*** CONFIDENTIAL PER 5/19/14 ORDER ***

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NON-PARTIES, PAT BAINER et al.,
Appellants,
v.

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

Case No.: 1D14-2163
L.T. No.: 2012-CA-00412, 2012-CA-00490, 2012-CA-2842

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

CORRECTED ANSWER BRIEF OF THE PLAINTIFFS

MESSER CAPARELLO, P.A.

Mark Herron
Robert J. Telfer III
2618 Centennial Place
Tallahassee, FL 32308

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

THE MILLS FIRM, P.A.

John S. Mills
203 North Gadsden Street, Suite 1A
Tallahassee, Florida 32301

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

David B. King
Thomas A. Zehnder
Frederick S. Wermuth
Vincent Falcone III
P.O. Box 1631
Orlando, FL 32802-1631

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

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

STATUTES, CONSTITUTIONAL PROVISIONS, AND RULES OF COURT

SECONDARY SOURCES

PRELIMINARY STATEMENT

This litigation arises from three related actions before the circuit court. Appellees The League of Women Voters of Florida, Common Cause, Brenda Ann Holt, J. Steele Olmstead, Robert Allen Schaeffer, and Roland Sanchez-Medina, Jr. (collectively, the "Coalition Plaintiffs"), filed two complaints, one challenging the congressional redistricting plan (the "2012 Congressional Plan") and another challenging the Senate redistricting plan (the "2012 Senate Plan") adopted after the Florida Supreme Court invalidated the initial Senate plan (the "Initial 2012 Senate Plan"). The remaining complaint filed by Appellees Rene Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan, and Bonita Again (collectively, the "Romo Plaintiffs," and together with the Coalition Plaintiffs, the "Plaintiffs"), challenges the 2012 Congressional Plan. The two Congressional cases (collectively, the "Congressional Action") have been consolidated for trial. The Senate case (the "Senate Action") has not yet been set for trial.

The defendants below are Appellees Florida Secretary of State Ken Detzner, Florida Attorney General Pam Bondi, the Florida Senate and its president, and the Florida House of Representatives and its speaker.

The Appellants are partisan operatives who are not parties to the lawsuit below – Pat Bainter, his political consulting company, Data Targeting, Inc., and

two of Data Targeting employees, Matt Mitchell and Michael Sheehan (collectively, the "Non-Parties").

Two trial court orders have been appealed. The first required production of the documents at issue, was entered on May 2, 2014, and is referred to herein as the "Production Order." The second addressed how confidentiality of the documents would be maintained during trial, was entered on May 15, 2014, and is referred to herein as the "Confidentiality Order."

The documents that have been produced pursuant to the Production Order are contained at Tab 1 of the Non-Parties' sealed supplemental appendix and are referred to herein as the "Produced Documents" or "Confidential Production." The documents the Non-Parties submitted for in camera review that have not been ordered produced are referred to herein as the "Withheld Documents." A few "examples" of the Withheld Documents are contained at Tab 2 of the Non-Parties' sealed supplemental appendix.

The appendices are cited by pdf page number using the following abbreviations:

NP App. – Appendix to Initial Brief of Non-Parties of May 19, 2014

NP Supp. App. – Supplemental Appendix of Non-Parties of May 19, 2014

Pl. App. – Appendix to Plaintiffs' Answer Brief filed herewith

Pl. Supp. App. – Supplemental Appendix to Plaintiffs' Answer Brief

Documents within the confidential production are alternatively cited to Bates numbers included in the index as "DC_." For example, the document labeled "DATAT CONF 01438" is cited as "DC1438."

STATEMENT OF THE CASE AND OF THE FACTS

The Non-Parties – a partisan political consulting company, its owner, and two employees – appeal the trial court's orders compelling production for use at a trial open to the public of several hundred pages of documents relating to their attempt to help the Legislature subvert the Florida Constitution by apportioning state and federal districts with the specific intent of protecting incumbents and ensuring one political party's continued legislative dominance disproportionate to the political affiliation of Florida's citizens. At issue below was whether the First Amendment or Florida's trade secrets laws grant partisan operatives the right to hide from the Plaintiffs and the public documentation of their surreptitious attempts to corrupt the legislative redistricting process in violation of the Florida Constitution. The Plaintiffs contend that not only were these documents never deserving of any protection, but that the Non-Parties have waived or otherwise failed to preserve their claims of error.

The Florida Supreme Court has summarized the subject of this litigation, the 2012 legislative apportionment of Florida's congressional and state senate districts, as follows:

> In February 2012, the Florida Legislature approved the decennial plan apportioning Florida's twenty-seven congressional districts, based on population data derived from the 2010 United States Census. Soon after its adoption, two separate groups of plaintiffs filed civil complaints in circuit court, which were later consolidated, challenging the constitutionality of the plan under new

state constitutional redistricting standards approved by the Florida voters in 2010 and now enumerated in article III, section 20, of the Florida Constitution. Those standards, governing the congressional reapportionment process, appeared on the 2010 general election ballot as "Amendment 6" and, together with their identical counterparts that apply to legislative reapportionment ("Amendment 5"), were generally referred to as the "Fair Districts" amendments. All together, these "express new standards imposed by the voters clearly act as a restraint on legislative discretion in drawing apportionment plans." [*In re Senate Joint Resolution of Legislative Apportionment 1176 (Apportionment I)*, 83 So. 3d 597, 599 (Fla. 2012).]

The Florida Constitution's Redistricting Standards

Article III, section 20, of the Florida Constitution prohibits the Legislature from drawing an apportionment plan or individual district "with the intent to favor or disfavor a political party or an incumbent" and "with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice." Art. III, § 20(a), Fla. Const. Specifically, this constitutional provision provides in its entirety as follows:

> In establishing congressional district boundaries:
>
> (a) No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice; and districts shall consist of contiguous territory.
>
> (b) Unless compliance with the standards in this subsection conflicts with the standards in subsection (a) or with federal law, districts shall be as nearly equal in population as is practicable; districts shall be compact; and districts shall, where feasible, utilize existing political and geographical boundaries.

> (c) The order in which the standards within subsections (a) and (b) of this section are set forth shall not be read to establish any priority of one standard over the other within that subsection.

Art. III, § 20, Fla. Const.

In interpreting the identical standards in article III, section 21, during its initial 2012 review of the legislative apportionment plan, this Court explained that the requirement that "[n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent" is "a top priority to which the Legislature must conform during the redistricting process." *Apportionment I*, 83 So.3d at 615. This Court stated that "by its express terms, Florida's constitutional provision prohibits intent, not effect, and applies to both the apportionment plan as a whole and to each district individually." *Id.* at 617.

Because "redistricting will inherently have political consequences," this Court explained that "the focus of the analysis must be on both direct and circumstantial evidence of intent." *Id.* In reviewing the objective evidence before it, this Court held that "the effects of the plan, the shape of district lines, and the demographics of an area are all factors that serve as objective indicators of intent." *Id.* Moreover, as to the intent to favor or disfavor an incumbent, this Court stated that "the inquiry focuses on whether the plan or district was drawn with this purpose in mind," and as to objective indicators of intent to favor or disfavor a political party, these "can be discerned from the Legislature's level of compliance with our own constitution's tier-two requirements, which set forth traditional redistricting principles." *Id.* at 618.

In reviewing these factors to assist this Court in discerning circumstantial evidence of intent, however, this Court was mindful that it was unable to engage in fact-finding. *See id.* at 612 & n. 13 (noting that the sole type of information available was "objective data" and refusing to consider an expert affidavit); *see also In re Senate Joint Resolution of Legislative Apportionment 2–B (Apportionment II)*, 89 So. 3d 872, 893 (Fla. 2012) (Pariente, J., concurring) ("Working within a strict time period, this Court is realistically not able to remand for fact-finding, which creates concerns that are compounded by the fact that the Court is constrained

> to the legislative record that is provided to it."). Indeed, in *Florida House of Representatives v. League of Women Voters of Florida (Apportionment III)*, 118 So. 3d 198, 207 (Fla. 2013), this Court subsequently explained that its decisions in *Apportionment I* and *Apportionment II* were "based solely on objective evidence and undisputed facts in the limited record before the Court." This Court also highlighted the need for judicial review of fact-intensive claims in order to effectuate the intent of the voters, who "clearly desired more judicial scrutiny" of apportionment plans, "not less." *Id.* at 205.

League of Women Voters of Florida v. Florida House of Representatives (Apportionment IV), 132 So. 3d 135, 139-40 (Fla. 2013) (footnotes omitted).

In rejecting claims that a legislative privilege immunizes members of the Legislature from the Plaintiffs' requests for discovery of information relating to their intent in apportioning the subject districts, the supreme court summarized much of the procedural history leading to this appeal as follows:

> In the consolidated circuit court lawsuit challenging the validity of the 2012 congressional apportionment plan under the Florida Constitution's redistricting standards, the challengers allege that the congressional apportionment plan and numerous individual districts violate the article III, section 20, standards by impermissibly favoring Republicans and incumbents, by intentionally diminishing the ability of racial and language minorities to elect representatives of their choice, and by failing to adhere to the requirement that districts be compact and follow existing political and geographical boundaries where feasible. The challengers seek both a declaratory judgment invalidating the entire plan, or at least the specific districts challenged, as well as a permanent injunction against conducting any future elections using the congressional district boundaries established by the 2012 apportionment plan.
>
> As part of ongoing pretrial civil discovery—and specifically in an effort to uncover and demonstrate alleged unconstitutional partisan or discriminatory intent in the congressional apportionment plan—the

> challengers sought information from the Legislature and from third parties regarding the 2012 reapportionment process. From third-party discovery, the challengers uncovered communications between the Legislature and partisan political organizations and political consultants, which they allege reveal a secret effort by state legislators involved in the reapportionment process to favor Republicans and incumbents in direct violation of article III, section 20(a). The challengers have also taken deposition testimony from numerous third-party witnesses as to their involvement in the redistricting process and their communications with state legislators and legislative staff members, and have been provided with e-mail communications between legislators and legislative staff, as well as other public records from the Legislature.

Apportionment IV, 132 So. 3d at 140-41 (footnote omitted).

This appeal involves the Plaintiffs' continuing efforts to complete the discovery from the "partisan political organizations and political consultants" referenced by the supreme court, and this is the second time the Non-Parties have sought relief from this Court to avoid that discovery. The odyssey began over 600 days ago on September 13, 2012, when the Coalition Plaintiffs served a subpoena duces tecum for deposition to Non-Party Patrick J. Bainter that required him to bring to the deposition any documents in his possession or control that related to or discussed congressional redistricting in 2012 and redistricting maps that were directly or indirectly submitted to or discussed with any legislator, legislative staff member, or legislative committee. Later, the Coalition Plaintiffs served similar notices for deposition duces tecum on all Non-Parties in both the Congressional and Senate Actions.

Bainter did not seek a protective order and instead attended the deposition and purported to bring all responsive documents he could locate. (NP App. 293.) As a result of his deposition testimony, the Coalition Plaintiffs issued subpoenas duces tecum with the same document descriptions on the other three Non-Parties – Bainter's company Data Targeting, Inc., as well as Matt Mitchell and Michael Sheehan, the two employees that Bainter had testified had been involved with communications about redistricting and revising draft maps. (NP App. 508-19.)

On December 4, 2012, prior to the scheduled depositions, the Non-Parties moved to quash the subpoenas in their entirety on the ground that they were "unreasonable and oppressive" and tantamount to a "fishing expedition." (Pl App. 85-91.) They made no claim in the motion that any of the requested documents were privileged or confidential under any theory. At subsequent hearings on their motion, they made passing suggestions that some of the requested documents might constitute trade secrets, but they never hinted at any claim of First Amendment privilege. (Pl. App. 100, 183-89.) After the trial court indicated it was going to deny their motion at least in part, they indicated that they would "make a good faith attempt to obtain the documents and research the documents, saving our objection on costs and trade secrets." (Pl. App. 202.)

The trial court ultimately entered two orders that limited the scope of the documents the Non-Parties would have to produce to documents dated, generated,

or created since January 1, 2010, and reserved jurisdiction to determine whether any of the costs of production should be paid by the Coalition Plaintiffs. (Pl. App. 224-33.) The Non-Parties filed a petition for writ of certiorari challenging these orders without raising any claim of privilege or trade secrets, and after ordering the Plaintiffs to show cause why the petition should be granted, the Court summarily denied the petition per curiam. *Data Targeting, Inc. v. The League of Women Voters*, 116 So. 3d 1266 (Fla. 1st DCA 2013).

During the pendency of the certiorari proceeding, the trial court denied the Non-Parties' motion for stay and ordered that them to complete their production of documents by April 22, 2013. (Pl. App. 234-38.) Instead of complying with that order, the Non-Parties filed a notice stating that they believed the documents should be confidential and that they would withhold production until the trial court resolved both that issue and also whether the Coalition Plaintiffs should have deposit money in the court's registry to cover the costs for reviewing and producing the documents. (Pl. App. 241-53.) They advised that they were in the process of preparing a privilege log that they would provide the Plaintiffs in the future. (Pl. App. 244.) They asked the Court to determine that their documents were confidential and should not be shared with third parties because they were "private business communications between Non-parties and other private, non-legislative entities." (Pl. App. 244-46.)

On the Coalition Plaintiffs' motion, the trial court found the Non-Parties to be in contempt of court for failing to produce the documents and privilege log as ordered. (Pl. App. 771-76.) The court gave them until May 29, 2013, to produce any non-privileged documents to the Coalition Plaintiffs, serve a privilege log identifying documents withheld based on a claim of privilege, and submit the withheld documents to the court for in camera review. (Pl. App. 772.) The court promised a daily monetary fine if the Non-Parties failed to timely comply, and it awarded the Coalition Plaintiffs their attorney's fees. (Pl. App. 772-73.)

The Non-Parties ultimately produced 166 pages of documents to the Coalition Plaintiffs and filed a motion for protective order that contained a one-page "privilege log" identifying 1,833 pages of responsive documents the Non-Parties had withheld based on blanket claims of (1) privilege as to all the documents under the First Amendment protecting freedom of association and (2) trade secret protection as to a subset of documents identified by Bates stamp. (Pl. App. 620-26, 743-770.) This violated the trial court's order that any privilege log should not only identify which privilege was claimed for each document but must also "identify each document by type, who prepared the document, [and] with whom each document was shared." (Pl. App. 772.)

After the Coalition Plaintiffs filed a second motion for contempt seeking a waiver of all privileges as a sanction, the Non-Parties filed an amended privilege

log that complied with the trial court's order under protest. (Pl. App. 777-86; NP App. 521-40.) The trial court denied this motion and referred the motion for protective order to a special master to review the documents, conduct an evidentiary hearing, and make a recommendation regarding the applicability of the First Amendment associational privilege or trade secret protections.[1] (Pl. App. 1226-31.)

After conducting an evidentiary hearing, the special master issued a report concluding not only that the First Amendment associational privilege applied but also that the Coalition Plaintiffs had failed to show a compelling need for the documents sufficient to overcome the privilege. (NP App. 599-604.) The special master mainly focused on deposition testimony and case law and only conducted "a very cursory examination" of the documents submitted for in camera review. (NP App. 600-02.) In light of his conclusion regarding the First Amendment, the special master did not reach the trade secret claim. (NP App. 604.)

The Coalition Plaintiffs filed objections to the special master's report, and the trial court conducted a hearing on January 23, 2014. (Pl. App. 1232-60; NP App. 632-21.) After conducting its own in camera review, the trial court ultimately

[1] The court had previously appointed Attorney Major B. Harding as special master to mediate discovery disputes in this case. (Pl. App. 239-40.) The Non-Parties' repeated reference to his honorary title as a former justice of the Florida Supreme Court notwithstanding, Mr. Harding was acting solely as an attorney appointed as a special master and not as a judicial officer.

announced at least part of its ruling on April 29,1014. (NP App. 633.) The trial court identified 538 pages of documents by Bates stamp number that it concluded were discoverable (the "Produced Documents") and ordered the Non-Parties to produce them to the Coalition Plaintiffs' counsel and experts, but it ruled that these documents would remain confidential and no document could not be shared with the Plaintiffs themselves or any third person "unless and until it's utilized some way in these proceedings." (NP App. 633.) The content of the Produced Documents most material to the Plaintiffs are addressed in the argument section and copies of all the Produced Documents appear in the Non-Parties sealed, supplemental appendix. (NP Supp. App. 9-548.)

Just after announcing its ruling at the April 29 hearing, the trial court confirmed the request by counsel for the Non-Parties as to whether the court had performed "the analysis for trade secret too when you looked at these documents, such that we don't need to go back through that record?" (NP App. 633.) At no point (during this hearing or otherwise) did the Non-Parties object to the failure to conduct any hearing, perform any analysis, or make any findings.

As to the deadline for turning over the Produced Documents, the court stated, "And I don't know a time period. But within the next week: okay?" (NP App. 633.) The Non-Parties did not ask the court to give it time to seek appellate review and instead submitted a proposed order on May 2, 2014, that required the

documents to be produced by 5:00 that same day. (Pl. App. 1446.) Their cover letter indicated that they "consent to the proposed order" and that they would address "available measures" to preserve confidentiality should the Coalition Plaintiffs offer any of the Disclosed Documents into evidence at trial. (Pl. App. 1446) The order drafted and consented to by the Non-Parties, which the trial court promptly entered (the "Production Order"), states that the court had conducted an *in camera* review and performed the balancing test requiring by case law for the associational privilege and the assertion of trade secrets. (NP App. 668.)

The Production Order provided that the Produced Documents could only be viewed by the Coalition Plaintiffs' counsel and experts and that the court would provide further guidance to the parties and Non-Parties regarding how the documents may be used at trial during the pre-trial conference scheduled the following week. (NP App. 668-69.) In advance of that hearing, the Non-Parties filed a motion to determine confidentiality of the Produced Documents pursuant to Florida Rule of Judicial Administration 2.420(e). (Pl. App. 1725-38.) The motion asked the court to designate the Produced Documents as confidential pursuant to five separate provisions of Rule 2.420(c)(9)(A). (Pl. App. 1729.) The motion sought to have the Produced Documents remain under seal throughout the rest of the proceedings and advised that if this relief was not granted, the Non-Parties would have to appeal the Disclosure Order. (Pl. App. 1732.) The body of the

motion only asked that the Produced Records be kept under seal, but the relief requested at the end included demands that the "proceedings before this Court entertaining testimony or evidence related to the documents are to be sealed in order to preserve the confidentiality of the records." (Pl. App. 1733.) Alternatively, the Non-Parties asked the Court to stay use of the Disclosed Documents during trial pending appeal of the Disclosure Order requiring disclosure of the documents. (Pl. App. 1553.)

At the May 12, 2014, hearing on this motion, it was confirmed that the Non-Parties had fully complied with the Production Order. (NP App. 1069.) The Non-Parties agreed that any Produced Documents the Coalition Plaintiffs intended to use at trial, previously disclosed only to counsel for the Coalition Plaintiffs and their experts, could also be disclosed to counsel for the other parties in the case and used during trial, and the Non-Parties made clear that their only concern was that the Produced Documents not be disclosed to the public. (NP App. 1070.) The trial court announced that it would not close the courtroom when the Produced Documents were discussed, but agreed that the documents themselves could be kept under seal. (NP App. 1070.)

In an order drafted by the Non-Parties and signed by the trial court on May 15, 2014 (the "Confidentiality Order"), the court concluded that (1) the Produced Documents were entitled to confidentiality under each of the five sections of Rule

2.420(c)(9)(A) cited by the Non-Parties, (2) the names of the Non-Parties were not confidential, (3) no "docket or case activity" would be confidential, (4) in preparation for trial that Produced Documents could be viewed by the clerk to the extent necessary to give effect to the Confidentiality Order and to counsel for and experts retained by the Coalition Plaintiffs, the Romo Plaintiffs, the Legislative Defendants,[2] and Intervenor/Defendant Florida NAACP. (NP App. 673.) The Non-Parties' proposed order signed by the court confirmed that the court had conducted the analysis required by Rule 2.420(c)(9)(B) and (C) that the restrictions it was placing were no broader than necessary to protect the Non-Parties' interests and that no less restrictive measures were available. (NP App. 673.)

The Confidentiality Order provided that the Produced Documents would remain "sealed as confidential and not subject to disclosure" throughout the proceedings, even when entered into evidence, but also provided that "this Court shall remain open" when the Produced Documents are used at trial. (NP App. 673.) The order goes on to require that the Produced Documents and any copies thereof in the possession of any party or intervenor must be immediately returned to counsel for the Non-Parties following the trial. (NP App. 674.) The Confidentiality Order otherwise denied the Non-Parties' Confidentiality Motion, including the

[2] The order provides that the Legislative defendant's counsel can view them "under the condition that such review shall not deem the Confidential Documents to constitute a public record under Florida law." (NP App. 673.)

request for a stay prohibiting use of the documents pending appeal of the Production Order. (NP App. 674.)

The Non-Parties filed a notice of appeal seeking review of both the Production Order and the Confidentiality Order, which was not entered until the day after the notice of appeal was filed. On May 16, 2014, this Court entered a corrected order directing that this cause will proceed as an appeal of a final order, that the appeal will be decided based on appendices in lieu of a record on appeal, and staying use of the Produced Documents at trial pending final disposition of this appeal or further order of the Court. That order and a clarification order entered May 19, 2014, direct that any appendix including documents determined to be confidential and any brief addressing the substance of those documents be filed in this Court under seal.

SUMMARY OF ARGUMENT

I. The Non-Parties mischaracterize the substance and relevance of the Produced Documents and how the Plaintiffs intend to use them. The documents do not reveal any secret political, social, or moral views or trade secrets of the Non-Parties, and the Plaintiffs do not seek to use them to prove the Non-Parties' intent. The Non-Parties' views and intents are well known and, in any event, not at issue. Instead, the Produced Documents constitute exactly the kind of evidence the Florida Supreme Court has held is central to this case. The documents tend to show

how the Non-Parties enabled the Legislature to create a mere illusion of public hearings and comment by arranging for strawmen to submit maps that these Non-Parties had prepared with a wink and a nudge to their collaborators in the Legislature

II.A. The Non-Parties have waived their defenses to producing the Produced Documents. They did not timely assert the privileges when they were required to; they freely (and falsely) discussed them in deposition without asserting the privilege, and they failed to exhaust their appellate remedies before producing the documents. B. The Non-Parties failed to preserve their arguments that the trial court did not follow particular procedures, such as holding an evidentiary hearing or making findings of facts because they never raised that before the trial court. In any event, they themselves proposed the trial court's orders making clear it had applied the correct analysis. C. The Non-Parties preserved their objections to the Confidentiality Order below, but then waived them in their initial brief by failing to cite, much less argue the governing requirements of Rule 2.420.

III.A. Even if preserved, the Non-Parties' challenge of the Disclosure Order is meritless. A. As to the First Amendment, the trial court conducted the correct two-pronged analysis accepting the fact findings the special master made following the evidentiary hearing. In light of the substance of the Produced Documents, which the court did not see when initially finding the privilege to apply,

demonstrate that there is no threat of chilling any legitimate associational right the Non-Parties might claim. Regardless, the overpowering public importance of enforcing the constitutional prohibition on partisan gerrymandering requires any privilege to yield. B. The same is true with regard to the Non-Parties' claim for trade secrets protection. The documents are not trade secrets, and even if they were, they are so relevant as to require production.

IV. Even if preserved, the Non-Parties' challenge of the Confidentiality Order is also meritless. Any error was in their favor because the Produced Documents do not implicate any confidentiality interest protected by Rule 2.420. The Non-Parties failed to request any less restrictive measures for protecting the Non-Parties' interests, such as redacting the documents, and the only restriction they sought and were denied – closing the courtroom so the public would never know the complete basis for the apportionment challenge – was overly broad.

ARGUMENT

I. THE PLAINTIFFS WISH TO USE THE DOCUMENTS NOT TO PROVE THE NON-PARTIES' INTENTIONS, BUT TO PROVE THAT THE NON-PARTIES, IN FACT, COLLABORATED WITH LEGISLATORS TO CONTRIVE THE SUBMISSION OF "PUBLIC" MAPS THROUGH STRAWMEN THAT CONCEALED PARTISAN GERRYMANDERING FROM THE PUBLIC.

Before addressing the threshold issue of whether the Non-Parties' arguments are preserved or the merits of the Non-Parties' arguments, Plaintiffs must correct the initial brief's mischaracterization of the substance and relevance of the

Produced Documents and how Plaintiffs intend to use them at trial. Even a cursory review of the Produced Documents confirms that they do not reveal any secret political, social, or moral views of the Non-Parties. The Non-Parties make no secret of the fact that they are paid political operatives and that they had an interest in the redistricting process to help ensure that as many of their Republican clients can be elected or re-elected as possible. There is nothing wrong about that fact in and of itself, and the Plaintiffs certainly do not intend to use the Produced Documents to prove the intent of anyone except the Legislature and those collaborating with the Legislature in the map drawing process. And while any attempt to influence legislators to defy the constitutional prohibition against partisan or discriminatory gerrymandering is deplorable whether it comes from the left, right, or center, the only people whose intent is on trial are the members, staffers, agents, and collaborators of the Legislature who were involved in the preparation of the adopted redistricting plans.

Instead, the Plaintiffs intend to use the Produced Documents, in conjunction with other evidence discovered in this case, for the precise purposes the supreme court emphasized were appropriate and crucial in this litigation:

> In order to fully effectuate the public interest in ensuring that the Legislature does not engage in unconstitutional partisan political gerrymandering, it is essential for the challengers to be given the opportunity to discover information that may prove any potentially unconstitutional intent. The challengers assert that documents they have so far uncovered, primarily through third-party discovery, reveal

> direct, secret communications between legislators, legislative staff members, partisan organizations, and political consultants. ….
>
> ….
>
> In *Apportionment I,* we acknowledged the Legislature for engaging in extensive public hearings as indicative of an unprecedented transparent reapportionment process. *See Apportionment I,* 83 So. 3d at 664 ("We commend the Legislature for holding multiple public hearings and obtaining public input."); *see also id.* at 637 n.35 (noting that the Legislature held twenty-six hearings at different locations around the state, during which the public had the opportunity to provide recommendations for the legislative and congressional apportionment plans). **However, if evidence exists to demonstrate that there was an entirely different, separate process that was undertaken contrary to the transparent effort in an attempt to favor a political party or an incumbent in violation of the Florida Constitution, clearly that would be important evidence in support of the claim that the Legislature thwarted the constitutional mandate.**
>
> We ... emphasize that this Court's first obligation is to give meaning to the explicit prohibition in the Florida Constitution against improper partisan or discriminatory intent in redistricting. **The existence of a separate process to draw the maps with the intent to favor or disfavor a political party or an incumbent is precisely what the Florida Constitution now prohibits. This constitutional mandate prohibiting improper partisan or discriminatory intent in redistricting therefore requires that discovery be permitted to determine whether the Legislature engaged in actions designed to circumvent the constitutional mandate.**

Apportionment IV, 132 So. 3d at 148-49 (emphases added).

It is precisely this sort of information that is at issue here, and the public interest in determining whether the Non-Parties enabled the Legislature to create a mere illusion of public hearings and comment by arranging for strawmen to submit maps that these Non-Parties had prepared with a wink and a nudge to their

collaborators in the Legislature.[3] A sampling of what Plaintiffs intend to prove with the Produced Documents in conjunction with other evidence follows:

The Non-Parties worked with other partisan operatives, including Marc Reichelderfer ("Reichelderfer"), Frank Terraferma ("Terraferma"), Richard Heffley ("Heffley"), and Richard Johnston ("Johnston"), drafted Senate and Congressional redistricting maps (the "Partisan Operative Maps") and submitted them to the Legislature through public front persons. The Plaintiffs have identified at least nine such Partisan Operative Maps masquerading as public maps among the Produced Documents.

The following chart identifies these Partisan Operative Maps:[4]

Supplemental Appendix Reference for Map Images	Confidential Production Number(s) Referencing Partisan Operative Map	Public Map Number

[3] The Non-Parties' attempt to compare their efforts to the Coalition Plaintiffs' submission of exemplar maps is without merit and mischaracterizes the record. The Coalition Plaintiffs, unlike the Non-Parties, did not collaborate with the Legislature in its redistricting efforts, nor has the Legislature ever suggested that it relied on any aspect of the Coalition Plaintiffs' proposed maps. The Legislature, by contrast, gave special access to the Non-Parties and their colleagues and repeatedly relied upon the Partisan Operative Maps in preparing the enacted districts in the Initial 2012 Senate Plan and the 2012 Congressional Plan.

[4] Plaintiffs believe that Non-Parties and their fellow partisan operatives submitted additional maps through front persons. The Plaintiffs have only had access to the non-native files in the Produced Documents since May 2, 2014, and certain native attachments only since May 9, 2014. Accordingly, the Plaintiffs continue to investigate whether there are additional Partisan Operative Maps.

7	DC0231-33	Senate Public Map 84
12	DC0114-16	Senate Public Map 85
17	DC0012, DC1751, DC1817-18, DC1820	Senate Public Map 90
24	DC0241-42, DC0244, DC1833, DC00106	Senate Public Map 105
31	DC0117, DC0118-19, DC0121-23, DC0139-40, DC0258, DC0124	Senate Public Map 123
43	DC0144-46, DC0149, DC1143	Senate Public Map 143
48	DC1147-50	Senate Public Map 147
54	DC00156, DC01779-82, DC00013	Congressional Public Maps 132 and 133

Bainter arranged for five of these maps to be submitted through strawmen in the Alachua County area, where Data Targeting is based. Specifically, Non-Parties directed Stafford Jones, the head of the Alachua County Republican Organization, "to have his people send these maps to" the Legislature's email address for public map submissions. (DC0241.) Bainter similarly suggested that he could solicit Mr. Jones to line up "10 more people at least" to serve as front persons for public map submissions and that Non-Parties could "start by submitting the map marc [Reichelderfer] had sent us." (DC1751.) Publicly available information confirms that the Alachua County strawmen have varying degrees of ties to Mr. Jones.[5]

[5] Christie Jones, who submitted Senate Public Map 90, is Stafford Jones' wife. Delena May, who submitted Senate Public Map 123, is secretary of the Alachua County Republican Organization. *See* http://www.alachuarepublicans.com/alachua-republican-executive-ommittee.html.

The Non-Parties also lined up "plants" to attend public redistricting hearings conducted by the Legislature. (DC0094.) The Non-Parties provided these individuals with "grass roots" scripts to advocate for district configurations that comported with Non-Parties' partisan objectives. (*Id.*.)

The Non-Parties went to extraordinary lengths to conceal their efforts to influence the redistricting process. Bainter directed his subordinates to "spread [the Partisan Operative Maps] around" among several strawmen to avoid detection, (DC0106), and to "be a bit more 'creative' about how we are naming" the Partisan Operative Maps lest there be the appearance of "coordination," (DC1833). A consultant working with the Non-Parties likewise said that she was avoiding an "e-mail trail" to comply with Bainter's instructions to be "incredibly careful and deliberative." (DC0094.)

The Legislature collaborated in the Non-Parties' and their cohorts' scheme to subvert the public process. In December 2010, Bainter attended a meeting at the Republican Party of Florida ("RPOF") headquarters to "brainstorm" about redistricting with Terraferma, Heffley, Reichelderfer, several other partisan

---

Henry E. Russell, III, who submitted Senate Public Map 105, is the husband of Mildred Russell, the state chairwoman of the Alachua County Republican Organization. *See id.* Alex Patton, who submitted Senate Public Map 143, co-owns a polling firm with Stafford Jones. *See* http://warroomlogistics.com/about-wrl/ ("The company was founded by Stafford Jones and Alex Patton, two veteran, Republican political operatives."). Operatives based in Tallahassee presumably recruited the other front persons residing in Leon County.

operatives, and the legislative staffers and lawyers overseeing the redistricting process. (Pl. App. Reichelderfer Depo. at 64:24-76:2.) Although the attendees have not provided many details about the meeting, one topic of discussion was how to avoid public disclosure of their collaboration. (*Id.* at 77:12-78:7.) According to Reichelderfer, the partisan operatives "wanted to be able to participate in the process," but "didn't want anybody to know what [they] were saying or doing." (*Id.* at 89:5-9.)

Bainter, Reichelderfer, and Heffley then attended a second redistricting-related meeting in January 2011 to discuss, among other things, the Legislature's efforts to invalidate Amendment 6. (*See* Pl. App. Kelly Depo. at 204:18-205:17.) The second meeting was attended not only by legislative staffers and lawyers, but also by Will Weatherford, Chairman of the House Redistricting Committee, and Don Gaetz, Chairman of the Senate Committee on Reapportionment. (*Id.*)

By using strawmen to submit public maps and attend public hearings, the Non-Parties and the other partisan operatives achieved the goal of secret participation in the redistricting process that had been discussed in December 2010 – and they did so with the complicity of the Legislature. Before the public hearing process, Gaetz sent an email to members of the Legislature advising them of the schedule for the upcoming public hearings. The metadata for the email reveals that Gaetz blind copied Heffley and Terraferma. The Plaintiffs will argue at trial that

Gaetz did so because he was aware of Heffley's and Terraferma's efforts to manipulate the public process. Throughout the map drawing process, the Legislature kept the operatives apprised of the redistricting efforts. The testimony of multiple witnesses has confirmed that Kirk Pepper, the Deputy Chief of Staff for the House, secretly transmitted draft maps being prepared by the House Redistricting Committee to Reichelderfer. (Pl. App. Reichelderfer at 54:22-56:8, 164:22-165:1; Kelly Depo. at 256:13-257:23.)[6]

The Plaintiffs will argue at trial that these "folks" in Tallahassee were legislators or staffers with him the Non-Parties and their collaborators communicated. Indeed, a remarkable array of features from the known Partisan Operative Maps found their way into the Initial 2012 Senate Plan and the 2012 Congressional Plan – considering that they represented only nine out of over 125 publicly submitted Senate and Congressional Maps.

Gaetz specifically cited the Partisan Operative Maps as the bases for at least twelve enacted Senate districts. (Pl. App. 1800 (Senate District 2 based on Senate Public Map 143); *id.* at 1805 (Senate District 6 based in part on Senate Public Map 90); *id.* at 1811 (Senate District 11 based on Senate Public Map 143); *id.* at 1813 (Senate District 13 based in part on Senate Public Map 147); *id.* at 1814 (Senate

[6] Reichelderfer and Pepper confirmed the transmission of draft maps in their trial testimony taken on May 19, 2014 and May 20, 2014. A transcript could not be obtained in time for the emergency briefing deadline.

District 14 based on Senate Public Map 123); *id.* at 1819 (Senate District 19 based in part on Senate Public Map 85); *id.* at 1827 (Senate District 25 based on Senate Public Map 123); *id.* at 1829 (Senate District 27 based in part on Senate Public Map 147); *id.* at 1834 (Senate District 31 based on Senate Public Map 123); *id.* at 1837 (Senate District 34 based in part on Senate Public Maps 84, 123, and 147); *id.* at 1838 (Senate District 35 based in part on Senate Public Maps 84 and 85); *id.* at 1842 (Senate District 39 based on Senate Public Map 85)).

The Legislature similarly cited the known Congressional Partisan Operative Map as the basis for at least three congressional districts. (*See id.* at 1987 (Congressional District 3, proposed by Senate as Congressional District 6, based on Congressional Public Map 133); *see also* App. 1626 (Congressional District 3 based on Congressional Public Map 133); *id.* at 1630(Congressional District 4 based on Congressional Public Map 133); *id.* at p.1667 (Congressional District 13 based in part on Congressional Public Map 133)).

The Non-Parties' and their collaborators' subversion of the public process is exactly the kind of "different, separate process that was undertaken contrary to the transparent effort" that the Florida Supreme Court deemed to be "important evidence in support of the claim that the Legislature thwarted the constitutional mandate." *Apportionment IV*, 132 So. 3d at 149.

II. THE NON-PARTIES HAVE WAIVED OR OTHERWISE FAILED TO PRESERVE THE ISSUES THEY RAISE.

Standard of Review. This court and other district courts have held that a trial court's finding of waiver is reviewed for abuse of discretion. *R.J. Reynolds Tobacco Co. v. Hiott*, 129 So. 3d 473, 479 (Fla. 1st DCA 2014).

A. The Non-Parties Have Waived Their Defenses to Producing the Documents.

While the trial court made no express finding of waiver and, indeed, rejected early waiver arguments made by Plaintiffs, it would have been fully justified by the record once it completed its in camera review in finding that under the totality of the circumstances, the Non-Parties waived their defenses to production. Regardless, now that all the information is in, especially now that the Plaintiffs have the Produced Documents to establish subject matter waiver and in light of the Non-Parties' failure to seek appellate review of the Production Order before complying with it, the record is clear that, under any reasonable view, the defenses have been waived. There are three levels to the Non-Parties' waiver; regardless of whether any one by itself would be sufficient, they collectively establish waiver as a matter of law.

1. The Non-Parties Did Not Timely Assert Their Defenses to Production.

Bainter waived any privilege by not seeking a protective order from the original notice of deposition duces tecum and purporting to comply with it. All of the subject documents fell under his control as owner of Data Targeting, which

employed the other two Non-Parties. Moreover, once the subpoenas was served on the other Non-Parties, they resisted discovery not on any claim for associational privilege or trade secret protections, but solely on claims of relevant and undue burden. They had the opportunity to raise whatever defenses to production they wished in their motion to quash, and they litigated that all the way to this Court. Particularly with regard to the blanket associational privilege, there can be no reasonable claim that the Non-Parties had to collect and review the responsive documents to determine whether the privilege might apply. Their associational privilege argument does not distinguish between the characteristics of any particular document and a comparison of the Produced Documents with the other documents they produced reveals no meaningful distinction.

The waiver became more apparent when they defied the original order requiring them to produce the documents back in April 2013. Their failure to comply by at least asserting the associational privilege and timely producing a privilege log should constitute a waiver by itself, doubly so when after being found in contempt, the Non-Parties submitted a privilege log that violated the plain language of the order requiring a detailed privilege log naming names and giving context to allow evaluation of the privilege. *Cf. Progressive Am. Ins. Co. v. Lanier*, 800 So. 2d 689, 690-91 (Fla. 1st DCA 2001) (holding that a blanket assertion of privilege without providing the information necessary for other parties to assess the

applicability of the privilege is insufficient to establish the privilege); *Metabolife Int'l, Inc. v. Holster*, 888 So. 2d 140, 141 (Fla. 1st DCA 2004) (failure to file privilege log justifies finding of waiver).

While the Fourth District has held that a non-party does not waive a claim of privilege by failing to submit the privilege log required by Rule 1.280(b)(6), *Westco, Inc. v. Scott Lewis' Gardening & Trimming, Inc.*, 26 So. 3d 620, 623 (Fla. 4th DCA 2009), that decision should not control for two reasons. First, it has not been followed (admittedly it has also not been rejected) by this or any other Florida appellate court to undersigned's knowledge and reflects a misapprehension of the clear purpose and intent behind the use of the term "party" in Rule 1.280(b)(6). Second, even if it correctly applies the procedural rule, the Non-Parties obligation to file a privilege log was still imposed by the trial court's unambiguous order that the Non-Parties provide a detailed privilege log. The Non-Parties did not provide a privilege log within the time frame specified by the order and, therefore, waived any potential claim of privilege.

2. The Non-Parties Freely (and Falsely) Discussed the Subject Matter of the Documents in Deposition Without Asserting the Privilege.[7]

[7] The Plaintiffs have only recently obtained the Confidential Production and, therefore, could not raise arguments regarding their subject matter before the trial court. Nevertheless, this Court may affirm the orders below on any ground in the record. *See Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644-45 (Fla. 1999).

A claim of privilege is "intended as a shield, not a sword," and "a party may not insist upon the protection of the privilege for damaging communications while disclosing other selected communications because they are self-serving." *Hoyas v. State*, 456 So. 2d 1225, 1229 (Fla. 3d DCA 1984) (citations omitted); *see also Cox v. Adm'r U.S. Steel & Carnegie*, 17 F.3d 1386, 1417 (11th Cir. 1994) (holding that a party may not "use the privilege to prejudice his opponent's case or to disclose some selected communications for self-serving purposes") (citation omitted). Thus, if a party "testifies as to privileged communications in part" or "introduces part of his correspondence" on the allegedly privileged matter, the remainder of the testimony or correspondence on the same subject matter is discoverable. *Coates v. Akerman, Senterfitt & Eidson, P.A.*, 940 So. 2d 504, 511 (Fla. 2d DCA 2006).

The Coalition Plaintiffs deposed Bainter, the owner and president of Data Targeting, in the Congressional and Senate Actions about the Partisan Operative Maps and the purpose behind Data Targeting's map drawing efforts. Rather than claim privilege, Bainter produced a number of documents regarding the Partisan Operative Maps and chose to offer testimony that ranged from evasive to demonstrably false. The following are a few examples of the testimony that Bainter provided:

> Q. Mr. Bainter, I would like to ask you the broad question of what involvement, if any, did Data Targeting have in the most recent redistricting process in Florida? I'm talking about the process from 2011 to 2012, roughly.

A. What involvement. Certainly, keenly interested in the process.

Q. Uh-huh. Did Data Targeting do anything in the process, perform any services for anyone?

A. Perform any services for anybody. I certainly kept an eye on the process that was going on. I absolutely was -- would download the maps that the league or whomever would submit, and analyze them and look at them. You know, repundants [sic] around me, we would share opinions and those sorts of things, yes.

(Pl. App. 27-28.)

Q. Okay. And you personally used the house and senate programs that -- My District Builder to draw maps?

A. Yes.

Q. Did you ever submit those maps -- did you ever upload them onto the house or senate websites?

A. I don't believe so.

Q. Okay. So why were you drawing maps?

A. Intrigue.

Q. Intrigue about what?

A. What do you mean by "what"?

Q. What do you mean, "intrigue"?

A. It was a pretty intriguing process.

Q. What? Well, one might be intrigued by the redistricting process and still not take it upon himself or herself to actually draw maps. So I'm wondering, why did you personally take it upon yourself to draw maps, what was going through your mind?

A. It was a very fascinating item. And I found it very interesting. I never actually completed a map. I found it way too tedious.

(*Id.* at 32.)

Q. Do you ever remember requesting that any change be made by anyone to any map that you reviewed during this redistricting process?

A. You're asking me if I remember specifically, and I do not remember specifics to that, no.

Q. Okay. Without referring to any specific incident, do you in general have any recollection of ever suggesting changes to maps that were shown to you during the redistricting process?

A. I -- yes.

Q. Okay. So why were you -- why were you suggesting changes to certain maps if what I understood before, you never submitted a map to the senate, you never uploaded a map, why were you suggesting changes?

A. There was, again, a lot of intrigue among the consulting community. And lots of them were drawing maps. And we, again, would work with those folks out of our own volition to evaluate what gaps seen and so forth.

(*Id.* at 41.)

Q. Do you recall Rich Johnson (sic) drafting maps?

A. Yeah.

Q. How many?

A. I don't know. A few.

Q. What did he do with them?

A. Traded them back and forth with me.

Q. And what else? What was the purpose of this map drawing process?

A. Interest. Mostly interest on our part.

(*Id.* at 41.)

Bainter reiterated this inaccurate testimony to frustrate discovery into the Partisan Operative Maps at the evidentiary hearing before the special master. Bainter falsely testified that he had provided "100 percent" of all documents in his possession "that were sent to a legislator or legislative aide or anybody in the Legislature regarding redistricting." (Pl. App. 1170.) Bainter later reaffirmed that "we provided 100 percent of any interaction [with the Legislature] almost a year ago," to dissuade the Plaintiffs from chasing what he characterized as a "rabbit trail" that is "not going to get them very far." (*Id.* at 1181.) In fact, Bainter knew that he had at least eight unproduced Senate and Congressional maps that had been submitted to the Legislature through strawmen in his possession.

Bainter then offered the following testimony before the special master:

Q. All right. All the map making you did was not done to provide information to the Legislature at least publicly, correct?

A. I never submitted any maps to any legislator or staff.

Q. And your friends, Mr. Reichelderfer and Mr. Heffley and Mr. Terraferma, none of them submitted maps –

A. I don't believe.

Q. -- through the public portal, right?

A. I would not know.

Q. Well, I mean, you all are so tight, you don't know whether they were submitting maps to the public portal?

MR. SAFRIET: Objection, asked and answered, Your Honor.

JUSTICE HARDING: Overruled. He can inquire.

A. I don't know.

BY MR. KING:

Q. Okay. At least you all weren't talking about that?

A. Again, I don't know whether anybody submitted a map or not.

(*Id.* at 1187-88.)

At the time Bainter gave this deposition and hearing testimony, he knew that he, his employees, and the other partisan operatives with whom he collaborated did not prepare the Partisan Operative Maps out of mere "intrigue" or "interest." Bainter was well aware that the Partisan Operative Maps were intended to be submitted through public strawmen to surreptitiously influence the redistricting process. It was, after all, Bainter who solicited Stafford Jones to arrange for "10 more people at least" from the Alachua County Republican Organization to serve as public front men, (DC1751), and asked his employees to "spread [the Partisan Operative Maps] around" among several strawmen to avoid detection, (DC0107).

Yet Bainter knowingly offered inaccurate testimony to the contrary, apparently expecting that the Confidential Documents would never see the light of day.

The Plaintiffs met similar resistance from other participants in the Non-Parties' efforts to subvert the public process. Johnston, for example, claimed that he was not "aware of anyone who drew maps and gave them to other groups" or "to other individuals to submit." (Pl. App. Johnston Depo. at 171:4-8.) The Produced Documents, however, contain an email from Johnston to Bainter titled "TLH." (DC0258.) The email followed the submittal of a Partisan Operative Map through a strawman as Senate Public Map 123. (*See* Pl. Supp. App. 31; DC0117, DC0118-19, DC0121-23, DC0124, DC0139.) In the "TLH" email, Johnston informed Bainter that he was "[h]eaded up" and "[t]elling folks to look at Map 123." (DC0258) "Folks" in the right position in Tallahassee evidently listened to Johnston, and several features from Senate Public Map 123 found their way into the Initial 2012 Senate Plan.

Terraferma likewise testified that he did not prepare maps for anyone else to submit and was "not sure" what his fellow operatives intended to do with the Partisan Operative Maps. (Pl. App. Terraferma Depo. at 61:13-65:7.) According to Terraferma, he assisted Heffley for personal reasons, (*id.* at 56:3-22), and drew redistricting maps "for fun," (*id.* at 109:19-24). Terraferma also claimed that he did not work "very much" with Bainter and "hardly had any conversations or e-mail

with him." (*Id.* at 59:11-19.) Several of the Produced Documents, however, tend to show that Terraferma prepared Congressional and Senate maps that were submitted through strawmen and had extensive communications with Bainter. (*E.g.*, DC0013, DC0034, DC0035, DC0036, DC0037, DC0040, DC1147, DC1148.)

For example, Terraferma sent "Schmedlov," a Senate plan, to Benjamin Ginsberg, a redistricting lawyer for Republican interests nationally, stating "Rich [Heffley] wanted you to have a copy of this Senate plan." (DC0037.) A few days later, Bainter sprang into action and directed Mitchell to "load [Schmedlov] up and get ready to shoot [it] back out for upload to Senate Website." (DC1641.) On the same day, a front person submitted Schmedlov as Senate Public Maps 143, and several of its features ultimately appeared in the Initial 2012 Senate Plan. (Pl. Supp. App. 43; *see* DC0144-46, DC0149, DC1143.)

After a meeting between Bainter, Terraferma, and Heffley on October 27, 2011, (Pl. App. 1162), Terraferma sent a Congressional map called "Congressional Complete" to Bainter. (DC0150.) After directing Sheehan and Mitchell to "NOT exactly copy this map," (DC0050), Congressional Complete was modified and then submitted through a strawman as Congressional Public Maps 132 and 133. (Pl. Supp. App. 54.) One minute after receiving Congressional Complete from Terraferma, Bainter sent an email to his employees titled "start drawing a

congressional map" and instructed them: "QUICK! we have to file it by Monday!" (DC1780.) This was, of course, the same Bainter who testified that he drew the Partisan Operative Maps out of "intrigue" and did not withhold any documents that had been provided to the Legislature.

Finally, on the November 1, 2011 deadline for submission of public maps, Terraferma sent an email titled "LAST ONE!" forwarding a plan called "Sputnik" to Bainter with a copy to Heffley. (DC1147.) Terraferma then sent the same group an email titled "this one didnt [sic] go through earlier….darn….." (DC1148.) Terraferma noted that Sputnik "bounced back," and asked Heffley: "Should we try to get this submitted now?" (*Id.*) Sputnik was submitted through a front person as Senate Public Map 147, and as with the other Partisan Operative Maps, the Initial 2012 Senate Plan contained many of Sputnik's features. (Pl. Supp. App. 48).

The Produced Documents show that the Non-Parties and the other operatives with whom they collaborated went to great lengths to hide their efforts to subvert the public process. They, for example, advised each other to "be a bit more 'creative' about how we are naming" the Partisan Operative Maps to avert the appearance of "coordination," (DC1833), and to avoid an "email trail," (DC0094). It is, therefore, unsurprising that the Non-Parties would resist production of the Produced Documents for over a year – even to the point of being held in contempt. But now that they have been produced, it is clear to Plaintiffs (as it likely was to

the trial court when it completed its in camera review) that Bainter testified inaccurately about *the very subject addressed in the documents over which the Non-Parties claim privilege* – i.e., the submittal of and purpose behind the Partisan Operative Maps. The deposition testimony by Bainter and other members of the "association" regarding the Partisan Operative Maps operates as a waiver, and the Non-Parties cannot now raise associational privilege or trade secret protection to shield these misrepresentations from cross-examination and judicial scrutiny.

3. The Non-Parties Failed to Exhaust Their Appellate Remedies Before Producing the Documents.

Finally, any doubts as to waiver should have been resolved when instead of asking for time to challenge the Disclosure Order by petition for writ of certiorari, the Non-Parties instead submitted an order that they represented granted relief to which they consented and promptly complied with the order. The very reason that a certiorari is appropriate to review an order compelling discovery over claims of privilege is because the issue cannot be reviewed from a final appeal after the discovery is provided; and the law is equally clear that certiorari review is no longer available either once the discovery has been provided. *E.g.*, *Marion County Hosp. Dist. v. Akins*, 435 So. 2d 272, 272 (Fla. 1st DCA 1983); *DeGennaro v. Janie Dean Chevrolet, Inc.*, 568 So. 2d 1008, 1009 (Fla. 4th DCA 1990); *Cicenia v. Mitey Mite Race Tracks, Inc.*, 415 So. 2d 128, 130 (Fla. 4th DCA 1982).

The Non-Parties appear to recognize this because throughout the proceedings below after they produced the documents and even throughout the initial brief, they repeatedly emphasized their agreement to turn over the Produced Documents for use at trial so long as they are kept confidential. Thus, this appeal is really not about the Production Order, but the Confidentiality Order. The only relief that the Non-Parties did not waive in the trial court was the request to keep the documents confidential while used at trial. (At least not until they filed an initial brief that does not address the applicable standards as argued in part II(D).)

B. The Non-Parties Failed to Preserve Their Claims of Procedural Irregularities.

Most of the Non-Parties' arguments regarding confidentiality do not involve substance or an actual application of law to fact, but instead depend on claims that the trial court did not make sufficient findings, conduct certain hearings, or engage in certain analysis on the record. But none of these arguments was preserved below because the Non-Parties never asked the trial court to do any of these things. *E.g.*, *Jonsson v. Dickinson*, 46 So. 3d 1016, 1016 (Fla. 1st DCA 2010); *Dismas Charities, Inc. v. Dabbs*, 795 So. 2d 1038, 1039 (Fla. 4th DCA 2001). Instead, they negotiated and then submitted an order that specifically stated that the court had engaged in the required analysis.

C. The Non-Parties Waived Review of the Trial Court's Ruling Under Rule 2.420 By Failing to Address That Rule's Standards in Their Initial Brief.

As argued above, the only argument preserved below the Non-Parties request to close the courtroom while the Disclosed Documents are discussed during trial, their only request for confidentiality the trial court denied. But the arguments they made below for this relief were all premised on the requirements of Florida Rule of Judicial Administration 2.420. But as the Plaintiffs emphasized in their response to the emergency motion for stay and the Non-Parties continued to ignore in their initial brief, the Non-Parties do not even reference Rule 2.420, much less explain how it was misapplied. Absent any meaningful argument as to how the trial court did not apply the controlling legal standards under Rule 2.420, the initial brief waives any such argument. *City of Bartow v. Brewer*, 896 So. 2d 931, 932 (Fla 1st DCA 2005) (failure to raise a point in the initial brief precludes the court's considering it); Fla. R. App. P. 9.210(b)(1), (5).

III. EVEN IF PRESERVED, THE NON-PARTIES DEFENSES TO PRODUCING THE DOCUMENTS ARE MERITLESS.

Standard of Review. Whether documents are subject to privilege or trade secret protection is a mixed question of fact and law, with the legal conclusion reviewed de novo. *E.g., Apportionment IV*, 132 So. 2d at 142; *All Pro Sports Camp, Inc. v. Walt Disney Co.*, 727 So. 2d 363, 368 (Fla. 5th DCA 1999).

A. The Non-Parties Had No First Amendment Right to Prevent Disclosure of Documents Revealing Their Surreptitious Efforts to Aid and Abet Legislators' Corrupt Intent to Engage in Prohibited Partisan Gerrymandering. (Initial Brief Point I)

1. The Trial Court Conducted the Kind of Review the Non-Parties Requested and Merely Disagreed as to the End Result.

The Non-Parties' unpreserved claims that they were denied an evidentiary hearing ignores the fact that the special master conducted an evidentiary hearing and the trial court adopted the special master's findings of fact. It is only the application of the law to those facts that the Non-Parties seek to dispute. It also ignores the fact that the trial court had complete briefing by the parties and recommendation from the special master setting forth the competing views on the proper analysis. And it ignores that the Non-Parties themselves prepared an order directly stating that the trial court had applied the very analysis they now claim it ignored. And even then, the Non-Parties only argue that a few of the Produced Documents should not have survived the strict scrutiny test. But it is their burden as appellants to demonstrate that the result reached by the trial court was wrong, not to simply criticize the manner in which the court reached the result. § 59.041, Fla. Stat.; *Dade Cnty. Sch. Bd.*, 731 So. 2d at 644-45 (explaining tipsy coachman rule).

2. The Trial Court's Initial Conclusion That Disclosure of the Requested Documents Threatened to Chill the Non-Parties' Associational Rights Was Proven Mistaken by Its

Subsequent In Camera Review of the Key Documents Ordered To Be Produced.

While the trial court did rule in favor of the Non-Parties and against the Coalition Plaintiffs on the issue of whether the Non-Parties established a prima facie showing of entitlement to a First Amendment privilege, that determination almost certainly gave way once the court actually reviewed the documents in camera. Regardless, this Court should find that there is no associational privilege implicated in this case. *See Dade Cnty. Sch. Bd.*, 731 So. 2d at 644-45.

The associational privilege is a seldom established claim against the use of government power to target and effectively silence collective speech. A proponent of the privilege must demonstrate a real prospect of group suppression by showing "a reasonable probability that the compelled disclosure [of personal information] will subject [group members] to threats, harassment, or reprisals from either Government officials or private parties." *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2820 (2010) (citing, *inter alia*, *Buckley v. Valeo*, 424 U.S. 1, 74 (1976)).

The need and failure to show a likelihood of real suppression has been the basis for the Supreme Court repeatedly to reject the associational privilege as a presumptive, blanket basis to cloak associational information in the electoral context. In *Buckley*, for instance, the Court rejected associational privilege as a basis broadly to exempt minor political parties from statutory disclosure requirements. Instead, the Court called for a case-by-case analysis, requiring

pertinent evidence of reprisals likely to suppress organized speech. *Buckley*, 424 U.S. at 74. In *John Doe No. 1*, the Court likewise rejected a claim to exempt from disclosure signatories to electoral petitions. 130 S. Ct. at 2821. The Court refused to presume that any burdens from disclosure of typical referendum petitions would be remotely like the burdens that arose as to a California referendum ("Proposition 8") against gay marriage. See id. at 2820-21.

Unlike here, the controversy over Proposition 8 reflects the circumstances that raise associational privilege concerns. The goal of Proposition 8 was to establish a prohibition against gay marriage in California. Supporters of the Proposition were subjected to extreme harassment, including death threats, property damage, and business boycotts, for expressing moral views against gay marriage. *See John Doe No. 1*, 130 S. Ct. at 2820 (acknowledging harassment related to Proposition 8 and "other particularly controversial" petitions); Petitioners' Brief, *John Doe No. 1*, 130 S. Ct. 2811 (2010) (No. 09-559), 2010 WL 711186, at *2-*6 (chronicling examples including publicized death threat to Mayor of Fresno, and systematic internet-based efforts to identify and threaten supporters whose names were publicly released).

Perry v. Schwarzenegger, 591 F.3d 1147 (9th Cir. 2009), was at the center of the Proposition 8 controversy. There, the plaintiffs (gay rights advocates) sought discovery of the internal communications of Proposition 8's official proponent

organization. *See id*. at 1152. In that context, the court may well have been justified in finding it "self-evident" that revealing the "private political and moral views" of supporters would "drastically alter" their future involvement in similar campaigns. *See id.* 1163.

Importantly, though, the moral dimension of the Proposition 8 controversy was significant, as courts have long recognized that forced disclosure of private religious and moral beliefs is likely to inhibit religious freedom. *See NAACP v. Alabama*, 357 U.S. 449, 462 (1958) (acknowledging likelihood of disclosure inhibiting free exercise of religion, particularly of group espousing dissident beliefs); *cf. Johnson v. Washington Times Corp.*, 208 F.R.D. 16, *17 (D.D.C. 2002) (ordering steps to protect identities of religious group's members in light of known intolerance to group and its views). *Perry*, thus, understandably emphasized that associational privilege does not turn on particular information types, such as member lists, but depends on "whether disclosure of [information sought] will have a deterrent effect on the exercise of protected activities." *Perry*, 591 F.3d at 1162 (emphasis added) (citing *NAACP v. Alabama*).

The circumstances surrounding the Coalition Plaintiffs' request for production from the Non-Parties are entirely different than what was at stake in *Perry*. In fact, if anything, it is the Coalition Plaintiffs that are far more closely aligned with the interests the Court sought to protect in *Perry*, as it is the Coalition

Plaintiffs, not the Non-Parties, who have in fact sought to associate for the purpose of legitimate petitioning activity. The Non-Parties, by contrast, have done nothing of the sort. They were being paid to associate in order to conspire with government officials to violate the constitution and thus should never be entitled to any such constitutional protections for purely business activities. Indeed, far from protesting government action, they were working with those in government to accomplish an unconstitutional goal.

The weight of authority on associational privilege is consistent with the general rule that evidentiary privileges are to be strictly construed in favor of requiring a strong showing of need to overcome "the normally predominant principle of utilizing all rational means for ascertaining the truth." *See Wilkinson v. FBI*, 111 F.R.D. 432, 438 (C.D. Cal. 1986) (citing *Trammel v. United States*, 445 U.S. 40, 47 (1980)); *In re Motor Fuel Temp. Sales Practices Litig.*, 707 F. Supp. 2d 1145, 1158 (D. Kan. 2010).

In *Wilkinson*, the court rejected a broad associational privilege claim for a dissident group's vice chair over group records. The court found no authority to justify a blanket assertion of associational privilege, and found no evidence that disclosure would deter associational activities. *Id.* at 436-37. The court distinguished *NAACP v. Alabama*, where discovery was "directed at the heart of a group's protected associational activities" as evidently calculated to expose the

identity of members who were demonstrably likely to suffer reprisals for their support of a controversial civil rights campaign. *Id.*

More recently, in *In re Motor Fuel*, a court rejected, as mere rhetoric, a trade association's claims that compelled disclosure of their lobbying activities on an issue being litigated would adversely affect the association's and its members' ability "to collectively advocate" positions, and would induce members to withdraw from, and others not to join, the association for fear that exposing their beliefs would subject them to harassment from consumer groups. *Id.* at 1158-59 & n.20. The court, therefore, permitted discovery of the trade association's activities, because its associational privilege claims were not coupled with pertinent evidence demonstrating that associational activities faced a real threat of suppression from outside forces. *See id.* at 1160. This ruling applies with equal force here.

In sum, the discovery requests in this case were not aimed at determining what the Non-Parties believed, intended, or sought. The Non-Parties have never kept those things secret. Instead, the discovery requests were aimed at evidence demonstrating how the Non-Parties collaborated with the Legislature to insinuate those political goals into the apportionment process. That is no more legitimate than associational claims to a right to secretly bribe public officials to accomplish political goals or other forms of public corruption. *Cf. Anderson v. Hale*, 49 Fed. R. Serv. 3d 364, 2001 WL 503045 (N.D. Ill. 2011) (holding that claim for

associational privilege as to evidence of participation in conspiracy to accomplish unlawful aims).

3. Regardless, Any First Amendment Interests the Non-Parties Had Must Yield to the Overwhelming Interest in Enforcing the Florida Constitution's Prohibition on Partisan Gerrymandering.

Even if the Non-Parties did have some basis for seeking the protections of the associational privilege, the trial court correctly concluded that the privilege must yield in this instance. Whatever doubt existed when the special master concluded that the Coalition Plaintiffs could not overcome the associational privilege was erased by the supreme court last December in *Apportionment IV*. The supreme court held that exactly this kind of discovery is so important to the Plaintiffs' (and public's) right to vindicate the Florida Constitution's prohibition on political gerrymandering as to outweigh even the strong legislative privilege. 132 So. 3d at 147-52. Indeed, the supreme court was approving a similar balancing approach by the very same circuit judge in this case. *See id.* at 150-52 (embracing Judge Lewis's balancing approach and emphasizing the level of discretion afforded the circuit court in evaluating the balance as to each document).

Again, the supreme court emphasized that it had approved the Legislature's apportionment decisions based on representations that it as the result of open public debate and map submissions. And the court emphasized the grave

importance of any evidence that this was a charade and there was actually collusion for behind-the-scenes political gerrymandering. *Id.* at 149.

The trial court clearly took its time reviewing the documents in camera fully aware of the competing interests and drew the appropriate balance. The Non-Party's attempt to show to the contrary through a variety of meritless arguments. First, they denigrate the trial judge for asking Bainter "[w]hat exactly does your company do?" (Brief at 19.) They utterly miss the irony that was the court's point. This question did not, as they suggest, indicate that he was unaware of the nature of their business after having reviewed their documents. Indeed, the court said it "had a pretty good idea" when it asked the question. (NP App. 651.) In context, the court was making a point. His question came right after Bainter testified that it cost hundreds of thousands of dollars to comply with the discovery requests because it had difficult targeting the exact data that was being requested. Intentionally or not, the question also emphasized the tremendous irony of a political consulting company whose business is crunching data for political gain asserting that it was just exercising its First Amendment right to show interest in government when it was surreptitiously feeding maps to the Legislature through strawmen. The only purpose of the Non-Parties' actions in relation to these documents was to assist the Legislature in engaging in the kind of secret political gerrymandering now prohibited by the constitution.

The Non-Parties also harp on the trial court for not ordering production of Withheld Documents that were duplicative of Disclosed Documents. But that merely shows that the court was engaged in a pragmatic approach that should be lauded, not ridiculed. To the extent the Non-Parties point to Withheld Documents that should have been produced for the same reason as Produced Documents, they only highlight how the Plaintiffs did not receive all the documents they should have in the first place. And to the extent they point to blank documents or others that were clearly mistakes, that only highlights that they made no document-by-document argument to the trial court to give it a chance to correct any mistakes. The rest of their document-specific arguments made for the first time on appeal simply misapply the context and relevance of these documents as explained in Part I above.

The point is that the trial court properly reviewed each document and that the material documents that Plaintiffs seek to use at trial are so overwhelming relevant to so overriding a legitimate governmental purpose as to require the weak claims of privilege to yield. While the Non-Parties would certainly have a stronger First Amendment claim to protect communications about petitioning the government to repeal the redistricting amendments or change the law, none of that is implicated in this case. The court restricted discovery to the post-2010 period,

and the Produced Documents all relate to the 2012 redistricting process clearly controlled by the recently enacted amendments.

B. Trade Secret Protections Do Not Apply to Unlawful Activity and, in Any Event, the Produced Documents Do Not Constitute Trade Secrets. (Initial Brief Point II)

The Non-Parties' cursory arguments that the Produced Documents include trade secrets should also be rejected. The protection afforded to trade secrets is not a "privilege" justifying a vague description. "Rather the party asserting trade secret protection must describe the allegedly appropriated trade secrets with reasonable particularity." *Levenger Co. v. Feldman*, 516 F. Supp. 2d 1272, 1287 (S.D. Fla. 2007). Yet the Non-Parties do not identify a single Produced Document that even arguably contains trade secrets.

These documents also are not trade secrets. A trade secret is defined as:

> information, including a formula, pattern, compilation, program, device, method, technique, or process that:
>
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§ 688.002(4), Fla. Stat. (2014). To be sure, the Non-Parties attempted to keep these documents out of the public eye through more than a year of discovery battles, but they ultimately provided them to the Coalition Plaintiffs. And,

regardless of the Non-Parties efforts to maintain the secrecy of these documents, concerted efforts to influence and distort a public redistricting process hardly have "independent economic value." The Non-Parties have certainly made no showing that the concept of using strawmen is not "readily ascertainable by others" who are similarly intent on surreptitiously influencing the Legislature.

The documents simply do not include formulas, patterns, compilations, devices, methods, techniques, or processes. § 688.002(4), Fla. Stat. Again, the only secrets here are an attempt to evade the constitution by assisting the Legislature to create an apportionment plan intended to favor partisan interests in violation of the constitution through a strawman charade. There is simply no legitimate business interest in preparing maps that favor particular political parties or candidates. That would be like claiming trade secret protection for a new "business method" of secretly bribing public officials or otherwise surreptitiously fomenting corruption.

Finally, to the extent any of the documents are trade secrets, that is not a defense to production where there are so relevant; it is only a ground for preserving their confidentiality to the extent reasonably possible.

IV. EVEN IF PRESERVED, ANY ERROR IN JUDGE LEWIS'S APPLICATION OF RULE 2.420 BENEFITTED THE NON-PARTIES.

Standard of Review. The degree, duration, and manner of confidentiality ordered by the trial court pursuant to Rule 2.420(e)(9)(B) and (C) likely involve some degree of discretion and should therefore be reviewed only for an abuse of

discretion. *Cf. Florida Highway Patrol v. Bejarano*, 1D13-5821, 2014 WL 1882233, at *3 (Fla. 1st DCA May 12, 2014) (recognizing trial court's broad discretion use of protective provisions).

To demonstrate error in the trial court's denial of the Confidentiality Motion, the Non-Parties bear the burden of demonstrating (1) the Produced Documents falling into one of the interests qualifying for protection set forth in Rule 2.420(c)(9)(A), (2) the degree, duration, and manner of protection they seek is "no broader than necessary" to protect those interests, and (3) "no less restrictive measures are available." Fla. R. Judicial Admin. 2.420(c)(9), (e).

The Non-Parties argued below their interests were due protection under five provisions of the rule. The first is to protect "the fair, impartial, and orderly administration of justice." Rule 2.420(c)(9)(i). That interest is only undermined by keeping these documents from the public. The second is to protect trade secrets, but there are no trade secrets here. Rule 2.420(c)(9)(ii). The third is to "obtain evidence to determine legal issues in a case," but that is an interest favoring disclosure, not secrecy in this case. Rule 2.420(c)(9)(iv). The fourth is to "avoid substantial injury to innocent third parties," but the only injury the Non-Parties would suffer is that the documents show that they are **not** innocent, but complicit in an attempt to circumvent the constitution. The last is to "avoid substantial injury to a party …," but the Non-Parties are, of course, not parties. Rule 2.420(c)(i)(vi).

Even if one or more of these interests warranted confidentiality, closing the courtroom would be broader than necessary to protect any cognizable interest in confidentiality contrary to Rule 2.420(c)(9)(B) and there would be less restrictive measures to protect those interests that Non-Parties chose not to seek, such as redaction of names or use of pseudonyms. The Non-Parties simply seek to keep the public from learning of a critical basis for the Plaintiffs' challenge to the Legislature's apportionment plans. Given the tremendous importance of this issue to the public, as recognized by the supreme court in *Apportionment IV*, the public has a right to know of this evidence, to the extent is offered into evidence.

CONCLUSION

For the foregoing reasons, the orders below should be affirmed as to this appeal, subject to the Plaintiffs right to timely appeal the aspects of the orders adverse to them.

Respectfully submitted,

MESSER CAPARELLO, P.A.

/s/ Mark Herron
Mark Herron
Florida Bar No. 199737
Email: mherron@lawfla.com
Robert J. Telfer III
Florida Bar No. 0128694
Email: rtelfer@lawfla.com
2618 Centennial Place
Tallahassee, FL 32308

THE MILLS FIRM, P.A.

/s/ John S. Mills
John S. Mills
Florida Bar No. 0107719
jmills@mills-appeals.com
Andrew D. Manko
Florida Bar No. 018853
amanko@mills-appeals.com
Courtney Brewer
Florida Bar No. 0890901

Telephone: (850) 222-0720
Facsimile: (850) 558-0659

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

cbrewer@mills-appeals.com
service@mills-appeals.com (secondary)
203 North Gadsden Street, Suite 1A
Tallahassee, Florida 32301
(850) 765-0897
(850) 270-2474 facsimile

and

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to the following attorneys on May 21, 2014:

D. Kent Safriet
Thomas R. Philpot
Mohammad O. Jazil
Hopping Green & Sams, P.A.
P.O. Box 6526
Tallahassee, Florida 32314
kents@hgslaw.com
tp@hgslaw.com
mohammadj@hgslaw.com

Counsel for Petitioners

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

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

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

Counsel for Fla. Senate & Senate Pres.

Blaine Winship
Atty. Gen., The Capitol, Suite PL-0 1
Tallahassee, FL 32399-1050
blaine.winship@myfloridalegal.com

Counsel for the Attorney General

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

Counsel for Florida Secretary of State

Daniel Nordby
Florida House of Representatives
422 The Capitol
Tallahassee, FL 32399-1300
daniel.nordby@myfloridahouse.gov
Betty.Money@myfloridahouse.gov

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

Karen C. Dyer
Boies, Schiller & Flexner, LLP
121 South Orange Ave., Suite 840
Orlando, FL 32801
kdyer@bsfllp.com

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

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

Counsel for Romo Plaintiffs

Counsel for Fla. House and Speaker

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

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

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

Counsel for NAACP

Ronald G. Meyer
Lynn Hearn
Meyer, Brooks, Demma & Blohm, P.A.
131 North Gadsden Street
Post Office Box 1547 (32302)
Tallahassee, Florida 32301
rmeyer@meyerbrookslaw.com
lhearn@meyerbrookslaw.com

Counsel for Coalition Plaintiffs

/s/ John S. Mills
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing brief is in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

/s/ John S. Mills
Attorney