Filing # 16164133 Electronically Filed 07/21/2014 05:53:43 PM

RECEIVED, 7/21/2014 17:58:40, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

PAT BAINTER et al.,
Appellants,

v.

LEAGUE OF WOMEN VOTERS et al.,
Appellees.

Case No.: SC14-1200
L.T. No.: 1D14-2163;
2012-CA-00412;
2012-CA-00490;
2012-CA-2842

ON APPEAL FROM THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA, CERTIFIED BY THE DISTRICT COURT FOR IMMEDIATE RESOLUTION

SUPPLEMENTAL ANSWER BRIEF OF PLAINTIFFS

MESSER CAPARELLO, P.A.

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

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

THE MILLS FIRM, P.A.

John S. Mills
Andrew D. Manko
Courtney R. Brewer
203 North Gadsden Street, Suite 1A
Tallahassee, FL 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 Appellees/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 REGARDING CITATIONS

This Court's June 24, 2014, order accepting jurisdiction directed the clerk of the circuit court to file an original record by July 7. This does not appear to have happened yet, and the Plaintiffs are unaware of any action taken by the Non-Parties to comply with their duty to make sure the record is timely prepared and transmitted. Fla. R. App. P. 9.200(e).

A reader wishing to see the documents on which this appeal should be decided should collect the following briefs and appendices (in addition to any amicus brief, supplemental brief, or appendices thereto that may be filed and accepted in the future):

1) The Non-Parties' Initial Brief ("Init. Br.") filed under seal in the district court on May 19 and in this Court on June 19;

2) The Non-Parties Supplemental Appendix ("NP Supp. App.") filed under seal in the district court on May 19 and in this Court on June 20;

3) The Plaintiffs' Corrected Answer Brief ("Ans. Br."), which supersedes their original answer brief and was filed under seal in the district court on May 21 and in this Court on June 19;

4) The Plaintiffs' Appendix ("Pl. App."), which was filed in the district court on May 20 and in this Court on June 20;

5) The Plaintiffs' Supplemental Appendix ("Pl. Supp. App."), which was filed under seal in the district court on May 20 and in this Court on July 21;

6) The Non-Parties' Reply Brief ("Reply Br."), which was filed under seal in the district court on May 21 and in this Court on June 19;

7) The Non-Parties' Amended Appendix ("NP Am. App."), which superseded their original, unsealed appendix and was filed in the district court on May 21 and in this Court on June 20;

8) The Non-Parties' Supplemental Initial Brief ("NP Supp. Br."), which was filed in this Court on July 9;

9) This supplemental answer brief;

10) The Plaintiffs' Second Supplemental Appendix ("Pl. 2d Supp. App."), which is being filed in this Court along with this brief; and

11) The Plaintiffs' Third Supplemental Appendix ("Pl. 3d Supp. App."), which is being filed under seal in this Court along with this brief.

The Plaintiffs cite the various appendices using the above abbreviations followed by the pdf page number. If the cited material is a four-to-a-page transcript, the pdf page number is followed by a colon and then the transcript page number. Thus, for example, NP Am. App. 1067:4 refers to page 4 of the May 12, 2014, transcript, which appears on page 1067 of the pdf file of the Non-Parties Amended Appendix.

In order to assist the Court, the Plaintiffs include the following chronological list of the documents contained in the various aforementioned appendices:

Date	Document	Appendix Location
3/13/12	Subpoena Duces Tecum served to Pat Bainter	NP Am. App. C
4/3/12	Coalition Plaintiffs' First Amended Complaint	Pl. 2d Supp. App. 241
4/3/12	Romo Plaintiffs' Second Amended Complaint	Pl. 2d Supp. App. 270
11/14/12	Deposition Transcript of Pat Bainter	NP Am. App. D/ Pl. App. 7
11/16/12	Subpeona Duces Tecum for Deposition served to Matt Mitchell, Michael Sheehan and Data Targeting, Inc. Records Custodian	NP Am. App. E
12/4/12	Non-Parties' Motion to Quash	Pl. App. 85
12/19/12	Transcript of 12/19/12 Hearing	Pl. App. 92
1/3/13	Hearing Transcript – Exceptions to Special Master Report	NP Am. App. I
1/28/13	Transcript of 1/28/13 Hearing	Pl. App. 176
1/30/13	Order Denying Motion to Quash	Pl. App. 224
1/30/13	Order Denying Ore Tenus Motion to Quash	Pl. App. 229
2/14/13	Hearing Transcript - Status Conference Hearing	NP Am. App. P
2/27/13	Hearing Transcript - Status Conference Hearing	NP Am. App. Q
4/17/13	Order Denying Stay and Compelling Production	Pl. App. 234
4/22/13	Non-Parties' Notice of Status of Production	Pl. App. 241
4/24/13	Order Appointing Special Master	Pl. App. 239
4/26/13	Coalition Plaintiffs' Motion for Contempt and Sanctions Against Non-Parties Pat Bainter, Matt Mitchell, Michael Sheehan, and Data Targeting, Inc.	Pl. 2d Supp. App. 7
5/13/13	Deposition Transcript of Richard Johnston	Pl. App. 2082
5/17/13	Deposition Transcript of Richard Heffley Vol. 1	Pl. App. 466
5/17/13	Deposition Transcript of Richard Heffley Vol. 2	Pl. App. 627
5/28/13	Hearing Transcript - Motion for Contempt	Pl. 2d Supp. App. 17
5/29/13	Non-Parties' Notice of Production	Pl. App. 176
5/29/13	Non-Parties' Motion for Protective Order	Pl. App. 743
5/31/13	Hearing Transcript - Motion for Protective Order	Pl. 2d Supp. App. 29
5/31/13	Contempt Order	Pl. App. 771

6/3/13	Coalition Plaintiffs' Second Motion for Contempt	Pl. App. 777
6/5/13	Non-Parties' Motion for Rehearing and Clarification	NP Am. App. R
6/11/13	Deposition Transcript of Frank Terraferma Vol. 1	Pl. App. 828
6/11/13	Deposition Transcript of Frank Terraferma Vol. 2	Pl. App. 980
6/11/13	Deposition Transcript of Frank Terraferma Exhibit 30 1	Pl. App. 1162
7/7/13	Non-Parties' Notice of Filing Amended Privilege Log	NP Am. App. F
8/22/13	Hearing Transcript - Second Motion for Contempt	Pl. 2d Supp. App. 36
9/14/13	Report of Special Master	NP Am. App. H
9/23/13	Hearing Transcript - Special Master Proceedings	NP Am. App. G
9/23/13	Excerpt of Hearing Testimony of Pat Bainter	Pl. App. 1163
9/25/13	Order Denying Second Motion for Contempt and Referring Matter to Special Master	Pl. App. 1226
11/5/13	Coalition Plaintiffs' Exceptions to Special Master's Report	Pl. App. 1232
3/5/14	Deposition Transcript of J. Alex Kelly Vol. 1	Pl. App. 1261
3/5/14	Deposition Transcript of J. Alex Kelly Vol. 2	Pl. App. 1450
3/20/14	Order on Special Master's Reports	NP Am. App. B
4/1/14	The Legislative Parties' Motion for Sanctions for Plaintiffs' Fraud on the Court	NP Am. App. A
4/14/14	Gutherie Exhibit 17	Pl. App. 1608
4/25/14	Coalition Plaintiffs' Response to Legislative Defendants' Motion for Sanctions for Plaintiffs' Alleged Fraud on the Court, Romo Plaintiffs' Response	NP Am. App. M
4/25/14	Romo Plaintiffs' Opposition to Legislative Parties' Motion for Sanctions for Fraud on the Court	NP Am. App. M
4/29/14	Hearing Transcript - Oral Ruling On In-Camera Review	NP Am. App. J

5/2/14	Circuit Court Second Order on Special Master's Report Dated September 14, 2013 Regarding Non-Parties' Pat Bainter, Matt Mitchell, Michael Sheehan and Data Targeting, Inc.	NP Am. App. K
5/2/14	Non-Parties' Letter to Court With Proposed Second Order on Special Master's Report	Pl. App. 1446
5/6/14	Coalition Plaintiffs' Motion in Limine to Exclude at Trial Testimony and Exhibits of Certain Witnesses	NP Am. App. M
5/12/14	Non-Parties' Motion to Determine Confidentiality	Pl. App. 1725
5/12/14	Hearing Transcript - Motion to Determine Confidentiality of Court Records	NP Am. App. O
5/15/14	Circuit Court Order on Non-Parties' Motion to Determine Confidentiality of Court Records	NP Am. App. L
5/19/14	Trial Transcript First Day - excerpt	Pl. 2d Supp. App. 58
5/22/14	Plaintiffs' Emergency Motion to Lift or Modify Stay and Alternative Suggestion to Certify Under Rule 9.125	Pl. 2d Supp. App. 65
5/22/14	Order Denying Motion to Lift Stay	Pl. 2d Supp. App. 74
5/22/14	Order Summarily Reversing Trial Court	Pl. 2d Supp. App. 75
5/28/14	Emergency Application for Stay of The Florida Supreme Court's Decision Requiring Disclosure of Material Protected by the First Amendments Associational Privilege and Florida's Trade Secrets Privilege	Pl. 2d Supp. App. 77
5/30/14	No-Party Letter Withdrawing SCOTUS Appeal	Pl. 2d Supp. App. 117
5/30/14	Coalition Plaintiffs' Motion for Rehearing (Congressional)	Pl. 2d Supp. App. 118
5/30/14	Coalition Plaintiffs' Motion for Rehearing (Senate)	Pl. 2d Supp. App. 129
6/4/14	Trial Transcript Final Day - excerpt	Pl. 2d Supp. App. 139
6/4/14	DCA En Banc Opinion	Pl. 2d Supp. App. 157
7/10/14	Final Judgment	Pl. 2d Supp. App. 200
7/15/14	The Legislative Parties' Motion to Alter or Amend The Judgment and Request for Emergency Consideration	Pl. 2d Supp. App. 288
7/17/14	Hearing Transcript - Status Conference	Pl. 2d Supp. App. 307
N/A	538 Pages Ordered Disclosed	NP Supp. App. 1

N/A	Additional Withheld Documents Not Disclosed	NP Supp. App. 2
N/A	Coalition Plaintiffs Email Disclosed in Discovery (Bates No. COALITION0017521)	NP Am. App. N
N/A	Plaintiff's Exhibit CP 1140	Pl. App. 1739
N/A	Plaintiff's Exhibit CP 1141	Pl. App. 1910
N/A	Weatherford Exhibit 11	Pl. App. 2080
N/A	Documents Included in Sealed Supplemental Appendix to Answer Brief at First District	Pl. Supp. App.
N/A	Sealed Transcript and Exhibits in Third Supplemental Appendix to Supplemental Answer Brief in this Court	Pl. 3d Supp. App.

SUPPLEMENTAL STATEMENT OF THE CASE AND FACTS

The Non-Parties' Assertion of Privilege Claims

In the rush to meet the expedited briefing schedule below, the Plaintiffs skipped over some procedural details in their answer brief's recitation of the procedural facts regarding when and how the Non-Parties came to assert their claims of privilege. In their reply brief, the Non-Parties claim that the answer brief mischaracterized this procedural history. (Reply Br. 10-12.) While the Plaintiffs dispute that they mischaracterized anything, they offer the following more detailed account to substitute for the passage beginning with the second sentence of the paragraph beginning on page 7 of their answer brief through the end of the paragraph the ends at the top of page 9:

Instead of complying with the trial court's order to complete their production by April 22, 2013, the Non-Parties filed a notice stating that they had completed their review of their documents for "responsiveness, privilege, and other matters of confidentiality," but they gave no indication of what privilege might apply. (Pl. App. 241-49.) They advised the court that they were "in a position" to produce the documents and that "[o]utstanding from this available production, a small set of documents are being recorded on a privilege log that will be available for Plaintiffs' review as soon as practical." (Pl. App. 244.) They further asserted that they would refuse to produce any of these documents until the court ruled on two

new requests they made for the first time in their motion: they wanted the Court to first order the Coalition Plaintiffs (1) to keep the documents confidential as "private business communications between Non-parties and other private, non-legislative entities" and (2) to deposit $50,000 into the registry of the court to cover the Non-Parties' alleged expenses. (Pl. App. 244-49.)

The Coalition Plaintiffs moved for contempt and sought an order awarding them attorney's fees and finding that any claim of privilege or confidentiality had been waived. (Pl. 2d Supp. App. 7-16.) At the hearing on this motion, the court asked the Non-Parties what "cat out of the bag" privilege they wished to assert. (Pl. 2d Supp. App. 22:21.) The Non-Parties initially claimed "irrelevance," but when pressed for an actual privilege, they advised, "Well, the privileged nature is proprietary business information. Some of it's trade secrets." (Pl. 2d Supp. App. 22:21-22.) When they were asked why they had not produced the documents that were not claimed to be trade secrets, they fell back on their claim that the documents should be confidential because they were irrelevant. (Pl. 2d Supp. App. 22:22-23.)

The trial court indicated that it was inclined to allow the Non-Parties to assert their late claims of privilege, but to award attorney's fees as a sanction for the Non-Parties' contempt of court. (Pl. 2d Supp. App. 27:41.) When the Non-Parties suggested that the fee award should be limited to fees incurred on the

contempt motion, the trial court responded that this would not be fair to the Coalition Plaintiffs who should not have had to come to court to resolve these issues after production had been ordered over the Non-Parties' relevancy objections. (Pl. 2d Supp. App. 27:42-43.) The court then gave the Non-Parties the option of either (1) paying the Coalition Plaintiff's attorney's fees in obtaining the documents over the Non-Parties' resistance or (2) producing all their documents based on a finding that any claim of privilege had been waived. (Pl. 2d Supp. App. 27:43.) The Non-Parties made clear that they did not want the latter sanction. (Pl. 2d Supp. App. 27:43.) The court gave them until the next day 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. 2d Supp. App. 23:26-27.) The Non-Parties advised the privilege log was "in the works" and would be ready the next day. (Pl. 2d Supp. App. 23:27.)

In contrast to their earlier representation that they only had a "small set of documents" subject to privilege and had been working on a privilege log for about a week (Pl. App. 243-44), the Non-Parties only produced 166 pages of documents to the Coalition Plaintiffs and submitted a "privilege log" consisting of a single page that indicated that they were withholding 1,833 pages of documents. (Pl. App. 621, 769-70.) They provided no description of the documents other than the

Bates stamp number and blanket claims of privilege that could not possibly be analyzed based on the log. (Pl. App. 770.) They also moved for a protective order and asserted privileges under the First Amendment and Florida's right of privacy as to all the documents and claimed that several of the documents also constituted trade secrets. (Pl. App. 743-68.)

At the hearing on this motion three days later, the Coalition Plaintiffs argued that the Non-Parties were continuing to defy the court's orders and should be immediately ordered to turn over the documents. (Pl. 2d Supp. App. 33:17.) The trial court agreed that the Non-Parties' privilege log was "not very helpful" because it did not identify the documents, the claimed privilege, or any information the Coalition Plaintiffs would need to be able to respond as to whether the documents are privileged. (Pl. 2d Supp. App. 33:17-18.) The court also indicated that the log should identify the people involved so a determination could be made if any of them were related to the Legislature or another consulting firm. (Pl. 2d Supp. App. 33:18.) The court ultimately deferred on whether the documents should be produced until a special master reviewed them in camera and made a recommendation. (Pl. 2d Supp. App. 33:21-24.)

Five days after the hearing, the Coalition Plaintiffs filed their second motion for contempt because the Non-Parties had refused to provide a revised privilege log despite the trial court's statements at the two prior hearings and the clear terms

of the contempt order. (Pl. App. 777-80.) They again asked the court to find the privileges waived. (Pl. App. 781-82.) The Non-Parties responded with a motion for rehearing, claiming that the trial court lacked the authority to require a privilege log and had been unclear in its orders in any event. (NP Am. App. 1106-22.) But two days later, they filed an amended privilege log that contained more detail. (NP Am. App. 521-40.) After a hearing on these motions (Pl. 2d Supp. App. 30-51), the trial court declined to hold the Non-Parties in contempt a second time, indicated that the amended privilege log would be sufficient, and asked the special master to complete his review of the documents to make a recommendation on the privilege claims. (Pl. App. 1226-28.)

Proceedings Subsequent to Trial Court's Rulings

The Non-Parties correctly predicted that the Plaintiffs would refer to matters occurring after the trial court made the rulings under review and correctly stated the general rule that such matters are not properly brought before the appellate court. (NP Supp. Br. 3-5.) But there are numerous exceptions, several of which apply here. The Plaintiffs provide this information not to show that the trial court was correct when it entered the orders under review (that was demonstrated in their answer brief), but so the Court will be fully apprised of the status of this important litigation. Also, it will equip the Court to resolve issues such as whether the Plaintiffs have lost the right to challenge the trial court's threshold ruling that the

First Amendment applies and to whether the Non-Parties' arguments in their initial brief that the trial court did not apply the appropriate level of scrutiny in its original ruling are correct or moot in light of the trial court's subsequent explanation.

> In determining matters of jurisdiction, the appellate court will often consider evidence outside the record.
>
> Also, evidence dehors the record will be considered where necessary to prevent a miscarriage of justice, or to clarify ambiguities in the record, … or to determine whether an appeal is moot, … a waiver or loss of the right of appeal, circumstances occurring subsequently to the appeal, which materially affect the rights involved, or facts occurring subsequent to appeal which are not denied.

5 C.J.S. *Appeal and Error* § 690 (footnotes omitted). The rules of ethics militate in favor of, not against, a duty "to notify the court of any development that may conceivably affect the outcome of the litigation, including facts that may raise a question of mootness." *Merkle v. Guardianship of Jacoby*, 912 So. 2d 595, 600 (Fla. 2d DCA 2005); *see also* Robert L. Stern, *Tips for Appellate Advocates*, 15 No. 3 Litig. 40, 67 (Spring 1989) ("Appellate courts *except* [sic] lawyers to advise them of some extra-record facts; those which make a case or an issue moot.").

The trial of the Congressional Action began on May 19. (Pl. 2d Supp. App. 58-64.) After the Plaintiffs complied with the expedited briefing schedule ordered by the district court and because the district court's stay threatened their ability to

use the Produced Documents[1] during the trial, the Plaintiffs filed an emergency motion on May 22, asking the district court to lift or modify its stay or, alternatively, to certify the orders for immediate review by this Court. (Pl. 2d Supp. App. 65-73.) They asked the district court to at least allow them to use the Produced Documents at trial under seal with the courtroom closed, which was the relief the Non-Parties had sought in the trial court. (Pl. 2d Supp. App. 66-67.)

The district court denied this motion within 45 minutes (Pl. 2d Supp. App. 74) and issued a separate order (the "DCA Disposition Order") that stated, in its entirety:

> The orders of the lower tribunal entered May 2, 2014, and May 5, 2014, are REVERSED to the extent the orders permit any degree of disclosure or use at trial of the constitutionally-protected contents of the privileged and confidential documents that are the subject of those orders. *See Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010). An opinion of this court explaining its reasoning will follow.

(Pl. 2d Supp. App. 75-76.)

The next morning, the Plaintiffs filed an emergency application in this Court seeking a constitutional writ to allow them to use the Produced Documents at trial in closed proceedings so that this Court would ultimately be able to conduct effective review of the to-be-issued district court opinion without it becoming

[1] As noted on page viii of the Plaintiffs' Answer Brief, the term "Produced Documents" refers to documents that were produced pursuant to the Production Order, which are contained at Tab 1 of the Non-Parties' sealed supplemental appendix (referred to herein as NP Supp. App.).

moot. *League of Women Voters of Fla. v. Data Targeting, Inc.*, No. SC14-987, 2014 WL 2186202, at *2 (Fla. May 27, 2014). This Court granted the petition on May 27 "[i]n order to maintain the status quo during the ongoing trial, preserve this Court's ability to completely exercise the eventual jurisdiction it is likely to have to review the First District's decision, and prevent any irreparable harm that might occur if the Petitioners are prevented from using the challenged documents." *Id.* at *4.

On May 28, the Non-Parties filed an emergency application in the Supreme Court of the United States seeking a stay of this Court's order. (Pl. 2d Supp. App. 77-116.) On May 29, Bainter and Richard Heffley, one of the political consultants with whom Bainter collaborated, testified at trial and several of the Produced Documents (the "Admitted Documents") were offered and accepted into evidence during closed proceedings. (Pl. 3d Supp. App. 11-127, 147-81 (currently sealed).) On May 30, the Non-Parties notified the Supreme Court that they were withdrawing their now-moot application for a stay, noting that they may later petition that Court to review this Court's ultimate decision on the merits. (Pl. 2d Supp. App. 117.)

Also on May 30, which was the fifteenth day after the Confidentiality Order was rendered, the Coalition Plaintiffs filed two motions in the trial court (one for their case challenging the congressional districts and another for the case

challenging the senate districts) asking it to reconsider its ruling that the Produced Documents used at trial would remain under seal and to order the rest of the Withheld Documents to be produced so they could be used in the to-be-scheduled trial on the Senate Action. (Pl. 2d Supp. App. 118-38.) They noted that the district court had determined that the Confidentiality Order was a final order and that their motions were, therefore, authorized by Florida Rule of Civil Procedure 1.530 and the pending appeal did not divest the trial court of jurisdiction. (Pl. 2d Supp. App. 119-20, 130-31.) These motions remain pending.

Meanwhile, the trial was completed on June 4, with the trial court taking the matter under advisement. (Pl. 2d Supp. App. 139-56.) On June 19, the district court entered an en banc order vacating the panel's earlier summary reversal order (i.e., the order this Court had stayed) and the order denying the Plaintiffs' motion for pass-through jurisdiction, and the en banc court certified that the issue in this appeal is of great public importance requiring immediate resolution by this Court. (Pl. 2d Supp. App. 157-60.) Judge Marstiller, who was on the original panel, dissented and provided the opinion that the panel would have issued had the matter not gone en banc. (Pl. 2d Supp. App. 163-83.) She explained why the panel concluded that the trial court's orders violated the First Amendment, and she clarified that the panel did not base its decision on the trade secrets claim. (Pl. 2d Supp. App. 166 n.5, 172-83.) She noted that she was "under no illusion" that her

opinion for the panel would have "survived" review by this Court. (Pl. 2d Supp. App. 168 n.6.) Judge Makar, who was also on the original panel, authored a separate dissenting opinion that noted his view that the Non-Parties' trade secret arguments "lacked any merit" and included a section that would have been his special concurrence on the First Amendment issue had the en banc court allowed the panel to issue an opinion. (Pl. 2d Supp. App. 186 n.16, 192-99.)

This Court accepted review on June 24 and stated that it would decide this proceeding based on the briefs filed in the district court and supplemental briefs it directed the parties to file.

On July 10, the trial court entered a judgment on the merits and declared that the Congressional Plan violated Article III, Section 20 of the Florida Constitution, one of the FairDistricts Amendments. (Pl. 2d Supp. App. 200-40.) The court made findings explaining how Bainter and other partisans had succeeded in having the Legislature draw unconstitutional maps:

> What is clear to me from the evidence, as described in more detail below, is that this group of Republican political consultants or operatives did in fact conspire to manipulate and influence the redistricting process. They accomplished this by writing scripts for and organizing groups of people to attend the public hearings to advocate for adoption of certain components or characteristics in the maps, and by submitting maps and partial maps through the public process, all with the intention of obtaining enacted maps for the State House and Senate and for Congress that would favor the Republican Party.
>
> They made a mockery of the Legislature's proclaimed transparent and open process of redistricting by doing all of this in the shadow of that

> process, utilizing the access it gave them to the decision makers, but going to great lengths to conceal from the public their plan and their participation in it. They were successful in their efforts to influence the redistricting process and the congressional plan under review here. And they might have successfully concealed their scheme and their actions from the public had it not been for the Plaintiffs' determined efforts to uncover it in this case.

(Pl. 2d Supp. App. 220-21 (footnote omitted).)

The trial court explained that it had read Judge Marstiller's dissenting opinion, which would have been the district court's panel opinion reversing the Production and Confidentiality Orders but for the en banc ruling, and had decided to address Judge Marstiller's concerns. (Pl. 2d Supp. App. 208 n.6.)

> A portion of the trial was closed to the public and certain exhibits entered under seal, pursuant to an order of the Florida Supreme Court. Whether this evidence will ever be made public awaits determination by that court of the correctness of my ruling that the associational privilege of the non-parties from whom the evidence was obtained should yield to the interest in disclosure. For purposes of such review, I will briefly explain how I weighed and balanced the appropriate factors and why I tipped the scales in favor of disclosure. Rather than file a partially redacted order, any reference to such evidence here will be general in nature so as not to reveal the specific information contained in the exhibits and testimony.
>
> As noted in my previous Orders, I found that the non-parties, the political consultants, had cognizable First Amendment Rights in the documents and testimony sought by the Plaintiffs in this case. The privilege is not absolute, however, and I had to weigh and balance the competing interests to determine whether that privilege should yield in favor of disclosure. Specifically, I considered the factors set forth in *Perry v. Schwarzenegger*, 591 F. 3rd 1147 (9th Circ. 2010), and determined that the privilege should yield. In the interest of time, I did not elaborate in detail my reasons for that conclusion, announced in open court. I thought it important that the parties know what could and could not be used at trial and that the non-parties have time to obtain a stay if further review was

deemed appropriate by the appellate court. The reasons I decided that the associational privilege should yield are as follows:

The case before me … is of the highest importance, going, as it does, to the very foundation of our representative democracy. "Indeed, as [this Court] succinctly stated, it is 'difficult to imagine a more compelling, competing government interest' than the interest represented by the challengers' article III, section 20(a), claims." *League of Women Voters* [*of Fla. v. Fla. House of Reps.*], 132 So. 3d 135, 147 [Fla. 2013].

The required disclosure was narrowly tailored and limited. Out of approximately 1800 pages of documents, I required the disclosure of less than a third of those. The disclosure was only to the Plaintiffs' attorneys with instructions that they not disclose it to third parties other than staff or retained experts, including to their own clients. I felt that the Plaintiffs' attorneys were in the best position to determine which of these documents were most probative of their claims. As it turned out, they actually offered as evidence only a very small portion of those documents as exhibits.

The documents for which the political consultants claimed privilege evidenced a conspiracy to influence and manipulate the Legislature into a violation of its constitutional duty set forth in Article 3, Section 20 of the Florida Constitution. That was, at least, a reasonable conclusion to be drawn from this and other evidence made available to me in the case to that point. As such, I viewed any chilling effect the release of these documents might have on such behavior in the future to be not such a bad thing, and the danger to the legitimate exercise of First Amendment rights rather slight.

Some of the communications, and a good deal of the map work product of the non-party political consultants, were transmitted to persons outside of their group, and made very public by submission to the legislature. If this did not constitute an outright waiver of the privilege as to these items, it lessened the strength of a legitimate claim to its protection.

Unlike the politically hot button issue of homosexual marriage, present in *Perry*, the underlying subject matter here was redistricting. Although political partisans are no doubt deeply interested in the process, the redistricting process does not address controversial issues of social and moral values that divide the population. It does not arouse the type of

intense passions that might justify a real fear of physical danger or mass public reprisals against the members if the information was made public.

The evidence was highly relevant and not available from other sources. When I considered this factor, I tried my best to look at it from the perspective of the judge rather than the ultimate fact finder, the two roles I play in a non-jury trial. One of the principal theories of the Plaintiffs in this case was that legislative staff and leaders collaborated with these political consultants to produce a redistricting map that violated the constitution by favoring the Republican Party and its incumbents.

While it is true that the documents claimed as privileged contain no glaring "smoking gun" in terms of direct communications between the consultants and specific staff or legislators, that does not mean they are not highly relevant. Under their theory of the case, it was essential for the Plaintiffs to first prove that there was a secretive shadow process of map drawing by the political consultants which found its way into the enacted congressional map before they could prove the second prong – the connection of this process to the Legislature.

Nor was this evidence available from other sources. Yes, the Plaintiffs engaged in extensive discovery and obtained e-mails and other documentation which they argued was compelling evidence in support of their claim. But the Plaintiffs' advocacy on this point should not be confused with the reality of what they actually had – which were bits and pieces of information which they sought to weave into a narrative consistent with their theory. The legislature had, in fact, destroyed e-mails and other evidence of communication regarding the redistricting process and so had many of the non-party political consultants.

Throughout the discovery process, these political consultants maintained that they were told by legislative leaders that they could not "have a seat at the table" in the drawing of the redistricting maps, and that they abided by that admonition. They denied having any input in the Legislative map drawing efforts or otherwise trying to influence how the maps were drawn. They denied that they submitted maps in the public submission process for redistricting. Any map drawing on their part was described as a hobby, something for personal use only, an exercise done to see what could be done on a map and to anticipate what the Legislature might produce.

> What this additional evidence gave the Plaintiffs was the ability to confront these denials, to lay bear not only the fact that some of these consultants were submitting maps to the legislature, but to show how extensive and organized that effort was, and what lengths they went to in order to conceal what they were doing. Notably, even in the face of this evidence, the non-party witnesses at trial did their best to evade answering direct questions on the subject, often using semantic distinctions to avoid admitting what they had done.
>
> At the time I considered the issue, the Plaintiffs did have some evidence that suggested otherwise but, considering the high burden on them to prove their case, I couldn't say that it would have been enough, or that this additional evidence wouldn't be crucial to the case. After all, I had not heard all of the evidence nor had the opportunity to view it in context. Now that I have, I can say that the evidence filed under seal was very helpful to me in evaluating whether Plaintiffs had proved that first prong of their theory.
>
> Moreover, as noted above, without sufficient proof of this secret, organized campaign to subvert the supposedly open and transparent redistricting process, the question of whether the Plaintiffs could sufficiently tie the Legislature to that effort becomes moot. To conclude that this evidence was not highly relevant to this central issue of legislative intent would have been to prejudge the case and determine ahead of time that the Plaintiffs would not be able to prove that connection. This I was not prepared to do.
>
> For all of these reasons, I tipped the scales in favor of the First Amendment privileges of the non-parties yielding to the need and interest of disclosure in this particular case.

(Pl. 2d Supp. App. 208-12 (footnotes omitted).)

Though styled as a final judgement, the trial court's ruling leaves open the issue of the proper remedy. The Plaintiffs sought not only a declaration that the Congressional Plan was unconstitutional, but also injunctive relief to remedy this violation, including an order adopting a lawful congressional redistricting plan. (Pl.

2d Supp. App. 265-66, 283.) The Legislative Defendants have filed a motion to alter or amend the judgment to clarify that it does not impact the 2014 election. (Pl. 2d Supp. App. 288-306.) They contend that they have the right to fashion the remedy for their constitutional violation and that even if new districts were put in place today, it is too late to impact the 2014 election because candidates have already qualified, primary ballots have already been sent to military voters overseas, and some votes have already been cast. (Pl. 2d Supp. App. 289-302.)

At a July 17 status conference, the Legislative Defendants advised the trial court that they accept and will not appeal its ruling that the Congressional Plan violated the constitution. (Pl. 2d Supp. App. 310.) The trial court indicated it was surprised that no party had appealed and noted that there was "a little uncertainty" as to what impact a ruling in this appeal would have on the final judgment. (Pl. 2d Supp. App. 320-21.) The trial court asked the Plaintiffs to file a memorandum regarding their position on who should fashion the remedy for the constitutional violation and whether that can be accomplished in time for the 2014 election. (Pl. 2d Supp. App. 321-23.) The Plaintiffs are still working on their memorandum, and the next scheduled status conference is this Thursday, July 24.

SUMMARY OF SUPPLEMENTAL ARGUMENT

The only issue raised by the Non-Parties that is not moot at this point is whether the transcript of the portion of the trial addressing the Admitted

Documents should be sealed. They have already produced the Produced Documents, and those documents will remain under seal under the trial court's ruling. And they lack standing to challenge the admissibility of the documents because they were not parties to the trial proceedings.

The Non-Parties' claims of privilege should be rejected in any event. They have failed to overcome the Plaintiffs' three different waiver arguments. The trial court should never have found the First Amendment protected the documents in the first place, and contrary to the Non-Parties' position accepted by Judge Marstiller, the Plaintiffs are free to challenge that threshold ruling to support the result reached by the trial court. And even if the First Amendment applies at all, the trial court was well within its discretion in finding the privilege should yield.

Finally, the Non-Parties' attempt to incorporate arguments below into its supplemental brief is a nullity that should be disregarded.

SUPPLEMENTAL ARGUMENT

I. THE ONLY RULING UNDER REVIEW THAT IS NOT MOOT AT THIS POINT IS THE RULING THAT THE TRIAL SHOULD NOT BE CLOSED WHILE THE DOCUMENTS ARE USED.

As argued in the answer brief, the Non-Parties' challenge to the Production Order is moot because the Non-Parties fully complied with it and produced the documents. Even as to the Confidentiality Order, the majority of the Non-Parties' arguments from the initial brief are based on their contention that the trial court did

not conduct the correct analysis or make sufficient findings to show that it applied the proper balancing test. And if that were true (notwithstanding that the Plaintiffs demonstrated in their answer brief why this claim is both incorrect and foreclosed by the failure to raise it in the trial court), that issue is now moot and any remand for further proceedings to apply that test would be futile. The trial court has fully explained its rationale in the well-reasoned judgment quoted above.

So, too, is any argument regarding the Produced Documents that were not used at the trial. The Non-Parties lost their right to challenge the order that they produce them to the Coalition Plaintiffs subject to keeping them sealed because they complied with the order instead of seeking a stay and certiorari. And they have received the relief they sought regarding their use at trial since the proceedings were closed to the public.

Moreover, while the Non-Parties certainly had standing to challenge the Production Order and the Confidentiality Order, they have no standing to challenge the actual admission of their documents into evidence because they were not parties to the trial proceedings. *See* § 90.508, Fla. Stat. (2014) ("Evidence of a statement or other disclosure of privileged matter is inadmissible **against the holder of the privilege** if the statement or disclosure was compelled erroneously by the court …." (emphasis added)).

At this stage in the proceedings, the only possible non-moot issue for which the Non-Parties have standing is whether the transcript of the portion of the trial court proceedings addressing the Admitted Documents should remain sealed despite the trial court's ruling that Florida Rule of Judicial Administration 2.420 did not require the courtroom to be closed. As explained in Part II(C) of the answer brief, the Non-Parties failed to preserve this issue because their initial brief did not even reference Rule 2.420 and its standards, much less explain how the trial court misapplied it.[2] In the event the Court rejects these arguments and the merits of the rulings directing that the documents be produced for use in open trial proceedings, the Plaintiffs close this brief with some additional points on the merits.

II. THE TRIAL COURT CORRECTLY RULED THAT THE PRODUCED DOCUMENTS SHOULD BE PRODUCED FOR USE IN OPEN TRIAL PROCEEDINGS.

The Plaintiffs largely rely on the waiver and merits arguments in their answer brief both with regard to the threshold question of whether the subject documents should have been deemed confidential at all and with regard to the requirements of Rule 2.420.

[2] The trial court's ruling that the Produced Documents themselves should remain under seal is a ruling adverse to the Plaintiffs and is therefore not presently before the Court. Once the trial court rules on the Coalition Plaintiffs' pending motion for rehearing on that issue, the losing party can decide whether that issue merits the resources required to seek appellate review.

A. The Result Below Is Fully Supported by Principles of Waiver and Preservation of Error.

There should be no reason to reach the constitutional issue in this case because the record establishes other grounds that fully support the result below. *See, e.g., In re Holder*, 945 So. 2d 1130, 1133 (Fla. 2006) ("Of course, we have long subscribed to a principle of judicial restraint by which we avoid considering a constitutional question when the case can be decided on nonconstitutional grounds."). The Plaintiffs explained their three waiver issues in Part II of the answer brief. The Non-Parties do not address these arguments in their supplemental brief. Their reply brief failed to even address some of these arguments and, in any event, did not overcome any of them.

In response to the Plaintiffs' argument that the Non-Parties waived the privilege claims by not timely asserting them, the Non-Parties make vague claims of purported fact unsupported by anything in the record or appendices. (Reply Br. 10-12.) In the supplemental statement of the case above, the Plaintiffs clarify the procedural history, and that recitation combined with the arguments in Part II(A)(1) of the answer brief conclusively demonstrate waiver.

The Non-Parties utterly fail to address the subject-matter waiver argument in Part II(A)(2) of the answer brief. As the trial court made clear in its final judgment, Bainter's voluntary testimony regarding the subject documents – claiming that the Non-Parties were drawing maps and discussing them amongst themselves as a sort

of "hobby" – was false. These documents related not to any legitimate First Amendment activity, but to a conspiracy to induce the Legislature to violate the Florida Constitution. Bainter not only voluntarily discussed the subject matter of these documents, but he did so in a false way that defeated any claim of privilege to hide his misrepresentations. While the trial court relied on these facts for its conclusion that the Non-Parties' claim of privilege was weak, it recognized that it probably did not even need to reach that issue due to the clear waiver. (*See* App. Pl. 2d Supp. App. 210 ("If this did not constitute an outright waiver of the privilege as to these items, it lessened the strength of a legitimate claim to its protection.").)

The Non-Parties' argument in their reply brief that they believed they had to comply with the Production Order instead of seeking a stay and certiorari is belied not only by the clear law cited in Part II(A)(3), but also by their counsel's prior recognition below that this was the "proper legal method" to preserve their privilege arguments. (Pl. 2d Supp. App. 21:18.) The trial court gave them time to do that, but they instead complied with the Production Order and only appealed once the court ruled that it would not close the courtroom. (*See* Pl. 2d Supp. App. 209 (noting that the reason the court did not take the time to enter an order detailing its reasoning before ordering production was to give the Non-Parties an expeditious chance to seek review and a stay from the district court).)

B. The Result Below Fully Complies With the First Amendment.

Even if the Court were to reject the preservation and waiver arguments presented by the Plaintiffs, it should still approve the result of the trial court's constitutional ruling on the merits. First, Judge Marstiller's dissenting opinion to the contrary notwithstanding, this Court's case law flatly rejects the Non-Parties' arguments that the Plaintiffs are precluded from arguing that the trial court reached the right result for the wrong reason because the First Amendment does not protect communications regarding an attempt to petition the Legislature to violate the law. *See, e.g.*, *Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002) ("The " 'tipsy coachman' doctrine … allows an appellate court to affirm a trial court that 'reaches the right result, but for the wrong reasons' so long as 'there is any basis which would support the judgment in the record.' " (Quoting *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644-45 (Fla. 1999))); *State v. Hankerson*, 65 So. 3d 502, 506 (Fla. 2011) (noting that appellees are not barred "from raising an alternative basis to support the trial court's ruling solely because the argument was not preserved").

The First Amendment would clearly protect the Non-Parties' communications if they related to advocating for the repeal of the Fair District Amendments or any other legitimate action the Legislature could take regarding apportionment. But that is not what these documents are about. The documents all

relate to efforts by the Non-Parties to secretly petition the Legislature to draw politically gerrymandered maps in direct violation of article III, section 20 of the Florida Constitution. Communications like these are no more entitled to any "associational privilege" than communications that seek to petition the government to do anything else illegal. Otherwise, efforts by parties, for example, to corrupt the courts by secret ex parte communications would be subject to First Amendment protection. The Non-Parties seek to make a mockery of the important protections the First Amendment affords to legitimate petitioning activity. In short, the trial court got to the right result through the wrong path – instead of finding that these circumstances merely weigh in favor of production under the *Perry* balancing test, it should have found that they prevent the First Amendment from applying to these documents in the first place.

But even if the trial court correctly found the First Amendment applies, it was also correct in concluding that the privilege must yield in the very narrow context of a lawsuit challenging the redistricting process. The Plaintiffs are hard pressed to explain the correctness of the trial court's reasoning in this regard any better than the trial court itself did in the final judgment quoted above. To the extent this Court concludes that this is a properly preserved appeal of the merits of the trial court's constitutional analysis, it should affirm because the trial court's balancing of the competing interests is unassailable.

As revealed by Judge Marstiller's opinion dissenting from the district court's en banc ruling, the panel below did not fully understand the relevance of the Produced Documents or how the Plaintiffs intended to use them at trial to link the Non-Parties' conspiratorial conduct among themselves to the question of whether the Legislature drew unconstitutional maps. This is likely because (1) the trial court, who had lived with this case for years and was gearing up for the trial, was in a better position to understand these issues in context and did not craft an order setting forth its reasoning and (2) the Plaintiffs had not previously seen the documents or a sufficiently detailed privilege log and had not been able to question the Non-Parties about the documents, so the Plaintiffs had been unable to fully develop the record to show the specific ways in which these documents were central to their case and could be tied to legislative intent.

Where the panel went particularly wrong, therefore, was in reversing the trial court's order outright, instead of remanding for further findings. And even had the orders been reversed, the Plaintiffs should have had the opportunity to seek reconsideration in the trial court after building a record showing exactly how each document fits into this case.

But at this point, even if this Court were inclined to agree with much of Judge Marstiller's opinion and send the case back to the trial court based on the record developed leading up to those rulings, it should still affirm because a

remand for further findings or analysis would be futile. The trial court has now fully explained its reasoning and further made clear how the Admitted Documents were so helpful in resolving the Plaintiffs' claims. A review of that order as well as the sealed transcript and Admitted Documents themselves should confirm the futility of any further proceedings as to these documents.[3]

III. THE NON-PARTIES' ATTEMPT TO "INCORPORATE" OTHER FILINGS INTO THEIR SUPPLEMENTAL BRIEF IS A NULLITY.

Instead of providing supplemental legal argument as directed by the Court, the Non-Parties purport to simply "incorporate by reference" into their supplemental brief their filings before the special master and in the trial court and the dissenting opinions by Judges Wetherell, Marstiller, and Makar. This is improper and should be disregarded. *E.g.*, *Simmons v. State*, 934 So. 2d 1100, 1112 n.13 (Fla. 2006); *Johnson v. State*, 660 So. 2d 637, 645 (Fla. 1995); *cf.* Fla. R. App. P. 9.210(b)(5) (initial brief must "contain" the appellant's argument).

[3] Whether the Produced Documents that were not used at trial should be made public or whether additional Withheld Documents should be produced for the to-be-set trial challenging state senate districts are not issues currently before the Court. The trial court ruled against the Coalition Plaintiffs on these issues. The Coalition Plaintiffs have raised these issues on rehearing and, if they lose, may elect to seek appellate review at that time.

SUPPLEMENTAL CONCLUSION

The Non-Parties' appeal should be dismissed as moot except to the extent the orders under review provide that the trial proceedings should have been open to the public, and to that extent, the orders should be affirmed. Either way, this Court's prior ruling that the trial proceedings be sealed should now be lifted.

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

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

THE MILLS FIRM, P.A.

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

and

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

David B. King
Florida Bar No.: 0093426
dking@kbzwlaw.com
Thomas A. Zehnder
Florida Bar No.: 0063274

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

Counsel for Appellees/Plaintiffs 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 July 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

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

ldominguez@whitecase.com
mgaulding@whitecase.com

Counsel for Fla. Senate & Senate Pres.

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

tbarreiro@gray-robinson.com
mwilkinson@gray-robinson.com

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