

EXHIBIT 2

Office of the Attorney General



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April 8, 2024

SENT VIA EMAIL

Pooja Chaudhuri
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CC: mitchellbrown@scsj.org; erosenberg@lawyerscommittee.org;
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jgreenbaum@lawyerscommittee.org;

RE: Subpoenas Duces Tecum and for Deposition of Members of the General Assembly and House Ethics Counsel Dough Himes.

Dear Pooja,

We are in receipt of the subpoenas duces tecum issued to nine legislators and House Ethics Counsel Doug Himes. Upon service, Counsel Mitchell Brown inquired as to whether the named legislative officials would agree to sit for depositions in this case. We object to the subpoenas duces tecum and any future subpoenas for testimony of these officials as barred by legislative privilege. The legislative officials will move to quash all such subpoenas on that ground.

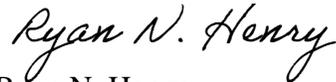
After reviewing the applicable rules, it is our understanding that we need to meet and confer about any motion to quash but the case management order does not require a joint discovery dispute statement since these subpoenaed officials are non-parties. Please let us know the range of times when you would be available for a meet-and-confer and whether you have a different understanding of the procedural requirements.

In the interest of efficiency, we would like to file one motion to quash all subpoenas directed to non-party legislative officials. Accordingly, at our meet-and-confer we will ask that Plaintiffs agree to an extension of our deadlines to file motions to quash the subpoenas duces

tecum. For the legislators and Counsel Himes, those deadlines are April 22, 2024 and May 1, 2024 respectively. *Olmstead v. Fentress Cnty., Tennessee*, No. 2:16-CV-00046, 2018 WL 6198428, at *2 (M.D. Tenn. Nov. 28, 2018) (“A motion to quash is timely if it is filed before compliance with the subpoena is required.”). We intend to move for an extension of these deadlines to a reasonable time after service of the subpoenas for testimony, which will allow for consolidated briefing.

Written objections to the subpoenas dated March 20, 2024 and March 28, 2024 are attached in accordance with Rule 45 of the Federal Rules of Civil Procedure. Thank you for your consistent willingness to collaborate on these tricky matters of timing and procedure.

Sincerely,



Ryan N. Henry

Assistant Attorney General

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Attachments:

Subpoenaed Legislators’ Objections to Subpoenas Duces Tecum

Counsel Himes’s Objections to Subpoena Duces Tecum

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**NON-PARTY LEGISLATORS' OBJECTIONS TO PLAINTIFFS'
SUBPOENAS TO PRODUCE DOCUMENTS, INFORMATION OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

Pursuant to Rules 45 of the Federal Rules of Civil Procedure, Deputy Speaker Curtis Johnson, Sen. Dawn White, Rep. Gary Hicks, Sen. Jack Johnson, Rep. Kevin Vaughan, Rep. Pat Marsh, Rep. Patsy Hazlewood, Sen. Paul Rose, and Leader William Lamberth (“the Subpoenaed Legislators”) object to Plaintiffs’ Subpoenas to Produce Documents or Information dated March 20, 2024 (“Subpoenas”).

GENERAL OBJECTIONS

1. The Subpoenaed Legislators object to any express or implied instruction or definition that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. The Subpoenaed Legislators object to every request in the Subpoenas because the requests seek information protected by legislative privilege. The Subpoenaed Legislators further object

to the Subpoenas to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the official documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, legislative immunity, and/or any other applicable privilege.

3. The Subpoenaed Legislators object to the requests because Plaintiffs did not take reasonable steps to avoid imposing undue burden as required by Fed. R. Civ. P. 45(d)(1). Specifically, the scope of the obligation resulting from the combination of Instructions #1, 2, 4, 20, and 21 with Requests #2, 5, and 7 is overbroad and unduly burdensome. When taken together, these instructions and requests require the Subpoenaed Legislators to provide documents and communications exchanged between at least 194 individuals and entities.

4. The Subpoenaed Legislators object to Plaintiff's definitions and directions in Instructions #1, 4, 20, and 21, to the extent that they include "persons or entities . . . purporting to act" on behalf of the Subpoenaed Legislators without their approval, knowledge, or authority.

5. The Subpoenaed Legislators object to the definition of "relating to" in Instruction #6 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

6. The Subpoenaed Legislators object to the request in Instruction #19 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which [they] have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for three reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand.")

(citations omitted)). Second, by requesting any documents that the Subpoenaed Legislators' attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of the Subpoenaed Legislators and are subject to attorney-client privilege. *See e.g., In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term "other agents" is vague and overly broad as it is not confined to agents of the Subpoenaed Legislators.

7. The Subpoenaed Legislators object to Instruction #29 for exceeding the requirements of Fed. R. Civ. P. 45. The Subpoenaed Legislators do not agree to undertake any production efforts that exceed the requirements of Fed. R. Civ. P. 45.

8. The Subpoenaed Legislators object to Instruction #31 to the extent that it requires them to identify responsive documents no longer in their possession, custody, or control, that they never knew existed or that they do not remember.

9. The Subpoenaed Legislators object to Instruction #32 for exceeding the requirements of Fed. R. Civ. P. 45. The Subpoenaed Legislators do not agree to undertake a duty to supplement responses when Fed. R. Civ. P. 45 does not require it.

10. The Subpoenaed Legislators reserve the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

11. The Subpoenaed Legislators expressly incorporate these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

- a. the origination or source of any redistricting proposal related to the Redistricting Plans;
- b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
- c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
- d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
- e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #1 to

the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators object to Request #1 to the extent that it seeks production of documents that are protected attorney-client privilege and the work-product doctrine. The Subpoenaed Legislators object to Request 1(g) as vague because it does not define the term “core preservation.” The Subpoenaed Legislators object to 1(h) as vague because “litigation materials” and “litigation documents” are undefined. The Subpoenaed Legislators object to Request #1(i) as overly broad because it asks for information “relating to any effect or impact of the Redistricting proposals of any kind.”

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;

- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social media account or since archived or deleted and including any comments made by you on your own posts or other social media users' posts);
- f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;
- g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written
- h. testimony and comments received by mail, email, legislative portal, or by other means;
- i. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;
- j. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;
- k. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;
- l. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other

minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

m. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with

n. redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

o. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;

p. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;

q. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to

Plaintiffs. The Subpoenaed Legislators object to Request #2 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

r. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #3 on the grounds that it is overly broad, vague, unduly burdensome, and seeks information not relevant to this litigation. Request #3 seeks “All Documents Relating to any legislation discussed, considered or passed,” without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state.

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #4 as vague in that it provides no definition for “rules, legislative counsel rules, procedural memos, and guidelines.” The Subpoenaed Legislators further object because the request for procedural documents from four

separate committees and subcommittees without any limitation on the topics those documents may encompass is overly broad, unduly burdensome, and seeks information not relevant to this litigation. The Subpoenaed Legislators object to Request #4 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #5 to the extent it seeks

documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators object to Request #5 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators object to Request #6 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any

national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in their possession, custody, or control, the Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19. The Subpoenaed Legislators object to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators object to Request #7 to the extent that it seeks production of documents protected attorney-client privilege and the work-product doctrine.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing

on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in their possession, custody, or control, The Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #17. The Subpoenaed Legislators object to Request #8 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators object to Request #9 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. To the extent that this request seeks information not in their possession, custody, or control, The Subpoenaed Legislators object to this request for the reasons set out above in their objection to Instruction #19.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

RESPONSE: The Subpoenaed Legislators object to this request because it seeks information protected by legislative privilege. The Subpoenaed Legislators further object to Request #10 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. The Subpoenaed Legislators further object to this request as overly broad and unduly burdensome for seeking all documents produced at any time in any other litigation relating to Tennessee's redistricting process, regardless of the nature of the litigation. The Subpoenaed Legislators object to Request #10 to the extent that it seeks production of documents protected by attorney-client privilege and the work-product doctrine.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Non-Party Legislators

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

COUNSEL OF RECORD	PARTY REPRESENTED
<p>Phillip F. Cramer Sperling & Slater 150 3rd Avenue South, Suite 1100 Nashville, TN 37201 Tel.: 312-224-1512 pcramer@sperling-law.com</p> <p>Jon Greenbaum* Ezra D. Rosenberg* Pooja Chaudhuri* Lawyers' Committee for Civil Rights Under Law 1500 K Street NW, Suite 900 Washington, DC 20005 Tel.: 202-662-8600 jgreenbaum@lawyerscommittee.org erosenberg@lawyerscommittee.org pchaudhuri@lawyerscommittee.org</p> <p>Jeffrey Loperfido* Mitchell D. Brown* Southern Coalition for Social Justice 1415 West Highway 54, Suite 101 Durham, NC 27707 Tel.: 919-323-3380 jeffloperfido@scsj.org mitchellbrown@scsj.org</p> <p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166</p>	<p>Plaintiffs Tennessee State Conference of the NAACP, League of Women Voters of Tennessee, The Equity Alliance, Memphis A. Philip Randolph Institute, African American Clergy Collective of Tennessee, Judy Cummings, Brenda Gilmore, Ophelia Doe, Freda Player, and Ruby Powell-Dennis</p>

<p>George E. Mastoris* Michelle D. Tuma* Winston & Strawn LLP 200 Park Avenue New York, NY 10166 Tel.: 212-294-6700 gmastoris@winston.com mtuma@winston.com</p>	
<p>Adam K. Mortara (BPR# 40089) Lawfair LLC 40 Burton Hills Blvd., Suite 200 Nashville, TN 37215 (773) 750-7154 mortara@lawfairllc.com</p> <p>Whitney D. Hermandorfer Director of Strategic Litigation Miranda H. Jones Senior Assistant Attorney General Ryan Nicole Henry Assistant Attorney General Philip Hammersley Assistant Solicitor General Office of the Tennessee Attorney General P.O. Box 20207 Nashville, Tennessee 37202 (615) 532-2935 whitney.hermandorfer@ag.tn.gov miranda.jones@ag.tn.gov ryan.henry@ag.tn.gov philip.hammersley@ag.tn.gov</p> <p><i>Counsel for Defendants</i></p>	<p>Defendants William B. Lee, in his official capacity as Governor of the State of Tennessee, Tre Hargett, in his official capacity as Secretary of State of the State of Tennessee, Mark Goins, in his official capacity as Coordinator of Elections for the State of Tennessee, the State Election Commission, and Donna Barrett, Judy Blackburn, Jimmy Eldridge, Mike McDonald, Secondra Meadows, Bennie Smith and Kent Younce, in their official capacities as members of the State Election Commission</p>

/s/ _____

Counsel for Non-Party Legislators

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

WILLIAM B. LEE, in his official capacity as
Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**NON-PARTY DOUG HIMES’S OBJECTIONS TO PLAINTIFFS’
SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

Pursuant to Rules 45 of the Federal Rules of Civil Procedure, Doug Himes—Tennessee House Ethics Counsel—objects to Plaintiffs’ Subpoena to Produce Documents or Information.

GENERAL OBJECTIONS

1. Counsel Himes objects to any express or implied instruction or definition that imposes or seeks to impose any burden or requirement greater than those required by the Federal Rules of Civil Procedure.

2. Due to Instruction #35, Counsel Himes submits these objections with the understanding that Plaintiffs are not seeking any documents covered by attorney-client privilege. Should Plaintiffs seek attorney-client privileged documents in the future, Counsel Himes reserves the right to assert attorney-client privilege over all such documents.

3. Counsel Himes objects to every request in the Subpoena because the requests seek information protected by legislative privilege. Counsel Himes further objects to the Subpoena to the extent it seeks information that is protected from disclosure by any statute governing the confidentiality of information or by the deliberative-process privilege, the official documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, legislative immunity, and/or any other applicable privilege.

4. Counsel Himes objects to the requests because Plaintiffs did not take reasonable steps to avoid imposing undue burden as required by Fed. R. Civ. P. 45(d)(1). Specifically, the scope of the obligation resulting from the combination of Instructions #1, 2, 4, 20, and 21 with Requests #2, 5, and 7 is overly broad and unduly burdensome. When taken together, these instructions and requests require Counsel Himes to provide documents and communications exchanged between at least 194 individuals and entities.

5. Counsel Himes objects to Plaintiff's definitions and directions in Instructions #1, 4, 20, and 21, to the extent that they include "persons or entities . . . purporting to act" on behalf of the Counsel Himes without his approval, knowledge, or authority.

6. Counsel Himes objects to the definition of "relating to" in Instruction #6 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

7. Counsel Himes objects to the request in Instruction #19 to produce *not only* documents in his actual possession, custody, or control *but also* "such documents which [he has] the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for three reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed

to be within the ‘possession, custody or control’ for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand.” (citations omitted)). Second, by requesting any documents that Counsel Himes’s attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Counsel Himes and are subject to attorney-client privilege. *See e.g., In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Counsel Himes.

8. Counsel Himes objects to Instruction #29 for exceeding the requirements of Fed. R. Civ. P. 45. Counsel Himes does not agree to undertake any production efforts that exceed the requirements of Fed. R. Civ. P. 45.

9. Counsel Himes objects to Instruction #31 to the extent that it requires him to identify responsive documents no longer in his possession, custody, or control, that he never knew existed or that he does not remember.

10. Counsel Himes objects to Instruction #32 for exceeding the requirements of Fed. R. Civ. P. 45. Counsel Himes does not agree to undertake a duty to supplement responses when Fed. R. Civ. P. 45 does not require it.

11. Counsel Himes reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

12. Counsel Himes expressly incorporates these General Objections into each specific response below. The failure to repeat any of these General Objections is not a waiver of these objections.

REQUESTS FOR PRODUCTION RESPONSES

1. All Documents Relating to any redistricting proposal for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, at any stage of the redistricting process, including but not limited to the Redistricting Plans *i.e.*, Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781. This request specifically includes but is not limited to:

- a. the origination or source of any redistricting proposal related to the Redistricting Plans;
- b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, demographic change, political affiliation, political party, or perceived electoral advantage;
- c. all drafts in the development or revision of any of the Redistricting Plans, including but not limited to shapefiles, files, or datasets used in mapping software such as maptitude, demographic data, election data, and files related to precinct names, precinct lines, split precincts, partisan indexes, population shifts, population deviations, voter registration, voter affiliation, citizenship, changing census geography, or any other measure used to evaluate the Redistricting Plans;
- d. all Documents Relating to any proposed Redistricting amendment, whether partial or total, to each such proposal;
- e. all Documents Relating to negotiations regarding any of the Redistricting Plans, including any redistricting proposals and/or drafts related to the Redistricting Plans;

- f. any concept maps or other pre-drafting Documents;
- g. all Documents Relating to the concept of “core preservation” regarding any of the Redistricting Plans;
- h. any academic, expert, or litigation materials, including but not limited to essays, histories, analyses of past Redistricting proposals in Tennessee or elsewhere, articles, or litigation documents;
- i. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to any effect or impact of the Redistricting proposals of any kind—including on (1) Tennessee minority voters, (2) existing or emerging minority opportunity districts (districts with at least 50% minority voting age population), and (3) voter turnout—that could result from the implementation of any such redistricting proposal;
- j. all calculations, reports, audits, estimates, projections, or other analysis, from any source, Relating to the total population or eligible voter population of Tennessee and the number of majority party seats that might be provided for in or could result from any Redistricting proposal; and
- k. all communications involving or correspondence (whether via e-mail, text, or some other means) Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #1 to the extent it seeks documents in the

possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #1 to the extent that it seeks production of documents that are protected by the work-product doctrine. Counsel Himes objects to Request 1(g) as vague because it does not define the term “core preservation.” Counsel Himes objects to 1(h) as vague because “litigation materials” and “litigation documents” are undefined. Counsel Himes objects to Request #1(i) as overly broad because it asks for information “relating to any effect or impact of the Redistricting proposals of any kind.”

2. All Documents Relating to the Redistricting process for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, such as Documents dealing with planning, timing, hearings, staffing, training, outreach, public participation, deadlines, limitations, and persons or entities. This request specifically includes but is not limited to:

- a. all correspondence with Legislators Relating to the Redistricting Plans;
- b. all correspondence between you and the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, and the Office of the Attorney General Relating to the Redistricting Plans;
- c. all correspondence between you and Defendants Relating to the Redistricting Plans;
- d. all correspondence with the National Republican Redistricting Trust (“NRRT”), Fair Lines America, or any Political Action Committees (“PACs”), or any other third-party organization including but not limited to the Heritage Foundation, consultant, expert, law firm, vendor, or other political party, community group, or organization;
- e. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any of your social

media account or since archived or deleted and including any comments made by you on your own posts or other social media users' posts);

f. a list of all individuals requesting, invited, permitted, or considered to testify in the Tennessee Senate and the Tennessee House Relating to the Redistricting process or the Redistricting Plans;

g. all transcripts of all testimony given in the Tennessee House and Tennessee Senate Relating to the Redistricting Plans, including all written

h. testimony and comments received by mail, email, legislative portal, or by other means;

i. all notices published or transmitted to individuals or the public about Redistricting Plan hearings and the scheduling of such hearings;

j. all Documents Relating to the process by which proposed amendments were (or were to be) reviewed by Legislators or officials before they could be considered by the entire Tennessee Senate or Tennessee House;

k. all Documents Relating to the involvement with or comments on the Redistricting Plans by anyone at the National Republican Redistricting Trust, Fair Lines America, or the Republican Party or any division, sub-division, or local branch of the Republican Party;

l. all Documents Relating to the selection or placement, or lack thereof, of Black, Hispanic, or other minority Senators and Black, Hispanic, or other minority Representatives within the Tennessee Senate and Tennessee House committees which considered or dealt with election and redistricting matters;

- m. all Documents Relating to the use of Voting Age Population (“VAP”), Black Voting Age Population (“BVAP”), Hispanic Voting Age Population (“HVAP”), Citizen Voting Age Population (“CVAP”), Black Citizen Voting Age Population (“BCVAP”), Hispanic Voting Age Population (“HCVAP”), and/or Total Population in connection with
- n. redistricting proposals, the Redistricting Plans, or the drawing of any district(s);
- o. all Documents Relating to whether the Redistricting Plans comply with the Voting Rights Act, including but not limited to any calculations, reports, audits, estimates, projections, or other analyses;
- p. all Documents Relating to or providing guidance on what is required in order to ensure compliance with the Voting Rights Act or the United States Constitution;
- q. all Documents referencing a distinction, or lack of distinction, between minority voters and Democratic voters.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #2 to the extent that it seeks production of documents protected by the work-product doctrine.

3. All Documents Relating to any legislation discussed, considered, or passed Relating to:

r. race, racism, critical race theory, the history of slavery, or the treatment and discussion of racial minorities, including those who identify as white, Anglo, Caucasian, or European-American;

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects Request #3 on the grounds that it is overly broad, vague, unduly burdensome, and seeks information not relevant to this litigation. Request #3 seeks “All Documents Relating to any legislation discussed, considered or passed,” without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state.

4. All committee rules, legislative counsel rules, procedural memos, and guidelines for the following committees of the Tennessee General Assembly or any conference committee appointed to address bills being passed through any of these committees: House Select Committee on Redistricting, House Public Service Subcommittee, House State Government Committee, Senate Ad Hoc Committee on Redistricting, and Senate Judiciary Committee.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #4 as vague in that it provides no definition for “rules, legislative counsel rules, procedural memos, and guidelines.” Counsel Himes further objects because the request for procedural documents from four separate committees and subcommittees without any limitation on the topics those documents may encompass is overly broad, unduly burdensome, and seeks information not relevant to this litigation.

5. All Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives or the Tennessee Senate, exchanged between, among, with, or within the

Tennessee General Assembly, any Legislator, the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #5 to the extent that it seeks production of documents protected by the work-product doctrine.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #6 to the extent that it seeks production of documents protected by the work-product doctrine.

7. All Documents Relating to enumerations or estimates by the U.S. Census Bureau or Tennessee Demographic Center related to population changes, race, ethnicity, language minority status, or United States citizenship exchanged between, among, with, or within the Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate for the Tennessee House or Tennessee Senate, any candidate to represent Tennessee in the U.S. House of Representatives, any campaign for the Tennessee House or Tennessee Senate, any campaign to represent Tennessee in the U.S. House of Representatives, any national political party, any state political party organization, any local political party organization, any national congressional campaign committee, any national organization dedicated to supporting state legislative candidates, the National Republican Redistricting Trust, Fair Lines America, the National Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in his possession, custody,

or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19. Counsel Himes objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes objects to Request #7 to the extent that it seeks production of documents protected the work-product doctrine. Counsel Himes objects to Request #7 as overly broad.

8. All Documents Relating to payment for services rendered by or engagements, agreements of representation, or contracts with any consultant, political operative, expert, law firm, attorney, vendor, or any other individual or entity related to the Restricting Plans. This request specifically includes but is not limited to:

a. all Documents Relating to the provision of assistance to you or the Tennessee General Assembly on Redistricting matters before the legislature by any attorney or consultant, or the availability, solicitation, or willingness of any attorney or consultant to provide such assistance; and

b. all Documents Relating to plans or requests for any person or entity to be present on or near the premises at which any committee hearing on Redistricting was taking place during or near the time of that committee hearing or any related Floor debate.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #17. Counsel Himes objects to Request #8 to the extent that it seeks production of documents protected by the work-product doctrine.

9. All Documents Relating to the voting districts or “VTDs” for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #9 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. To the extent that this request seeks information not in his possession, custody, or control, Counsel Himes objects to this request for the reasons set out above in the objection to Instruction #19.

10. For any time period, all Documents produced to or received from parties in the above-captioned dispute related to the Redistricting process, the Redistricting Plans, this litigation, or other litigation challenging the Redistricting Plans.

RESPONSE: Counsel Himes objects to this request because it seeks information protected by legislative privilege. Counsel Himes objects to Request #10 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Counsel Himes further objects to this request as overly broad and unduly burdensome for seeking all documents produced at any time in any other litigation relating to Tennessee’s redistricting process, regardless of the nature of the litigation. Counsel Himes objects to Request #10 to the extent that it seeks production of documents protected by the work-product doctrine.

Respectfully submitted,

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Counsel for Non-Party Legislators

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ _____

Counsel for Non-Party Legislators