

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA**

RENE ROMO, an individual; BENJAMIN  
WEAVER, an individual; WILLIAM  
EVERETT WARINNER; an individual;  
JESSICA BARRETT, an individual; JUNE  
KEENER, an individual; RICHARD  
QUINN BOYLAN, an individual; and  
BONITA AGAN, an individual,  
Plaintiffs,

CASE NO: 2012-CA-00412

v.

KEN DETZNER, in his official capacity as  
Florida Secretary of State, and PAM  
BONDI, in her official capacity as  
Attorney General of the State of Florida,  
Defendants.

---

THE LEAGUE OF WOMEN VOTERS OF  
FLORIDA, et al.

Plaintiffs,

v.

CASE NO: 2012-CA-00490

KEN DETZNER, in his official capacity as  
Florida Secretary of State; THE FLORIDA  
SENATE; MICHAEL HARIDOPOLOS, in  
his official capacity as President of the  
Florida Senate; THE FLORIDA HOUSE  
OF REPRESENTATIVES; and DEAN  
CANNON, in his official capacity as  
Speaker of the Florida House of  
Representatives,

Defendants.

---

**RESPONSE TO COURT'S ORDER TO SHOW CAUSE AND RESPONSE IN  
OPPOSITION TO PLAINTIFFS' MOTION FOR REHEARING DATED MAY 30, 2014**

**I. INTRODUCTION**

In their Motion for Rehearing dated May 30, 2014, the Plaintiffs seek disclosure of all 1,833 pages of documents that Justice Major Harding, as the Special Master, and this Court

previously deemed protected.<sup>1</sup> See Court’s Order on Special Master’s Reports (Mar. 20, 2014). But, for four separate reasons, the Plaintiffs have deprived this Court of jurisdiction to consider the Motion, and waived their rights to any documents other than the 538 pages ordered disclosed by the Florida Supreme Court in *Bainter v. League of Women Voters of Fla.*, 39 Fla. L. Weekly 689 (Fla. 2014). First, the Plaintiffs’ Motion for Rehearing was untimely. Second, the Plaintiffs failed to file a Notice of Cross-Appeal. Third, assuming the Plaintiffs timely filed their Motion for Rehearing – which they did not – the Plaintiffs abandoned the Motion by operation of law when they filed their Notice of Appeal. Fourth, the Plaintiffs waived any right to all 1,833 pages of documents when they failed to file a Motion for Rehearing or Clarification before the Florida Supreme Court after that Court “affirm[ed] the trial court’s ruling requiring production of the 538 pages of disputed documents.” *Bainter*, 39 Fla. L. Weekly at 696 (emphasis added). As such, for any of four independent reasons, the Motion for Rehearing should be denied.

## II. BACKGROUND

This is a discovery dispute with an unusual procedural history. See *League of Women Voters of Fla. v. Data Targeting, Inc.*, 140 So. 3d 510, 516 (Fla. 2014) (Polston, C.J., dissenting). Briefly, the Court referred this dispute to Justice Harding, as the Special Master, and then entered an order affirming Justice Harding’s finding that the Non-Parties “are an association consisting of others with likeminded political beliefs and ideas” such that their 1,833 pages of documents are protected by the First Amendment’s associational privilege. Court’s Order on Special Master’s Reports at 1. The Court further noted that disclosure of the Non-Parties’ documents “would chill their communication and harm their ability to associate and communicate.” *Id.* But

---

<sup>1</sup> “Plaintiffs” refers collectively to the Plaintiffs that filed a Motion for Rehearing before the Court on May 30, 2014 and subsequently filed a Notice of Appeal on August 29, 2014. “Non-Parties” refers collectively to Pat Bainter, Matt Mitchell, Michael Sheehan, and Data Targeting, Inc.

the Court deferred for another day the question of whether the First Amendment's balancing test required the disclosure of some of the documents. *Id.*

On May 2, 2014, after further consideration, the Court entered an order requiring disclosure of 538 pages of the Non-Parties' 1,833 pages of documents. *See* Court's Second Order on Special Master's Report (May 2, 2014) ("May 2, 2014 Order"). The Non-Parties filed a timely Notice of Appeal on May 14, 2014, arguing that the First Amendment's balancing test could not have required disclosure of these 538 pages. *See* Non-Parties' Notice of Appeal (May 14, 2014). The Florida Supreme Court subsequently affirmed the Court's decision on different grounds. *Bainter*, 39 Fla. L. Weekly at 696 (affirming trial court on the grounds of waiver).

It is important to note that the Plaintiffs failed to file a Motion for Rehearing before this Court within 15 days of the Court's decision to enter the May 2, 2014 Order, and never filed a Notice of Cross-Appeal as it relates to the Court's May 2, 2014 Order. Indeed, in what would have been the First District's panel opinion, Judge Marstiller specifically noted that the "[P]laintiff-[A]ppellees *did not appeal or cross-appeal.*" *Non-Parties v. League of Women Voters of Fla.*, 39 Fla. L. Weekly 1300, n.2 (1st DCA 2014) (emphasis added). Nor did the Plaintiffs file a Motion for Rehearing or Clarification in the time prescribed by the Florida Supreme Court after that Court specifically required disclosure of only the 538 pages of documents at issue. *See Bainter*, 39 Fla. L. Weekly at 696.

On August 29, 2014, the Plaintiffs filed a Notice of Appeal as it relates to the Court's orders on the merits of the underlying redistricting dispute. The Legislative Defendants filed a separate Notice of Cross-Appeal. These appeals are now pending before the Florida Supreme Court. *See League of Women Voters v. Detzner*, Case No. SC14-1905.

### III. ARGUMENT

#### A. The Plaintiffs did not file a timely Motion for Rehearing.

In their Motion for Rehearing, the Plaintiffs argue that the Court should have required disclosure of all 1,833 pages of documents, and not just the 538 pages the Court ordered disclosed. *See* Motion for Rehearing at 1-2. Stated differently, the Plaintiffs argue that the Court erred in the May 2, 2014 Order by requiring disclosure of only 538 pages. *Id.*

The Plaintiffs Motion for Rehearing, however, is untimely as it relates to the Court's May 2, 2014 Order. Florida Rule of Civil Procedure 1.530(b) provides that a motion for rehearing "shall be served not later than 15 days after the . . . date of filing of the judgment in a non-jury action." The term "judgment" means "a final judgment rendered by the [C]ourt." *Deal v. Deal*, 783 So. 2d 319, 320 (Fla. 5th DCA 2001) (citing *Wagner v. Bieley, Wagner & Assocs., Inc.*, 263 So. 2d 1 (Fla. 1972)). And when discovery is sought from those who "are not parties to the action pending" before a court, the final judgment is the order that compels discovery from these nonparties. *Fla. House of Rep. v. Expedia, Inc.*, 85 So. 3d 517, 520 (Fla. 1st DCA 2012).

Here, the Court's May 2, 2014 Order compelled disclosure of the 538 pages of documents "by 5:00 p.m. on Friday, May 2, 2014." May 2, 2014 Order at ¶ 2.<sup>2</sup> The Plaintiffs filed and served their Motion for Rehearing on May 30, 2014 – they filed and served the Motion more than 15 days after the Court entered the May 2, 2014 Order. The Plaintiffs' Motion was

---

<sup>2</sup> The Non-Parties note that the Court also issued an order on May 15, 2014 that provided guidance on how the Non-Parties' materials were to be used at trial in the underlying case, and denied the Non-Parties' request for a stay pending appeal of the Court's final order issued on May 2, 2014. In other words, the Court's May 15, 2014 Order provided the means by which to mitigate harm to the Non-Parties from disclosure of the compelled materials. Order on Non-Parties Motion to Determine Confidentiality of Court Records ¶ 6 (May 15, 2014); *see also* May 2, 2014 Order at ¶ 3. But nowhere in the May 15, 2014 Order did the Court compel any additional disclosures.

thus untimely, and this Court simply does not have jurisdiction to consider the Motion. Fla. R. Civ. P. 1.530(b); *see also Balmoral Condo. Ass'n v. Grimaldi*, 107 So. 3d 1149, 1152 (Fla. 3d DCA 2013) (“once a judgment becomes final – as where (a) a final judgment has been entered, and (b) a motion for rehearing under 1.530 has been denied *or no such motion is filed and the [15] days for filing same has expired – the trial loses jurisdiction to rehear the judgment on the merits.*”) (citations omitted) (emphasis added); *Dep’t of Rev. v. Madden*, 672 So. 2d 67, 68 (Fla. 2d DCA 1996) (concluding that “trial court had no jurisdiction to rehear the matter pursuant to Florida Rule of Civil Procedure 1.530” where the deadline to file a motion for rehearing “had expired”); *Migilore v. Migilore*, 717 So. 2d 1077, 1078 (Fla. 4th DCA 1998) (construing the deadline strictly, and holding that a party missed the deadline even where its motion was timely filed but not timely served).

**B. The Plaintiffs never filed a Notice of Cross-Appeal.**

The Plaintiffs also waived any right to obtain the remaining documents by failing to file a Notice of Cross-Appeal before the First District as it relates to the May 2, 2014 Order. The Florida Rules of Appellate Procedure require that a notice of cross-appeal be filed “within 10 days of service of the appellant’s timely filed notice of appeal or within the time prescribed for filing [their own] notice of appeal.” Fla. R. App. P. 9.110(g). “A cross-appeal is an appellee’s exclusive method of obtaining relief from error in an order, and *absent a cross-appeal, an appellee may not seek affirmative relief from any part of the order; the appellee may only defend the order.*” *Cespedes v. Yellow Transp., Inc.*, 130 So. 3d 243, 249 (Fla. 1st DCA 2013) (citing *Premier Indus. v. Mead*, 595 So. 2d 122, 124 (Fla. 1st DCA 1992)) (emphasis added); *see also Philip J. Padovano, Florida Appellate Practice*, § 23.9 at 494 (2011-12 ed.) (explaining that

without a notice of cross-appeal “the appellee may only defend the order of the lower court and *may not seek affirmative relief from any party of the order*”) (emphasis added).

Here, the Plaintiffs never filed a Notice of Cross-Appeal as it relates to the Court’s May 2, 2014 Order – the Plaintiffs failed to exercise their “exclusive method of obtaining relief” from the Court’s May 2, 2014 Order. *Cespedes*, 130 So. 3d at 249. A panel of the First District recognized as much. *Non-Parties*, 39 Fla. L. Weekly 1300 at n.2. Yet now the Plaintiffs argue that this Court erred in requiring the disclosure of only 538 pages of documents. The Plaintiffs seek affirmative relief from the Court’s May 2, 2014 Order after two separate appellate courts considered the matter, and the Florida Supreme Court affirmed the trial court’s May 2, 2014 Order. While the Plaintiffs’ collateral attack on the May 2, 2014 is clearly improper because they never filed a Notice of Cross-Appeal, *Cespedes*, 130 So. 3d at 249, it also contravenes the policy underlying the cross-appeal rule by allowing for piecemeal consideration and appeals of the same May 2, 2014 Order. The Plaintiffs’ Motion should thus be denied. *Cf. Flinn v. Flinn*, 68 So. 3d 424, 425 (Fla. 4th DCA 2011) (“It is a long-held policy of the courts of this state that piecemeal appeals are not permitted where claims are legally interrelated and in substance involve the same transaction.”) (quoting *Mendez v. W. Flagler Family Ass’n*, 303 So. 2d 1, 5 (Fla. 1974) (internal quotations omitted)).

**C. The Plaintiffs abandoned their Motion for Rehearing when they filed their Notice of Appeal.**

Even if one assumes that the Plaintiffs timely and properly filed their Motion for Rehearing – which they did not – and this Motion tolled the time to file a Notice of Cross-Appeal – which it did not – the Plaintiffs abandoned their Motion by filing a Notice of Appeal in the underlying case. The Florida Rules of Appellate Procedure clearly provide that “[i]f [a motion for rehearing] ha[s] been filed and a notice of appeal is filed before the filing of a signed written

order disposing of all such motions, all motions filed by the appealing party that are pending at the time *shall be deemed abandoned.*” Fla. R. App. P. 9.020(h)(3) (emphasis added).

Here, the Court issued no order, much less a written order, on the Plaintiffs’ Motion for Rehearing before the Plaintiffs filed their Notice of Appeal on August 29, 2014. As such, the Plaintiffs “abandoned” their Motion. *Id.* The Notice of Appeal also had the effect of depriving this Court of continuing jurisdiction over the case generally, and jurisdiction over the Motion for Rehearing specifically because that Motion is not a procedural motion. *See, e.g., Raynor v. Fla. State Lodge*, 987 So. 2d 152, 154-55 (Fla. 1st DCA 2008) (quashing trial court order by explaining that “[w]hile the appeal of [a substantive order] was pending in this Court, the circuit court had no jurisdiction to continue to act on th[e] case” because “Florida Rule of Appellate Procedure 9.600(a) provides that a lower tribunal has concurrent jurisdiction with [the First District] only for procedural matters,” and “th[e] matter [of amending a previous arbitration award] was not procedural”).

**D. The Plaintiffs chose not to file a Motion for Rehearing or Clarification before the Florida Supreme Court.**

Finally, if the Plaintiffs believe that the logic of the Florida Supreme Court’s recent decision in *Bainter* should have required disclosure of all 1,833 pages of the Non-Parties documents, despite their failure to file a Notice of Cross-Appeal, then the Plaintiffs should have filed a Motion for Rehearing or Clarification before the Florida Supreme Court. They did not.

The Florida Supreme Court’s now final holding in *Bainter* is clear: “we affirm the trial court’s ruling requiring production of the *538 pages of disputed documents.*” *Bainter*, 39 Fla. L. Weekly at 696 (emphasis added). The time to alter this holding has since passed. *Id.* (truncating

deadlines for rehearing).<sup>3</sup> Therefore, the Florida Supreme Court's decision affirming this Court's May 2, 2014 Order should be treated as law of the case, and the Court should deny the Plaintiffs' Motion for Rehearing. *Fla. Real Estate Comm'n v. McGregor*, 336 So. 2d 1156, 1161 (Fla. 1976) (Hatchett, J., dissenting) ("Whatever is once established between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts in the case.") (quoting 2 Fla. Jur. *Appeals* § 398 (1963)); *see also Fla. Dep't of Transp. v. Juliano*, 801 So. 2d 101, 106 (Fla. 2001) ("Additionally, the law of the case doctrine may foreclose subsequent consideration of issues implicitly addressed or necessarily considered by the appellate court's decision."); 3 Fla. Jur. *Appellate Review* § 433 (2014) ("A trial court has no discretion to change the law of the case.").

#### IV. CONCLUSION

After the appellate process has run its course, and after choosing not to exercise their opportunity to seek additional relief from the appellate courts, the Plaintiffs mount a collateral attack on the Court's May 2, 2014 Order. This collateral attack is untimely and improper. This attack is foreclosed by the Florida Supreme Court's recent decision affirming the Court's May 2, 2014 Order that required the production of 538 pages – and only 538 pages – of the disputed documents. Also, the Plaintiffs own actions have deprived this Court of the jurisdiction to even consider the Motion for Rehearing. For the foregoing reasons, the Plaintiffs' Motion for Rehearing should be denied, and the Court's May 2, 2014 Order – as already affirmed by the Florida Supreme Court – should stand.

---

<sup>3</sup> Mandate in the case also issued, bringing to a close the appellate proceedings as they relate to the Non-Parties. *See Anton v. State*, 976 So. 2d 6, 9 (Fla. 2d DCA 2008) ("The appellate process is completed on the date the mandate is issued.") (collecting cases).



Respectfully submitted:

/s/ D. Kent Safriet

D. Kent Safriet

Florida Bar No. 174939

kents@hgslaw.com

Mohammad O. Jazil

Florida Bar No. 72556

mohammadj@hgslaw.com

HOPPING GREEN & SAMS, P.A.

P.O. Box 6526

Tallahassee, Florida 32314

Telephone: (850) 222-7500

Facsimile: (850) 224-8551

*Counsel for Pat Bainter, Matt Mitchell,  
Michael Sheehan, and Data Targeting, Inc.*

Dated: December 30, 2014

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by electronic service through the Florida ePortal Filing System to all counsel of record below on the 30th day of December, 2014:

George T. Levesque  
General Counsel  
THE FLORIDA SENATE  
305 Senate Office Building  
Tallahassee, Florida 32399-1300  
Telephone: 850-487-5237  
levesque.george@flsenate.gov  
carter.velma@flsenate.gov

***Counsel for the Florida Senate***

J. Andrew Atkinson  
Ashley Davis  
Florida Department of State  
R.A. Gray Building  
500 S. Bronough Street  
Tallahassee, FL 32399  
ashley.davis@DOS.myflorida.com  
jandrew.atkinson@DOS.myflorida.com  
Diane.Wint@dos.myflorida.com

***Counsel for Florida Secretary of State***

Karen C. Dyer  
BOIES, SCHILLER & FLEXNER, LLP  
121 South Orange Ave., Suite 840  
Orlando, FL 32801  
kdyer@bsfllp.com

***Counsel for Romo Plaintiffs***

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

***Counsel for the Florida Senate***

Blaine Winship  
Timothy D. Osterhaus  
Atty. Gen., The Capitol, Suite PL-01  
Tallahassee, Florida 32399-1050  
timothy.osterhaus@myfloridalegal.com  
blaine.winship@myfloridalegal.com

***Counsel for the Attorney General***

Benjamin James Stevenson  
ACLU of Florida Foundation  
Post Office Box 12723  
Pensacola, Florida 32591-2723  
Phone 786-363-2738  
Fax: 786-363-1985  
bstevenson@aclufl.org

***Counsel for NAACP***

Charles T. Wells  
George N. Meros, Jr.  
Jason L. Unger  
Andy Bardos  
GRAY ROBINSON, P.A.  
P.O. Box 11189 (32302)  
301 South Bronough Street; Suite 600  
Tallahassee, Florida 32301  
Tel. (850) 577-9090  
Fax. (850) 577-3311  
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

***Counsel for the Florida House of Representatives***

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

***Counsel for the Florida House of Representatives***

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

***Counsel for NAACP***

Raoul G. Cantero  
Jason N. Zakia  
Jesse L. Green  
WHITE & CASE LLP  
Southeast Financial Center, Ste. 4900  
200 South Biscayne Boulevard  
Miami, FL 33131  
Telephone: (305) 371-2700  
Facsimile: (305) 358-5744  
rcantero@whitecase.com  
jzakia@whitecase.com  
jgreen@whitecase.com  
ldominguez@whitecase.com  
mgaulding@whitecase.com

***Counsel for the Florida Senate***

Marc Erik Elias (admitted pro hac vice)  
John M. Devaney  
Perkins Coie, LLP  
700 13<sup>th</sup> Street, NW, Suite 600  
Washington, D.C. 20005  
Telephone: (202) 434-1609  
melias@perkinscoie.com  
jdevaney@perkinscoie.com  
efrost@perkinscoie.com  
syarborough@perkinscoie.com

***Counsel for Romo Plaintiffs***

Allison J. Riggs, *Admitted 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

***Counsel for NAACP***

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

***Counsel for Coalition Plaintiffs***

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  
rspear@perkinscoie.com  
jstarr@perkinscoie.com

***Counsel for Romo Plaintiffs***

Mark Herron, Esq.  
Robert J. Telfer III, Esq.  
Angelina Perez, Esq.  
Messer, Caparello & Self, P.A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
Telephone: (850) 222-0720  
Facsimile: (850) 558-0659  
mherron@lawfla.com  
rtelfer@lawfla.com  
aperez@lawfla.com  
clowell@lawfla.com  
bmorton@lawfla.com  
statecourtpleadings@lawfla.com

***Counsel for Romo Plaintiffs***

David B. King  
Thomas A. Zehnder  
Frederick S. Wermuth  
Vincent Falcone, III  
**KING, BLACKWELL, ZEHNDER &  
WERMUTH, P.A.**  
P.O. Box 1631  
Orlando, FL 32802-1631  
Telephone: (407) 422-2472  
Facsimile: (407) 648-0161  
dking@kbzwlaw.com  
tzehnder@kbzwlaw.com  
fwerthem@kbzwlaw.com  
vfalcone@kbzwlaw.com  
aprice@kbzwlaw.com  
courtfilings@kbzwlaw.com

Gerald E. Greenberg  
Adam M. Schachter  
GELBER SCHACHTER & GREENBERG,  
P.A.  
1441 Brickell Avenue, Suite 1420  
Miami, Florida 33131  
Telephone: (305) 728-0950  
Facsimile: (305) 728-0951  
ggreenberg@gsgpa.com  
aschachter@gsgpa.com  
DGonzalez@gsgpa.com

*Counsel for Coalition Plaintiffs*

Daniel C. Brown  
Carlton Fields Jordan Burt, P.A.  
215 S. Monroe Street, Suite 500  
Tallahassee, FL 32301  
Telephone: (850) 224-1585  
Facsimile: (850) 222-0398  
dbrown@cfjblaw.com  
cthompson@cfjblaw.com  
talecf@cfdom.net

David P. Healy  
2846-B Remington Green Circle  
Tallahassee, FL 32308  
Telephone: 850.222-5400  
Facsimile: 850.222.7339  
dhealy@davidhealylaw.com

*Counsel for Non-parties Republican Party of  
Florida, Frank Terraferma, Richard Heffley  
& Marc Reichelderfer*

/s/ D. Kent Safriet  
Attorney