q. (By Mr. Gear) And I'm talking about during
13 the 2021 redistricting process.

14 MS. OLALDE: Are you talking about in a
15 public, like the entire court, or...

16 MR. GEAR: Let's start off with public.

17 Q. (By Mr. Gear) Did they ever publicly discuss
18 the comments that were being received by constituents
19 relating to the posting of Maps 1 and 2?

20 A. No, sir, not that I recall.

21 Q. Did they ever privately discuss the comments
22 related to the posting of Map 1 and 2 by the
23 constituents? That was a terrible question.

24 Did they -- did the commissioners court
25 ever privately discuss the comments that were received

1 from constituents related to the posting of Maps 1 and
2 2?

3 A. No, sir, not that I recall.

4 Q. So what, if any, changes that you're aware of
5 were made as a result of the comments that were
6 received from constituents related to the posting of
7 Maps 1 and 2?

8 A. Changes to the maps?

9 Q. To either Map 1 or 2.

10 A. No, sir.

11 Q. Is that no, no changes were made?

12 A. Not that I recall, no, sir.

13 MR. GEAR: Can you pull up Exhibit 8 for
14 me, Zach, please?

15 Q. (By Mr. Gear) We discussed the special
16 session, the November 12th, 2021, date. I'll give you
17 a chance to look at this first before we identify it
18 for the record.

19 And maybe after this it will be a good
20 time to take a break.

21 MS. OLALDE: Yeah, I think so.

22 Q. (By Mr. Gear) Can you tell me what this
23 document is?

24 A. Yes, sir. It's a special meeting agenda
25 posted November 9th, 2021.

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

HONORABLE TERRY PETTEWAY,*
ET AL., *
*
PLAINTIFFS, *
* CASE NO. 3:22-CV-00057
VS. *
*
GALVESTON COUNTY, ET AL.,*
*
DEFENDANTS. *

ORAL AND VIDEOTAPED DEPOSITION OF
DARRELL APFFEL
JANUARY 5, 2023

ORAL AND VIDEOTAPED DEPOSITION OF DARRELL
APFFEL, produced as a witness at the instance of
the PLAINTIFF(S), and duly sworn, was taken in the
above-styled and numbered cause on JANUARY 5, 2023,
from 9:17 A.M. to 6:01 P.M., before AMY PRIGMORE,
CSR, in and for the State of Texas, reported by
stenographic means, at the offices of GREER HERZ &
ADAMS, One Moody Plaza 18th Floor, Galveston,
Texas, pursuant to the Federal Rules of Civil
Procedure and the provisions stated on the record
or attached hereto.

1 We --

2 THE WITNESS: Okay.

3 MS. VALL-LLOBERA: Since I see it's
4 almost 1:00 o'clock.

5 MR. RUSSO: How much time are you
6 thinking you need?

7 MS. VALL-LLOBERA: Well, can we go
8 off the record?

9 THE VIDEOGRAPHER: Do we have
10 agreement of counsel?

11 MR. RUSSO: Yes.

12 THE VIDEOGRAPHER: Off the record at
13 12:52.

14 (Break.)

15 THE VIDEOGRAPHER: Back on the
16 record at 1405. Please proceed.

17 Q. (BY MS. VALL-LLOBERA) Welcome back,
18 Mr. Apffel.

19 A. Thank you.

20 Q. So picking up right where we left off, we
21 were discussing the 2021 redistricting process
22 that took place, you know, after the census data
23 came out, through that -- that fall.

24 Were you aware that Commissioner Holmes
25 received the National Republican Redistricting

1 Trust numbers from Mr. Oldham?

2 A. I don't even -- no, I guess -- I don't know
3 what that means, and I -- so, no.

4 Q. So you did not get redistricting information
5 from the National Republican Redistricting Trust?

6 A. No.

7 Q. Did you receive demographic information from
8 Mr. Oldham?

9 A. Can you be more specific?

10 Q. Did you receive racial demographic
11 information from Mr. Oldham?

12 A. I wasn't concerned about race.

13 Q. But did Mr. Oldham provide you with any
14 racial demographic information?

15 A. Huh-uh, not that I recall. Other than in
16 our discussions and -- I mean, but no -- no, I
17 don't even recall that.

18 Q. I'm a bit unclear. You did discuss racial
19 demographics in your discussions --

20 A. No. That's why I say, I don't recall that.
21 It was just population.

22 Q. So you saw demographics on a TV screen?

23 A. What's -- so what's demographics? I -- I
24 don't know what demographics are.

25 Q. So racial demographic -- did you see

1 information that showed the race of the people who
2 lived in certain areas of Galveston County, as part
3 of your redistricting process?

4 A. No. We were looking at population, and how
5 to equalize that.

6 Q. Did you look at the percentages of
7 African-Americans or Hispanics in the county?

8 A. No.

9 Q. Are you -- are you aware -- currently, this
10 day, are you aware of the percentage of
11 African-Americans and Hispanics in Galveston
12 County?

13 A. I'm not.

14 Q. Are you aware of the percentage of
15 African-Americans or Hispanics in your precinct
16 today?

17 A. I'm not. I probably should be, but I'm not.

18 Q. Were you aware of the percentage of
19 African-Americans and Hispanics in your precinct
20 before the redistricting? Like -- excuse me, the
21 map in place before redistricting?

22 A. I'm not.

23 Q. During the August and September 2021 time
24 period, to your knowledge, did any of the other
25 commissioners or Judge Henry, or their staffs, have

1 any other meetings about redistricting?

2 A. To my knowledge, no.

3 Q. So they didn't meet with Mr. Oldham, to your
4 knowledge?

5 A. Oh, I thought you meant other than, to my
6 knowledge. To my knowledge --

7 Q. I can rephrase --

8 A. Okay.

9 Q. -- so it's clearer.

10 To your -- to your knowledge, did any of the
11 other commissioners or Judge Henry, or their
12 staffs, have other meetings or conversations about
13 redistricting with Mr. Oldham, or his staff?

14 A. After -- at or about the time we had -- that
15 I had mine?

16 Q. Correct.

17 A. My understanding -- I didn't witness it.
18 But my understanding was, he was there to -- for
19 two days, to meet with me, Mr. Clark,
20 Commissioner Holmes, Commissioner Giusti, and
21 Judge Henry.

22 Q. Okay. And to your knowledge, did the
23 commissioners or did Judge Henry's other staff have
24 other meetings or conversations about
25 redistricting, other than those meetings with

1 A. No. For all the reasons I've stated to you.

2 MS. VALL-LLOBERA: All right. Okay.

3 I think -- I have one -- I think one more exhibit,
4 and then a pause.

5 Tab 48. So introducing Apffel
6 Exhibit 26.

7 (Exhibit 26 is marked.)

8 Q. (BY MS. VALL-LLOBERA) This was a cover
9 e-mail from December 2021. It was produced by the
10 Department of Justice, and it contains, embedded in
11 the e-mail, a news article.

12 Have you seen this e-mail before?

13 A. I've got to look. But...

14 (The witness peruses the document.)

15 A. It was in the Galveston News. So, of
16 course, I read it.

17 Q. (BY MS. VALL-LLOBERA) And I would just like
18 to turn your attention to a specific section, which
19 is going to be on page -- one, two, three -- on
20 page 4 of the exhibit, there is a heading that
21 says, Coastal District, about halfway down the
22 page.

23 A. Okay. Let me get there.

24 (The witness peruses the document.)

25 A. Okay.

1 Q. (BY MS. VALL-LLOBERA) So towards the end of
2 this page, under the heading, Coastal District, it
3 says: Apffel said he didn't spend much time before
4 Friday's meeting analyzing data about changes the
5 map made to the racial makeover -- makeup of
6 precincts.

7 A. I think my testimony has been consistent
8 with that.

9 Q. And you are quoted in this article as
10 saying, quote, I saw it, but just for a second, end
11 quote.

12 Did I read that correctly?

13 A. Nope, I'm lost. I'm looking for that. Oh,
14 right here, yeah.

15 Q. Is that still your recollection of -- of
16 seeing the -- the data about the changes the map
17 made to the racial makeup of precincts?

18 A. Yes, it's still my testimony.

19 Q. Okay. Thank you.

20 A. I saw it, but just for a second. Is that --
21 what are they talking about there, a map, or -- I
22 don't know what -- are they talking about racial
23 data? I don't know what -- but that --

24 Q. The line before it -- I can re-read it.

25 A. Yeah, I see it. I mean, I'm just confused

1 on what it -- what that -- what they're talking
2 about.

3 So my recollection is I didn't look at that.
4 But maybe that's saying I did. If I did, it was
5 just for a second.

6 (Voices en sotto.)

7 MS. VALL-LLOBERA: I think this is a
8 good stopping point for us to have a ten-minute
9 break. And...

10 THE VIDEOGRAPHER: Counsel, are you
11 in agreement?

12 MR. RUSSO: Yeah. Are you looking
13 to pass, or what are you doing with ten minutes?

14 MS. VALL-LLOBERA: I still have a
15 couple more sections before passing.

16 MR. RUSSO: Okay. You need a break?

17 THE WITNESS: I'll take a little
18 break. It can't hurt.

19 MR. RUSSO: Okay. Sounds good.
20 Okay. Thank you.

21 THE VIDEOGRAPHER: With agreement of
22 counsel, we're off the record at 1544.

23 (Break.)

24 THE VIDEOGRAPHER: Back on the
25 record at 1601.

1 MS. VALL-LLOBERA: Okay. I would
2 like to introduce the next exhibit. So this is
3 going to be Tab 46. This is going to be Apffel
4 Exhibit 27.

5 (Exhibit 27 is marked.)

6 Q. (BY MS. VALL-LLOBERA) So...

7 (Voices en sotto.)

8 Q. (BY MS. VALL-LLOBERA) So, Exhibit 27 is an
9 October 26, 2021, e-mail. And the subject line
10 says, Galveston Work Products.

11 Specifically, if you -- if you go to --
12 there is a placeholder in this document for an
13 Excel. It's towards almost the end of the
14 document, and it ends in 11286.

15 A. Okay.

16 Q. So there are various documents attached to
17 this e-mail, but the one we're going to talk about
18 is actually the -- just this Excel document that's
19 called, Galveston Analysis.

20 A. Okay.

21 Q. And so, the Excel itself is going to be an
22 exhibit that we introduce only via Exhibit Share,
23 because --

24 A. Yeah.

25 Q. -- it's a native Excel.

From: [Angela Olalde](#)
To: [Randy Howry](#); "[Valencia Richardson](#)"; [Bernadette Reyes](#)
Cc: [Sarah Chen](#); [Shawn Sheehy](#); [Hilary Harris Klein](#); [Joaquin Gonzalez](#); [Meza, Catherine \(CRT\)](#); [Dallin Holt](#); [Vall-Ilobera, Diana](#); [Jason Torchinsky](#); [Jordan Raschke Elton](#); [Joseph Russo](#); [Mark Gaber](#); [Neil Baron](#); [Simone Leeper](#); [Sonni Waknin](#); [Silberstein, Andrew](#); [Hani Mirza](#); [Suriani, JoAnna](#); [Garrett, Kathryn](#); [Polizzano, Michelle](#); [Zhu, Molly](#); [Nickolas Spencer](#); [Mancino, Richard](#); [Gear, Bruce \(CRT\)](#); [Jayaraman, Tharuni \(CRT\)](#); [Newkirk, Zachary \(CRT\)](#); [Mateo Forero](#); [K'Shaani.Smith@usdoj.gov](#); [Wake, Brittany \(CRT\)](#); [chad@brazilanddunn.com](#); [Caitlin Baker](#)
Subject: RE: Petteway, et al v. Galveston County: Privilege Log of Commissioner Stephen Holmes
Date: Friday, April 28, 2023 3:39:02 PM
Attachments: [image001.png](#)

Randy – we can agree the production won't cause a waiver for withheld documents. Please produce those items to Defense counsel so we can review to ensure that privilege is applied. We can produce what is not privileged among that set.

I'll update the letter and send a draft to the group.

Angie

From: Randy Howry <rhowry@howrybreen.com>
Sent: Friday, April 28, 2023 11:36 AM
To: Angela Olalde <aolalde@greerherz.com>; 'Valencia Richardson' <VRichardson@campaignlegalcenter.org>; Bernadette Reyes <bernadette@uclavrp.org>
Cc: Sarah Chen <schen@texascivilrightsproject.org>; Shawn Sheehy <ssheehy@holtzmanvogel.com>; Hilary Harris Klein <hilaryhklein@scsj.org>; Joaquin Gonzalez <joaquin@texascivilrightsproject.org>; Meza, Catherine (CRT) <Catherine.Meza@usdoj.gov>; Dallin Holt <dholt@holtzmanvogel.com>; Vall-Ilobera, Diana <DVall-Ilobera@willkie.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Jordan Raschke Elton <jraschkeelton@greerherz.com>; Joseph Russo <JRusso@greerherz.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Neil Baron <neil@ngbaronlaw.com>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sonni Waknin <sonni@uclavrp.org>; Silberstein, Andrew <ASilberstein@willkie.com>; Hani Mirza <hani@texascivilrightsproject.org>; Suriani, JoAnna <JSuriani@willkie.com>; Garrett, Kathryn <KGarrett@willkie.com>; Polizzano, Michelle <MPolizzano@willkie.com>; Zhu, Molly <MZhu@willkie.com>; Nickolas Spencer <nas@naslegal.com>; Mancino, Richard <RMancino@willkie.com>; Gear, Bruce (CRT) <Bruce.Gear@usdoj.gov>; Jayaraman, Tharuni (CRT) <Tharuni.Jayaraman@usdoj.gov>; Newkirk, Zachary (CRT) <Zachary.Newkirk@usdoj.gov>; Mateo Forero <mforero@holtzmanvogel.com>; K'Shaani.Smith@usdoj.gov; Wake, Brittany (CRT) <Brittany.Wake@usdoj.gov>; chad@brazilanddunn.com; [Caitlin Baker](mailto:cbaker@howrybreen.com) <cbaker@howrybreen.com>
Subject: Re: Petteway, et al v. Galveston County: Privilege Log of Commissioner Stephen Holmes

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Angela—

I have reviewed and considered your draft letter about the privilege log. Commissioner Holmes intends to maintain attorney client and legislative privilege with respect to several entries detailed below, but is willing to produce the majority of the items to the parties subject to the parties'

agreement that doing so does not constitute a waiver of the privileges over the remaining withheld items. If the parties agree to that, then Commissioner Holmes intends to maintain his assertion of legislative privilege as to Bates 1-4, 5-34, 181-191, and 571. Commissioner Holmes intends to maintain his attorney-client privilege assertion as to Bates 181, 181-191, and 319-346. Because you raised Mr. Dunn's correspondence specifically, you should know that Mr. Dunn was Commissioner Holmes's attorney with respect to redistricting prior to the adoption of the plan by the Commissioners' Court. Included on that email are Mr. Dunn's map drawing consultants. It is my understanding that this attorney-client relationship is precisely the type of relationship over which the County is claiming privilege with respect to Mr. Oldham and Mr. Bryan. It is also my understanding that the Court is in the process of ruling on that issue. If the Court orders those items produced and if the County does not appeal that ruling, we will follow the Court's order with respect to Commissioner Holmes's communications with Mr. Dunn.

With respect to the remaining items, Commissioner Holmes is willing to produce them to all parties, subject to the agreement regarding waiver above. I gather that the County may wish to withhold some of the items from the Plaintiffs in this case based upon attorney-client privilege. As the County is already in possession of these emails, please advise which Bates numbered items you would like me to withhold from production to the Plaintiffs.

Hopefully this resolves the draft discovery dispute letter you sent. If you wish to challenge the remaining privilege assertions, please send a revised draft dispute letter tailored to those items and I will respond with Commissioner Holmes's position.

I've been traveling this week and I'm out of pocket for the rest of today and through the weekend. I will be available to discuss further on Monday.

Randy

Randy Howry

Howry Breen & Herman, LLP

1900 Pearl Street | Austin, Texas 78705

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rhowry@howrybreen.com | www.howrybreen.com

From: Angela Olalde <aolalde@greerherz.com>

Sent: Wednesday, April 26, 2023 12:29 PM

To: Randy Howry <rhowry@howrybreen.com>; 'Valencia Richardson' <VRichardson@campaignlegalcenter.org>; Bernadette Reyes <bernadette@uclavrp.org>

Cc: Sarah Chen <schen@texascivilrightsproject.org>; Shawn Sheehy <ssheehy@holtzmanvogel.com>; Hilary Harris Klein <hilaryhklein@scsj.org>; Joaquin Gonzalez <joaquin@texascivilrightsproject.org>; Meza, Catherine (CRT) <Catherine.Meza@usdoj.gov>; Dallin

Holt <dholt@holtzmanvogel.com>; Vall-Ilobera, Diana <DVall-Ilobera@willkie.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Jordan Raschke Elton <jraschkeelton@greerherz.com>; Joseph Russo <JRusso@greerherz.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Neil Baron <neil@ngbaronlaw.com>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sonni Waknin <sonni@uclavrp.org>; Silberstein, Andrew <ASilberstein@willkie.com>; Hani Mirza <hani@texascivilrightsproject.org>; Suriani, JoAnna <JSuriani@willkie.com>; Garrett, Kathryn <KGarrett@willkie.com>; Polizzano, Michelle <MPolizzano@willkie.com>; Zhu, Molly <MZhu@willkie.com>; Nickolas Spencer <nas@naslegal.com>; Mancino, Richard <RMancino@willkie.com>; Gear, Bruce (CRT) <Bruce.Gear@usdoj.gov>; Jayaraman, Tharuni (CRT) <Tharuni.Jayaraman@usdoj.gov>; Newkirk, Zachary (CRT) <Zachary.Newkirk@usdoj.gov>; Mateo Forero <mforero@holtzmanvogel.com>; K'Shaani.Smith@usdoj.gov <K'Shaani.Smith@usdoj.gov>; Wake, Brittany (CRT) <Brittany.Wake@usdoj.gov>; chad@brazilanddunn.com <chad@brazilanddunn.com>

Subject: RE: Petteway, et al v. Galveston County: Privilege Log of Commissioner Stephen Holmes

Apologies, attached are the exhibits. There is an exhibit numbering error in the draft that I'll fix (changing the 10/31 letter to "Exhibit 3).

From: Angela Olalde

Sent: Wednesday, April 26, 2023 12:26 PM

To: 'Randy Howry' <rhowry@howrybreen.com>; 'Valencia Richardson' <VRichardson@campaignlegalcenter.org>; 'Bernadette Reyes' <bernadette@uclavrp.org>

Cc: 'Sarah Chen' <schen@texascivilrightsproject.org>; 'Shawn Sheehy' <ssheehy@holtzmanvogel.com>; 'Hilary Harris Klein' <hilaryhklein@scsj.org>; 'Joaquin Gonzalez' <joaquin@texascivilrightsproject.org>; 'Meza, Catherine (CRT)' <Catherine.Meza@usdoj.gov>; 'Dallin Holt' <dholt@holtzmanvogel.com>; 'Vall-Ilobera, Diana' <DVall-Ilobera@willkie.com>; 'Jason Torchinsky' <jtorchinsky@holtzmanvogel.com>; Jordan Raschke Elton <jraschkeelton@greerherz.com>; Joseph Russo <JRusso@greerherz.com>; 'Mark Gaber' <MGaber@campaignlegalcenter.org>; 'Neil Baron' <neil@ngbaronlaw.com>; 'Simone Leeper' <SLeeper@campaignlegalcenter.org>; 'Sonni Waknin' <sonni@uclavrp.org>; 'Silberstein, Andrew' <ASilberstein@willkie.com>; 'Hani Mirza' <hani@texascivilrightsproject.org>; 'Suriani, JoAnna' <JSuriani@willkie.com>; 'Garrett, Kathryn' <KGarrett@willkie.com>; 'Polizzano, Michelle' <MPolizzano@willkie.com>; 'Zhu, Molly' <MZhu@willkie.com>; 'Nickolas Spencer' <nas@naslegal.com>; 'Mancino, Richard' <RMancino@willkie.com>; 'Gear, Bruce (CRT)' <Bruce.Gear@usdoj.gov>; 'Jayaraman, Tharuni (CRT)' <Tharuni.Jayaraman@usdoj.gov>; 'Newkirk, Zachary (CRT)' <Zachary.Newkirk@usdoj.gov>; 'Mateo Forero' <mforero@holtzmanvogel.com>; 'K'Shaani.Smith@usdoj.gov' <K'Shaani.Smith@usdoj.gov>; 'Wake, Brittany (CRT)' <Brittany.Wake@usdoj.gov>; 'chad@brazilanddunn.com' <chad@brazilanddunn.com>

Subject: RE: Petteway, et al v. Galveston County: Privilege Log of Commissioner Stephen Holmes

Hello all, attached is Defendants' position statement on the Commissioner Holmes privilege log dispute. Happy to discuss if anyone would like to hop on a call. Otherwise, if you have a position to include please let me know.

Angie

From: Angela Olalde

Sent: Tuesday, April 25, 2023 4:21 PM

To: 'Randy Howry' <rhowry@howrybreen.com>; 'Valencia Richardson' <VRichardson@campaignlegalcenter.org>; Bernadette Reyes <bernadette@uclavrp.org>

Cc: Sarah Chen <schen@texascivilrightsproject.org>; Shawn Sheehy <ssheehy@holtzmanvogel.com>; Hilary Harris Klein <hilaryhklein@scsj.org>; Joaquin Gonzalez <joaquin@texascivilrightsproject.org>; Meza, Catherine (CRT) <Catherine.Meza@usdoj.gov>; Dallin Holt <dholt@holtzmanvogel.com>; Vall-Ilobera, Diana <DVall-Ilobera@willkie.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Jordan Raschke Elton <jraschkeelton@greerherz.com>; Joseph Russo <JRusso@greerherz.com>; Mark Gaber <MGaber@campaignlegalcenter.org>; Neil Baron <neil@ngbaronlaw.com>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sonni Waknin <sonni@uclavrp.org>; Silberstein, Andrew <ASilberstein@willkie.com>; Hani Mirza <hani@texascivilrightsproject.org>; Suriani, JoAnna <JSuriani@willkie.com>; Garrett, Kathryn <KGarrett@willkie.com>; Polizzano, Michelle <MPolizzano@willkie.com>; Zhu, Molly <MZhu@willkie.com>; Nickolas Spencer <nas@naslegal.com>; Mancino, Richard <RMancino@willkie.com>; Gear, Bruce (CRT) <Bruce.Gear@usdoj.gov>; Jayaraman, Tharuni (CRT) <Tharuni.Jayaraman@usdoj.gov>; Newkirk, Zachary (CRT) <Zachary.Newkirk@usdoj.gov>; Mateo Forero <mforero@holtzmanvogel.com>; K'Shaani.Smith@usdoj.gov; Wake, Brittany (CRT) <Brittany.Wake@usdoj.gov>; chad@brazilanddunn.com

Subject: RE: Petteway, et al v. Galveston County: Privilege Log of Commissioner Stephen Holmes

Randy,

Will you produce the documents you've withheld based on attorney-client privilege to defense counsel for review? Looks like those are Bates #s 181 and 319-46. Actually, for 319-46, it looks like Commissioner Holmes and Chad Dunn were emailing, so there wouldn't be a privilege.

Also, if there is an asserted legislative process privilege, it seems that privilege would attach to the *Commissioners Court/County* and so those documents should also be turned over to counsel for the County. Please let me know your thoughts, hopefully I can narrow any dispute for the court.

Angie

From: Randy Howry <rhowry@howrybreen.com>

Sent: Tuesday, April 25, 2023 2:13 PM

To: 'Valencia Richardson' <VRichardson@campaignlegalcenter.org>; Angela Olalde <aolalde@greerherz.com>; Bernadette Reyes <bernadette@uclavrp.org>

Cc: Sarah Chen <schen@texascivilrightsproject.org>; Shawn Sheehy <ssheehy@holtzmanvogel.com>; Hilary Harris Klein <hilaryhklein@scsj.org>; Joaquin Gonzalez <joaquin@texascivilrightsproject.org>; Meza, Catherine (CRT) <Catherine.Meza@usdoj.gov>; Dallin Holt <dholt@holtzmanvogel.com>; Vall-Ilobera, Diana <DVall-Ilobera@willkie.com>; Jason Torchinsky <jtorchinsky@holtzmanvogel.com>; Jordan Raschke Elton <jraschkeelton@greerherz.com>; Joseph Russo <JRusso@greerherz.com>; Mark Gaber

<MGaber@campaignlegalcenter.org>; Neil Baron <neil@ngbaronlaw.com>; Simone Leeper <SLeeper@campaignlegalcenter.org>; Sonni Waknin <sonni@uclavrp.org>; Silberstein, Andrew <ASilberstein@willkie.com>; Hani Mirza <hani@texascivilrightsproject.org>; Suriani, JoAnna <JSuriani@willkie.com>; Garrett, Kathryn <KGarrett@willkie.com>; Polizzano, Michelle <MPolizzano@willkie.com>; Zhu, Molly <MZhu@willkie.com>; Nickolas Spencer <nas@naslegal.com>; Mancino, Richard <RMancino@willkie.com>; Gear, Bruce (CRT) <Bruce.Gear@usdoj.gov>; Jayaraman, Tharuni (CRT) <Tharuni.Jayaraman@usdoj.gov>; Newkirk, Zachary (CRT) <Zachary.Newkirk@usdoj.gov>; Mateo Forero <mforero@holtzmanvogel.com>; K'Shaani.Smith@usdoj.gov; Wake, Brittany (CRT) <Brittany.Wake@usdoj.gov>; chad@brazilanddunn.com

Subject: Petteway, et al v. Galveston County: Privilege Log of Commissioner Stephen Holmes

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Counsel,

Please see attached the privilege log of Commissioner Stephen Holmes.

As part of the preparation of this privilege log, I considered the privilege logs submitted by other parties. I tried to be consistent with the information contained in those logs. Likewise, I have reviewed some of the depositions that have been provided. I have attempted to be consistent with discovery responses and objections propounded by other parties.

Having said that, I am new to this case. I am happy to discuss this log to consider whether it can or should be modified.

Thank you,

Randy Howry

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