

IN THE SUPREME COURT OF FLORIDA

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

v.

KEN DETZNER, et al.,
Appellees.

Case No.: SC14-1905
L.T. No.: 2012-CA-00412;
2012-CA-00490

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

SUPPLEMENT TO INITIAL BRIEF OF APPELLANTS

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PRELIMINARY STATEMENT

This supplement to the initial brief is filed pursuant to this Court's order of November 20, 2014, providing:

If the Appellants/Cross-Appellees believe that they must discuss the contents of any of the documents or testimony currently under seal in *Bainter v. League of Women Voters of Florida*, No. SC14-1200, they shall file a separate brief, not to exceed ten pages, containing only that material. Under the unique circumstances of this litigation, where the confidentiality of this material is wholly dependent on issues that were decided by this Court in its November 13, 2014, opinion in the separate *Bainter* case, the Court will maintain the confidentiality of any separate filing in this case that references the sealed materials only until such time as the record in *Bainter* is unsealed.

Citations to the record on appeal are identical to those conventions explained in the Preliminary Statement to Assist the Reader in the initial brief, with the addition of the following:

- (Ex. SCP-___) indicates citations to the Coalition Plaintiffs' **sealed** exhibits admitted at trial, which were filed by the clerk of the lower tribunal on a disc with the *Bainter* record.

I. EVIDENCE OF OPERATIVES' INVOLVEMENT DERIVED FROM CURRENTLY SEALED BANTER DOCUMENTS.

Starting in July 2011, Terraferma, Heffley, Reichelderfer, Bainter, and other partisan operatives began drafting and exchanging state Senate and congressional redistricting plans (the "Consultant Drawn Maps"). (T1:68-70; T10:1169-72; T15:1946, 1975-76; T16:2072; Exs. CP-256-57, CP-259, CP-261, CP-358-62, CP-366-67, CP-369, CP-374, CP-376; SCP-696, SCP-717, SCP-1368, SCP-1370-71, SCP-1374-75, SCP-1386-87, SCP-1392, SCP-1401, SCP-1436, CP-1444-46.) Several of the partisan operatives falsely testified that they prepared the Consultant Drawn Maps as a hobby or out of general interest. (SR21:2895-2900.) In truth, the operatives, cooperating with the Legislature, developed a plan to submit the Consultant Drawn Maps either indirectly through intermediaries masquerading as concerned citizens or directly using false names. (SR21:2896, 2901; Exs. SCP-676, SCP-688, SCP-696, SCP-717, SCP-721, SCP-1368, SCP-1370-71, SCP-1374-75, SCP-1386-87, SCP-1392, SCP-1401, SCP-1418-19, SCP-1436.)

Bainter and his employees, together with Heffley, Terraferma, Reichelderfer, and other partisan operatives prepared and then secretly submitted at least two congressional and seven state Senate Consultant Drawn Maps under the following names:

Congressional Public Map HPUBC0132 – Alex Posada
Congressional Public Map HPUBC0133 – Alex Posada
Senate Public Map HPUBS0084 – Micah Ketchel

Senate Public Map HPUBS0085 – Andrew Ladd
Senate Public Map HPUBS0090 –Christie Jones
Senate Public Map SPUBS0105 – Henry E. Russell III
Senate Public Map SPUBS0123 – Delena May
Senate Public Map SPUBS0143 – Alex Patton
Senate Public Map SPUBS0147 – Remzey Samarrai

*(Compare Ex. CP-586 and CP-587, with Ex. CP-1445 and CP-1446; compare Ex. CP-586 and CP-587, with Ex. SCP-1401; compare Ex. SCP-1375, with Ex. CP-1394; compare Ex. SCP-1368, with Ex. CP-1395; compare Ex. SCP-1392 ,with Ex. CP-1396; compare Ex. SCP-696 at 5, with Ex. CP-1397; compare Ex. SCP-1371, with Ex. CP-1399; compare Ex. SCP-1387 at 2, with Ex. CP-1400.)*¹

At the same time, the operatives provided their recruited intermediaries with “Grassroots scripts,” pre-prepared statements offered at public hearings promoting district configurations favored by the operatives. (Ex. SCP-1418-19.) Thus, the operatives made it appear as though members of the public submitted the Consultant Drawn Maps and provided input in the process, and the Legislature gave the outward appearance of public participation when it was in fact relying on partisan districts drawn by well-connected Republican operatives.

¹ Bainter admitted that several Consultant Drawn Maps were prepared by his office. (SR21:2861-62.) On other occasions, he refused to confirm that maps circulated among himself and his employees were identical or nearly identical to publicly submitted maps. (SR21:2863-64, 2874-75, 2883-84.) Regardless of such refusals, comparing the visual features and demographic data for the Consultant Submitted Maps to publicly submitted maps confirms that they are identical or nearly identical.

The operatives began crafting the known congressional Consultant Drawn Maps as early as July 2011. At that time, Terraferma prepared and sent an early draft plan to Heffley, along with a statistical report for eight districts drawn with large minority populations. (Ex. CP-1445-46.) Terraferma’s July 2011 map reflected a recurring strategy of packing minorities into districts to enhance Republican performance in surrounding districts. It included, for example, a Proposed District 3 (Enacted District 5)² with Black VAP over 50%, a Proposed District 27 (Enacted District 9) with Hispanic VAP over 40%, and a Proposed District 17 (Enacted District 27) that drew in additional minorities by dividing Homestead. (Ex. CP-1445-46.)

On October 10, 2011, Bainter emailed his employees, Matt Mitchell and Michael Sheehan, asking them to “please get w[ith] me first thing this morning re maps. We’ve got a job to do[.]” Sheehan sent VAP statistics to Bainter, and Bainter responded, “This is on the map they sent us?” Sheehan then emailed Bainter, attaching a state Senate map, and stated, “Here is the District Plan exported to a DBF file. It is ready for submission.” (Ex. SCP-1375.) The next day, Sheehan emailed Mitchell and Bainter another state Senate map and stated, “Here is the second district plan exported to a DBF file. It is ready for submission.” (Ex.

² Where proposed maps contain district numbers that differ from the numbering of the enacted districts, Plaintiffs provide the analogous enacted district number in parentheses following the proposed district number.

SCP-1375.) The two maps referenced in these emails were submitted to the Legislature under the names Micah Ketchel and Andrew Ladd as Senate Public Maps HPUBS0084 and HPUBS0085. (Exs. SCP-1375; CP-1394; SCP-1368; CP-1395.)

On October 11, 2011, Bainter again emailed Sheehan and Mitchell, “Stafford [is] getting me 10 more people at least. We could start by submitting the map [Reichelderfer] has sent us.” (Ex. SCP-1392; SR21:2858-59).³ Sheehan replied with a state Senate map, “Using [Reichelderfer’s] Map I modified SD11 to include east Pasco County and Wilton Simpson’s residence. We can submit this today.” (Ex. SCP-1392.) This map was submitted under the name Christie Jones as Senate Public Map HPUBS0090. (Ex. SCP-676, SCP-1392, CP-1396.)

On October 12, 2011, Sheehan emailed Bainter, “I am currently building alternate maps for submitting. Each map will have altered district boundaries, names and formats. We can then make specific modifications if needed before submitting.” (Ex. SCP-716). On October 17, 2011, Bainter emailed Mitchell, “Let’s get this submitted ... can do tomorrow morning. I think there is a way to submit to the Senate Website. They asked me about that the other day.” Mitchell

³ “Stafford” refers to Stafford Jones, the head of a Republican organization in Bainter’s home county, Alachua. (SR21:2859.) Many of the public agents used to submit maps were connected to Jones or his organization. (*See, e.g.*, SR21:2862-63, 2872-73, 2888.)

responded, “They do have their own District Builder program, and the Senate Redistricting Committee also has an e-mail address to receive submissions (RedistrictFlorida@flsenate.gov). I can direct Stafford to have his people send these maps to that e-mail.” Bainter replied, “Yea, lets [sic] spread them around.” (Ex. SCP-696.) After this exchange, the remaining state Senate Consultant Drawn Maps were submitted to the Senate, rather than the House, as reflected by public map designations beginning with the letter “S.”

On October 18, 2011, Sheehan emailed Mitchell a state Senate map and advised, “Here is the latest Senate plan for submission.” (Ex. SCP-696.) The referenced map was submitted under the name Henry E. Russell III as Senate Public Map SPUBS0105. (SR21:2872-73; Ex. SCP-696 at 5, CP-1397.)

On October 27, 2011, Bainter emailed Heffley attaching a state Senate map with political performance data. (Ex. CP-360.) Bainter then sent the same map to Joel Springer, an RPOF employee. (Ex. SCP-1370.) The referenced map was submitted under the name Delena May as Senate Public Map SPUBS0123. (SR21:2882-85; Exs. SCP-697, CP-1398.) On November 1, 2011, Richard Johnston, a political consultant familiar with Bainter’s efforts to submit maps through intermediaries, sent an email to Bainter titled “TLH” (an abbreviation for Tallahassee), informing Bainter that Johnston was “[h]eaded up” and “[t]elling folks to look at Map 123.” (SR21:2886-87; Ex. SCP-697.)

On October 28, 2011, Terraferma sent Ginsberg, copying Heffley and Bainter, a state Senate map titled “Schmedlov.” (Exs. CP-361, SCP-1371.) The referenced map was submitted under the name Alex Patton as Senate Public Map SPUBS0143. (SR26:4123-24; Exs. SCP-1371, CP-1399.)

That same day, Terraferma emailed Bainter a modified version of his July 2011 congressional map titled “Congress Complete.” (Exs. SCP-1374, SCP-1401.) On November 1, 2011, Congressional Public Maps HPUBC0132 and HPUBC0133 were submitted under the name Alex Posada using the email address alexposada22@gmail.com. (Ex. CP-586-87, CP-1363.) Posada testified that he had never seen HPUBC0132 and HPUBC0133, did not use alexposada22@gmail.com as his email account, and did not authorize anyone to submit the maps using his name. (SR22:2989, 2995-96.)⁴ HPUBC0132 and HPUBC0133 contained six districts identical to districts in Terraferma’s July 2011 map and eleven districts identical to districts in “Congress Complete.” (T15:1960-61; SR21:2806, 2821-22.) Like Terraferma’s July 2011 map, HPUBC0132, HPUBC0133, and “Congress Complete” contained a Proposed District 3 (Enacted District 5) with a Black VAP over 50%, a Proposed District 27 (Enacted District 9) with a Hispanic VAP over 40%, and a Proposed District 17 (Enacted District 27) dividing Homestead to

⁴ The parties stipulated to the admission of Posada’s deposition transcript in lieu of live testimony. (T20:2627 (Posada misidentified in transcript as “Zuznak”).)

increase its African American population. (Exs. CP-586, CP-587, CP-1445, SCP-1401.) In his email sending “Congress Complete,” Terraferma noted that “Tampa is far from perfect....” (Ex. SCP-1374), an apparent reference to District 11 (Enacted District 14) being entirely in Hillsborough County. In the modifications between “Congress Complete” and HPUBC0132 and HPUBC0133, District 11 (Enacted District 14) was redrawn to instead cross Tampa Bay, thereby dividing Pinellas County to make District 13 more Republican. (Exs. SCP-1401, CP-586-87.)

On November 1, 2011, Terraferma sent Bainter and Heffley, an email titled “Last one!” attaching a state Senate map named “Sputnik.” (Ex. SCP-1386.) Later that day, Terraferma emailed Bainter and Heffley, that “this one didnt go through earlier...darn....” indicating the plan had “bounced back.” (Ex. CP-368.) The operatives decided that they “[m]ight as well submit” the plan even though the map submission deadline had expired. (Ex. CP-368.) Bainter forwarded Terraferma’s email and the “Sputnik” plan to Mitchell and Sheehan. (Ex. SCP-1387.) The “Sputnik” plan was submitted under the name Remzey Samarra as Senate Public Map SPUBS0147. (SR21:2889-91; Ex. SCP-1387 at 2, CP-1400.)

Bainter and his colleagues went to great lengths to avoid discovery of their influence on the redistricting process. At one point, Bainter asked Sheehan and Mitchell, “Do we need to be a bit more ‘creative’ about how we are naming these

[maps]? Seems like there is some coordination here.” Sheehan responded that he submitted the file with “a different name.” Bainter replied, “Lets [sic] be extremely careful...” (Ex. SCP-721 (ellipsis in original).) In an email attaching two of the operatives’ “Grassroots Scripts,” Mitchell advised a colleague that they must be “incredibly careful and deliberative here” and “[c]annot be too redundant on that front,” emphasizing that “Pat [Bainter] and I will probably sound almost paranoid on this over the next week, but it will be so much more worthwhile to be cautious.”

Mitchell’s colleague responded,

Just to ease your minds, I have tried to do most of the asking over the phone, so their [sic] is no e-mail trail if it gets forwarded. When I e-mail guidelines to people, the only thing I am putting in writing is that it is important that we show support for the redistricting process, and the way it was handled by the Senate

(Ex. SCP-688.)

II. CONSULTANT DRAWN MAPS IDENTIFIED AT LEAST IN PART FROM BANTER DOCUMENTS CURRENTLY UNDER SEAL

In public statements, the Legislature admitted that it relied in whole or in part on the Consultant Drawn Maps for the following districts:

Congressional District 3 – Alex Posada (HPUBC0133)
Congressional District 4 – Alex Posada (HPUBC0133)
Congressional District 13 – Alex Posada (HPUBC0133)
Senate District 2 – Alex Patton (SPUBS0143)
Senate District 6 – Christie Jones (HPUBS0090)
Senate District 11 – Alex Patton (SPUBS0143)
Senate District 13 – Remzey Samarra (SPUBS0147)
Senate District 14 – Delena May (SPUBS0123)
Senate District 19 – Andrew Ladd (HPUBS0085)

Senate District 25 –Delena May (SPUBS0123)
Senate District 27 – Remzey Samarrai (SPUBS0147)
Senate District 31 – Delena May (SPUBS0123)
Senate District 34 – Micah Ketchel (HPUBS0084) Delena May
(SPUBS0123), and Remzey Samarrai (SPUBS0147)
Senate District 35 – Micah Ketchel (HPUBS0084) and Andrew Ladd
(HPUBS0085)
Senate District 39 – Andrew Ladd (SPUBS0085)

(Exs. CP-60 at 15-19, 21-23, 57-60; CP-1140 at 60-62, 65-67, 72-76, 81, 88-91, 95-96, 99-100, 103-04.)

III. EVIDENCE REGARDING DISTRICTS 13 AND 14 DERIVED FROM BAINTER DOCUMENTS CURRENTLY UNDER SEAL

The Tampa Bay area was a subject of interest and discussion among the political operatives. Keeping both districts within their own counties would create two naturally occurring Democratic districts. By pulling minority Democratic voters out of Pinellas and into Hillsborough, the Legislature ensured that District 13 would become competitive for Republicans. In early versions of the Posada maps, Terraferma kept Tampa Bay and Pinellas County whole. Yet he was dissatisfied with the partisan implications of that configuration, observing to James Rimes (an employee of the RPOF) and Heffley that the Tampa Bay area was “far from perfect” with “[Representative Kathy] Castor in hills[borough] only ☹️.” (Ex. SCP-1374.) In modifications shortly before submission of the Posada maps, the operatives altered the analogs to Districts 13 and 14 to divide Tampa Bay and Pinellas County. (*Compare* Ex. SCP-1401, *with* CP-586 and CP-587.) The

Legislature then expressly relied on HPUBC0133 (Ex. CP-587), one of the Posada maps, in preparing the enacted version of District 13. (Ex. CP-60 at 60.) As shown in the table below, the final configuration of District 13 that emerged from the Legislature’s closed-door meetings in late January 2012 had virtually identical performance to the operatives’ version.

CD13 analogs	Democratic Performance				Democratic Registration	
	2006 Gov.	2008 Pres.	2010 Gov.	2012 Pres.	2010	2012
f12002	45.3%	52.1%	51.4%	51.0%	33.3	32.3
S/C9014	45.6%	52.4%	51.5%	51.3%	33.3	32.1
H/C0133 ⁵	45.2%	51.9%	51.0%	50.7%	36.1	35.1
H/C9047-9057	45.3%	51.9%	51.0%	50.7%	36.2	35.2

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⁵ District 13 is identical in Posada Maps, HPUBC0132 and 0133. (*Compare* Ex. CP-586, *with* Ex. CP-587; SR26:4110.) 2010 and 2012 Democratic voter registration figures are in columns “%GENRVDEM10” and “%GENRVDEM12” in the MyDistrictBuilder data. (Ex. CP-1455 at 194-95.) In the same manner as Joint Trial Exhibit 1, performance figures reflect two-party averages for each of cited elections (see columns “%G12PRE...,” “%G10GOV...,” “%G08PRE...,” and “%G06GOV...”) in the MyDistrictBuilder data. (Ex. CP-1455 at 193-94.)

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