

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS, *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-00259  
[Lead Case]

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UNITED STATES OF AMERICA,

*Plaintiff,*

v.

STATE OF TEXAS, *et al.*,

*Defendants.*

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Case No. 3:21-cv-00299  
[Consolidated Case]

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**UNOPPOSED MOTION FOR LEAVE TO EXCEED PAGE LIMIT**

Defendants Greg Abbott, John Scott, and the State of Texas, as well as Lieutenant Governor Dan Patrick, Speaker Dade Phelan, and twenty-four Texas legislators and legislative staff respectfully seek leave to exceed the page limit for discovery and case-management motions in connection with their Motion to Quash, or, in the alternative, Motion for Protective Order, attached to this motion as Exhibit B. *See* ECF 218-2. Movants seek to quash a subpoena the United States issued to the Texas Legislative Council because, among other reasons, it improperly seeks records subject to the legislative privilege, the attorney-client privilege, and other protections—belonging to and in the legal custody of members of the Texas Legislature, not TLC.

In the Western District of Texas, the page limit for discovery and case-management motions is ten pages. *See* Local Rule 7.C.2. Movants seek leave to file a motion that does not exceed nineteen

pages. Movants seek leave to ensure they have sufficient opportunity to explain the factual and legal basis of their Motion to Quash, and for other good cause. Leave will not prejudice any party. Counsel for Movants has conferred with counsel for the United States, who indicated the United States does not oppose this Motion for Leave.

### **CONCLUSION**

For the foregoing reasons, Movants respectfully request that the Court grant their motion and allow them to file a Motion to Quash that does not exceed nineteen pages.

Date: April 6, 2022

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

Respectfully submitted.

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**COUNSEL FOR MOVANTS**

**CERTIFICATE OF CONFERENCE**

I certify that counsel for Movants conferred with counsel for the United States regarding the subject of this motion. Counsel indicated the United States does not oppose this Motion for Leave.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on April 6, 2022, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN

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**ORDER**

Before the Court is the Unopposed Motion for Leave to Exceed Page Limit by Defendants Greg Abbott, John Scott, and the State of Texas, as well as Lieutenant Governor Dan Patrick, Speaker Dade Phelan, and twenty-four Texas legislators and legislative staff, in connection with their Motion to Quash, or, in the alternative, Motion for Protective Order. *See* ECF 218, 218-2. The Court has considered the motion and FINDS that there is good cause for the motion to be granted.

**IT IS THEREFORE ORDERED THAT:**

The Unopposed Motion to Exceed Page Limit is **GRANTED**. ECF 216.

Movants **MAY FILE** a motion that does not exceed nineteen pages.

The Motion to Quash attached to the Motion for Leave is **DOCKETED**.

So ORDERED and SIGNED on this \_\_\_\_ day of April, 2022.

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**David C. Guaderrama,**  
**United States District Judge**  
**Western District of Texas**

*And on behalf of:*

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

*-and-*

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

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**DEFENDANTS AND SUBPOENA RECIPIENTS'  
MOTION TO QUASH OR, IN THE ALTERNATIVE,  
MOTION FOR PROTECTIVE ORDER**

## TABLE OF CONTENTS

Table of Contents .....	i
Introduction.....	1
Background.....	2
Argument .....	5
I. State Law Makes Individual Legislators, not TLC, the Custodians of Legislators’ Documents .....	6
A. Directing a Subpoena to TLC for Legislators’ and Other State Officials’ Documents Is Improper.....	6
B. The Subpoena Should be Quashed in its Entirety Unless the United States Can Articulate a Basis for it Other than Seeking Individual Legislators’ and Other State Officials’ Documents.....	9
II. In the Alternative, the Subpoena Should be Modified to Exclude Documents Falling Squarely Within the Legislative and Attorney-Client Privileges .....	10
A. Applicable Privileges Apply to Communications Accessible by TLC.....	11
B. State Officials Have Invoked Legislative Privilege, and Only Those Individual Legislators, the Lieutenant Governor, and Other Officials May Waive Applicable Privileges .....	15
Conclusion .....	19
Certificate of Conference.....	20
Certificate of Service.....	20

## INTRODUCTION

Legislative privilege has existed for centuries “to protect the integrity of the legislative process by insuring the independence of individual legislators.” *United States v. Brewster*, 408 U.S. 501, 507 (1972); *see United States v. Johnson*, 383 U.S. 169, 178 (1966). In the United States, the privilege has protected some state governments for longer than the Constitution itself. *See Tenney v. Brandhove*, 341 U.S. 367, 373–75 (1951). Texas is no exception; legislative privilege has protected Texas legislators for nearly 150 years. *See* Tex. Const. art. III, § 21; Tex. Gov’t Code § 306.008(a).

But here, the United States is deploying a third-party subpoena in an attempt to circumvent those guarantees. In its redistricting challenge to the reapportioned Texas congressional and house districts, the United States has issued subpoenas for any and all redistricting-related documents from more than two dozen state officials including individual legislators, staff, and the lieutenant governor. The subpoenas cover “[a]ll documents relating to any redistricting proposal,” including “draft” legislation or “criteria, requirements, priorities, or guidelines used,” “[a]ll documents relating to the redistricting process,” “[a]ll documents . . . exchanged” between various government officials, and more. *See generally* Ex. A (subpoenas issued to twenty-six legislators and staff). Because the subpoenas seek materials and communications falling squarely within the protections of legislative privilege and attorney-client privilege, the individual subpoena recipients have objected to the sweeping subpoenas on those grounds. *See generally* Ex. B (objections and responses to subpoenas *duces tecum* to the twenty-six subpoena recipients).<sup>1</sup> In an attempted end-run around those objections, the United States has issued a nearly identical third-party subpoena seeking the same redistricting-related documents from the Texas Legislative Council, a state legislative agency. *See* Ex. C (TLC subpoena). For its part, TLC has also served vigorous objections based on, among other things, overbreadth and various privileges.

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<sup>1</sup> Defendants have conducted a robust review and production of documents responsive to the United States’ subpoenas, despite their being substantially overbroad and calling for privileged information. To date, Defendants have produced nearly 18,000 pages of documents in response to the twenty-six individual subpoenas.



That end-run around the individual legislators’ and state officials’ privilege objections is improper. It contravenes basic notions of *who* may be subpoenaed and *what* can be subpoenaed when legislators’ documents are at the heart of such demands. Accordingly, Defendants, alongside the already-subpoenaed individual state officials<sup>2</sup> hereby seek an order quashing the subpoena or a protective order limiting the scope of the TLC subpoena. The United States can demand that TLC turn over only that which is TLC’s to turn over, and even then, only that which is not privileged.

### BACKGROUND

During the second half of 2021, the Texas Legislature reapportioned Texas’s congressional, senate, house, and State Board of Education districts. Soon after, the United States, along with several plaintiffs’ groups, brought lawsuits challenging the new districts. The complaints allege that the districts violate Section 2 of the Voting Rights Act, among other claims. The suits have been consolidated and discovery has begun while Defendants’ motion to dismiss the United States’ complaint is pending. *See* Mot. to Dismiss, ECF 111.<sup>3</sup>

The United States has since taken the lead in discovery, issuing document subpoenas for more than two dozen Texas government officials, most of whom are individual legislators. The subpoenas seek any and all documents relating to redistricting from the Lieutenant Governor, leaders of the

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<sup>2</sup> The individual state officials already subpoenaed include Lieutenant Governor Dan Patrick; Speaker of the Texas House Dade Phelan; Senate Special Committee on Redistricting Chairwoman Joan Huffman, Texas House Redistricting Committee Chairman Todd Hunter; Texas House Representatives Tom Craddick, Philip Cortez, John Lujan, Geanie Morrison, Andrew Murr, Steve Allison, Jacey Jetton, Brooks Landgraf, Ken King, J.M. Lozano, and Ryan Guillen; and eleven staff members to the elected lieutenant governor, senators, and representatives. All of the individual subpoena recipients are currently represented by the Texas Office of the Attorney General, also representing Defendants.

<sup>3</sup> In the interim, the Supreme Court has indicated that it will be revisiting the legal standard for adjudicating such Voting Rights Act challenges. *See Merrill v. Milligan*, 142 S. Ct. 879 (2022). The Court has stayed district court orders enjoining Alabama’s congressional districts. *Id.* In deciding the Alabama appeal next term, the Court will clarify the “notoriously unclear and confusing” Voting Rights Act obligations in redistricting and “resolve the wide range of uncertainties arising under” the existing test of *Thornburg v. Gingles*, 478 U.S. 30 (1986). *Id.* at 879 (Kavanaugh, J., concurring in grant of stay); *id.* (Roberts, C.J., dissenting from grant of stay). The Supreme Court’s scheduling of the Alabama cases raises serious questions about the propriety of moving ahead with any discovery pending the Supreme Court’s clarification of the very rules governing the claims for which discovery is sought. At the very least, it counsels against the duplicative discovery the United States seeks here.

senate and house redistricting committees, and eleven other individual state legislators and their staff members. An exemplar subpoena is included as Exhibit A. All such subpoenas ask for any conceivable state house or congressional redistricting documents, covering:

1. “All documents relating to any redistricting proposal,” including any “redistricting proposal drawn, discussed or considered,” including “the origination(s) or source(s) or any such redistricting proposal,” “the impetus, rationale, background, or motivation for any such redistricting proposal,” “all drafts in the development or revision of any such redistricting proposals,” “pairing of any incumbents in any such redistricting proposal,” “any redistricting amendment” to such proposals, “Negotiations regarding any redistricting proposal,” and “all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind...including on Texas minority voters . . . .”;
2. “All documents relating to the redistricting process . . . .”;
3. “All documents relating to voting patterns” regarding race, including “any calculations, reports, audits, estimates, projections, or other analyses”;
4. “All documents relating to whether . . . any . . . redistricting proposal drawn, discussed, or considered . . . complies with the Voting Rights Act, including but not limited to any calculations, reports, audits estimates, projections, or other analyses”;
5. “All documents relating to redistricting . . . exchanged between, among, with, or within” various government offices, committees, the Texas Legislative Council, any elected representatives or candidates, national or local parties, consultants, law firms, or other organizations;
6. “All other documents relating to redistricting . . . including but not limited to redistricting criteria,” “correspondence,” “notes,” “studies,” and so forth;
7. “All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center . . . .”;
8. “All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest” or “any other type of contract related to redistricting”; and
9. “All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.”

Ex. A at 6–9.

In response to the subpoenas, all individual subpoena recipients have asserted various defenses. *See generally* Ex. B. Those defenses include that documents sought are subject to legislative

privilege or attorney-client privilege, or are otherwise protected attorney work product. *E.g., id.* at 5–12 (objections and responses of Lieutenant Governor Patrick). All individual subpoena recipients have made clear that they will not be producing such privileged documents. For non-privileged documents that are not otherwise subject to other objections, the individual subpoena recipients have begun a rolling production of responsive documents. These include submissions to the committee from the public, public meeting notices or press releases, and other documents existing in the publicly available legislative record leading to the passage of the challenged legislation.

Instead of conferring about the productions from the individual legislators, the United States has subpoenaed the Texas Legislative Council for the same documents. TLC is a service agency of the Texas legislature. TLC assists legislators and staff in drafting and analyzing proposed legislation and provides computer support, among other services. Tex. Gov’t Code § 323.001, *et seq.* The TLC subpoena is nearly identical to the subpoenas issued to individual members. It seeks all of the above categories of documents except for the last catch-all category for “documents relating to the instant lawsuit or preceding [DOJ] investigation.” *Compare* Ex. C at 9, *with* Ex. A. And it adds the following catch-all category, which removes all doubt about that the subpoena seeks documents belonging to individual legislators or other officers from TLC:

All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives in the possession, custody, or control of the Texas Legislative Council, including documents located on any email server or on any shared or network drive, such as the “X-Drive” space assigned to individual legislators or their staff and the “Y-Drive” space shared between legislators or their staff. This request includes emails, memoranda, correspondence, calendar invitations, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, public statements, or other communications.

Ex. C at 9.

Counsel for the Defendants and all individual subpoena recipients have formally met and conferred with the United States on the scope of the TLC subpoena. The United States has taken the position that it can seek any individual legislators’ and other officials’ documents from TLC,

disregarding unequivocal state law that such documents are not TLC's to give. It has also taken the position that legislative privilege is inapplicable to any such documents unless and until individual legislators affirmatively invoke legislative privilege in this Court. But that disregards the objections that individual subpoena recipients have already served on the United States and other applicable state law and federal procedure. Moreover, to the extent the United States seeks documents from legislators and staff who have not received subpoenas, trying to get those documents from TLC, without any notice to the affected individuals and holders of the privilege, circumvents basic notions of fair notice.

### **ARGUMENT**

Movants now seek an order quashing the TLC subpoena or, alternatively, a protective order from this Court that prohibits the United States from seeking documents from TLC that must instead be obtained from individual state officials or documents that are otherwise privileged. *See Kilmon v. Saulsbury Indus., Inc.*, No. 17-cv-99, 2018 WL 5800759, at \*4 (W.D. Tex. Feb. 13, 2018) (“motion for a protective order may be made by any party and such party may seek a Rule 26(c) protective order ‘if it believes its own interest is jeopardized by discovery sought from a third person’” (quoting Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2035 (3d ed. 2011))); *see, e.g., Citizens Union of City of New York v. Att’y Gen. of New York*, 269 F. Supp. 3d 124, 172 (S.D.N.Y. 2017) (granting Governor and intervening State Assembly and Senate’s motion to quash subpoena seeking privileged documents); *Holdquin v. Celebrity Cruises, Inc.*, No. 1:10-cv-20215, 2010 WL 6698221, at \*2 (S.D. Fla. July 22, 2010) (granting a party’s motion for a protective order to stop third-party discovery of privileged materials); *Gulf Coast Energy LLC v. Bank of Am. Corp.*, No. 4:13-cv-2985, 2014 WL 12616133, at \*2 (S.D. Tex. Dec. 2, 2014) (modifying a third-party subpoena document-production requests based on a party’s claim of privilege). At best, the TLC subpoena is duplicative of individual subpoenas already served on individual legislators and other state officials; at worst, it is a failed and egregious end-run around legislative privilege.

**I. State Law Makes Individual Legislators, not TLC, the Custodians of Legislators' Documents**

The United States demands “[a]ll documents relating to any redistricting proposal,” “[a]ll documents relating to the redistricting process,” and more from TLC. Ex. C at 6–7. The subpoena specifically states that TLC is to produce any such documents “located on any email server or on any shared network drive,” including those on network spaces “*assigned to individual legislators* or their staff” or “*shared between legislators* and their staff.” *Id.* at 9 (emphasis added). The United States appears to believe that TLC must produce these documents because it necessarily has access to them as the legislative service agency providing computer support to the legislature. That tack is contrary to state law and federal procedure. Unsurprisingly, these demands of TLC raise a host of privilege issues that ought to instead be resolved directly between the United States and individual legislators or other state officials. The subpoena should be quashed and the documents sought from the proper document custodians themselves (as the United States has already done for more than two dozen individual subpoena recipients).

**A. Directing a Subpoena to TLC for Legislators' and Other State Officials' Documents Is Improper**

Rule 45 requires production of materials that are in a third-party subpoena recipient’s “possession, custody or control.” Fed. R. Civ. P. 45(a)(1)(A)(iii); *accord* Fed. R. Civ. P. 34. “Control” entails determining who has the “legal right to obtain documents requested . . . .” *Provost v. Kia Motors Am.*, No. 3:05-cv-36, 2006 WL 8432737, at \*1 (M.D. La. Feb. 9, 2006) (*quoting* *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984)); *McKesson Corp. v. Islamic Republic of Iran*, 185 F.R.D. 70, 78 (D.D.C. 1999) (“[C]ontrol generally addresses the legal right, authority, or ability of the party whom/which the [discovery] request is directed to exercise lawful possession over the premises or documents at issue.”). A discovery seeker cannot subpoena documents from an individual who is not properly the custodian of documents. *See, e.g., St. Pierre v. Dearborn Nat’l Life Ins. Co.*, No. 3:19-cv-223, 2020 WL 6122555, at

\*4 (W.D. Tex. Apr. 14, 2020) (rejecting the notion that “hav[ing] a close working relationship” or “a mere contractual relationship” is sufficient) (Guaderrama, J.); *Liberty Mut. Ins. v. Ravannack*, No. 2:00-cv-1209, 2002 WL 1770936, at \*3 (E.D. La. Aug. 1, 2002); *Gen. Envt Sci. Corp. v. Horsfall*, 25 F.3d 1048, 1994 WL 228256, at \*10 n.15 (6th Cir. May 25, 1994) (per curiam) (observing that “access to the documents” is not the same as being able to “command their production”); *Estate of Young v. Holmes*, 134 F.R.D. 291, 294 (D. Nev. 1991) (“The party must be able to command the release of the documents . . .” which is “usually the result of statute, affiliation or employment.”).

In this case, state law directly answers the question of who is the custodian of the subpoenaed documents. It is not TLC. Rather, an individual member of the legislature, the lieutenant governor, and house and senate officers (such as the parliamentarian) remain the custodians of their documents, however they are stored. That is so even if such documents are accessible to TLC because they are transmitted, stored, or maintained on legislative computer systems:

A member of the legislature, the lieutenant governor, an officer of the house or senate, or a legislative agency, office, or committee that uses a system made available by the [Texas Legislative C]ouncil to transmit, store, or maintain records:

- (1) possesses, maintains, or controls the records for purposes of litigation; and
- (2) is the custodian of the records for purposes of Chapter 552.

Tex. Gov’t Code § 306.009; *accord id.* § 323.021 (providing the same in statute creating TLC).

Sections 306.009 and 323.021 thus remove any doubt that TLC cannot turn over individual members’ or other officials’ documents in litigation, without the members’ consent to do so. The documents must be subpoenaed from the individual members themselves (or the lieutenant governor himself). TLC has no legal “right” or “authority” or “practical ability” under its originating statute, Texas Government Code § 323.021, to turn over documents that remain in the possession, custody, and control of those individual members or other officials. *Perez v. Perry*, No. 5:11-cv-360, 2014 WL 1796661, at \*2 (W.D. Tex. May 6, 2014); *see, e.g., Correia v. Town of Framingham*, 2013 WL 952332, at \*3

(D. Mass. Mar. 8, 2013) (looking to state law to determine whether a party has control over certain documents for federal discovery purposes); *cf. Balt. City Bd. of Sch. Cmr's v. Warren Ebret Co. of Md., Inc.*, 2014 WL 6390300, at \*6 (D. Md. Nov. 12, 2014) (looking to state law for “corporate custodian relating to forfeiture” to determine diversity jurisdiction).

The United States cannot ignore state law to circumvent that legal reality. *See, e.g., Robinson v. Moskus*, 491 F. Supp. 3d 359, 363 (C.D. Ill. 2020) (preventing discovery on defendant state employees for certain documents when “nothing in the [state] statute . . . confers a right upon a [state] employee to demand documents from [an agency], his or her employer”); *Page v. Va. State Bd. of Elections*, 15 F. Supp. 3d 657, 663–64 (E.D. Va. 2014) (relying on state law to determine whether an outside consultant could invoke legislative privilege). As the United States seemingly already realizes—as shown by the more than two dozen individual subpoenas already served—it has no right to subpoena the same documents from TLC.

All of this is for good reason. Section 306.009, mirroring 323.021 of the Texas Government Code, exists to stop the very litigation tactics at play here. It confirms that a discovery seeker cannot circumvent longstanding legislative and attorney-client privileges held by individual members and other state officials by seeking documents merely because they are accessible to a state agency offering computer support services to those individuals—just as it would be fanciful to issue a third-party subpoena a law firm’s office administrator for thousands of privileged documents between the firm’s attorneys and clients. The legislators, lieutenant governor, and other legislative officers remain the custodians of their own documents, and the existence of TLC does not change that. *See Tex. Gov’t Code* § 306.008(a)(3) (confirming that private communications concerning legislative activities or functions remain “confidential and subject to legislative privilege,” including when such communications are among or between “a member of the governing body of a legislative agency” or “a legislative employee,” among others). If the United States seeks to subpoena individual members’

or other officials' documents, it must subpoena them from those custodians—something the United States, tellingly, has already done. At the very least, the United States should be ordered to limit its subpoena to exclude such documents already subpoenaed from the individual legislators and other state officials, documents that TLC has no authority to turn over.

**B. The Subpoena Should be Quashed in its Entirety Unless the United States Can Articulate a Basis for it Other than Seeking Individual Legislators' and Other State Officials' Documents**

The most obvious way to address the complexities created by the TLC subpoena—duplicative of subpoenas already issued to more than a dozen state officials and seeking the same categories of privileged information—is for the Court to quash the TLC subpoena. Indeed, the United States has not yet asserted any other basis for the subpoena other than as a means to seek those individual legislators' and other state officials' own redistricting-related documents, which Texas law confirms belong to the individual legislators and other state officials and not to TLC. Tex. Gov't Code § 306.009. The subpoena expressly clarifies that TLC should be turning over documents from email servers and shared network drives “*assigned to individual legislators or their staff*” or “*shared between legislators or their staff.*” Ex. A at 9 (emphasis added). As such, the subpoena is entirely duplicative of subpoenas already served on individual members and their staff; it appears to seek redistricting-related documents belonging only to those individual members and other state officials. *Compare* Ex. A *with* Ex. C.

To fully appreciate the absurdity of such a duplicative subpoena, imagine what TLC will have to do if the subpoena remains in place. Because TLC does not formally possess or control the documents, it will be obligated to coordinate with individual members already subject to duplicative subpoenas from the United States and other state officials. Beyond that, presumably the United States would demand a detailed and burdensome privilege log that will be no different than dozens that will



be created in response to the individual subpoenas that the United States has already issued.

For these reasons alone, the TLC subpoena should be quashed. *See Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979) (party has standing to quash a non-party subpoena if it can allege a “personal right or privilege with respect to the materials subpoenaed”); *see, e.g., Bryant Gulf Coast Energy*, 2014 WL 12616133, at \*2 (granting Merrill Lynch’s motion to quash subpoena seeking confidential Merrill Lynch information from FINRA); *Bryant v. Mattell, Inc.*, No. 2:04-cv-9049, 2010 WL 11463910, at \*2–3 (C.D. Cal. July 8, 2010) (collecting various cases regarding a party’s standing to quash a third-party subpoena when the information sought is the party’s privileged or protected material). Short of quashing the subpoena, there will be substantial and unnecessary procedure to affirm that each individual legislator—whether having anything to do with this litigation or not—has legislative privilege. State law and federal procedure already solve that problem: direct subpoenas to the true custodians of the documents, the individual legislators and other state officials.

## **II. In the Alternative, the Subpoena Should be Modified to Exclude Documents Falling Squarely Within the Legislative and Attorney-Client Privileges**

If the subpoena is not quashed, a protective order is necessary to clarify that the United States must limit the scope of the TLC subpoena to exclude documents that are privileged, whether or not TLC is deemed to be the proper custodian of such documents. Redirecting a subpoena to TLC is no way to circumvent the legislative privilege, attorney-client privilege, and other protections that extend to the documents sought by the subpoena. But that appears to be exactly what the United States seeks to do. For example, the subpoena seeks “[a]ll documents relating to any redistricting proposal,” including “draft[s]” as well as “documents relating to the impetus, rationale, background, or motivation for any such redistricting proposal” or “negotiations regarding any redistricting proposal,” among others. Ex. C at 6–7. The subpoena seeks those documents even if they are located on drives assigned to or shared by individual legislators and their staff. *Id.* at 9. Likewise, the subpoena seeks documents “relating to whether any redistricting proposal complies with the Voting Rights Act” and

related “analyses,” without regard to the request’s obvious encroachment into the attorney-client privilege. *Id.* at 7–8.

#### **A. Applicable Privileges Apply to Communications Accessible by TLC**

As an initial matter, state law makes clear that any applicable legislative or attorney-client privilege extends to documents accessible by TLC. While in many States legislative privilege exists as a creature of common law and general constitutional protections, *see, e.g.*, Tex. Const. art. III, § 21, the Texas Government Code additionally and expressly codifies legislative privilege protections as necessary “[t]o protect the public’s interest in the proper performance of the deliberative and policymaking responsibilities of the legislature and to preserve the legislative branch’s independence.” Tex. Gov’t Code § 306.008(a). By statute, a communication remains “confidential and subject to legislative privilege if the communication:”

- (1) is given privately;
- (2) concerns a legislative activity or function; and
- (3) is among or between any of the following:
  - (A) a member of the house or senate;
  - (B) the lieutenant governor;
  - (C) an officer of the house or senate;
  - (D) a member of the governing body of a legislative agency; or
  - (E) a legislative employee.

*Id.*; *accord id.* § 323.017 (defining confidential and privileged communications between members and TLC).<sup>4</sup>

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<sup>4</sup> “Legislative employee” is defined broadly to include either “an employee of, assistant to, or credentialed intern for any part of the legislative branch of state government, including the house, the senate, a member of the house or senate, the lieutenant governor, an officer of the house or senate, a house or senate committee, a joint committee, or a legislative agency” or “a person performing services under a contract entered into with the house, the senate, a house or senate committee, or a legislative agency.” Tex. Gov’t Code § 306.008(e)(3)(A), (B).

These codified protections mirror and ought to be interpreted as coextensive with the common-law privileges afforded to legislators, legislative officers, and staff to protect the legislative process. State governments, some well before the federal Constitution was ratified, have guaranteed legislative privilege to protect the independence of their legislative processes. *See Tenney*, 341 U.S. at 373–75 (collecting examples for proposition that “[t]he provision in the United States Constitution” for federal legislative privilege “was a reflection of political principles already firmly established in the States”). These constitutionally prescribed legislative privileges mirror the federal Speech or Debate Clause for congressional representatives. *Id.* at 375. And this commitment to “legislative privilege” reflects the strong presumption *against* “judicial inquiries into legislative . . . motivation.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 n.18 (1977). Such inquiries are disfavored because they “represent a substantial intrusion into the workings of other branches of government.” *Id.*; *see also United States v. Johnson*, 383 U.S. 169, 179 (1966); *United States v. Helstoski*, 442 U.S. 477, 491 (1979). At whatever level of government, “the exercise of legislative discretion should not be inhibited by judicial interference,” and it is simply “not consonant with our scheme of government for a court to inquire into the motives of legislators.” *Bogan v. Scott-Harris*, 523 U.S. 44, 52, 55 (1998) (quoting *Tenney*, 341 U.S. at 377); *accord Citizens Union of City of New York*, 269 F. Supp. 3d at 141 (“sparse legislative record . . . does not justify turning discovery into a fishing expedition into non-public information that may or may not have been considered important by individual legislators and the Governor in connection with passage of [challenged legislation]; nor does it warrant the disclosure of privileged materials”).

In Texas and elsewhere, those protections extend to legislative staff and service agencies. Again, Texas makes that express by statute. *See* Tex. Gov’t Code § 306.008(a). And state and federal courts have confirmed that the privilege so extends. *See, e.g., Veasey v. Perry*, No. 2:13-cv-193, 2014 WL 1340077, at \*2 (S.D. Tex. Apr. 3, 2014); *Texas v. Holder*, No. 1:12-cv-128, 2012 WL 13070059, at \*3

(D.D.C. May 21, 2012) (“To the extent that a TLC employee is engaged in a legislative act[] that would have [been] privileged if performed by the [legislator] personally. Texas has a strong argument that the communications are privileged.” (quotation marks omitted)); *see also In re Perry*, 60 S.W.3d 857 859–60 (Tex. 2001) (applying the “fundamental separation-of-powers tenets” embodied in “the Texas and federal constitutions” and “extend[ing] the legislative immunity doctrine beyond federal and state legislators to other individuals performing legitimate legislative functions” to prevent discovery); *Clear Lake City Water Auth. v. Salazar*, 781 S.W.2d 347, 348 (Tex. App.—Houston [14th Dist.] 1989) (no writ) (preventing discovery from local legislators); *accord Gravel v. United States*, 408 U.S. 606, 618 (1972) (federal privilege “applies not only to a Member, but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself”); *id.* at 625 (describing privilege to attach to those “integral part[s] of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation,” whether or not performed by the member himself); *see also Doe v. McMillan*, 412 U.S. 306, 312 & n.7 (1973) (rejecting argument that congressional committee staff and a congressional consultant and investigator were beyond the scope of federal privilege).

Applied here, TLC’s role as a legislative service agency places it within the privileged sphere of legislative acts. *See* Tex. Gov’t Code § 306.008(a); *In re Perry*, 60 S.W.3d at 858 (extending legislative privilege to the Legislative Redistricting Board that was “acting in a legislative capacity”); *Canfield v. Gresham*, 17 S.W. 390, 393 (Tex. 1891) (holding that “[t]he command of the house protected the sergeant at arms” from suit); *see also Gravel*, 408 U.S. at 616–17 (aides’ day-to-day assistance is “so critical to the [legislators’] performance that they must be treated as the [legislators’] alter egos”).

That TLC might have access to draft bills by shared network drives, for example, does nothing to thwart the legislative privilege that clearly attaches to such draft bills. The inquiry is not *who* may access those documents within the Texas Legislature, but instead *what* is the nature of such documents.

The privilege attaches to “legitimate legislative activities,” meaning an action taken within the course of the “legislative process itself.” *Cole v. Gray*, 638 F.2d 804, 811 (5th Cir. 1981); *In re Hubbard*, 803 F.3d 1298, 1308 (11th Cir. 2015). If they are documents relating to the Legislature’s indisputably legislative act of crafting redistricting legislation, they are privileged. *See Bogan*, 523 U.S. at 55–56 (activity is “legislative” when it is part of a “discretionary, policymaking decision” or involves “a field where legislators traditionally have power to act”); *see also, e.g., Brewster*, 408 U.S. at 512 (“A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it.”); *In re Perry*, 60 S.W.3d at 860–61.

There is thus no argument that the United States can circumvent the privileged nature of such documents by seeking them from TLC versus from the individual legislators or the lieutenant governor or other state officials to whom the documents actually belong. *See Fed. R. Evid.* 501. Legislative privilege protects nearly all of the documents the United States seeks from TLC, and they may be properly withheld for that reason, whether sought from TLC or sought from the proper legislative officials. *See, e.g., Holder*, 2012 WL 13070113 at \*4; *see also Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov’t*, 849 F.3d 615, 624 (5th Cir. 2017) (observing that if “the councilmembers’ reasons for passing the resolutions are privileged,” then “they cannot be directly compelled to disclose them”); *compare Gravel*, 408 U.S. at 616–17.

Likewise, TLC maintains attorney-client privilege with other legislative officials. Private communications that concern a legislative activity or function are “subject to attorney-client privilege if:”

- (1) one of the parties to the communication is a legislative attorney or a legislative employee working at the direction of a legislative attorney; and
- (2) the communication is made in connection with the legislative attorney’s provision of legal advice or other legal services.

Tex. Gov’t Code § 306.008(b).

The United States also cannot ignore these privileges by subpoenaing TLC instead of or in addition to individual legislators and other legislative officials. If, for example, TLC provided privileged legal advice to legislators with legal advice in relation to a redistricting proposal's compliance with applicable state or federal law (*see* Ex. C at 8), such legal advice remains privileged and protected from discovery. Fed. R. Evid. 501, 502. Explained below, that privilege is *not* waivable by TLC and the TLC subpoena is not an appropriate end-run around it.

**B. State Officials Have Invoked Legislative Privilege, and Only Those Individual Legislators, the Lieutenant Governor, and Other Officials May Waive Applicable Privileges**

A protective order is also necessary because the United States appears to believe that it can bait TLC into waiving legislative or attorney-client privileges that are only waivable by the individual legislators or other legislative officers themselves. TLC has no authority to disclose the individual's documents, let alone to waive privileges on his or her behalf. *See, e.g.*, Tex. Gov't Code § 306.008(c) ("A member of the house or senate, the lieutenant governor, or an officer of the house or senate may choose to disclose all or part of a communication to which [legislative or attorney-client privilege] applies and to which the individual or legislative employee acting on behalf of the individual was a party.").<sup>5</sup> Unless and until there is a waiver of legislative or attorney-client privilege by the individual legislator, the lieutenant governor, or other appropriate legislative officer, and the United States well knows that there has been no such waiver here given the individual subpoena recipients' objections, the United States cannot circumvent those privileges by subpoenaing a legislative agency.

A waiver of legislative privilege entails "explicit and unequivocal renunciation of the

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<sup>5</sup> Officers of the house or senate include the house chief clerk, the house journal clerk, the house reading clerks, the house sergeant-at-arms, the house door keeper, the house chaplain, the house voting clerk, the house committee coordinator, the house parliamentarian, the senate secretary, the senate journal clerk, the senate calendar clerk, the senate enrolling clerk, the senate sergeant-at-arms, the senate doorkeeper, and the senate chaplain. Tex. H. Rule 2 (87th Legis. 2021); Tex. S. Rule 1.04 (87th Legis. 2021). Those associated with TLC are not included within the meaning of "officer."

protection,” for “any lesser standard would risk intrusion by the Executive and the Judiciary [into legislative matters].” *United States v. Helstoski*, 442 U.S. 477, 491 (1979); accord *Clear Lake City Water Auth.*, 81 S.W.2d at 350–51 (rejecting waiver argument because “privilege is a personal one which cannot be imputed to all officials of a governmental body merely on the basis that one or two members waived it”); *Co. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, No. 11-cv-5065, 2011 WL 4837508, at \*11 (N.D. Ill. Oct. 12, 2011) (prohibiting plaintiffs “from subpoenaing . . . documents from individual members of the General Assembly unless the member affirmatively waives his or her legislative privilege in writing”); *ACORN v. Cnty. of Nassau*, No. 05-cv-2301, 2007 WL 2301, at \*5, \*6 (E.D.N.Y. Sept. 25, 2007) (denying the plaintiff’s motion to compel where the legislative privilege applied and the plaintiff failed to prove waiver); *McDonough v. City of Portland*, No. 2:15-cv-153, 2015 WL 12683663, at \*9 (D. Me. Dec. 31, 2015) (recommending denying a motion to compel privileged information where privilege had not been waived). There has been nothing of the sort in these consolidated cases.

Most relevant here, the United States has subpoenaed more than two dozen individual legislators, staffers, and the lieutenant governor so far. Those third-party subpoenas necessarily reflect who the United States believe will have privileged information related to the dispute. In response to every one of those subpoenas, the subpoena recipients have invoked legislative privilege and attorney-client privileges to the federal government’s sweeping requests. *See generally* Ex. B. These objections are beyond sufficient to establish that legislative privilege has and will continue to be invoked, consistent with state and federal common law protections.

To the extent that the United States disagrees with the individual subpoena recipients’ invocation of legislative privilege, the proper course is to litigate the privilege issues as part of a motion to compel documents from those individual subpoena recipients, over their privilege objections. After all, the applicable privileges belong to those individuals, not TLC. *See Bogan*, 523 U.S. at 48–49; *Martin*

*v. Crestline Hotels & Resorts, LLC*, No. 1:19-cv-470, 2020 WL 3145694, at \*3 (W.D. Tex. June 12, 2020) (quashing subpoena and rejecting as contrary to the patient-physician privilege a subpoena seeking “the medical information of non-parties who have not waived their patient-physician privileges in this case,” which belonged to the non-party patients themselves and not patients’ insurance carrier); *Hall v. Louisiana*, No. 3:12-cv-657, 2014 WL 1652791, at \*4 (M.D. La. Apr. 23, 2014) (quashing third-party subpoena for privileged information and explaining that “attorney-client privilege is held by the clients, not [subpoena recipient], and [subpoena recipient] is without authority to waive it”). Any dispute that the United States wishes to raise over the scope of that privilege should thus be litigated against the individuals who hold the privilege.

But rather than litigate any dispute over the privilege objections raised by the individual subpoena recipients, the United States has attempted an end-run around those objections by subpoenaing TLC. There is no basis for such a proxy war on legislative privilege, leaving it to TLC to hold the line on a privilege belonging to legislators and other state officials. While the United States might wish to litigate that privilege battle with TLC, as a third-party agency not represented by Defendants’ or the individual subpoena recipients’ counsel, the United States should be prohibited from removing from that battle the members to whom the privilege belongs. Avoiding that proxy war is the very reason why Texas law expressly states that the documents belong to the members’ themselves, not TLC. *See* Tex. Gov’t Code §§ 306.009, 323.021.

Likewise, to the extent that the United States intends to argue that it may subpoena TLC for privileged documents belonging to other members whom the United States has not yet individually subpoenaed, that argument should be rejected out of hand. The United States is not entitled to have documents from TLC belonging to all 181 members of the legislature—ranging from those no more involved in the redistricting bills than voting for them to those who were centrally involved and who have already been individually subpoenaed. And yet, the United States has gestured at the idea that



TLC must produce all documents of all members, privileged or not, unless and until all such members must insert themselves in this litigation to affirm what state law already says about legislative privilege. To articulate that idea is to reject it; all 181 members of the Texas Legislature need not intervene to invoke legislative privilege over documents to which TLC has access but which belong to the legislators and other officials themselves.

Here again, the federal government's litigation strategy is an end-run around federal procedure and state law. If the United States wants to hear from all 181 members, then the United States must take the risks associated with such sweeping and unnecessary discovery, *see, e.g.*, Fed. R. Civ. P. 45(d)(1), and subpoena the document custodians themselves. State law already cements that the subpoenaed documents do not belong to TLC, Tex. Gov't Code § 306.009, and that legislative privilege attaches to those documents, *id.* § 306.008(a). TLC is *not* in possession, custody, or control of all 181 members' documents for purposes of litigation, and cannot waive any of the associated privileges in any event. *Id.* §§ 306.009, 323.021. Ultimately, if the United States seeks to probe the privilege of individual members, it is the United States that must make the calculated decision about whom to subpoena and thereafter survive all of the limitations put in place by the Federal Rules to protect third parties from such improper, unnecessary, burdensome, and irrelevant discovery. It is not the burden of Defendants (let alone a third-party subpoena recipient without custody over the subpoenaed documents) to additionally procure 181 affirmative statements repeating the same: that the individual legislators own their own documents and that long-held privilege protections, confirmed by state law, remain long-held here.<sup>6</sup>

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<sup>6</sup> Even if such a thing could be required, the United States has not given reasonable time for compliance, let alone a proposed procedure short of 181 individual legislators intervening in this litigation for the sole purpose of affirming their legislative privilege. TLC as a third-party subpoena recipient should not be made to procure 181 such statements, most of which will be from individual legislators who as of now have no connection to (if even awareness of) this ongoing litigation, within the brief amount of time allotted by the subpoena. The subpoena should thus be quashed or the time to comply modified on that basis too. *See* Fed. R. Civ. P. 45(d)(3)(A)(i) (permitting motion to quash or modify a subpoena that "fails to allow reasonable time to comply").

The United States cannot short-circuit these protections by seeking any and all redistricting documents from a legislative agency, which neither owns the documents nor can waive privilege to such documents.

### **CONCLUSION**

For the foregoing reasons, Defendants and the individual subpoena recipients seek an order quashing the TLC subpoena or, in the alternative, a protective order to preclude the United States from demanding documents from TLC that are not TLC's to give. Individual members' documents, the lieutenant governor's documents, and other state officials' documents belong to the officials themselves. That TLC might be able to access such documents *via* shared networks or otherwise does not change this fact. The documents must thus be sought from the individual custodians—as the United States has already done. The United States, moreover, cannot circumvent the legislative and other applicable privileges invoked by those individual subpoena recipients by seeking the same documents from TLC. The same privileges that bar the United States from seeking documents that are part and parcel of the legislative redistricting process from the individual members bar the United States from seeking the same from TLC. Defendants respectfully request a protective order accordingly limiting the subpoena.

Date: April 6, 2022

Respectfully submitted.

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Attorney General of Texas

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First Assistant Attorney General

/s/ Patrick K. Sweeten  
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**COUNSEL FOR MOVANTS**

**CERTIFICATE OF CONFERENCE**

I certify that counsel for Defendants and the individual subpoena recipients conferred with counsel for the United States on two occasions regarding the subject of this motion. Counsel for the United States indicated it opposed any modification of the TLC subpoena, which confirms opposition to the relief sought here.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on April 6, 2022, and that all counsel of record were served by CM/ECF.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS, *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-00259  
[Lead Case]

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UNITED STATES OF AMERICA,

*Plaintiff,*

v.

STATE OF TEXAS, *et al.*,

*Defendants.*

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Case No. 3:21-cv-00299  
[Consolidated Case]

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**EXHIBIT A**

**COMPILATION OF UNITED STATES SUBPOENAS**

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lieutenant Governor Dan Patrick  
Office of the Lieutenant Governor, Texas Capitol, 1100 Congress Ave., Room 2E.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/07/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/04/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michelle Rupp

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON  
8th Floor, Washington, D.C. 20530 Email: michelle.rupp@usdoj.gov Phone: 202-305-0565

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lieutenant Governor Dan Patrick

Office of the Lieutenant Governor, Texas Capitol, 1100 Congress Ave., Room 2E.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/07/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/04/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michelle Rupp

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON  
8th Floor, Washington, D.C. 20530 Email: michelle.rupp@usdoj.gov Phone: 202-305-0565

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

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12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

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21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

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- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
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g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

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Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

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any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lieutenant Governor Dan Patrick

Office of the Lieutenant Governor, Texas Capitol, 1100 Congress Ave., Room 2E.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/07/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/04/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michelle Rupp

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON  
8th Floor, Washington, D.C. 20530 Email: michelle.rupp@usdoj.gov Phone: 202-305-0565

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

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**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lieutenant Governor Dan Patrick

Office of the Lieutenant Governor, Texas Capitol, 1100 Congress Ave., Room 2E.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/07/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/04/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michelle Rupp

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

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8th Floor, Washington, D.C. 20530 Email: michelle.rupp@usdoj.gov Phone: 202-305-0565

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This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
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 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

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FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
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v.

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Defendants.

Civil Action No. 3:21-cv-259  
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(consolidated cases)

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2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lieutenant Governor Dan Patrick  
Office of the Lieutenant Governor, Texas Capitol, 1100 Congress Ave., Room 2E.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/07/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/04/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michelle Rupp

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON  
8th Floor, Washington, D.C. 20530 Email: michelle.rupp@usdoj.gov Phone: 202-305-0565

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

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8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

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11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

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g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

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7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lieutenant Governor Dan Patrick  
Office of the Lieutenant Governor, Texas Capitol, 1100 Congress Ave., Room 2E.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/07/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/04/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michelle Rupp

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON  
8th Floor, Washington, D.C. 20530 Email: michelle.rupp@usdoj.gov Phone: 202-305-0565

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lieutenant Governor Dan Patrick

Office of the Lieutenant Governor, Texas Capitol, 1100 Congress Ave., Room 2E.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/07/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/04/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michelle Rupp

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON  
8th Floor, Washington, D.C. 20530 Email: michelle.rupp@usdoj.gov Phone: 202-305-0565

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

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**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

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**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

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**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

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**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

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7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Lieutenant Governor Dan Patrick  
Office of the Lieutenant Governor, Texas Capitol, 1100 Congress Ave., Room 2E.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/07/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/04/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michelle Rupp

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON  
8th Floor, Washington, D.C. 20530 Email: michelle.rupp@usdoj.gov Phone: 202-305-0565

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Print

Save As...

Add Attachment

Reset

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

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3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where: )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Adam Foltz  
1331 Okeeffe Ave, Apt 210, Sun Prairie, WI 53590

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/11/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/09/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

**DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where: )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Representative Andrew Murr

Texas Capitol Extension, 1100 Congress Ave., Room E1.308, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/11/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/09/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jasmin Lott

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Anna Mackin

Texas Capitol, Sam Houston Building, 1100 Congress Ave., Room SHB 450, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/11/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/09/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

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**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

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- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Sean Opperman

Texas Capitol, Sam Houston Building, 1100 Congress Ave., Room SHB 450, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/11/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/09/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jasmin Lott

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where: )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Representative Steve Allison

Texas Capitol Extension, 1100 Congress Ave., Room E1.512, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/11/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/09/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jasmin Lott

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
 \_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Representative Todd Hunter  
Texas Capitol, 1100 Congress Ave., Room 1W.5, Austin, TX 78701☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment APlace: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/11/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/09/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

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LEAGUE OF UNITED LATIN AMERICAN  
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2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

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- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Speaker Dade Phelan  
Texas Capitol, 1100 Congress Ave., Room 2W.13, Austin, TX 78701☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment APlace: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/17/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*The name, address, e-mail, and telephone number of the attorney representing *(name of party)* the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Jay Dyer  
Texas Capitol, 1100 Congress Ave., Room 2W.13, Austin, TX 78701☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment APlace: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/17/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Julia Rathgeber

Texas Capitol, 1100 Congress Ave., Room 2W.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/17/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jasmin Lott

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

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**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

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**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

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3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

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21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Mark Bell

Texas Capitol, 1100 Congress Ave., Room 2W.13, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/17/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jasmin Lott

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

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7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Angie Flores  
Texas Capitol, 1100 Congress Ave., Room 1W.5, Austin, TX 78701☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment APlace: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/18/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where: )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Representative Brooks Landgraf  
Texas Capitol Extension, 1100 Congress Ave., Room E1.324, Austin, TX 78701☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment APlace: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/18/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

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**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

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**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

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IN THE UNITED STATES DISTRICT COURT  
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LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

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2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

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19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Colleen Garcia

Texas Capitol Extension, 1100 Congress Ave., Room E2.158, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/18/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jasmin Lott

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where: )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Representative Jacey Jetton

Texas Capitol Extension, 1100 Congress Ave., Room E2.716, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/18/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jasmin Lott

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Senator Joan Huffman

Texas Capitol, 1100 Congress Ave., Room 1E.15, Austin, TX 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/21/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/18/2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Jasmin Lott

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

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**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

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**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

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16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Representative Jose Manuel Lozano, Jr.  
Texas Capitol, 1100 Congress Ave., Room 1W.4, Austin, TX 78701☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment APlace: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/30/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/28/2022

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*/s/ Jasmin Lott*Attorney's signature*The name, address, e-mail, and telephone number of the attorney representing *(name of party)* the United States of America, who issues or requests this subpoena, are:Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: [jasmin.lott@usdoj.gov](mailto:jasmin.lott@usdoj.gov) Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

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20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where: )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Representative Ken King  
Texas Capitol Extension, 1100 Congress Ave., Room E2.808, Austin, TX 78701☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment APlace: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/30/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/28/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.



2. “Legislator” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives” means a past or present elected member of the United States House of Representatives, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.



## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where: )

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Representative Ryan Guillen  
Texas Capitol, 1100 Congress Ave., Room 1W.3, Austin, TX 78701☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment APlace: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

04/04/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 03/04/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*The name, address, e-mail, and telephone number of the attorney representing *(name of party)* the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

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13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.



### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. the origination(s) or source(s) of any such redistricting proposal;
- b. the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. all drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. the pairing of any incumbents in any such redistricting proposal;
- e. any redistricting amendment, whether partial or total, to each such proposal;
- f. negotiations regarding any redistricting proposal; and

g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative

Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House,

any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

8. All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

9. All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS, *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-00259  
[Lead Case]

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UNITED STATES OF AMERICA,

*Plaintiff,*

v.

STATE OF TEXAS, *et al.*,

*Defendants.*

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Case No. 3:21-cv-00299  
[Consolidated Case]

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**EXHIBIT B  
COMPILATION OF OBJECTIONS**

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**LIEUTENANT GOVERNOR DAN PATRICK'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Lieutenant Governor Dan Patrick hereby  
serves Objections and Responses to the United States' Subpoena for Documents and Records.

Date: February 18, 2022

Respectfully submitted.

KEN PAXTON  
Attorney General of Texas

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
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**Counsel for Lieutenant Governor Dan Patrick**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Lieutenant Governor Patrick asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Lieutenant Governor Patrick. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Comm’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Lieutenant Governor Patrick objects to these requests to the extent that the information sought is either irrelevant or disproportionate.

Given Lieutenant Governor Patrick’s role as president of the Texas Senate, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Lieutenant Governor Patrick’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Lt. Gov. Patrick anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Lt. Gov. Patrick anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.



The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Lieutenant Governor Patrick reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Lieutenant Governor Patrick likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Lieutenant Governor Patrick objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Lieutenant Governor Patrick's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Lieutenant Governor Patrick reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Lieutenant Governor Patrick will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Lieutenant Governor Patrick objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Lieutenant Governor Patrick will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Lieutenant Governor Patrick objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Lieutenant Governor Patrick objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Lieutenant Governor objects to the implied application to any related persons or entities without specific enumeration.

Lieutenant Governor Patrick further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Lieutenant Governor Patrick objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Lieutenant Governor Patrick further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Lieutenant Governor directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Lieutenant Governor Patrick, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Lieutenant Governor Patrick objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Lieutenant Governor Patrick objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Lieutenant Governor Patrick also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Lieutenant Governor objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Lieutenant Governor Patrick objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Lieutenant Governor also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Lieutenant Governor objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills

comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and legislators and their staffs are privileged communications covered by the legislative privilege.

Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Lieutenant Governor objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Lieutenant Governor Patrick also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Lieutenant Governor, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Lieutenant Governor also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Lieutenant Governor and the many third



parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Lieutenant Governor objects to this request because it is overbroad. The request calls for "all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives," without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States' claims in this case.

The Lieutenant Governor also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning "presentations," "redistricting criteria," and "meeting minutes" go to the Lieutenant Governor's mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. See *Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign

committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Lieutenant Governor objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Lieutenant Governor Patrick also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Lieutenant Governor, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Lieutenant Governor also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Lieutenant Governor and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Lieutenant Governor objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Lieutenant Governor objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Lieutenant Governor Patrick is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Lieutenant Governor Patrick objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Lieutenant Governor and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Lieutenant Governor also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Lieutenant Governor objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Lieutenant Governor to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Lieutenant Governor also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.



Lieutenant Governor Patrick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**DARRELL DAVILA'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Darrell Davila hereby serves Objections and  
Responses to the United States' Subpoena for Documents and Records.

Date: February 18, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Darrell Davila**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Mr. Davila asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Mr. Davila. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Mr. Davila objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Mr. Davila’s role as Lieutenant Governor Dan Patrick’s chief of staff, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Mr. Davila’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Mr. Davila anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Mr. Davila anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Mr. Davila reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Mr. Davila likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Mr. Davila objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Mr. Davila's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Mr. Davila reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Mr. Davila will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Mr. Davila objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Mr. Davila will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Mr. Davila objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Mr. Davila objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Mr. Davila objects to the implied application to any related persons or entities without specific enumeration.

Mr. Davila further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Mr. Davila objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Mr. Davila further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Mr. Davila directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Mr. Davila, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable response deadline of March 7, 2022, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Mr. Davila objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Mr. Davila objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.



Mr. Davila also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable response deadline of March 7, 2022, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Mr. Davila objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Mr. Davila objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Mr. Davila also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable response deadline of March 7, 2022, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Mr. Davila objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.



Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Davila, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Mr. Davila objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Mr. Davila also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Davila, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Davila also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Mr. Davila and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable response deadline of March 7, 2022, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should

responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Mr. Davila objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Mr. Davila also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Mr. Davila’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable response deadline of March 7, 2022, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Davila, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Mr. Davila objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).

That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Mr. Davila also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Davila, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Davila also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Mr. Davila and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Davila objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable response deadline of March 7, 2022, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Mr. Davila objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Mr. Davila is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Mr. Davila objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Mr. Davila and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Mr. Davila also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable response deadline of March 7, 2022, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Mr. Davila objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Mr. Davila to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Mr. Davila also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Mr. Davila is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable response deadline of March 7, 2022, to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE GEANIE W. MORRISON'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Geanie W. Morrison hereby  
serves Objections and Responses to the United States' Subpoena for Documents and Records.

Date: February 18, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Geanie W. Morrison**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation



### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Morrison asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Morrison. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Morrison objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Morrison’s role as a member of the Texas House Representative, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Morrison’s “thought processes or the communications [she] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Morrison anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Morrison anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Morrison reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Morrison likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Morrison objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Morrison's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Morrison reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Morrison will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Morrison objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Representative Morrison will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>



## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Morrison objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Morrison objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Morrison further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Morrison objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Morrison further objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Morrison, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Morrison objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Morrison objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Morrison also objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Morrison objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills

comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Morrison also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist,



any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Morrison also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all

documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Morrison is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Morrison objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative Morrison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified

pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.



IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE JOHN LUJAN'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative John Lujan hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: February 18, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative John Lujan**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Lujan asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Lujan. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Lujan objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Lujan’s role as a member of the Texas House Representative, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Lujan’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Lujan anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Lujan anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Lujan reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Lujan likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Lujan objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Lujan's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Lujan reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Lujan will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Lujan objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Representative Lujan will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Lujan objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Lujan objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Lujan further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Lujan objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Lujan further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Lujan, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Lujan objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Lujan objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.



Representative Lujan also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Lujan objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills

comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Lujan also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.



Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist,

any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Lujan also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all

documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Lujan is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Lujan objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative Lujan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified

pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**KOY KUNKEL'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Koy Kunkel hereby serves Objections and  
Responses to the United States' Subpoena for Documents and Records.

Date: February 18, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Koy Kunkel**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Mr. Kunkel asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Mr. Kunkel. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Mr. Kunkel objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Mr. Kunkel’s former role as committee clerk of the Special Senate Redistricting Committee, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Mr. Kunkel’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Mr. Kunkel anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Mr. Kunkel anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document



or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Mr. Kunkel reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Mr. Kunkel likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Mr. Kunkel objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Mr. Kunkel's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Mr. Kunkel reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Mr. Kunkel will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Mr. Kunkel objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Mr. Kunkel will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>



### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Mr. Kunkel objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Mr. Kunkel objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Mr. Kunkel objects to the implied application to any related persons or entities without specific enumeration.

Mr. Kunkel further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Mr. Kunkel objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Mr. Kunkel further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Mr. Kunkel directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Mr. Kunkel, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Mr. Kunkel objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Mr. Kunkel objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Mr. Kunkel also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Mr. Kunkel objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Mr. Kunkel objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Mr. Kunkel also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Mr. Kunkel objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Kunkel, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Mr. Kunkel objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Mr. Kunkel also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Kunkel, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Kunkel also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Mr. Kunkel and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should

responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Mr. Kunkel objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Mr. Kunkel also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Mr. Kunkel’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Kunkel, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Mr. Kunkel objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).



That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Mr. Kunkel also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Kunkel, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Kunkel also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Mr. Kunkel and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Kunkel objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Mr. Kunkel objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Mr. Kunkel is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Mr. Kunkel objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Mr. Kunkel and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Mr. Kunkel also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Mr. Kunkel objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Mr. Kunkel to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Mr. Kunkel also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Mr. Kunkel is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**MOLLY SPRATT'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Molly Spratt hereby serves Objections and  
Responses to the United States' Subpoena for Documents and Records.

Date: February 18, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Molly Spratt**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Ms. Spratt asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Ms. Spratt. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Ms. Spratt objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Ms. Spratt’s former role as chief of staff to Senator Joan Huffman, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Ms. Spratt’s “thought processes or the communications [she] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Ms. Spratt anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Ms. Spratt anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Ms. Spratt reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Ms. Spratt likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Ms. Spratt objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Ms. Spratt's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Ms. Spratt reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Ms. Spratt will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Ms. Spratt objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Ms. Spratt will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Ms. Spratt objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Ms. Spratt objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Ms. Spratt objects to the implied application to any related persons or entities without specific enumeration.

Ms. Spratt further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Ms. Spratt objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Ms. Spratt further objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Ms. Spratt directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Ms. Spratt, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Ms. Spratt objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Ms. Spratt objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Spratt also objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Ms. Spratt objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Ms. Spratt objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Spratt also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Ms. Spratt objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.



Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Spratt, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Ms. Spratt objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Ms. Spratt also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Spratt, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Spratt also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Ms. Spratt and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should

responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Ms. Spratt objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Ms. Spratt also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Ms. Spratt’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Spratt, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Ms. Spratt objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).



That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Ms. Spratt also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Spratt, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Spratt also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Ms. Spratt and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Spratt objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Ms. Spratt objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Ms. Spratt is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Ms. Spratt objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Ms. Spratt and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Ms. Spratt also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Ms. Spratt objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Ms. Spratt to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Ms. Spratt also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Ms. Spratt is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE PHILIP CORTEZ'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Philip Cortez hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: February 18, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Philip Cortez**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Cortez asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Cortez. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Cortez objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Cortez’s role as a member of the Texas House Representative, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Cortez’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Cortez anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Cortez anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Cortez reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Cortez likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Cortez objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Cortez's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Cortez reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Cortez will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Cortez objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Representative Cortez will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>



## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Cortez objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Cortez objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Cortez further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Cortez objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Cortez further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Cortez, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Cortez objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Cortez objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.



Representative Cortez also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Cortez objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills

comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Cortez also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist,

any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Cortez also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all

documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Cortez is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Cortez objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative Cortez is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified

pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.



IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE TOM CRADDICK'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Tom Craddick hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: February 18, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Tom Craddick**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation



### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Craddick asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Craddick. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Craddick objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Craddick’s role as a member of the Texas House Representative, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Craddick’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Craddick anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Craddick anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Craddick reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Craddick likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Craddick objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Craddick's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Craddick reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Craddick will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Craddick objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Representative Craddick will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Craddick objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Craddick objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Craddick further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Craddick objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Craddick further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Craddick, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Craddick objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Craddick objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Craddick also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Craddick objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills



comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Craddick also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist,

any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Craddick also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all



documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Craddick is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Craddick objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative Craddick is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified

pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**ADAM FOLTZ'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Adam Foltz hereby serves Objections and  
Responses to the United States' Subpoena for Documents and Records.

Date: February 23, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Adam Foltz**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Mr. Foltz asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Mr. Foltz. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Mr. Foltz objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Mr. Foltz’s employment by the House Redistricting Committee, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Mr. Foltz’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Mr. Foltz anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Mr. Foltz anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Mr. Foltz reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Mr. Foltz likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Mr. Foltz objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Mr. Foltz's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Mr. Foltz reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Mr. Foltz will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Mr. Foltz objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Mr. Foltz will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Mr. Foltz objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Mr. Foltz objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Mr. Foltz objects to the implied application to any related persons or entities without specific enumeration.

Mr. Foltz further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish



Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Mr. Foltz objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Mr. Foltz further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Mr. Foltz directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Mr. Foltz, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Mr. Foltz objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Mr. Foltz objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.



Mr. Foltz also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Mr. Foltz objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Mr. Foltz objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Mr. Foltz also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Mr. Foltz objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Foltz, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Mr. Foltz objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Mr. Foltz also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Foltz, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Foltz also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Mr. Foltz and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should

responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Mr. Foltz objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Mr. Foltz also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Mr. Foltz’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Foltz, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Mr. Foltz objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).

That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Mr. Foltz also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Foltz, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Foltz also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Mr. Foltz and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Foltz objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Mr. Foltz objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Mr. Foltz is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Mr. Foltz objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Mr. Foltz and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Mr. Foltz also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Mr. Foltz objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Mr. Foltz to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Mr. Foltz also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Mr. Foltz is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE ANDREW MURR'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Andrew Murr hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: February 23, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Andrew Murr**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Murr asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Murr. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Murr objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Murr’s role as a member of the Texas House Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Murr’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Murr anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Murr anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document



or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Murr reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Murr likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Murr objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Murr's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Murr reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Murr will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Murr objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Representative Murr will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Murr objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Murr objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Murr further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Murr objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Murr further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Murr, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Murr objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Murr objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Murr also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Murr objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills

comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Murr also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.



Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist,

any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Murr also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all

documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Murr is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Murr objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative Murr is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified



pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**ANNA MACKIN'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Anna Mackin hereby serves Objections and  
Responses to the United States' Subpoena for Documents and Records.

Date: February 23, 2022

Respectfully submitted.

KEN PAXTON  
Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Anna Mackin**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Ms. Mackin asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Ms. Mackin. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Ms. Mackin objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Ms. Mackin’s former role as special counsel to the Senate Redistricting Special Committee, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Ms. Mackin’s “thought processes or the communications [she] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Ms. Mackin anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Ms. Mackin anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Ms. Mackin reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Ms. Mackin likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Ms. Mackin objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Ms. Mackin's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Ms. Mackin reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Ms. Mackin will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Ms. Mackin objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Ms. Mackin will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Ms. Mackin objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Ms. Mackin objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Ms. Mackin objects to the implied application to any related persons or entities without specific enumeration.

Ms. Mackin further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Ms. Mackin objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Ms. Mackin further objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Ms. Mackin directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Ms. Mackin, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Ms. Mackin objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Ms. Mackin objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.



Ms. Mackin also objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Ms. Mackin objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Ms. Mackin objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Mackin also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Ms. Mackin objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.



Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Mackin, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Ms. Mackin objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Ms. Mackin also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Mackin, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Mackin also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Ms. Mackin and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should

responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Ms. Mackin objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Ms. Mackin also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Ms. Mackin’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Mackin, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Ms. Mackin objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).

That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Ms. Mackin also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Mackin, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Mackin also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Ms. Mackin and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Mackin objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Ms. Mackin objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Ms. Mackin is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Ms. Mackin objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Ms. Mackin and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Ms. Mackin also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Ms. Mackin objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Ms. Mackin to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Ms. Mackin also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Ms. Mackin is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**SEAN OPPERMAN'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Sean Opperman hereby serves Objections  
and Responses to the United States' Subpoena for Documents and Records.

Date: February 23, 2022

Respectfully submitted.

KEN PAXTON  
Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Sean Opperman**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation



### **OBJECTIONS RELEVANT TO EACH REQUEST**

Mr. Opperman asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Mr. Opperman. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Mr. Opperman objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Mr. Opperman’s role as chief of staff to Senator Joan Huffman, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Mr. Opperman’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Mr. Opperman anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Mr. Opperman anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Mr. Opperman reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Mr. Opperman likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Mr. Opperman objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Mr. Opperman's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Mr. Opperman reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Mr. Opperman will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Mr. Opperman objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Mr. Opperman will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>



### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Mr. Opperman objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Mr. Opperman objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Mr. Opperman objects to the implied application to any related persons or entities without specific enumeration.

Mr. Opperman further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Mr. Opperman objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Mr. Opperman further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Mr. Opperman directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Mr. Opperman, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Mr. Opperman objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Mr. Opperman objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Mr. Opperman also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Mr. Opperman objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Mr. Opperman objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Mr. Opperman also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Mr. Opperman objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Opperman, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Mr. Opperman objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Mr. Opperman also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Opperman, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Opperman also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Mr. Opperman and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should

responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Mr. Opperman objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Mr. Opperman also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Mr. Opperman’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Opperman, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Mr. Opperman objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).



That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Mr. Opperman also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Opperman, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Opperman also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Mr. Opperman and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Opperman objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Mr. Opperman objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Mr. Opperman is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Mr. Opperman objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Mr. Opperman and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Mr. Opperman also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Mr. Opperman objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Mr. Opperman to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Mr. Opperman also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Mr. Opperman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE STEVE ALLISON'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Steve Allison hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: February 23, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Steve Allison**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Allison asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Allison. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Allison objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Allison’s role as a member of the Texas House Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Allison’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Allison anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Allison anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Allison reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Allison likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Allison objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Allison's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Allison reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Allison will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Allison objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Representative Allison will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Allison objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Allison objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Allison further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Allison objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Allison further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Allison, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Allison objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Allison objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Allison also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Allison objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills



comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Allison also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist,



any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Allison also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all

documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Allison is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Allison objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative Allison is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified

pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE TODD HUNTER'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Todd Hunter hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: February 23, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Todd Hunter**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Hunter asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Hunter. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Hunter objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Hunter’s role as a member of the Texas House Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Hunter’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Hunter anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Hunter anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Hunter reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Hunter likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Hunter objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Hunter's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Hunter reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Hunter will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Hunter objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Representative Hunter will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>



## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Hunter objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Hunter objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Hunter further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish



Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Hunter objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Hunter further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Hunter, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Hunter objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Hunter objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Hunter also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Hunter objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills

comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Hunter also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist,

any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Hunter also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all



documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Hunter is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Hunter objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not contend an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative Hunter is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified

pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**SPEAKER OF THE HOUSE DADE PHELAN'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Speaker of the House Dade Phelan hereby  
serves Objections and Responses to the United States' Subpoena for Documents and Records.

Date: March 3, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Speaker of the House Dade Phelan**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Speaker Phelan asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Speaker Phelan. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Speaker Phelan objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Speaker Phelan’s role as the Speaker of the Texas House of Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Speaker Phelan’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Speaker Phelan anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Speaker Phelan anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Speaker Phelan reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Speaker Phelan likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Speaker Phelan objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

The Speaker objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Speaker Phelan's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Speaker Phelan reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Speaker Phelan will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Speaker Phelan objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Speaker Phelan will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Speaker Phelan objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Speaker Phelan objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Speaker objects to the implied application to any related persons or entities without specific enumeration.

Speaker Phelan further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2)

existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Speaker Phelan objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Speaker Phelan further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Speaker directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Speaker Phelan, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Speaker Phelan objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Speaker Phelan objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Speaker Phelan also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Speaker objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Speaker Phelan objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Speaker also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Speaker objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.



Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Speaker, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Speaker objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Speaker Phelan also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Speaker, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Speaker also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Speaker and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should

responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Speaker objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Speaker also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Speaker’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Speaker, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Speaker objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).



That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Speaker Phelan also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Speaker, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Speaker also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Speaker and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Speaker objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Speaker objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Speaker Phelan is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Speaker Phelan objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Speaker and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Speaker also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Speaker objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Speaker to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Speaker also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Speaker Phelan is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**JAY DYER'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Jay Dyer hereby serves Objections and  
Responses to the United States' Subpoena for Documents and Records.

Date: March 3, 2022

Respectfully submitted.

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Attorney General of Texas

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**Counsel for Jay Dyer**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Mr. Dyer asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Mr. Dyer. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Mr. Dyer objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Mr. Dyer’s role as deputy chief of staff to Speaker of the House Dade Phelan, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. See *Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Mr. Dyer’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Mr. Dyer anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Mr. Dyer anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Mr. Dyer reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Mr. Dyer likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Mr. Dyer objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

Mr. Dyer objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Mr. Dyer's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Mr. Dyer reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Mr. Dyer will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Mr. Dyer objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Mr. Dyer will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>



## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Mr. Dyer objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Mr. Dyer objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Mr. Dyer objects to the implied application to any related persons or entities without specific enumeration.

Mr. Dyer further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Mr. Dyer objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Mr. Dyer further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Mr. Dyer directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Mr. Dyer, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Mr. Dyer objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Mr. Dyer objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.



Mr. Dyer also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Mr. Dyer objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Mr. Dyer objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Mr. Dyer also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Mr. Dyer objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Dyer, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Mr. Dyer objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Mr. Dyer also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Dyer, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Dyer also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Mr. Dyer and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should

responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Mr. Dyer objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Mr. Dyer also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Mr. Dyer’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Dyer, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Mr. Dyer objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).

That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Mr. Dyer also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Dyer, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Dyer also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Mr. Dyer and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Dyer objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Mr. Dyer objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Mr. Dyer is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Mr. Dyer objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Mr. Dyer and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Mr. Dyer also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Mr. Dyer objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Mr. Dyer to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Mr. Dyer also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Mr. Dyer is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**JULIA RATHGEBER'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Julia Rathgeber hereby serves Objections  
and Responses to the United States' Subpoena for Documents and Records.

Date: March 3, 2022

Respectfully submitted.

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Attorney General of Texas

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**Counsel for Julia Rathgeber**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Ms. Rathgeber asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Ms. Rathgeber. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Ms. Rathgeber objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Ms. Rathgeber’s role as former deputy chief of staff to Speaker of the House Dade Phelan, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Ms. Rathgeber’s “thought processes or the communications [she] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Ms. Rathgeber anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Ms. Rathgeber anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document



or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Ms. Rathgeber reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Ms. Rathgeber likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Ms. Rathgeber objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

Ms. Rathgeber objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Ms. Rathgeber's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Ms. Rathgeber reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Ms. Rathgeber will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Ms. Rathgeber objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Ms. Rathgeber will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Ms. Rathgeber objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Ms. Rathgeber objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Ms. Rathgeber objects to the implied application to any related persons or entities without specific enumeration.

Ms. Rathgeber further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Ms. Rathgeber objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Ms. Rathgeber further objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Ms. Rathgeber directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Ms. Rathgeber, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Ms. Rathgeber objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Ms. Rathgeber objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Rathgeber also objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Ms. Rathgeber objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Ms. Rathgeber objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Rathgeber also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Ms. Rathgeber objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Rathgeber, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Ms. Rathgeber objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Ms. Rathgeber also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Rathgeber, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Rathgeber also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Ms. Rathgeber and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should



responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Ms. Rathgeber objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Ms. Rathgeber also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Ms. Rathgeber’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Rathgeber, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Ms. Rathgeber objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).

That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Ms. Rathgeber also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Rathgeber, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Rathgeber also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Ms. Rathgeber and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Rathgeber objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Ms. Rathgeber objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Ms. Rathgeber is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Ms. Rathgeber objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Ms. Rathgeber and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Ms. Rathgeber also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Ms. Rathgeber objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Ms. Rathgeber to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Ms. Rathgeber also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Ms. Rathgeber is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.



**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**MARK BELL'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Mark Bell hereby serves Objections and  
Responses to the United States' Subpoena for Documents and Records.

Date: March 3, 2022

Respectfully submitted.

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Attorney General of Texas

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**Counsel for Mark Bell**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Mr. Bell asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Mr. Bell. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Mr. Bell objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Mr. Bell’s role as former deputy chief of staff to Speaker of the House Dade Phelan, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Mr. Bell’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Mr. Bell anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Mr. Bell anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Mr. Bell reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Mr. Bell likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Mr. Bell objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

Mr. Bell objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Mr. Bell's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Mr. Bell reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Mr. Bell will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Mr. Bell objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Mr. Bell will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Mr. Bell objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Mr. Bell objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Mr. Bell objects to the implied application to any related persons or entities without specific enumeration.

Mr. Bell further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Mr. Bell objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Mr. Bell further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Mr. Bell directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Mr. Bell, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Mr. Bell objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Mr. Bell objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.



Mr. Bell also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Mr. Bell objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Mr. Bell objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Mr. Bell also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Mr. Bell objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Bell, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Mr. Bell objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Mr. Bell also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Bell, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Bell also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Mr. Bell and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should



responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Mr. Bell objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Mr. Bell also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Mr. Bell’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Mr. Bell, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Mr. Bell objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients).

That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States' claims in this case.

Mr. Bell also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Mr. Bell, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that "officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions." *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Mr. Bell also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Mr. Bell and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Mr. Bell objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Mr. Bell objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to "any other attorney," "any other vendor," or "any other person or entity." The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for "all documents" that "[relate] to redistricting" and that include "any other person or entity." Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Mr. Bell is not a party to this litigation, and should not be required to produce, for example, "all documents" that "[relate] to redistricting" that include "any political operative." Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Mr. Bell objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Mr. Bell and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Mr. Bell also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Mr. Bell objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Mr. Bell to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Mr. Bell also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Mr. Bell is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**ANGIE FLORES'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Angie Flores hereby serves Objections and  
Responses to the United States' Subpoena for Documents and Records.

Date: March 4, 2022

Respectfully submitted.

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Attorney General of Texas

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**Counsel for Angie Flores**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Ms. Flores asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Ms. Flores. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Ms. Flores objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Ms. Flores’s role as chief of staff to Representative Todd Hunter, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Ms. Flores’s “thought processes or the communications [she] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Ms. Flores anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Ms. Flores anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document



or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Ms. Flores reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Ms. Flores likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Ms. Flores objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

Ms. Flores objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Ms. Flores's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Ms. Flores reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Ms. Flores will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Ms. Flores objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Ms. Flores will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Ms. Flores objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Ms. Flores objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Ms. Flores objects to the implied application to any related persons or entities without specific enumeration.

Ms. Flores further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and



- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Ms. Flores objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Ms. Flores further objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Ms. Flores directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Ms. Flores, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Ms. Flores objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Ms. Flores objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or

protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Flores also objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Ms. Flores objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Ms. Flores objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Flores also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Ms. Flores objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with

the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Flores, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Ms. Flores objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Ms. Flores also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Flores, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Flores also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Ms. Flores and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Ms. Flores objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Ms. Flores also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Ms. Flores’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Flores, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Ms. Flores objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Ms. Flores also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Flores, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Flores also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Ms. Flores and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Flores objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Ms. Flores objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Ms. Flores is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that



include “any political operative.” Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Ms. Flores objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Ms. Flores and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Ms. Flores also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Ms. Flores objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Ms. Flores to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Ms. Flores also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Ms. Flores is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE BROOKS LANDGRAF'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Brooks Landgraf hereby  
serves Objections and Responses to the United States' Subpoena for Documents and Records.

Date: March 4, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Brooks Landgraf**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation



### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Landgraf asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Landgraf. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Landgraf objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Landgraf’s role as a member of the Texas House Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Landgraf’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Landgraf anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Landgraf anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Landgraf reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Landgraf likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Landgraf objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

The Representative objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Landgraf's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Landgraf reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Landgraf will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Landgraf objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Representative Landgraf will answer the Requests to the

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Landgraf objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Landgraf objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Landgraf further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;

- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Landgraf objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Landgraf further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Landgraf, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Landgraf objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Landgraf objects to this request to the extent

that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Landgraf also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Landgraf objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.



**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Landgraf also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for "all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives," without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States' claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning "presentations," "redistricting criteria," and "meeting minutes" go to the Representative's mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S.

House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Landgraf also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.



**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Landgraf is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Landgraf objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative Landgraf is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**COLLEEN GARCIA'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Colleen Garcia hereby serves Objections  
and Responses to the United States' Subpoena for Documents and Records.

Date: March 4, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Colleen Garcia**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Ms. Garcia asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Ms. Garcia. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Ms. Garcia objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Ms. Garcia’s former role as general counsel and committee clerk to the Texas House Redistricting Committee, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Ms. Garcia’s “thought processes or the communications [she] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Ms. Garcia anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Ms. Garcia anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Ms. Garcia reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Ms. Garcia likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Ms. Garcia objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

Ms. Garcia objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Ms. Garcia's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Ms. Garcia reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Ms. Garcia will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Ms. Garcia objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Ms. Garcia will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Ms. Garcia objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Ms. Garcia objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. Ms. Garcia objects to the implied application to any related persons or entities without specific enumeration.

Ms. Garcia further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and



- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Ms. Garcia objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Ms. Garcia further objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, Ms. Garcia directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Ms. Garcia, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Ms. Garcia objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Ms. Garcia objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or



protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Garcia also objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, Ms. Garcia objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Ms. Garcia objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Ms. Garcia also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Ms. Garcia objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with

the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Garcia, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** Ms. Garcia objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Ms. Garcia also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Garcia, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Garcia also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between Ms. Garcia and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** Ms. Garcia objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

Ms. Garcia also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to Ms. Garcia’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators and their staff about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of Ms. Garcia, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** Ms. Garcia objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Ms. Garcia also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators and their staff, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of Ms. Garcia, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

Ms. Garcia also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between Ms. Garcia and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Ms. Garcia objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** Ms. Garcia objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Ms. Garcia is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that

include “any political operative.” Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Ms. Garcia objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to Ms. Garcia and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

Ms. Garcia also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** Ms. Garcia objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring Ms. Garcia to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

Ms. Garcia also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Ms. Garcia is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE JACEY JETTON'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Jacey Jetton hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: March 4, 2022

Respectfully submitted.

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Attorney General of Texas

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**Counsel for Representative Jacey Jetton**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Jetton asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Jetton. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Jetton objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Jetton’s role as a member of the Texas House Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Jetton’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Jetton anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Jetton anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document



or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Jetton reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Jetton likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Jetton objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

The Representative objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Jetton's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Jetton reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Jetton will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Jetton objects to and will refrain from extending or modifying any words employed in the Requests to comport with any

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

expanded definitions or instructions. Representative Jetton will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Jetton objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Jetton objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Jetton further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;

- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Jetton objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Jetton further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Jetton, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Jetton objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Jetton objects to this request to the extent that documents

that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Jetton also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Jetton objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Jetton also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).



The Representative also objects to this request because it calls for documents that are irrelevant to the United States' claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for "all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives," without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States' claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning "presentations," "redistricting criteria," and "meeting minutes" go to the Representative's mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are "legislative acts" protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S.

House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Jetton also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Jetton is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Jetton objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.



Representative Jetton is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**SENATOR JOAN HUFFMAN'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email:  
michelle.rupp@usdoj.gov Phone: 202-305-0565

Pursuant to the Federal Rules of Civil Procedure, Senator Joan Huffman hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: March 4, 2022

Respectfully submitted.

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Attorney General of Texas

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**Counsel for Senator Joan Huffman**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 4, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Senator Huffman asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Senator Huffman. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Senator Huffman objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Senator Huffman’s role as Chair of the Special Senate Committee on Redistricting, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Senator Huffman’s “thought processes or the communications [she] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Senator Huffman anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Senator Huffman anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Senator Huffman reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Senator Huffman likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Senator Huffman objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

Senator Huffman objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Senator Huffman's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Senator Huffman reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Senator Huffman will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Senator Huffman objects to and will refrain from extending or modifying any words employed in the Requests to comport with any expanded definitions or instructions. Senator Huffman will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

## **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Senator Huffman objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Senator Huffman objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Senator objects to the implied application to any related persons or entities without specific enumeration.

Senator Huffman further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

## **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish

Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Senator Huffman objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Senator Huffman further objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, The Senator directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Senator Huffman, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Senator Huffman objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Senator Huffman objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.



Senator Huffman also objects to this request because it asks her to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. *See* <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, The Senator objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Senator Huffman objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Senator also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Senator objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with



the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Senator objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Senator Huffman also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Senator also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to redistricting exchanged between The Senator and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Senator objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States’ claims in this case.

The Senator also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative’s mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist,

any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Senator objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Senator Huffman also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Senator also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between The Senator and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Senator objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Senator objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents”

that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Senator Huffman is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Senator Huffman objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to The Senator and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Senator also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Senator objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring The Senator to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Senator also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Senator Huffman is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified

pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE J.M. LOZANO'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530; michelle.rupp@usdoj.  
gov; (202) 305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative J.M. Lozano hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: March 14, 2022

Respectfully submitted.

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Attorney General of Texas

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**Counsel for Representative J.M. Lozano**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 14, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation



### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Lozano asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Lozano. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Lozano objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Lozano’s role as a member of the Texas House Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Lozano’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Lozano anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Lozano anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document



or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Lozano reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Lozano likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Lozano objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

The Representative objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Lozano's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Lozano reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Lozano will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Lozano objects to and will refrain from extending or modifying any words employed in the Requests to comport with

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

any expanded definitions or instructions. Representative Lozano will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Lozano objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Lozano objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Lozano further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and

- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Lozano objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Lozano further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Lozano, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Lozano objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Lozano objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege,

deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Lozano also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Lozano objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Lozano also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents



relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States' claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative's mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any

local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Lozano also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Lozano is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Lozano objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.



Representative Lozano is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE KEN KING'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530; michelle.rupp@usdoj.  
gov; (202) 305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Ken King hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: March 14, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Ken King**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 14, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten  
PATRICK K. SWEETEN  
Deputy Attorney General for Special Litigation

### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative King asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative King. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative King objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative King’s role as a member of the Texas House Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative King’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative King anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative King anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document

or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative King reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative King likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative King objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

The Representative objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative King's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative King reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative King will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative King objects to and will refrain from extending or modifying any words employed in the Requests to comport with any

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

expanded definitions or instructions. Representative King will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative King objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative King objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative King further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and

- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative King objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative King further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative King, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative King objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative King objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process



privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative King also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative King objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.



**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative King also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents

relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States' claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative's mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any

local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative King also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative King is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wima v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative King objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.

Representative King is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-259-DCG-JES-JVB  
(Consolidated Cases)

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**REPRESENTATIVE RYAN GUILLEN'S OBJECTIONS AND RESPONSES TO  
THE UNITED STATES' SUBPOENA FOR DOCUMENTS AND RECORDS**

TO: Michelle Rupp, U.S. Department of Justice, Civil Rights Division, Voting Section, 950  
Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530; michelle.rupp@usdoj.  
gov; (202) 305-0565

Pursuant to the Federal Rules of Civil Procedure, Representative Ryan Guillen hereby serves  
Objections and Responses to the United States' Subpoena for Documents and Records.

Date: March 18, 2022

Respectfully submitted.

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Attorney General of Texas

/s/ Patrick K. Sweeten  
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**Counsel for Representative Ryan Guillen**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2022, the attached Objections and Responses to the United States' Subpoena for Documents and Records was served on opposing counsel via electronic mail.

/s/ Patrick K. Sweeten

PATRICK K. SWEETEN

Deputy Attorney General for Special Litigation



### **OBJECTIONS RELEVANT TO EACH REQUEST**

Representative Guillen asserts that each of the following objections applies specifically to each request below. In the interest of brevity, these objections are offered here to avoid unnecessary repetition of objections to definitions, scope, and similar issues that afflict each request. These objections are as follows:

There is currently no protective order in place between the United States Department of Justice (“DOJ”) and Representative Guillen. To the extent that documents may be identified that are discoverable but require additional protections to prevent public disclosure, any such documents that are identified will be withheld and described in the responses, with the clarification that such production will first require entry of a protective order before the documents may be disclosed.

The Federal Rules provide that the “attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” Fed. R. Civ. P. 45(d)(1). While nonparty subpoenas are governed by Rule 45, they are also subject to the parameters established by Rule 26. *Camoco, LLC v. Leyva*, 333 F.R.D. 603, 607 (W.D. Tex. 2019) (“As with any other forms of discovery, the scope of discovery through a Rule 45 subpoena is governed by Rule 26(b).”). Therefore, the discovery sought here is still limited to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1).

The twin demands for relevancy and proportionality “are related but distinct requirements.” *Samsung Electronics Am., Inc. v. Chung*, 321 F.R.D. 250, 279 (N.D. Tex. 2017). Thus, if the information sought is irrelevant to the party’s claims or defenses, “it is not necessary to determine whether it would be proportional if it *were* relevant.” *Walker v. Pioneer Prod. Servs., Inc.*, No. CV 15-0645, 2016 WL 1244510, at \*3 (E.D. La. Mar. 30, 2016). Conversely, “relevance alone does not translate into automatic discoverability” because “[a]n assessment of proportionality is essential.” *Motorola Sols., Inc. v. Hytera Commc’ns Corp.*, 365 F. Supp. 3d 916, 924 (N.D. Ill. 2019). Accordingly, Representative Guillen objects to these requests to the extent that the information sought is irrelevant or disproportionate.

Given Representative Guillen’s role as a member of the Texas House Representatives, and that the requested production directly relates to legislative activities, much of the requested production is subject to legislative privilege. That privilege traces its roots to before the founding of the Republic, as it has “taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.” *Tenney v. Brandhove*, 341 U.S. 372 (1951). The privilege protects not only legislators, but their staff and aides as well. *See Gravel v. United States*, 408 U.S. 606, 615-16 (1972). Here, DOJ’s attempt to compel disclosure of Representative Guillen’s “thought processes or the communications [he] had with other legislators” falls squarely within the well-established contours of legislative privilege. *Perez v. Abbott*, No. 5:11-cv-360, 2014 WL 3495414 (W.D. Tex. July 11, 2014). Additional privileges, including but not limited to, attorney-client privilege, the attorney work product doctrine, and deliberative process may also be implicated by DOJ’s requests, and Representative Guillen anticipates asserting all applicable privileges implicated by the DOJ’s requests. To the extent that documents responsive to DOJ’s requests, Representative Guillen anticipates withholding the materials, preparing a log that complies with the Federal Rules of Civil Procedure, and producing that log within a reasonable time.

The inadvertent production or disclosure of any privileged documents or information shall not constitute or be deemed to be a waiver of any applicable privilege with respect to such document



or information (or the contents or subject matter thereof) or with respect to any other such document or discovery now or hereafter requested or provided. Representative Guillen reserves the right not to produce documents that are in part protected by privilege, except on a redacted basis, and to require the return of any document (and all copies thereof) inadvertently produced. Representative Guillen likewise does not waive the right to object, on any and all grounds, to (1) the evidentiary use of documents produced in response to these requests; and (2) discovery requests relating to those documents.

A portion of the requested production is also irrelevant to DOJ's claims and is thus identified individually below. But a much larger portion of the request is not proportional to the needs of the case. The proportionality language was inserted into Rule 26(b) in 2015 "to emphasize the need for proportionality," *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017), and "highlight[] its significance," *Mannina v. D.C.*, 334 F.R.D. 336, 339 n.4 (D.D.C. 2020); *see also* Chief Justice John Roberts, 2015 Year-End Report on the Federal Judiciary at 6, Supreme Court of the United States,<sup>1</sup> ("Rule 26(b)(1) crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality[.]"). As the Advisory Committee explained, this addition of overt "proportional" language was meant to better reflect the intent of the 1983 amendments, which were designed "to deal with the problem of over-discovery." Fed. R. Civ. P. 26(b) advisory committee's note (2015) (quoting the 1983 advisory notes). However, this "clear focus of the 1983 provisions may have been softened, although inadvertently, by the amendments made in 1993." *Id.* Thus, the 2015 amendment sought to "restore[] the proportionality factors to their original place in defining the scope of discovery" and reinforce the parties' obligation "to consider these factors in making discovery requests, responses, or objections." *Id.* As fully restored, the proportionality requirement "relieves parties from the burden of taking unreasonable steps to ferret out every relevant document." *Virginia Dep't of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 672 (2019). Accordingly, Representative Guillen objects to the DOJ's subpoena to the extent that it falls short of this more stringent proportionality standard.

The Representative objects to the production of any documents or communications created after October 25, 2021 because any documents created after the passage of HB1 and SB6 are irrelevant to the United States' claims.

These responses and objections are made without waiving any further objections to, or admitting the relevancy or materiality of, any of the information or documents requested. All answers are given without prejudice to Representative Guillen's right to object to the discovery of any documents, facts, or information discovered after the date hereof. Likewise, these responses and objections are not intended to be, and shall not be construed as, agreement with the DOJ's characterization of any facts, circumstances, or legal obligations. Representative Guillen reserves the right to contest any such characterization as inaccurate and object to the Requests insofar as they contain any express or implied assumptions of fact or law concerning matters at issue in this litigation.

Representative Guillen will provide responses based on terms as they are commonly understood and consistent with the Federal Rules of Civil Procedure. Representative Guillen objects to and will refrain from extending or modifying any words employed in the Requests to comport with

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<sup>1</sup> <https://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf>

any expanded definitions or instructions. Representative Guillen will answer the Requests to the extent required by the Federal Rules of Civil Procedure and the Local Rules of the Western District of Texas.

### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

Representative Guillen objects to the definition of “document” to the extent that it calls for documents protected from disclosure by legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or any other applicable privilege.

Representative Guillen objects to the definitions of “Legislator,” “Member of the U.S. House of Representatives,” “individual person,” “entity,” and “organization,” *see* ¶¶ 2–3, 9–10 because they are overbroad and inaccurate. They improperly group all persons and entities having any relation to a particular person or entity, when in fact the particular person or entity is independent of those related persons or entities. The Representative objects to the implied application to any related persons or entities without specific enumeration.

Representative Guillen further objects to the time period in Instruction 21, which defines the relevant time period for these responses as beginning on January 1, 2019. The claims and issues in this litigation pertain to redistricted maps that were drawn based upon data received from the United States Census Bureau in the late summer of 2021 and finalized in the fall of 2021. Accordingly, it is unreasonable and disproportionate to the needs of this case to look back to January of 2019 for documents responsive to these requests.

### **RESPONSES**

**Document Request 1.** All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal drawn, discussed, or considered. This request includes but is not limited to:

- a. The origination(s) or source(s) of any such redistricting proposal;
- b. The impetus, rationale, background, or motivation for any such redistricting proposal;
- c. All drafts in the development or revision of any such redistricting proposal, including but not limited to shapefiles, files or datasets used in mapping software, each RED report, each PAR report, demographic data (including but not limited to Citizen Voting Age Population, herpanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, herpanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to reconstituted election analyses), and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, Spanish Surname Voter Registration, voter affiliation, Spanish Surname Voter Turnout, or changing census geography;
- d. The pairing of any incumbents in any such redistricting proposal;
- e. Any redistricting amendment, whether partial or total, to each such proposal;
- f. Negotiations regarding any redistricting proposal; and

- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact, of any kind—including on (1) Texas minority voters, (2) existing or emerging minority opportunity districts, or (3) voter turnout (including Spanish Surname Voter Turnout)—that could result from the implementation of any such redistricting proposal.

**Response.** Representative Guillen objects to this request because it calls for the production of documents that are subject to legislative privilege, attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501. In particular, requesting analyses “from any source” is likely to encompass documents that are protected by legislative privilege. Requesting “the origination(s)” and “the impetus, rationale, background, or motivation” of certain legislative proposals would impermissibly expose thought processes and mental impressions, which are also subject to legislative privilege. Requesting analyses that were “considered by” the Legislature, “draft in the development or revision of” redistricting proposals, “negotiations” and “calculations, reports, audits, estimates, projections, or other analyses” would be subject to legislative privilege for the same reason.

Representative Guillen further objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request generally seeks shapefiles, data sets, reconstituted election analyses, amendments, information concerning the pairing of incumbents, and other general information, the Representative directs DOJ to the Texas Legislative Council’s Capitol Data Portal, <https://data.capitol.texas.gov/organization/tlc>, where such information may be found. Insofar as the request seeks such information specifically considered by Representative Guillen, the request calls for information subject to the legislative privilege.

Lastly, insofar as the request seeks legal analysis concerning the “effect or impact” of redistricting proposals on “minority voters,” “existing or emerging minority opportunity districts,” or “voter turnout,” it seeks information that may be subject to the attorney-client privilege or constitute attorney work product.

Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 2.** All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

**Response.** Representative Guillen objects to this request because it calls for documents that are subject to the legislative privilege. The request seeks documents relating to the “planning” and “timing” of the redistricting process. These go to mental impressions and legislative strategy, which are at the core of the legislative privilege. Representative Guillen objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege,

deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

Representative Guillen also objects to this request because it asks him to gather publicly-available documents that are equally accessible to Plaintiff. Insofar as the request seeks information on the attendance and date of hearings, and persons and entities involved, such information may be found at the Texas Senate and Texas House of Representatives websites, as well as on the Texas Legislature Online (“TLO”) website. See <https://senate.texas.gov/index.php> (Senate); <https://house.texas.gov/> (House); <https://capitol.texas.gov/Home.aspx> (TLO).

Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 3.** All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** Insofar as this request asks for calculations, reports, audits, estimates, projections, or other analyses used as part of the redistricting process, the Representative objects on the basis that such a request calls for documents that are subject to the legislative privilege. Documents used for the purpose of formulating legislation are at the core of the legislative privilege. Representative Guillen objects to this request to the extent that documents that are subject to attorney-client privilege, attorney work-product privilege, deliberative process privilege, or protected from disclosure by Texas Government Code § 323.017, which is privileged under Fed. R. Evid. 501 are implicated by this request.

The Representative also objects to this request because it is facially overbroad. It calls for “all” documents relating to voting patterns, without any temporal limitation (other than the one included in the instructions) or further specification. For this reason, documents relating to voting patterns in Texas may well be irrelevant to the United States’ claims—which are limited to several districts in the Texas House of Representatives map and Congressional map.

Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 4.** All documents relating to whether House Bill 1, Senate Bill 6, or any other redistricting proposal drawn, discussed, or considered with respect to the Texas House or the Texas delegation to the U.S. House of Representatives complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

**Response.** The Representative objects to this request because, by its very nature, it calls for documents that are subject to the attorney-client privilege, the legislative privilege, and constitute attorney work product. Legal analysis concerning whether HB1, SB6, or other related redistricting bills comply with the VRA will necessarily implicate these privileges. Further, communications between legislators and their staffs are privileged communications covered by the legislative privilege.

Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 5.** All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to documents that are irrelevant to the United States’ claims in this case.

Representative Guillen also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731-34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents



relating to redistricting exchanged between the Representative and the many third parties listed on page 8 of the United States' requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 6.** All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives from July 1, 2021, to the present, including but not limited to redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating redistricting for the Texas House or Texas delegation to the U.S. House of Representatives,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will necessarily apply to make documents that are irrelevant to the United States' claims in this case.

The Representative also objects to this request because it calls for documents that are subject to the legislative privilege. Among others, documents concerning “presentations,” “redistricting criteria,” and “meeting minutes” go to the Representative's mental impressions and motivations concerning pending legislation, which is clearly covered by the privilege. Of course, communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991).

Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 7.** All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Office of the Governor, the Office of the Representative, the Office of the Secretary of State, the Office of the Attorney General, any legislator, the House Committee on Redistricting or members thereof, the Senate Special Committee on Redistricting or members thereof, the Conference Committee regarding Senate Bill 6 or members thereof, the Texas Legislative Council, any member of the U.S. House of Representatives, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any

local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

**Response.** The Representative objects to this request because it is overbroad. The request calls for “all documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes,” without any qualifications (other than the listed recipients). That is an extremely broad request, and will likely apply to make documents that are irrelevant to the United States’ claims in this case.

Representative Guillen also objects to this request because it calls for documents that are covered by the legislative privilege. First, with respect to communications between legislators, it is clear that communications and deliberations by legislators about pending bills are “legislative acts” protected by legislative privilege. *See Gravel v. United States*, 408 U.S. 606, 624-25 (1972); *Hughes v. Tarrant County*, 948 F.2d 918, 921 (5th Cir. 1991). And requesting communications between the office of the Governor, the office of the Representative, the office of the Secretary of State, and other similar parties, their staff or agents, encompasses documents that are protected by legislative privilege. Indeed, the Supreme Court has repeatedly recognized that “officials outside the legislative branch are entitled to legislative immunity when they perform legislative functions.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)).

The Representative also objects to this request because it calls for documents that are irrelevant to the United States’ claims in this case. Specifically, it is unclear without further specification why documents relating to demographic enumerations or estimates exchanged between the Representative and the many third parties listed on page 8 of the United States’ requests (that is, candidates, political parties, lobbyists, and the rest) would be relevant.

The Representative objects on the basis that much the information sought by this request may be made publicly available by the U.S. Census Bureau and the Texas Demographic Center.

Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 8.** All documents relating to payment for services; agreements of representation, consultation, employment, services, confidentiality, or common interest; or any other type of contract relating to redistricting for the Texas House or Texas delegation to the U.S. House of Representatives that include any of the following individuals or entities: Adam Foltz, Akin Gump Strauss Hauer & Feld LLP, Michael Best Strategies, any consultant, any political operative, any expert, the Office of the Texas Attorney General, any other law firm, any other attorney, any other vendor, or any other person or entity.

**Response.** The Representative objects to this request because it is overbroad and harassing. Although it appears to be bounded by specific persons and entities, the end of the request provides that the request applies to “any other attorney,” “any other vendor,” or “any other person or entity.” The net effect is that the initial limitations are swallowed by the sheer breadth of a request that asks for “all documents” that “[relate] to redistricting” and that include “any other person or entity.” Accordingly, this request is overly broad and conducting a search of this scope and breadth without any reasonable limitation is disproportionate to the needs of this case. Further, Representative Guillen is not a party to this litigation, and should not be required to produce, for example, “all documents” that “[relate] to redistricting” that include “any political operative.” Such a facially overbroad requests create an undue burden. *Wiva v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

In addition, Representative Guillen objects to this request because it calls for documents that are subject to the legislative privilege and the attorney-client privilege. Documents relating to services provided by third parties for a legislative purpose are subject to the legislative privilege. *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (citing *Supreme Court of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 731–34 (1980)). And documents relating to the Representative and any legal representation, by the Office of the Texas Attorney General or otherwise, is subject to the attorney-client privilege.

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any contracts or other agreements entered into after the filing of this complaint would necessarily be irrelevant.

Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**Document Request 9.** All non-privileged documents relating to the instant lawsuit or preceding investigation of Texas by the U.S. Department of Justice.

**Response.** The Representative objects to this request because it is overbroad. It is unclear from the face of this request why “all documents relating” to this lawsuit or the United States’ preceding investigation would be relevant to the United States’ claims. And insofar as these documents relate to the United States’ investigation, these are documents that are more likely to be within the care, custody, or control of the United States. If such materials are more commonly held by others, including state and local law enforcement agencies, production should be requested from them rather than from an individual legislator. Given the availability of these documents from other sources, the burden of requiring the Representative to collect them far exceeds any benefit that might result. *See Virginia Dep’t of Corr. v. Jordan*, 921 F.3d 180, 189 (4th Cir. 2019) (stating that courts should “consider what information is available to the requesting party from other sources” when analyzing “the benefit side of the ledger”).

The Representative also objects on the basis that this request does not list an end date. *See Doe v. McMillan*, 412 U.S. 306, 313–14 (1973). Any documents originating after the filing of this complaint would necessarily be irrelevant.



Representative Guillen is conducting a diligent search and will produce responsive, non-privileged documents and communications on a rolling basis, within a reasonable time of March 7, 2022, response deadline to the extent they are not withheld based upon any of the foregoing privileges or objections. Should responsive documents subject to privilege, objection, or both, be identified pursuant to this process, this response will be supplemented to reflect that such documents are being withheld.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS, *et al.*,

*Plaintiffs,*

v.

GREG ABBOTT, *et al.*,

*Defendants.*

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Case No. 3:21-cv-00259  
[Lead Case]

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UNITED STATES OF AMERICA,

*Plaintiff,*

v.

STATE OF TEXAS, *et al.*,

*Defendants.*

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Case No. 3:21-cv-00299  
[Consolidated Case]

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**EXHIBIT C  
TLC SUBPOENA**

## UNITED STATES DISTRICT COURT

for the

Western District of Texas

League of United Latin American Citizens, et al.

*Plaintiff*

v.

Greg Abbott, et al.

*Defendant*

Civil Action No. 3:21-cv-259-DCG-JES-JVB

(If the action is pending in another district, state where:

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Texas Legislative Council  
Robert E. Johnson Building, 1501 N. Congress Ave., Austin, Texas 78701

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See Attachment A

Place: US Attorney's Office for the Western District of Texas  
903 San Jacinto Blvd., Suite 334  
Austin, TX 78701

Date and Time:

03/30/2022 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 02/28/2022

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Jasmin Lott

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party) the United States of America, who issues or requests this subpoena, are:

Jasmin Lott, U.S. Department of Justice, Civil Rights Division, Voting Section, 950 Pennsylvania Ave. NW, 4CON 8th Floor, Washington, D.C. 20530 Email: jasmin.lott@usdoj.gov Phone: 202-307-6321

Civil Action No. 3:21-cv-259-DCG-JES-JVB

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
 \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**ATTACHMENT A – SUBPOENA FOR DOCUMENTS AND RECORDS**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, you are commanded to produce to the United States of America the documents and electronically stored information described below in your possession, custody, or control.

**DEFINITIONS AND INSTRUCTIONS**

1. “Document” is defined to be synonymous in meaning and scope as the term “document” is used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence and includes, but is not limited to, any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages (such as Slack, Signal, Snapchat, Telegram, and Wickr), social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

2. “Legislator or their staff” means a past or present elected member of the Texas House of Representatives (“Texas House”) or the Texas Senate, as well as such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

3. “Member of the U.S. House of Representatives or their staff” means a past or present elected member of the United States House of Representatives, as well as such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

4. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area. Unless otherwise specified, the term does not include consideration of the alignment of district boundaries for the Texas Senate or the Texas State Board of Education.

5. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.



6. “Senate Bill 6” means the legislation setting forth the district boundaries for the Texas delegation to the U.S. House of Representatives that Governor Greg Abbott signed into law on October 25, 2021. *See* S.B. 6, 87th Leg., 3d Spec. Sess. (Tex. 2021).

7. “House Bill 1” means the legislation setting forth the district boundaries for the Texas House that Governor Abbott signed into law on October 25, 2021. *See* H.B. 1, 87th Leg., 3d Spec. Sess. (Tex. 2021).

8. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a third party, including but not limited to any and all documents that you and your counsel or other persons or entities acting or purporting to act on your behalf have actually reviewed.

9. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

10. All references in these requests to an entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

11. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either

disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

12. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

13. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; and documents attached to each other should not be separated.

14. Each document produced should be categorized by the number of the document request in response to which it is produced.

15. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of the objection. Any ground not stated will be waived.

16. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 45(e)(2)(A) of the Federal Rules of Civil Procedure, including a description of the basis of the claimed privilege and all information necessary for the United States to assess the claim of privilege.

17. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or subsection thereof, then in response to the appropriate request: (a) produce all such documents as are available without undertaking what you contend to be an unduly burdensome request; (b) describe with

particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unduly burdensome.

18. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by court order.

19. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please provide the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

20. These requests are continuing in nature. Your response must be supplemented and any additional responsive material disclosed if responsive material becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect.

21. Unless otherwise specified, all document requests concern the period of time from January 1, 2019, to the present.

### **DOCUMENT REQUESTS**

1. All documents relating to any redistricting proposal for the Texas delegation to the U.S. House of Representatives or the Texas House, including but not limited to House Bill 1, Senate Bill 6, and any other Congressional or House redistricting proposal, draft proposal, or proposed amendment, or draft amendment drawn, discussed, or considered. This request includes but is not limited to:

- a. documents relating to the origination(s) or source(s) of any such redistricting proposal;
- b. documents relating to the impetus, rationale, background, or motivation for any such redistricting proposal;
- c. documents relating to the development, consideration, or revision of any such redistricting proposal, including but not limited to shapefiles, map images, any other files or datasets used in mapping software, RED reports not available on DistrictViewer, PAR reports, demographic data (including but not limited to Citizen Voting Age Population, Hispanic Citizen Voting Age Population, Black Citizen Voting Age Population, Voting Age Population, Hispanic Voting Age Population, and Black Voting Age Population), election data (including but not limited to voter registration, Spanish surname voter registration, Spanish surname turnout, and reconstituted election results), compactness analyses, precinct or VTD information, precinct or VTD splits, city and council splits, partisan indices, party affiliation, population shifts, district population analyses, population deviations, or changing census geography;

- d. documents relating to the pairing of incumbents;
- e. documents relating to the comparison of redistricting proposals;
- f. documents relating to negotiations regarding any redistricting proposal;
- g. all calculations, reports, audits, estimates, projections, or other analyses, from any source, relating to the effect or impact of any such redistricting proposal or the potential implementation of such proposal, including (1) on voters who are member of racial, ethnic, or language minority groups; (2) on districts in which voters who are members of racial or language minority groups make up a majority of the eligible voter population (3) on districts that provide voters who are members of racial, ethnic, or language minority groups with the opportunity to elect their preferred candidates; (4) on districts in which an opportunity is emerging for voters who are members of racial, ethnic, or language minority groups to elect their preferred candidates; or (5) voter turnout, including any specific analysis of Spanish surname voter turnout or turnout among any racial, ethnic, or language minority group;
- h. all documents relating to whether any redistricting proposal complies with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses; and
- i. all other reports or analyses relating to redistricting proposals that drafted, discussed, examined, or reviewed by the Texas Legislative Council or its personnel.

2. All documents relating to the redistricting process for the Texas House or the Texas delegation to the U.S. House of Representatives, including but not limited to workshops,

trainings, planning, timing, hearings, outreach, publicity, public or expert participation, deadlines, limitations, staffing, and persons or entities involved.

3. All documents relating to voting patterns in Texas elections with respect to race, ethnicity, or language minority status, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses.

4. All documents relating to the criteria, requirements, priorities, or guidelines used or proposed to be used in redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives.

5. All documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives exchanged between, among, with, or within the Texas Legislative Council, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator or their staff, the House Committee on Redistricting or members and staff thereof, the Senate Special Committee on Redistricting or members and staff thereof, the Conference Committee regarding Senate Bill 6 or members and staff thereof, any member of the U.S. House of Representatives or their staff, any candidate to represent Texas in the U.S. House of Representatives, any candidate for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity,

any local elected official in Texas, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

6. All other documents relating to redistricting for the Texas House or the Texas delegation to the U.S. House of Representatives in the possession, custody, or control of the Texas Legislative Council, including documents located on any email server or on any shared or network drive, such as the “X-Drive” space assigned to individual legislators or their staff and the “Y-Drive” space shared between legislators or their staff. This request includes emails, memoranda, correspondence, calendar invitations, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, public statements, or other communications.

7. All documents relating to enumerations or estimates by the U.S. Census Bureau or Texas Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship that were exchanged between, among, with, or within the Texas Legislative Council, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any legislator or their staff, the House Committee on Redistricting or members and staff thereof, the Senate Special Committee on Redistricting or members and staff thereof, the Conference Committee regarding Senate Bill 6 or members and staff thereof, any member of the U.S. House of Representatives or their staff, any candidate for the Texas House, any candidate to represent Texas in the U.S. House of Representatives, any campaign for the Texas House, any campaign to represent Texas in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the



National Republican Redistricting Trust, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

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